Department of the Army
Pamphlet 27–162

Legal Services

Claims Procedures

Headquarters
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Washington, DC
1 April 1998

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SUMMARY of CHANGE

DA PAM 27–162
Claims Procedures

This revision--

- Updates information about, and procedures for, tort, personnel, disaster and environmental claims (throughout).

- Replaces material, not regulatory in nature, that was published in the previous version of AR 27-20 (throughout).

- Changes the chapter and paragraph structure to correspond with that set forth in AR 27-20, thereby permitting the user to find material easily by matching paragraph headings (throughout).

- Presents a revised disaster claims plan (chap 1).

- Streamlines Freedom of Information Act and Privacy Act procedures (chap 1).

- Presents procedural material common to all tort claims (chap 2). (The chapters pertaining to individual tort statutes present only such material as pertains to that particular statute.)

- Defines geographic areas for which area claims offices (ACO) have been assigned responsibility for processing tort claims caused by Army soldiers and civilian employees, including DOD civilian employees, except where the Army is assigned single-service claims responsibility (Table 2-1).

- Defines the procedures command claims services use to delineate geographic areas of responsibility (para 2-3).

- Defines the requirement that only a claims judge advocate, claims attorney, claims investigator, or claims examiner interact with new claimants who contact the claims office (para 2-6).

- Explains the limitation of payment to fair share where the United States is only proportionately liable when it is a joint tortfeasor; otherwise requires filing of suit or appeal pursuant to applicable chapter (para 2-82).

- Applies rules on structured settlements found in AR 27-20, chapter 3, to all chapters (para 2-83).

- Extends the Department of Justice requirement that claims judge advocates and claims attorneys not discuss tax implications of structured settlements with claimants (AR 27-20, chapter 4) to all chapters (para 2-83).

- Instructs claims personnel, such as an area claims office, to settle claims at the lowest feasible level and never to admit liability (para 2-84).

- Provides that an area action officer’s authority may be delegated to experienced claims judge advocates and claims attorneys on a case-by-case basis (para 2-85).

- Encourages compromise in lieu of denial on appropriate claims (para 2-86).

- Instructs claims judge advocates and claims attorneys to negotiate face-to-face with claimants wherever possible (para 2-87).

- Instructs all claims personnel to fully inform unrepresented claimants about procedures, rights, and applicable law (para 2-88).

- Defines word "settlement" to include "denial" (para 2-89).

- States that an advance payment, while requiring a potentially payable claim, does not require a claimant to file a claim first (para 2-91).

- Requires settlement agreements on all tort claims, including those paid in full (para 2-93).

- Permits a court of a foreign country to approve the settlement of a minor’s claim (para 2-93).

- Provides that a final offer is in order only when an otherwise payable claim cannot be compromised (para 2-94).

- Requires that letters making a final offer or denying reconsideration and denial letters are mailed by certified mail, "Return Receipt Requested" (para 2-97).

- Requires claims personnel to acknowledge, in writing, all requests for reconsideration or appeals at the time of receipt (para 2-98).

- Requires claims personnel to retain files locally until the period for filing suit or appeal has passed and final action has been taken on all claims arising from the incident (para 2-99).

- States that USARCS must assign an office code to a foreign claims commission before the commission may act (para 10-6).

- Incorporates personnel claims policy changes published in *Army Lawyer* Notes (chap 11).

- Expands authority to pay personnel claims for vehicle theft and vandalism; permits payment for loss or damage arising from such incidents occurring anywhere on post, at quarters, or which are incident to service (para 11-5*h*).

- Authorizes staff judge advocates to waive maximum allowable amounts in personnel claims (para 11-14*a*).

- Authorizes staff judge advocates to act on certain requests for reconsideration of personnel claims (para 11-20).

- Addresses apportionment of claims payments between appropriated and nonappropriated funds (paras 12-1 and 12-9).

- Instructs that the Monthly Budget Status Report and other routine correspondence will be communicated by electronic mail. In the absence of e-mail capability, the field claims office will communicate by telephone, with facsimile transmission employed as a last resort. In emergencies, the field claims office will immediately contact the budget analyst by telephone to request funds (para 13-12*d*).

- Reflects recent statutory changes that apply to affirmative claims (chap 14).

Headquarters
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1 April 1998

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Legal Services

Claims Procedures

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:

JOEL B. HUDSON
Administrative Assistant to the
Secretary of the Army

History. This issue publishes a revision of the pamphlet, which was last printed on 15 December 1989. Because the publication has been revised extensively, the changed portions have not been highlighted.

Summary. This pamphlet sets forth procedures for investigating, processing, and settling claims against, and in favor of, the United States. This publication is intended to be read and used in conjunction with AR 27-20, which sets forth guiding legal principles and policy.

Applicability. This pamphlet applies to the Active Army, the Army National Guard (ARNG), the United States Army Reserve (USAR), and to Department of Defense (DOD) civilian employees under certain circumstances. In countries where the United States Army has been assigned single-service claims responsibility, this pamphlet applies to claims generated by the other armed services. During mobilization, procedures in this publication may be modified to support policy changes, as necessary.

Proponent and exception authority. The proponent agency of this pamphlet is the Office of The Judge Advocate General. The proponent has the authority to approve exceptions to this publication that are consistent with controlling law and regulation. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Commander, U. S. Army Claims Service, Fort George G. Meade, MD 20755-5360.

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Glossary

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RESERVED

Chapter 1
The Army Claims System

Section I
General

1–1. Purpose

a. Army claims mission. Training missions and overseas deployments by Active U.S. Army, Army Reserve, and National Guard personnel performing Federal functions may result in claims filed by individuals to recover funds for maneuver damage, certain environmental damage claims, destruction of personal or real property, and physical injury or death. Additionally, soldiers of the Army and other armed services as well as eligible Department of Defense (DOD) civilian employees who have deployed or changed permanent duty stations submit thousands of claims annually for lost or damaged household goods and other losses sustained incident to service. Combined, the foregoing claims, once evaluated, result in the tens of millions of dollars paid each year by the Army Claims System.

(1) This System is comprised of—

- U.S. Army Claims Service (USARCS), Office of The Judge Advocate General, U.S. Army.
- U.S. Army Claims Service, Europe.
- U.S. Army Claims Service—Korea,
- U.S. Army Claims Service South.
- Over 100 field claims offices around the world.

(2) On behalf of the Secretary of the Army, USARCS—

- Provides policy guidance and substantive claims-related assistance to the Department of the Army (DA) and the field claims offices worldwide.
- Provides operational guidance and support to military missions on claims and processes individual claims expeditiously.
- Coordinates the execution of the single service claims responsibility that the DOD has assigned to the Army for designated parts of the world.
- Assists field claims attorneys and commanders in establishing a claims processing and payment protocol that facilitates military operations, deploys as required, and provides support for certain environmental claims.
- Oversees claims payments arising from negligent acts or omissions and accidents that occur during military operations (such as peace-keeping and peace-enforcement missions; humanitarian relief operations in response to hurricanes, floods, earthquakes, and other natural disasters; and civil disturbances).
- If chemical accidents occur, acts as the agent for certain claims under the Chemical Stockpile Emergency Preparedness Program within the United States and other chemical demilitarization sites.

(3) In contrast to the payment missions listed in paragraph 1-1*a*(2), USARCS, through affirmative claims, is responsible for recovering funds that are owed to the Army, DOD, and the General Treasury by transportation carriers, insurance companies, and third parties who injure military personnel or damage military property.

(4) To execute its broad mission, USARCS receives indispensable assistance from the field claims offices and conducts an Annual Worldwide Claims Training Course open to both the Army claims community and members of the DOD and Federal Government.

b. Relationship between AR 27–20 and DA Pam 27–162.

(1) In furtherance of these and other claims missions, this publication explains and implements the policies contained in Army Regulation (AR) 27–20. It describes the procedures and responsibilities for investigating, processing, and settling claims arising from, or related to, military operations and activities against, and in favor of, the United States, under the authority conferred by statutes, regulations, international and interdepartmental agreements and DOD directives. This text is intended to ensure that claims are investigated properly, analyzed fully, adjudicated objectively and fairly, and paid or denied; or that collection action is initiated as may be appropriate.

(2) For ease of reference, the chapter and paragraph numbers in this publication correspond with the chapter and paragraph numbers used in AR 27–20. To the extent possible, the subparagraph numbers in this publication correspond to those used in the regulation, but that was not done uniformly since this publication contains much more information and implementing guidance than does AR 27–20. Readers will find, however, that both texts follow the same general order in presenting their subjects.

1–2. References

Required and related publications and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this pamphlet are explained in the Glossary.

1–4. Types of claims

a. Cognizable claims. This regulation covers cognizable claims under the following claims settlement authorities:

(1) *The Military Claims Act (MCA),* 10 United States Code (USC) 2733, 2738 (see chap 3).

(2) *The Federal Tort Claims Act (FTCA),* 28 USC 2671–2680 (see chap 4).

(3) *The Non Scope Claims Act,* 10 USC 2737 (see chap 5).

(4) *The National Guard Claims Act (NGCA),* 32 USC 715 (see chap 6).

(5) *Treaties and other international agreements,* 10 USC 2734b (see chap 7).

(6) *The Army Maritime Claims Settlement Act (AMCSA),* 10 USC 4801–4804, 4806 (see chap 8).

(7) *Redress of Injuries to Personal Property,* Article 139, Uniform Code of Military Justice (UCMJ), 10 USC 939 (see chap 9).

(8) *The Foreign Claims Act (FCA),* 10 USC 2734 (see chap 10).

(9) *The Personnel Claims Act (PCA),* 31 USC 3721 (see chap 11).

(10) Claims against non-appropriated fund (NAF) activities and the Risk Management Program (RIMP) (see chap 12).

(11) *The Federal Claims Collection Act (FCCA),* 31 USC 3711 (see chap 14).

(12) *The Federal Medical Care Recovery Act (FMCRA),* 42 USC 2651–2653 (see chap 14).

(13) Collection from third-party payers of reasonable costs of healthcare services, 10 USC 1095 (see chap 14).

(14) Claims by the U.S. Postal Service for losses or shortages in postal accounts caused by unbonded Army personnel (39 USC 411 and DOD Manual 4525.6–M). (See paras 1–7 and 2–25 of this publication.)

b. Other claims. This pamphlet also cites other laws and regulations that may give rise to claims not specifically discussed in this publication.

c. Sovereign immunity and claims against the Government.

(1) Common law has long held as a fundamental principle the concept that a sovereign is immune from suit without its consent. The U.S. Constitution, by implication, asserts sovereign immunity. (See *Principality of Monaco v. State of Mississippi,* 292 U.S. 313, 321, 1934). Therefore, unless the Government waives immunity, an injured party has few alternative methods by which to seek compensation for injuries sustained because of the Government's actions. As a remedy, the individual claims statutes authorize such waivers, establish a comprehensive administrative and limited judicial mechanism to evaluate and adjudicate claims and, in the process, save legislative resources by eliminating the need for Congressional action or private relief bills for individual claimants. (See *Rayonier*

Incorporated v. United States, 352 U.S. 315, 1957.) (For a brief history, see paragraph 11–1*c*.)

(2) The claims statutes, whether considered individually or together, do not waive immunity completely. The claims judge advocate (CJA) or claims attorney must determine the extent of the waiver and the remaining immunity. The following questions arise when considering statutory waivers and their implementing regulations:

(a) To what extent does the statute purport to waive immunity when it prescribes that certain claims are settled administratively (see for instance, the MCA (chap 3), and the FCA (chap 10)) rather than litigiously (see the FTCA (chap 4)).

(b) What is the statute's geographical or territorial application?

(c) What persons are permitted to be claimants?

(d) What legal interests (such as property rights, personal security, or community reputation) are compensable?

(e) What types of conduct, committed by whom, will result in a compensable claim?

(f) What monetary limits, if any, apply to compensation?

(g) What is the mode of adjudication (litigation, administrative settlement, Congressional determination)?

(3) Under the Army Claims System, approval authorities are authorized and have a duty to pay only meritorious claims in accordance with the standards governing claims resolution. In this sense, the administrative settlement of claims constitutes a limited waiver of sovereign immunity.

(4) Even if the claimant receives an award through administrative settlement or litigation, payment is not made automatically. Congress not only establishes the circumstances under which payments may be authorized, it must first appropriate public funds for the payment. Each year, Congress appropriates funds for the uniformed services to pay claims approved by duly-empowered administrative officers. Congress has created a permanent, indefinite appropriation for satisfaction of final judgments and compromise settlements against the United States (see 31 USC 1304).

1–5. Command and organizational relationships

a. General.

(1) The United States is self-insured. The Army Claims System implements numerous statutes that waive the Federal government's sovereign immunity and authorize payment for wrongful death, personal injury, and property damage or loss.

(2) The modern Army's size, complexity, and varied missions necessitate an extensive claims system, which operates in peacetime, during operations other than war, and in war. While performing many worldwide missions (including military operations and maneuvers, training missions, peace keeping, peace enforcement, humanitarian relief, domestic civil disturbance response, and disaster relief), the Army may sustain losses of Government property that are unrelated to the primary claims mission, and Army personnel and equipment may injure other persons and damage other property. The Army Claims System facilitates fair compensation for the injured parties, consistent with claims policies and laws.

(3) The DA is but one of many Federal agencies responsible for settling claims against, and asserting claims on behalf of, the United States. Within the Army, claims administrators typically include CJAs, claims attorneys, claims investigators, claims officers, recovery judge advocates (RJA), recovery attorneys, members of foreign claims commissions (FCC), claims adjudicators, recovery assistants and staff assistants. The term "Army Claims System" refers to these persons collectively, as well as to the body of applicable claims statutes and other authorities. These persons administer those claims unique to the military and discharge other claims responsibilities in common with other Federal departments and agencies.

b. Department of the Army.

(1) *Secretary of the Army.* The Secretary of the Army (SA) heads the Army Claims System. Some claims statutes, such as the Personnel Claims Act (PCA) and the Military Claims Act (MCA), require the SA to issue departmental regulations and to invest subordinate officials with some settlement authority. Army regulations permit certain claimants to appeal to the SA or designee.

(2) *The Judge Advocate General.* The SA has delegated many important claims responsibilities and decisions to The Judge Advocate General (TJAG). In addition to overseeing all the Army's legal activities, the TJAG assesses how claims administration affects other functions such as relations with host governments abroad, military operations, and morale. Within the Office of The Judge Advocate General (OTJAG), The Assistant Judge Advocate General (TAJAG) exercises general oversight on claims, including those requiring action by the SA's designee. Both the SA's and TJAG's designees may act on behalf of their superiors under the "alter ego" doctrine.

(3) *U.S. Army Claims Service.* The U.S. Army Claims Service (USARCS), located at Fort George G. Meade, Maryland, 20755–5360, is the OTJAG element responsible for managing the Army Claims System. Its Commander and certain of the Commander's designees are empowered to deny or settle claims up to the monetary limits established by statutes and implementing regulations. The Commander, USARCS, formulates claims policies on behalf of the SA, prepares claims regulations and provides guidance to field claims offices. The USARCS staff provides additional guidance and instruction to the field in a variety of ways. USARCS acts as the receiving State office (RSO) for claims cognizable under Article VIII of the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA) (19 June 1951 (1953, Part 2), 4 U.S. Treaties (UST) 1972, Treaties and Other International Acts Series (TIAS) No. 2846).

c. Creation of an Overseas Command Claims Service. When the major Army command (MACOM) or equivalent Staff Judge Advocate (SJA) office determines that a command claims service is warranted to support a deployment, the MACOM or SJA office should immediately furnish the Commander, USARCS (Attention: Chief, Foreign Torts Branch, Tort Claims Division) the following information:

- Nature and duration of mission.
- Number of troops.
- Assessment of the claims situation.
- Supplemental claims requirements.
- Continued updates on the claims mission.

This information prepares the USARCS Foreign Torts Branch to assist the field claims offices and to respond to claims issues that may arise at the DA and DOD staff levels.

d. Field offices. The Commander, USARCS, has designated area claims offices (ACO) around the world as well as command claims services for major overseas theaters. Because USARCS still maintains sole control of funding codes, the Commander, USARCS, must approve the creation of any new office that has payment approval authority. AR 27–20, paragraph 1–5*f*, authorizes heads of ACOs to create four types of claims processing offices (CPO). CPOs are those subordinate claims offices within an ACO's geographic area that have approval authority or investigative responsibility. The first three are permanent; the fourth is intended as a temporary, event-specific extension of the ACO. These claims offices are—

(1) CPOs without approval authority.

(2) CPOs with approval authority.

(3) Medical CPOs.

(4) Special CPOs.

e. Area claims offices. ACOs and their subordinate CPOs have geographic areas of responsibility within the continental United States (CONUS) and command areas of responsibility overseas. (See Table 2–1 for a list of worldwide Army ACOs and their geographical or command areas of responsibility.)

f. National Guard liaison. Within CONUS, it is important to maintain effective liaison with the State National Guard (NG) because many of the NG's activities are covered by the FTCA and the

NGCA. Thus, CONUS ACOs have been designated as the primary liaison offices for NG matters (see figure 1–1). In general, these offices were selected based on the location of NG headquarters in their assigned geographic areas. Other claims offices exercising jurisdiction over part of the State must assist NG personnel and units involved in incidents within their area of responsibility, but need not maintain constant liaison with NG headquarters.

g. Reserve Judge Advocates. To ensure the best possible Army claims program, CONUS ACOs will, whenever possible, use Reserve Judge Advocates (JA) located within their areas for investigations and legal research. Reservists may earn retirement points for working on such projects. USARCS and the Judge Advocate Guard and Reserve Affairs Department, OTJAG, may assist in identifying Reservists with claims experience.

1–6. Designation of claims attorney

a. Claims Judge Advocate. A command or SJA may designate an officer of the Judge Advocate General's Corps to direct the command's claims activities.

b. Claims attorney. The following persons may designate a qualified DA or DOD civilian attorney, who is assigned to a Judge Advocate or legal office, as a claims attorney:

(1) The Commander, USARCS.

(2) The senior JA of a command that has a command claims service.

(3) The chief or commander of a command claims service.

(4) The head of an ACO.

(5) The Chief Counsel, HQ, U.S. Army Corps of Engineers (USACE). To be eligible for designation as a claims attorney, an individual must be a civilian employee of the DA or DOD; a member of the bar of a State, the District of Columbia, a territory or possession in which U.S. law applies; serve in grade GS–11 or above; and perform primary duties as a legal adviser. The Commander, USARCS, may waive these requirements in appropriate cases.

c. Claims processing office. The head of an ACO may designate a CJA or claims attorney to act as a CPO with or without approval authority. The Commander, USARCS, must approve creation of a new office with independent payment approval authority (see para 1–5*c* and *d*), and must furnish a command and office code.

d. Designations. The head of an ACO should designate, in writing, each CJA, claims attorney, or subordinate CPO who has payment approval authority. Figure 1–2, which lists the statutory authority under which claims may be approved and the applicable monetary limitations, sets forth a sample designation.

Section II
Duties, Operations, Policies, and Guidance

1–7. Duties

a. The Commander, USARCS, drafts DA Pam 27–162.

b. Direct questions regarding which person or agency should assume duties over a particular claim or claim-related issue to the Commander, USARCS.

c. Direct questions regarding the specific claims duties of the following persons to the Commander, USARCS:

- Secretary of the Army.
- The Judge Advocate General.
- The Assistant Judge Advocate General.
- The Commander, USARCS.
- Chiefs of claims services.
- Heads of ACOs.
- Heads of CPOs.
- The Chief of Engineers.
- The Commanding General.
- U.S. Army Medical Command.
- The Chief, National Guard Bureau.
- Other persons holding positions within the Army Claims System.

1–8. Operations of claims components

a. Command claims services. The SJA of the command supervises a command claims service. If the command claims service is a separate organization, its senior legal advisor may designate a JA as chief or commander of the command claims service. Otherwise, the chief of the command claims service will be the senior legal advisor, who will assign qualified claims personnel to the command claims service, ensuring that claims are promptly investigated and processed. With the concurrence of the Commander, USARCS, the head of a command claims service may designate ACOs to carry out claims responsibilities within that service's jurisdiction.

b. Area claims offices.

(1) The ACO is the primary office that investigates and processes claims. It will be staffed with qualified legal personnel under the supervision of the SJA, command JA, chief counsel, or USACE district or command legal counsel.

(2) Heads of ACOs may designate personnel from other installations within their areas as CPOs to receive, investigate and process claims (see AR 27–20, para 1–5*f*). Only offices having a CJA or claims attorney may be designated as CPOs with payment approval authority. Before a CPO may be granted payment approval authority, the Commander, USARCS, must approve the designation and furnish a command and office code. Where a proposed CPO is not under the command of the ACO's parent organization, a support agreement or memorandum of understanding between the affected commands may accomplish this designation.

c. Claims processing offices.

(1) *CPO with approval authority.* A CPO that has been granted payment approval authority must provide for the investigation of all potential and actual claims arising within its assigned jurisdiction, either on an area basis or on a command or agency basis, and for the adjudication and payment of all presented payable claims within its monetary jurisdiction. If the adjudicated amount of a personnel claim arising under AR 27–20, chapter 11, and chapter 11 of this publication, exceeds the CPO's monetary jurisdiction, the claim will be approved and paid up to the amount delegated to that office and immediately forwarded to the next higher claims authority for payment of the excess (see AR 27–20, para 11–2*e*).

(2) *CPO without approval authority.* A CPO that has not been granted claims approval authority will investigate all potential and actual claims arising within its assigned jurisdiction, either on an area basis or on a command or agency basis. Once an investigation is completed, the claim file will be forwarded to the appropriate ACO for action. Alternatively, an ACO may direct a CPO without approval authority to forward its claims investigation to another CPO within the ACO's jurisdiction.

(3) *Medical CPOs.* The medical claims judge advocates (MCJA) or medical claims attorneys at Army medical centers may be designated by the SJA or head of the ACO for the installation on which the center is located as CPOs with approval authority for medical malpractice claims only. This authorization does not apply to the Fitzsimons Army Medical Center or Walter Reed Army Medical Center.

(4) *Special CPOs.* The Commander, USARCS, the command claims service chief and head of an ACO may designate special CPOs within their respective commands for specific, short-term purposes (for example, maneuvers, disaster response, civil disturbances and other emergencies). The head of the ACO may delegate as much of his or her own approval authority as necessary to the head of the special CPO to effect the CPO's purpose. In no case, however, may a special CPO pay its first claim before obtaining express authorization from the Commander, USARCS. Special CPOs will process all claims under the claims expenditure allowance and claims command and office code of the authority establishing the office, or under a separate code assigned by USARCS. The existence of any special CPO must be reported both to the Commander, USARCS, and the chief of a command claims service, if any. A special CPO established for a disaster or civil disturbance

should not be dispatched before the Commander, USARCS, is notified. The head of the ACO or special CPO must obtain authorization from the Commander, USARCS, before paying the first payable disaster or civil disturbance claim.

1–9. Claims policies

a. Regulation. AR 27–20 sets forth claims policies that this publication implements and explains.

b. Amendments. OTJAG will publish amendments and supplements to the policies set forth in AR 27–20 as required.

c. Periodic notice. Additionally, a monthly *Claims Note*, providing guidance on administrative and procedural matters, is published in *The Army Lawyer*, a periodical available to the public. Field claims offices should address questions about claims policy, procedures to be applied in unusual situations, or requests to deviate from established policies, through command legal channels to the Commander, USARCS.

1–10. Disclosure of information

a. Conflict of interest. Government personnel shall neither represent any claimant nor receive any payment or gratuity for services rendered to a claimant. Government personnel shall not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 USC 203 and 205). Claims personnel are responsible for the dissemination of information concerning the right to present claims, the procedures to be followed, and the claims office's location. They will furnish claim forms to potential claimants. While assisting claimants with claim forms, however, claims personnel shall not assist them in determining what amount to claim.

b. Release of information. A CJA, claims attorney or an investigator who receives a request for information must consider both the *Freedom of Information Act (FOIA)*, 5 USC 552 (1994) and the *Privacy Act of 1974 (PA)*, 5 USC 552a (1994). These time-sensitive requests should be processed expeditiously.

(1) *The Freedom of Information Act.*

(a) References. CJAs and claims attorneys should refer to AR 25–55 and the Department of Justice (DOJ) *Freedom of Information Act Guide and Privacy Act Overview* (available to the public through Government Printing Office), when processing a FOIA or PA request for claim records.

(b) Substantive Overview.

1. The FOIA authorizes persons with a right, enforceable in court, of access to Federal agency records except those, or portions thereof, that are protected from disclosure by one of nine exemptions, or by three special law enforcement exclusions. The exemptions are—

- Exemption 1: National Security.
- Exemption 2: Internal personnel rules and practices.
- Exemption 3: Incorporation of disclosure prohibitions in other statutes.
- Exemption 4: Trade secrets and commercial financial information from a privileged or confidential source.
- Exemption 5: Interagency or intraagency memoranda not available under law to a party in litigation with the agency.
- Exemption 6: Clearly unwarranted invasion of privacy interests.
- Exemption 7: Law enforcement records, as specified.
- Exemption 8: Matters related to an agency's regulation or supervision of financial institutions.
- Exemption 9: Geological and geophysical information.

2. Confidentiality of Medical Quality Assurance Records, 10 USC 1102, allows disclosure of medical quality assurance information only in certain limited situations. Because of the criminal sanctions for violation of the statute, claims attorneys will decline to release medical quality assurance information and will send all such FOIA requests to USARCS (Attention: FOIA Officer) for review. USARCS will coordinate with MEDCOM, the release authority. However, the PA is not an Exemption 3 statute. PL No. 98–477, section 2(c), 98 Stat. 2209, 2212 (1984).

3. Exemption 5 protects documents normally privileged in the civil discovery context. *NLRB v. Sears, Roebuck and Co.*, 421 U.S. 132, 149 (1975); see *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181, 1185 (D.C. Cir. 1987). Exemption 5 applies to the following privileges:

- The deliberative process privilege (see *Mapother v. Department of Justice*, 3 F.3d 1533 (D.C. Cir. 1993)).
- The attorney work-product privilege, which protects documents prepared in contemplation of litigation (see *Exxon Corporation v. Department of Energy*, 585 F. Supp. 690, 700 (D.D.C. 1983), (privilege extends to administrative proceedings); *Kent Corporation v. NLRB*, 530 F.2d 612, 623 (5th Cir. 1976), cert denied, 429 U.S. 920 (1976) (litigation need not have commenced); *Schiller v. NLRB*, 964 F.2d 1205, 1208 (D.C. Cir. 1992) (applies to foreseeable litigation)).
- The attorney-client privilege, which consists of confidential communications between an attorney and client (see *Upjohn v. United States*, 449 U.S. 383 (1981) (sound legal advice serves the public)).
- The confidential report privilege (see *Washington Post v. Department of Health and Human Services*, 603 F. Supp. 235, 238–39 (D.D.C. 1985), rev'd on other grounds, 795 F.2d 205 (D.C. Cir. 1986)).
- The critical self-evaluative privilege (see *Washington Post Co. v. U.S. Department of Justice*, No. 84–3581, slip op. at 18–21 (D.D.C. 25 Sept. 1987) (magistrate's application of Exemption 4), adopted (D.D.C. 15 Dec 1987), rev'd and remanded on other grounds, 863 F.3d 96 (D.C. Cir.1988)).
- The settlement negotiations privilege (see *M/A Com Info Sys v. Department of Health and Human Services*, 656 F. Supp. 691, 692 (D.D.C. 1986) (applying Exemption 4)).
- The privilege based on Federal Rule of Civil Procedure Rule 26(b)(4), limiting access to reports prepared by expert witnesses (see *Hoover v. Department of the Interior*, 611 F.2d 1132, 1141 (5th Cir. 1980)).
- Other privileges.

The claims attorney must determine whether any of the privileges apply to the requested information.

4. The U.S. Attorney General's 4 October 1993 FOIA Memorandum emphasized discretionary FOIA disclosure in furtherance of Congressional policy and established "foreseeable harm" as the standard for a decision not to disclose. Therefore, in each case, the claims attorney will determine whether disclosure of the requested information would foreseeably harm the basic institutional interests underlying the Exemption 5 privileges in question.

- Regarding the deliberative process privilege, "foreseeable harm" factors may include—
  - The nature of the decision (is it sensitive?).
  - The nature of the decision-making process (the requirement for confidentiality).
  - The status of the decision (a greater likelihood of harm from disclosure when a decision is not made).
  - Status of personnel (impact of disclosure on agency personnel).
  - Potential for, and significance of, process impairment ("chilling effect").
  - Sensitivity of information (impact of data).
- Regarding the attorney work-product privilege, "foreseeable harm" factors may include timing considerations (is litigation foreseeable or has the case concluded?), substantive scope (attorney thought processes), and other factors (such as sensitive issues).
- For other privileges, "foreseeable harm" factors should relate to the reason why the privilege exists. For example, depending on

the facts, release of expert opinions or settlement criteria might reasonably impair the Government's bargaining position and, thus, reasonably lead to "foreseeable harm."

5. Exemption 6 permits the Government to withhold all information about individuals maintained in "personnel and medical and similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 USC 552(b)(6). This exemption does not, however, apply to persons requesting information about themselves. See H.R. Rep. No. 1380, 93d Cong., 2d Sess. (1974). Claims attorneys are to determine—

- First, whether the requested document is a personnel, medical or similar file. (See *United States Department of State v. Washington Post Co.*, 456 U.S. 595 (1982).)
- Second, whether disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Third, whether the public's right to disclosure outweighs the individual's right to privacy. See *U.S. Department of Justice v. Reporters' Committee for Freedom of the Press*, 489 U.S. 749 (1989); *New York Times Co. v. National Aeronautics and Space Administration*, 920 F.2d 1002 (D.C. Cir. 1990) (*en banc*). Medical, personnel, and related documents of personnel filing claims have been protected under Exemption 6 by the courts (see *Plain Dealer Publishing Company v. U.S. Department of Labor*, 471 F. Supp. 1023, 1028–30 (D.D.C. 1979); see also *McDonnell v. United States*, 4 F.3d 1227, 1254 (3d Cir. 1993)).

(c) Procedure.

1. Within two working days of receipt of a FOIA request concerning a claim over which USARCS has responsibility for monitoring and settling, CJAs and claims attorneys will contact the USARCS area action officer (AAO) for information. The field claims attorney will maintain continuous contact with USARCS until the response has been dispatched pursuant to an established suspense date.

2. Upon receipt of a FOIA request, claims office personnel should coordinate with the Administrative Law Section of the OSJA for the CPO or ACO.

3. If the file contains reports compiled by another agency, forward the documents to that agency for its release determination pursuant to AR 25–55.

4. When claims for one incident are filed with two or more agencies, coordinate the Army's release of information with the other agency. The lead agency will control release. If no lead agency is named, the release must be coordinated with USARCS.

5. Field claims offices should normally release to the requester nonexempt portions of the record. On the other hand, field offices may consult USARCS for opinions regarding releasability and may explore consolidating the exempt records with the non-exempt records through a single response from USARCS.

6. Only the initial denial authority may withhold requested records that are exempt from disclosure. TJAG has delegated initial denial authority for claim records to the Commander, USARCS. The Executive, USARCS, normally will serve as the USARCS point of contact or action officer for FOIA requests.

7. Upon determining that exempt information should not be released, field claims office personnel will forward the request and two copies of the pertinent documents to the Commander, USARCS, who, as the initial TJAG denial authority, may deny release of records under the FOIA. In forwarding the documents to USARCS, claims personnel are requested to send the files by express mail; number the documents, if possible; and arrange the files as follows:

- Tab A—Copy of the request.
- Tab B—Legal memorandum with recommendations and rationale.
- Tab C—Documents proposed for nondisclosure.
- Tab D—Documents proposed for release in redacted format.
- Tab E—Documents proposed for release, or released previously (optional).

8. USARCS will send a reply to the requester, send a copy to the OSJA claims office, and maintain a file copy.

9. For annual reporting purposes, USARCS and field claims personnel will maintain records of manpower, time, expenses, and effort expended on the request.

10. Field offices will forward any appeal of a full or partial FOIA denial to USARCS, which will route the appeal to the Office of The General Counsel (OGC), Army.

(2) *The Privacy Act.*

(a) References. CJAs and claims attorneys should refer to AR 340–21, DA Pam 25–51, and the DOJ's *Freedom of Information Act Guide and Privacy Act Overview* when processing a FOIA or PA request for claim records.

(b) Substantive Overview.

1. The PA restricts disclosure of personally identifiable records maintained by agencies and affords individuals increased rights of access to agency records maintained on them.

2. To the extent that Army claims are filed in a system of records retrievable by reference to the claimant's name (see DA Pam 25–51, paras 5–6 through 5–58), such files are within the PA's scope. CJAs and claims attorneys should maintain copies of the system notices pertaining to claims files and know their routine user and access procedure provisions.

3. Contact the USARCS Executive Officer for guidance on requests for records of affirmative maritime claims, which are filed under the name of the vessel involved in the incident and, therefore, pose exception issues.

4. Under the PA, an agency may not disclose records to a third party without written consent of the person to whom the record in the system of records pertains, unless one of the following twelve exceptions is met:

- An agency needs to know.
- Disclosure is required by the FOIA.
- Disclosure is required for routine use.
- Disclosure is required for use by the Bureau of the Census.
- Disclosure is required for statistical research.
- Disclosure is required for use by the National Archives.
- Disclosure is requested by law enforcement.
- Disclosure is required for compelling circumstances affecting the health or safety of an individual.
- Disclosure is required by Congressional inquiry.
- Disclosure is requested by the General Accounting Office.
- Disclosure is required by court order.
- Disclosure is required in conformity with the Debt Collection Act, 5 USC 552a(b)(1)–(12).

Additionally, the ten disclosure exemptions under the PA (see 5 USC 552a(d)(5), (j)–(k)) cover information compiled in reasonable anticipation of a civil action or proceeding 5 USC 552a(d)(5)). These exemptions, which are similar to the FOIA's attorney work-product privilege exemption (see *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1187–1189 (D.C. Cir 1987)), apply in an administrative context and cover information prepared by attorneys and non-attorneys. See *Smierkta v. U.S. Department of Treasury*, 447 F. Supp. 221, 227–228 (D.D.C. 1978), remanded on other grounds, 604 F. 2d 698 (D.C. Cir 1979).

(c) Procedure.

1. Within two working days of receipt of a PA request for information concerning a claim over which USARCS has responsibility for monitoring and settling, the field CJA or claims attorney is to notify the USARCS AAO and maintain continuous contact with USARCS until the response has been dispatched pursuant to an established suspense date.

2. Upon receipt of a PA request, claims office personnel should coordinate with the Administrative Law Section of the OSJA.

3. Normally, field claims offices should release nonexempt portions of the record to the requester.

4. Field claims offices are not authorized, however, to deny PA requests. For any prospective full or partial denial of a PA request, forward to the Commander, USARCS, any such request, two copies of the records proposed to be withheld (numbered if possible), and a recommendation set forth in the following order and manner:

- Tab A—Request.
- Tab B—Legal memorandum or analysis.
- Tab C—Proposed exempt records.
- Tab D—Proposed redacted records.
- Tab E—Records proposed for disclosure or previously disclosed records (optional).

5. The Commander, USARCS, will forward all such requests to TJAG, the access and initial denial authority for PA requests (see AR 340–21, para 1–7*i*).

(3) *Consultation Case Review Branch reports.*

(a) Evaluations of injuries and malpractice claims prepared by the Consultation Case Review Branch (CCRB), Army Health Professional Support Agency, should not be disclosed routinely. The CCRB is comprised of medico-legal experts whose opinions are protected from civil discovery to the extent allowed by Federal Rule of Civil Procedure (FRCP) 26b(4). Additionally, under the "foreseeable harm" test, some circumstances may bring CCRB reports within the protection of the Government's deliberative process privilege, attorney work-product privilege, or attorney-client privilege. Still other privileges may apply to CCRB reports.

(b) CCRB opinions are prepared for use by USARCS and ACOs in evaluating liability.

(c) Refer all requests for release of CCRB opinions and reports to the USARCS AAO. USARCS personnel will coordinate with CCRB and MEDCOM. The Commander, USARCS, must approve any release of a CCRB opinion by a field office.

(4) *Requests for records prepared by other Army activities or other Federal agencies.*

(a) General. Claims files may contain documents originating from other Federal agencies or other Army organizations. Some records prepared by or for other agencies carry restrictions on their release (for example, public release of Inspector General reports and accident investigation reports prepared by safety personnel are restricted). U.S. Army Criminal Investigation Division (CID) investigation reports also may contain nonreleasable information. If claim files contain records prepared by other agencies or DOD organizations, the office processing the request should refer to the regulations governing the records to determine what restrictions, if any, apply to their release. Normally, the request should be referred to the DOD component responsible for the records requested (see AR 25–55, para 5–206).

(b) Medical quality assurance records. Medical quality assurance (QA) records are both confidential and privileged, and their unauthorized release may result in criminal penalties (10 USC 1102). QA records are not subject to discovery nor may they be introduced into evidence. Participants in QA activities are precluded from testifying about QA records, committee findings, actions, opinions, and recommendations. QA records should not be commingled with claims files—either place them in separate QA files (not retrievable by a claimant's name) or return them to the generating medical activity for filing. Refer requests for QA records to MEDCOM.

1–11. Single service claims responsibility

a. Assigned areas. DOD has assigned single service responsibility to the branches of the armed services for settlement of claims under the MCA, the FCA, Status of Forces Agreements, and other authorities in certain countries.

(1) *Army.* DOD Directive 5515.8, as supplemented through executive agreements, assigns claims responsibility to the Army for the following countries:
Austria; Bosnia; Belgium; Croatia; El Salvador; France; Germany; Grenada; Haiti; Honduras; Hungary; Republic of Korea (ROK); Kuwait; The Marshall Islands; the Netherlands; Switzerland.
The Army is designated the receiving State in the United States under 10 USC 2733, 2734, 2734a, 2734b, 2736, and 2737, the NATO SOFA (4 U.S.T. 1972, TIAS 2846 and similar Status of Forces Agreements) and SOFAs with other countries not covered by the NATO SOFA.

(2) *Navy.* DOD Directive 5515.8, as supplemented through executive agreements, assigns the following areas of responsibility to the Navy: Bahrain, Iceland, Israel, Italy, Portugal and Tunisia.

(3) *Air Force.* DOD Directive 5515.8, as supplemented through executive agreements, assigns the following areas of responsibility to the Air Force: Australia; Azores; Canada; Cyprus; Denmark; Egypt; Greece; India; Iraq (effective 14 June 1991); Japan; Luxembourg; Morocco; Nepal; Norway; Oman; Pakistan; Saudi Arabia; Spain; Turkey; the United Kingdom; and claims arising in United States Central Command (CENTCOM), U.S. Special Operations Command (USSOC), and in countries not specifically assigned to the Army or Navy.

b. Unassigned Areas. In the absence of assigned claims responsibility in certain countries, unified and specified commanders may, when necessary to implement contingency plans and as an interim measure only, assign single service claims responsibility in accordance with the DOD General Counsel's guidance.

c. Notification to USARCS. SJAs and other claims authorities should inform the Commander, USARCS (Attention: Foreign Torts Branch), whenever the Army has been assigned single service responsibility for a foreign country. Such contact ensures that USARCS will receive information enabling it to respond efficiently and effectively to inquiries on policy issues from the legal staff of the Joint Chiefs of Staff or other agencies and field commands. Additionally, through such communications, USARCS can advise the field claims offices of any changes in the assignment of single service responsibilities and provide required assistance.

d. Inquiries. Field claims offices may address questions concerning single service responsibility to the Commander, USARCS (Attention: Foreign Torts Branch). It is advisable to contact the Foreign Torts Branch to ascertain issues that may be of import to an assigned area.

1–12. Cross-servicing of claims

Contact the Commander, USARCS, when attempting to determine whether another military department has single service responsibility for a claim and coordinating with the other military department's claims service. If a claim arises in a foreign country that is not listed in paragraph 1–11, field claims offices may contact the Foreign Torts Branch, USARCS, to determine whether another military department has been assigned single service claims responsibility for that country, or for further guidance.

1–13. Adjudication of claims

Changes set forth in this publication that affect claims processing or adjudication will apply only to claims filed on or after the effective date of this publication unless specifically noted otherwise.

1–14. Disaster claims planning

a. USARCS disaster claims planning responsibility. The Commander, USARCS, is responsible for developing and maintaining disaster claims plans Army-wide. The Commander, USARCS, is required to—

(1) Assist field claims offices in developing disaster claims plans.

(2) Develop and maintain plans for disasters in geographic areas not under the jurisdiction of an area claims authority and in which the Army has single service responsibility or is likely to be the predominant armed force.

(3) Take initial action on claims arising in emergency situations.

b. Area claims office responsibility. Because many small installations and depots lack sufficient personnel and logistical resources to conduct disaster claims operations, such responsibility falls on the ACOs. Each ACO head is required to develop and maintain written plans for response to a disaster or civil disturbance. Such plans will

provide for an advance party that is able to assess the need for a special CPO.

c. Nature of disasters in general. There are four major categories of disasters for which claims offices may have support responsibilities:

- Claims arising from disasters caused by nature or man occurring on or affecting the installation.
- Claims arising from military operations that harm the off-post civilian population. This category may include aircraft or chemical accidents. (The DA may designate any claims office to execute a disaster claims response mission, regardless of whether the installation of the servicing claims office is responsible for the accident. For example, geographical factors may dictate that the claims office at one Army post respond to the disaster claims requirements caused by another service or another Army post. This contingency illustrates the need to maintain a sound disaster claims plan.)
- Claims responsibilities in support of military involvement in Federal disaster relief missions.
- Claims responsibilities in support of military involvement in civil disturbances.

d. Command reliance on claims process in disaster response. Disasters often result in intense scrutiny from the media, the general public, and higher military authority. Such scrutiny pressures both the installation and commanders to release information about the victims' safety and welfare as well as the breadth and availability of relief. To support the command's disaster response, a field claims office usually is required to—

- Furnish the Public Affairs office information on the claims procedure.
- Interact with other command staff elements and municipal, county, State, and Federal disaster assistance agencies.
- Directly inform the public on claims procedures.
- Ascertain facts regarding liability.
- Upon appropriate authorization, stand poised and ready to compensate members of the public through at least partial payments.
- Deploy to a site and execute claims operations on the scene, as required.

The fast pace that a disaster imposes requires claims offices and installation agencies supporting the disaster claims mission to possess a flexible disaster claims operational response and to draft and maintain, update and execute a sound disaster claims plan.

e. Disaster claims operational response concept. A well-defined disaster claims operational response concept enables claims office personnel to respond effectively to disasters of varying magnitudes. The disaster claims team's essential duties are to—

- Make stipulated immediate contacts.
- Perform a preliminary survey to determine possible Army liability for damages.
- Deploy some disaster claims team members to determine whether to establish a special claims processing center.
- Upon a determination by the Commander, USARCS, that the Army is liable, pay claims and ensure that the public is informed of the claims payment location.

Execution of these duties in the disaster relief context, however, requires substantial coordination. In the following paragraphs, a general four-phased framework, suitable for tailoring to the needs of the disaster mission, is discussed.

(1) *Phase 1: Readiness.* During the readiness phase, claims office personnel assess potential disasters based on the scope of the installation's activities and the historical natural disaster patterns, identify critical path requirements for disaster claims support, and arrange coordination. Preparation and maintenance of the disaster claims plan is fundamental in this phase. Key readiness arrangements include: an "equipment list" for deploying officers and soldiers to use during a deployment (such as protective chemical gear and masks, as required for riot control agent releases and chemical accidents); and a Claims Team Disaster Personnel and Kit Checklist (see figure 1–3), which lists the supplies required in a disaster claims office. Preparations and supplies appropriate to a disaster include—

- Recording equipment (video camera, 35-mm camera, and tape recorder).
- Transportation plan (including provisions for emergency travel orders; emergency fund citation for per diem, lodging, supplies and other unanticipated expenses; and arrangements for emergency movement by aircraft and vehicle).
- Communications plan (including notebook computer system and mobile cellular phone service).
- Arrangements for translators, as may be required.
- Pre-drafted comments for the public affairs office regarding claims application procedures, the existence of claims procedures, and investigations guidance to soldiers appointed to perform claims duties.
- Arrangements with the finance office to facilitate access to funds, including cash, 24 hours a day.
- Arrangements with the installation for transportation under all weather conditions to deliver funds upon appropriate authorization.
- Coordination and integration of the disaster claims plan and its execution requirements with the installation's disaster response plans.
- An understanding of installation, city, municipal, county, regional, State, and Federal disaster response concepts and plans.
- A list of other logistical information (claims team members' names, the planned location of the claims processing center, and investigative techniques to be used).

Periodically, claims offices should conduct claims disaster operation exercises as the ACO deems necessary to enhance readiness.

(2) *Phase 2: Deployment.* Upon receiving notification of the disaster, the claims office will ensure immediate and personal notification of the Commander, USARCS (Executive, Tort Claims Division, the particular Torts Branch or AAO) (fax 301-677-6708, DSN 923-6708) and of the Executive, OTJAG (703–695–4384/3786, DSN 225–4384/3786). The claims office will also—

- Initiate a log of activities.
- Obtain legal deployment materials.
- Coordinate with the Office of the SJA to ensure adequate and appropriate legal staff and automation support.
- Coordinate with other installation elements to ensure adequate finance, operational, technical, automation and logistical support.
- Dispatch a CJA or representative as part of the advance party to determine the need for a special CPO.

(3) *Phase 3: Response.* This phase requires claims office personnel to—

- Assess Army liability by conducting a preliminary survey to determine the event, the nature of the injuries and damage, and advise the Staff Judge Advocate and the Commander, USARCS, on possible Army liability for damages.
- Determine the level of the implementation of the claims disaster plan.
- Ensure the presence of the required financial, operational, technical, and logistical assistance support elements from the installation and other Army assets.
- If feasible, ensure that press releases do not contain any admission

of negligence (under State, Federal, or military law) since the Army is still evaluating the facts and the law.

- Investigate and preserve evidence.
- Establish a special claims processing center with the concurrence of the Commander, USARCS; determine the need to make advance payments; ensure that the establishment or location of the claims office is adequately publicized through staff briefings, press releases and press conferences.
- Ensure the existence of appropriate communications and coordination with main legal office and other staff elements.
- In cases of Army disaster relief to States pursuant to Presidentially declared emergencies under Federal law, ensure the existence of appropriate State indemnification agreements by contacting the Tort Claims Division, USARCS for technical guidance.

(4) *Phase 4: Recovery.* During a disaster recovery phase, claims personnel must take the following actions:

- Execute the disaster plan.
- Determine if immediate payment of claims is feasible and, if so, obtain the concurrence of the Commander, USARCS, before paying claims, to avoid premature or erroneous admission of liability.
- Upon approval of the Commander, USARCS, pay meritorious claims expeditiously.
- Inform the public affairs office that the Army's acceptance of claims does not necessarily establish the Army's liability.
- Ensure that accurate claims information is disseminated.
- Determine the need to supplement any claims investigation with an AR 15–6 investigation (the result of which cannot determine liability under State, municipal, county or Federal law).
- Ensure that the appropriate technical or scientific personnel advise the claims office on their findings.

f. Disaster claims plans.

(1) With today's greater emphasis on the Army's role in disaster relief operations, every military installation should have one or more disaster claims plan in place. The head of each ACO should furnish a copy of its disaster claims plan to USARCS.

(a) To ensure that the claims offices have the required installation support during a disaster, USARCS recommends that the OSJA have the installation commander or other competent authority execute a disaster claims directive assigning claims support roles to various installation components. The sample shown at figure 1–4 provides a suggested format. USARCS recognizes, however, that the requirements of each installation and the comments of the various staff elements during the staffing and coordination of the directive before the competent authority issues it may result in variations and modifications.

(b) Note that figures 1–4a, b, c, and d present a comprehensive plan, including directives to the OSJA. This plan contains the basic disaster claims requirements in one document, for ease of reference during disaster response. It is optional, however, for the installation commander and other appropriate authority to issue the coordination directive only to non-OSJA functions (since the SJA does not have authority over those functions), with the SJA or ACO issuing supplemental directives to the JAG legal staff. Another option is for annexes to the installation disaster claims plan to address the support for claims and the role of claims during a disaster. In any event, any directive issued by the installation commander or competent authority, along the lines of figure 1–4*a*, should ensure functional compatibility with any installation disaster plan.

(2) To ensure that claims personnel are furnished with essential direction during disasters, disaster claims plans should provide—

(a) Claims arising out of emergencies, aircraft and missile accidents, natural disasters, or other situations that may be expected to generate a substantial number of claims over a short time normally will be investigated by the claims office responsible for the area in which the incident occurred.

(b) An ACO may create a special CPO for emergencies and other specific short-term purposes. The ACO, however, should notify the Commander, USARCS, before establishing a special CPO in response to a disaster.

(c) If a special CPO is established for a disaster, an assigned CJA or claims attorney with delegated claims approval authority must supervise it.

(d) To prevent premature admissions of liability, no field claims office will pay a claim arising out of an emergency situation involving military weapons, equipment, aircraft, or personnel without the concurrence of the Commander, USARCS.

(e) Manmade or natural disasters, by their suddenness and their widespread and extraordinarily devastating effects, may cause extensive civilian property damage or personal injuries. It is common for a disaster to leave those affected in immediate need of funds. Claims offices should expect to receive numerous requests for advance or emergency partial payments after a disaster.

1. Emergency partial payment of personnel claims. Natural and man-made disasters that affect Army installations may give rise to numerous personnel claims for damage to or loss of personal property incident to service caused by fire, flood, hurricane or other unusual occurrence. Natural disasters may cause compensable personal property losses at on-post quarters in CONUS and at on-post and off-post quarters overseas. They also may damage or destroy household goods held in temporary or nontemporary storage. Storage sites, scattered in communities across the United States and around the world, are vulnerable to certain disasters that bypass the military installations. For this reason, military and civilian personnel may have cause to claim damage to or loss of their personal property.

- AR 27–20, paragraph 11–18, authorizes emergency partial payments to alleviate hardship by providing immediate funds for the repair or replacement of lost or damaged personal property. The approval or settlement authority must first determine, however, that the claim is clearly payable in an amount exceeding the amount of the proposed emergency payment.
- To request an emergency partial payment, the claimant must submit a completed DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) (see figure 11–7a and b for a completed sample form), explaining in Part I, block 10, or on additional sheets, the hardship circumstances for which emergency payment is needed, and DD Form 1844 (List of Property and Claims Analysis Chart) (see figure 11–10b for a sample completed form), listing those items for which immediate compensation is sought. A field claims office may make emergency partial payments in amounts up to $2,000, or the authorized limit, if it determines that the claim is clearly payable in an amount equal to, or exceeding, the proposed emergency partial payment, and that a hardship exists. If a higher partial payment is warranted, the CJA or claims attorney should contact the Chief, Personnel Claims and Recovery Division, USARCS, who may authorize emergency partial payments above $2,000, or the authorized limit.
- Before making an emergency partial payment, the CPO should obtain an executed partial acceptance agreement from the claimant or representative. The following sample language may be used:

```
I, [name of claimant], agree to accept the sum of
$_______ as a partial payment in order to relieve
immediate hardship. I understand that this sum
will be deducted from any award made in final set-
tlement of my claim. I understand that if I do not
provide the documentation needed to complete my
claim within ________ months, my claim will be
processed for final settlement.
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There is no set time period in which the claimant should submit the completed claim after an emergency partial payment. The sample

agreement above authorizes the insertion of the time period in which the claimant will provide the documentation to complete the claim. That time period, usually one to three months, may be extended or shortened depending on the circumstances. Usually, a claimant faced with an emergency hardship situation is eager to resolve the matter. While efficient office administration requires the claim to be processed as soon as possible after a partial payment is made, claims personnel should remember that maintaining morale and avoiding financial hardship are key policies underlying the personnel claims process.

2. Advance partial payments of tort claims. Manmade disasters (such as military aircraft crashes or chemical, nuclear or conventional munitions accidents, caused by Army soldiers or civilian personnel acting within the scope of their employment or arising incident to Army noncombat activities) may generate a substantial number of claims. Extensive property damage or personal injuries to civilians are likely to evoke sympathy within the community, adding public relations pressure on field claims offices to compensate those who have suffered losses. Claims office personnel should strive to resolve such claims fairly and quickly, according to the legal requirements. Under the FTCA, neither advance nor emergency partial payments are authorized. Both the MCA and the FCA authorize advance partial payments. Pursuant to 10 USC 2736, claims offices may make advance partial payments of meritorious claims arising under those Acts to alleviate immediate hardship in the absence of an applicable SOFA. To meet the requirements for advance partial payment, the claim must be cognizable and meritorious under the MCA or the FCA; there must exist an immediate need of the injured party or his or her family for food, clothing, shelter, medical or burial expenses, other necessities, or other resources for such expenses that are not available; and the total damage sustained must exceed the amount of the advance payment (see para 2–54).

g. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601–9675. The Army Claims Service is not authorized to fund evacuation costs and other claims under CERCLA in response to chemical accidents. Coordinate all questions regarding this matter with the Commander, USARCS (Attention: Executive).

h. Other forms of emergency compensation. USARCS is authorized to compensate claimants under the FTCA, MCA, FCA and PCA. Direct requests for other forms of emergency or disaster relief compensation to the Commander, USARCS (Attention: Executive).

1–15. Claims training

a. Claims training within CONUS. One of USARCS missions is to provide CONUS claims training. USARCS' philosophy in this regard has one basic tenet: devising practical claims instruction geared to the students' experience and level of responsibility. To meet this goal, USARCS uses a two-tiered training program:

(1) *Claims video teleconferences.* The Commander, USARCS, hosts a series of video teleconferences (VTCs), usually every other month. Twenty-five installations, identified by the MACOMS, receive the live broadcast of each VTC. Claims personnel from offices located near USARCS are invited to join the VTC presenters at the Fort Meade Video Teleconference Center. Upon request, USARCS personnel will distribute videotapes of each VTC to field claims offices that are unable to participate in the live broadcast.

(2) *Annual workshops.* The annual Claims Service Worldwide Training Course is designed to provide training on claims policy and on the investigation, negotiation and settlement of claims. Held each fall near Fort Meade, Maryland, the workshop covers tort claims, personnel claims and recovery, and affirmative claims. The course emphasizes the "lawyering of claims." Experts conduct training through lectures, discussion workshops and elective seminars. The primary attendees are active Army CJAs and claims attorneys, Reserve Component JAs in claims detachments or serving as claims officers, USACE claims attorneys, medical claims investigators, and senior civilian claims personnel whose duties include tort claims investigation and claims office administration.

b. Claims training overseas.

(1) In the European theater, the U.S. Army Claims Service, Europe (USACSEUR) annually sponsors a continuing legal education program. It provides training in claims adjudication, tort claims investigation and recovery processing. This program is intended for CJAs, claims attorneys, paralegals and senior claims noncommissioned officers (NCOs). Lasting approximately one week, it focuses on various claims issues from a managerial perspective. USACSEUR also sponsors a claims workshop at least twice a year. It offers training in the routine processing of claims files, claims adjudication, rules for recovery, preparation of vouchers, maintenance of logs and other administrative matters.

(2) In the Pacific Rim, the U.S. Armed Forces Claims Service, Korea (USAFCS–K) provides claims training within the ROK. During the annual Pacific Area Claims Conference sponsored by USAFCS–K, training is provided to military and civilian attorneys, paralegals, senior claims adjudicators and NCOs representing the Army, Navy, Air Force, and Marines throughout the Pacific theater.

1–16. Claims assistance visits

a. Purpose. The Commander, USARCS, has initiated the claims assistance visits (CAV) program to encourage administrative uniformity within claims offices, to share successful time and work management practices among offices, and to ensure that claimants receive consistent, high-quality service throughout the Army. These visits emphasize assistance rather than inspection and are conducted at field claims offices.

b. Scheduling. The Chief, Personnel Claims and Recovery Division, schedules visits with the SJA of the particular CONUS installation. The visits are made cyclically, in response to specific requests from the field, or when review of field office operations indicates an apparent need.

c. Focus. During a CAV, the team examines all aspects of claims office management (see figure 1–5 for a checklist).

d. Completion. After the visit, the CAV team members provide the SJA with an out briefing on the strengths and weaknesses found as well as an opportunity for immediate feedback and clarification. Upon their return to USARCS, CAV team members prepare a written after-action report, submitting one copy each to the Commander, USARCS; the installation SJA; and the individual field information file maintained in the Personnel Claims Branch at USARCS. Information from these reports may be provided to OTJAG for use on Article 6, UCMJ, visits.

e. Claims assistance visits in Europe. In Europe, USACSEUR conducts periodic claims management evaluations to help field claims offices evaluate their operations. These evaluations are based on a field claims office's or SJA's need or request. In either case, USACSEUR visits each office once every two years and provides after-action reports to the CJA and the appropriate SJA.

f. Claims assistance visits in the Republic of Korea. In the ROK, USAFCS–K conducts quarterly CAVs to the ACOs and CPOs located in ROK, Japan and Okinawa.

1–17. OTJAG Annual Claims Award

a. Qualifications. Office of The Judge Advocate General Claims Award may be awarded to selected claims offices worldwide. This award provides special recognition to the claims offices that have made significant contributions to the Army Claims Program's success within their respective commands.

b. Procedure. At the conclusion of each fiscal year, USARCS evaluates the annual performance of all claims offices and nominates offices for performance awards by The Judge Advocate General.

c. Criteria. The evaluation process considers the office's support of deployments, responses to emergencies and disasters, tort claims and personnel claims processed, the amount of recovery moneys generated, quality of the disaster claims plan, initiatives in the execution of the claims mission, and other factors designated by the Commander, USARCS.

Area	*Active Duty Liaison for National Guard*
Alaska	Fort Wainwright
Alabama	Fort Rucker
Arizona	Fort Huachuca
Arkansas	Fort Sill
California	Presidio of Monterey
Colorado	Fort Carson
Connecticut	West Point
Delaware	Aberdeen Proving Ground
District of Columbia	Military District of Washington, Ft. Myer
Florida	Fort Stewart
Georgia	Fort Benning
Guam	25th Inf. Division (L) and USARHAW
Hawaii	25th Inf. Division (L) and USARHAW
Idaho	Fort Lewis
Illinois	Fort Leavenworth
Indiana	Fort Knox
Iowa	Fort Leavenworth
Kansas	Fort Riley
Kentucky	Fort Knox
Louisiana	Fort Polk
Maine	Fort Dix
Maryland	Fort Meade
Massachusetts	Fort Dix
Michigan	Fort Knox
Minnesota	Fort Leavenworth
Mississippi	Fort Rucker
Missouri	Fort Leonard Wood
Montana	Fort Lewis
Nebraska	Fort Riley
Nevada	Presidio of Monterey
New Hampshire	Fort Dix
New Jersey	Fort Monmouth
New Mexico	White Sands Missile Range
New York	West Point
North Carolina	Fort Bragg
North Dakota	Fort Riley
Ohio	Fort Knox
Oklahoma	Fort Sill
Oregon	Fort Lewis
Pennsylvania	Fort Meade
Puerto Rico	Fort Buchanan
Rhode Island	Fort Dix
South Carolina	Fort Jackson
South Dakota	Fort Riley
Tennessee	Fort Campbell
Texas	Fort Hood
Utah	Fort Carson
Vermont	Fort Dix
Virginia	Fort Lee
Virgin Islands	Fort Buchanan
Washington	Fort Lewis
West Virginia	Fort Lee
Wisconsin	Fort Leavenworth
Wyoming	Fitzsimons Army Garrison

Figure 1-1. Primary active duty liaison offices for the National Guard

(Letterhead)

XXXX-X (27) 6 April 1996

MEMORANDUM FOR Mr. Arnold Lefcourt, Office of the Staff Judge Advocate, Fort Harris, Junction City, TN 12340

SUBJECT: Designation of Claims Attorney

Pursuant to AR 27–20, paragraph 1-6, Mr. Arnold Lefcourt, GS-13, is designated a claims attorney with approval authority under the statutes and subject to the monetary authority set forth below:

a. 10 USC 2733, with authority to pay in full or in part, claims presented for $25,000 or less, and to pay claims regardless of the amount claimed, provided the claimant accepts an award of $25,000 or less in full satisfaction and final settlement of the claim.

b. 28 USC 2671-2680, with authority to pay in full or in part, claims presented for $25,000 or less, and to pay claims regardless of the amount claimed, provided the claimant accepts an award of $25,000 or less in full satisfaction and final settlement of the claim.

c. 10 USC 2737, with authority to pay in full or in part, claims presented for $1,000 or less, and to pay claims regardless of the amount claimed, provided the claimant accepts an award of $1,000 or less in full satisfaction and final settlement of the claim.

d. 32 USC 715, with authority to pay in full or in part, claims presented for $25,000 or less, and pay claims regardless of the amount claimed, provided the claimant accepts an award of $15,000 or less in full satisfaction and final settlement of the claim.

e. 31 USC 3721, with authority to pay up to $25,000 in the settlement of claims.

f. Claims cognizable under AR 27–20, chapter 12, with authority to pay claims in accordance with AR 27–20, chapters 3, 4, and 11.

Jason Compson
Colonel, JA
Staff Judge Advocate

Figure 1-2. Sample designation of claims attorney memorandum

Personnel:

Claims Judge Advocate (0- 3): Edward Harkness

Claims Processing Specialist(s): SFC William Perry

Other: _____

Disaster Claims Kit:

x Claims Forms
- x Standard Form 95, other Standard Claims Forms
- x DD Form 1842, Claims for Loss of, or Damage to, Personal Property Incident to Service
- x Claim Investigation Forms
- x DD Form 1844, List of Property and Claims Analysis Chart
- x DA Form 2823, Sworn Statement Forms
- x Department of the Army, Command/Installation Letterhead
- x Power of Attorney Forms (Local)
- x DA Form 1666, Claims Settlement Agreement
- x Authority to File Claim Affidavits (Local)
- x Advance Payment Acceptance Agreement Forms (Local)
- x DA Form 1668, Small Claims Certificates
- x FMS Form 195, Judgment Fund Payment Request Forms (Both FTCA and MCA versions)
- x FMS Form 196, Judgment Fund Award Data Sheet
- x FMS Form 197, Voucher for Payment

x Supplies
- x 3-1/2 inch diskettes (blank, formatted)
- x Legal pads, 8-1/2 x 11 inch
- x File folders
- x Writing supplies (pens, pencils, etc.)
- x Videotapes
- x Camera film

x Investigation
- x Videocamera
- x 35-mm Camera
- x DA Form 2823, Sworn Statement
- x Claims Journal
- x Laptop notebook computer with modem

x Communications
- x Line telephone
- x Cellular telephone
- x Laptop notebook computer with modem and e-mail
- x Desktop computer with e-mail
- x Computer printer
- x Electronic beeper
- x Installation, command, JAG office, county, city, and state telephone directories
- x Fax machine

x Transportation
- x Blanket travel orders
- x Aircraft coordination
- x Vehicle coordination, all weather

x Legal Authority

Figure 1-3. Claims team disaster personnel and kit checklist—Continued

x	AR 27–20
x	DA Pam 27–162
x	FTCA Handbook
x	TJAGSA Claims Materials
x	USARCS Worldwide Claims Training Notebook
x	TJAGSA Operations/Deployment Handbook
x	Other Materials

Figure 1-3. Claims team disaster personnel and kit checklist

(Letterhead)

(OFFICE SYMBOL) (MARKS Number) ***(Date)***

MEMORANDUM FOR (List Appropriate Organizations, for example:)
Chief of Staff
Garrison Commander
Staff Judge Advocate

SUBJECT: Disaster Claims Plan—***(Installation/Command)***

1. ***References***
a. Add appropriate local installation regulations or directives, including any pertinent military and accident response plans.
b. AR 25–55, *The Department of the Army Freedom of Information Act Program.*
c. AR 27–20, *Claims.*
d. AR 27–40, *Litigation.*
e. AR 37–103, *Disbursing Operations for Finance and Accounting Offices.*
f. AR 50–6, *Nuclear and Chemical Weapons and Material, Chemical Surety.*
g. AR 335–15, *Management Information Control System.*
h. AR 500–50, *Civil Disturbances.*
i. AR 500–60, *Disaster Relief.*
j. DA Pam 27–162, *Claims Procedures.*
k. DA Pam 50–6, *Chemical Accident or Incident Response and Assistance (CAIRA) Operations.*

2. ***Purpose.*** This disaster claims plan sets forth the ***(installation/command)***'s concept of disaster claims operations pursuant to the directives of AR 27–20, paragraph 1-7*d*(11) (1997).

3. ***Objectives.*** In response to a disaster or civil disturbance, this plan, and its supplementation and execution, ensures—
a. That members of the public understand the Army's procedures for filing claims and that the Army will execute any lawful obligation to compensate them for losses for which the Army is liable under applicable laws.
b. Determination of the liability of the United States for personal injuries, death, or property damage.
c. Prompt settlement of meritorious claims.
d. Procedures for prompt and efficient claims investigation of major disasters or civil disturbances within this claims area which are not caused by activities of the Army, the ARNG, or the forces of a NATO sending State, when directed to execute such a mission.

4. ***Scope.*** This directive issues disaster claims response to the following military operations and situations:
a. An unexpected, extraordinary disaster occasioned by the activities of the Army, the ARNG (while performing Federally funded training or functions), or the forces of a NATO sending State resulting in extensive property damage, personal injuries or death, and creating a large number of potential claims against the United States. (Disasters or civil disturbances caused by NATO forces will be investigated in accordance with AR 27–20, chapter 7.)
b. Intervention of Federal troops, from this command or other commands, in hostile actions such as terrorist attack, mob action, civil disturbances, or other occurrences under the provisions of AR 500–50, or other authority. The involvement of Federal troops in controlling such occurrences may generate potential claims against the United States. The intervention of Federal troops from other commands may exceed the normal capabilities of task force personnel to investigate and process those claims expeditiously and require claims investigation and processing augmentation from this command.
c. Disasters or civil disturbances resulting from a nuclear weapons accident or incident of the Air Force, Navy, or Marine Corps or of a Federal agency. In such cases—
(1) If an installation or agency of the armed service involved is available and assumes claims responsibility over the incident or accident, the claims office, (OSJA/

Figure 1-4A. Disaster claims plan—Continued

organization) with the concurrence of the Commander, ***(installation/command),*** will furnish requested assistance, such as immediate investigation pursuant to the request of another armed service, as contemplated in AR 27–20, paragraph 2-3*a*(5).

(2) If no installation or agency of the armed service involved is available, or if it cannot be readily determined which service had custody of the weapon or instrumentality allegedly causing the accident or incident, the claims office, ***(OSJA/organization),*** with concurrence of the Commander, ***(installation/command),*** or, if directed, other competent authority, will proceed to execute its disaster or civil disturbance claims plan.

d. Intervention of Federal troops from this command or other commands to assist in providing relief for natural disasters, such as hurricanes, earthquakes, tornadoes, floods and fires or other occurrences under the provisions of AR 500–60 or other authority. The involvement of Federal troops in responding to such situations may generate potential claims against the United States. The intervention of Federal troops from other commands may exceed the normal capabilities of task force personnel to investigate and process those claims expeditiously and require claims investigation and processing augmentation from this command.

5. ***Applicability.*** This directive applies to commanders and claims authorities of other Army installations and activities within this command's area claims authority to the extent the responsibility of the Commander is, or can be, assigned to those installations/activities.

6. ***Definitions.*** The terms used in this plan are defined in AR 27–20, Glossary.

7. ***Responsibilities.***

a. *Installation Commander*. The installation/organizational Commander, ***(installation/command),*** exercises command supervision of disaster claims operations within this claims area, as set forth in AR 27–20, paragraph 1-7(*d*) (11). This area includes: ***(state the area).***

b. *Planning*. The installation emergency standing operating procedures or equivalent will include plans executing disaster claims operations and support by the required installation elements. For civil disturbances or other disaster response activities requiring the commitment or involvement of installation troops, the plan will include: the appointment of claims investigating officers down to the battalion and separate company level; and appointment of Class A Agents ***(see enclosure 1 for sample application)*** including descriptions of their duties, appointment procedures, and pre-deployment training.

c. *Disaster*. Upon the occurrence of civil disturbance or disaster as contemplated under this plan or in which the military is authorized and directed to assist, particularly within this area of responsibility, this command's staff and operating elements will execute disaster contingency plans in support of the claims mission and provide the support required, including taking the following actions:

(1) *All command members*. No representation of, or actual, payments of claims by the Government or its agents will be given to any local, State, or county officials, the media, the public or potential claimants without the express concurrence from the Commander, USARCS, on behalf of The Judge Advocate General and The Secretary of the Army, that the Government is liable.

(2) *Assistant Chief of Staff for Personnel*. Provide survivor assistance to eligible persons at the disaster scene in coordination with the Office of the Staff Judge Advocate.

(3) *Assistant Chief of Staff for Operations*. Issue directives for aircraft support of personnel of claims teams as needed, and to commanders near the disaster or civil disturbance scene or other commanders as required, to provide assistance as needed to the claims team.

(4) *Assistant Chief of Staff for Logistics*. Provide transportation and technical support for claims team as needed.

(5) *Assistant Chief of Staff for Civil Affairs*. Provide augmentation and technical support as required;

(6) *Garrison Commander*. Direct resources and activities, including providing of environmental, technical, and scientific support to execute the claims mission and ensure coordination with city, county, municipal, State and Federal agencies providing disaster assistance.

(7) *Directorate of Public Works and the Directorate of Engineering and Housing*. When space in military facilities or public buildings is not reasonably available, arrange space and facility support for the execution of the claims operations as allowed under applicable law, including the provisions of AR 405–10, and execute coordination arrangements with the U.S. Army Corps of Engineers.

(8) *Directorate of Training and Plans*. Issue, on a priority basis, taskings and directives to support the claims mission as determined by the Staff Judge Advocate.

Figure 1-4A. Disaster claims plan—Continued

(9) *Signal and Communications*. Provide required support to the claims office on a priority basis.

(10) *Information Management Office*. Provide automation support to the claims operation as required on a priority basis.

(11) *Public Affairs Officer*. Ensure the issuance of accurate information regarding claims through coordination with the Office of the Staff Judge Advocate. In response to inquiries regarding claims, before the Army has determined that it is liable and will pay claims, state clearly that information dispensed regarding the location of the claims office and claims procedures is not in any way a representation by the Army that it will pay claims as the matter is still pending investigation. After the Army has decided to pay claims, issue information regarding the claims office's location and telephone numbers, and advise the public that the Army is in the process of evaluating claims on a case-by-case basis under applicable legal standards (see para 7*a*). Provide photographic and video services for the claims office, if feasible, upon request of the Staff Judge Advocate.

(12) *Finance Office*. The finance organization within this command shall provide cash or funds to the claims operation and Class A Agents on a 24-hour basis, as needed. Finance offices supporting this command from a location outside the control of this command shall, by prior agreement, provide cash and funds to the claims operation and Class A Agents through local banks, wire services or other means, on a 24-hour basis.

(13) *Civilian Personnel Office*. Furnish additional personnel support as may be required for the field claims office in the disaster area and upon notification by the SJA or field claims office, to the extent feasible.

(14) *Medical Activity*. Provide medical and technical analysis to the disaster claims operation to the extent feasible.

(15) *Training Support Center*. Furnish requested videocamera equipment and other supplies to the claims office on a priority basis.

(16) *Provost Marshall/Military Police*. Provide security services for any cash stored or paid, or other financial transactions in which security services are required.

(17) *Staff Judge Advocate*.

(a) Notify the Commander, USARCS, OTJAG, Fort Meade, MD 20755-5360 (DSN 923-7009, ext 202; commercial: (301) 677-7009; (post duty office: (301) 677-4805/4522, DSN 923-4805/4522)

(b) Notify the Executive Officer, OTJAG, DA, WASH DC (DSN 225-4384/3786; commercial: (703) 695-4384 or 695-3786).

(c) Deploy to the disaster area an advance party, including a Claims Judge Advocate, to investigate the incident and determine the need for establishing a special claims processing office. In the course of any preliminary investigation of an incident or occurrence considered under this plan, the field claims officer may request assistance as needed and available from any local commander near the disaster or civil disturbance area and from other commanders of this headquarters.

(d) Submit the Claims Judge Advocate's preliminary report of the investigation to the Commander, ***(installation/command),*** and the Commander, USARCS. This report, along with other pertinent information, serves as a basis for determining whether the Government is solely liable, jointly liable, or not liable for the occurrence and any resulting claims. No payment of claims by the Government or representation that payment will be made will be given to State and local government officials, the public or potential claimants without authorization from the Commander, USARCS.

(e) If it is determined that the United States is not liable, a comprehensive and detailed investigation (including, where appropriate, photographs and damage estimates) will still be completed in case litigation ensues later. The Commander, USARCS, will provide guidance on the investigation's scope.

(f) If the Commander, USARCS, determines that the Government is liable, the SJA will take action necessary to implement this claims plan.

8. ***Implementation of Claims Process.***

a. Upon receiving notice from the Commander, USARCS, that the Government is liable and meritorious claims are to be paid, the Claims Judge Advocate or SJA will inform appropriate local officials, advise them of the claims mission, and arrange for the location of the special claims processing office. This information will be disseminated to the affected populace through press releases and other news media by the public affairs officer ***(see enclosure 2)***.

b. All claims and complaints will be investigated and processed by special claims processing office personnel. All meritorious claims will be forwarded as quickly as possible to the special claims processing office for action on a priority basis. Claims determined to be meritorious but beyond a special claims processing office's approval

Figure 1-4A. Disaster claims plan—Continued

authority, or claims on which a recommendation of disapproval is made, will be forwarded without delay to the area claims office.

c. Advance payments may be made if authorized.

d. The field claims officer will be responsible for preparing a completely documented master file or electronic equivalent. All claims arising from the disaster will be processed with a cross-reference to the master file or automation equivalent.

e. Upon completing the mission, the field claims office will cease operations after issuing appropriate press notices. Remaining claims will be processed at this installation.

9. ***Payment of claims in disaster or civil disturbance area.***

a. Upon determination by the Commander, USARCS, that the claims are payable, the SJA will authorize the field claims officer to approve claims that comply with AR 27–20, subparagraphs 3-14*a*(4) and (5) and 4-12*a* (1) (*d*) and *a* (2), or as otherwise directed.

b. To the extent possible, claims vouchers approved by the field claims officer should be hand-carried to the U.S. Army finance officer to ensure immediate processing. The finance and accounting officer will make payment by government check for claims vouchers that the field claims officer has approved for payment or cash as directed. Checks will be made payable to the claimant, mailed, and delivered by the USPS. If operations of the USPS have been interrupted in the disaster or civil disturbance area, or other circumstances require immediate delivery, the field claims officer or an assistant, pursuant to AR 37–103, will be authorized to obtain Government checks at the finance and accounting office, or from other duly designated locations, for delivery to the claimant. Duly authorized claims officials or Class A Agents will transfer cash to the claimants.

c. The field claims officer will forward claims in excess of the field claims officer's authority, claims not within the purview of AR 27–20, and claims found not to be meritorious to the SJA, this headquarters, for disposition.

10. ***Reports.***

a. *Interim Report*. At the end of each 24-hour operational period, the field claims officer will prepare a brief narrative on the activities of the office, including major problems encountered (see sample at enclosure 3). A copy of this report will be forwarded directly to each of the following addressees:

(1) Commander, USARCS, OTJAG, Fort Meade, MD 20755-5360; via e-mail, BBS, telephone and facsimile.

(2) The SJA, this headquarters.

b. *Final Report*. Upon closing the office, the Claims Judge Advocate will prepare a detailed and comprehensive report of the entire claims operation. Distribution will be the same as that specified above for the interim report.

c. *Reports Control*. These reports are exempt from reports control.

(Encl Listing) ***(Signature Block)***

Figure 1-4A. Disaster claims plan

(Letterhead)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: DUTY APPOINTMENT/ASSIGNMENT AS CLASS "A" AGENT

1. Effective ***(date), (name of Class A agent)*** , is appointed as Class A Agent to (fill in agent, for example L. Kennedy, DDFO, DFAS-Rome, 1224 Chappie James Blvd, Rome, New York 13441-4511).

2. Authority: DOD FMR 7000.14-R, Volume 5, paragraphs 020604, 0210 and 080105.

3. Purpose: To perform duties as Class A Agent in support of ***(reason agent is appointed) .***

4. Period: ***(dates agent will perform duties)*** .

5. Funds in the amount of ***($ amount of advance)*** will be charged against ***(fund citation and Account Processing Code)*** .

6. Special Instructions: Checks will not be entrusted to others for any reason. Class A Agents will become familiar with Chapters 2, 3, and 8 of DOD FMR 7000.14-R, Volume 5 and FM 14-7. All U.S. Treasury checks entrusted to Agent Officer will be protected at all times as provided in DOD FMR 7000.14-RR, Volume 5, chapters 3 and 8. Class A Agents will turn in undelivered checks to the DDFO designated in paragraph 1, above.

7. Responsibility of Class A Agent:

a. Relationship with Disbursing Officer and Assumption of Liability. Appointment as a Class A Agent establishes an agency relationship between the appointee and the servicing finance Disbursing Officer. The Class A Agent may be held pecuniarily liable for vouchers that have been misplaced, lost, erroneously paid or unpaid, or for failure to otherwise execute the fiduciary duties associated with this responsibility.

b. Duties of the Agent. This agent will be responsible for ***(list duties)***. This agent is authorized to make the following types of payments: ***(describe types of payments and monetary conversions that officer is empowered to make).***

c. Officer's Acknowledgment and Acceptance of Appointment. "I agree this date to hold myself accountable to the United States for all public funds received. I have been furnished a copy of instructions concerning my duties and counseled regarding the pecuniary liability I assume in the execution of these duties."

(Appointee Signature)
(Name, Rank/Branch), Class A Agent

8. Point of contact is _____, at facsimile _____, telephone number _____, and e-mail address _____.

(APPOINTING COMMANDER'S SIGNATURE BLOCK)

Figure 1-4B. Disaster claims plan

(Letterhead)

(OFFICE SYMBOL) (MARKS Number) ***(Date)***

MEMORANDUM FOR

CDR, USARCS, OTJAG, Fort Meade, MD 20755-5360 SJA ***(INSTALLATION)***

SUBJECT: Interim Report

1. Information pertaining to ***(incident/place/date)*** disaster claims operations.
   a. Number of claims on hand as of ***(date)***:
   b. Number of claims received:
   c. Number of claims processed:
      (1) Number paid:
      (2) Number disapproved:
      (3) Number forwarded to USARCS:
   d. Number of claims pending at close of business:
   e. Number of claims received to date:
   f. Dollar amount claimed to date:
   g. Dollar amount paid to date:

2. Brief summary of major problems.

(Encl Listing) ***(Signature Block)***

Figure 1-4C. Disaster claims plan

SAMPLE

press release

DISASTER

A/An ***(explosion occurred) (Army aircraft crashed) (other)*** at 8:00 a.m. today at ***(location)***. The cause of the incident is unknown at this time. Military officials are currently in the process of investigating the cause and the extent of the damage.

[***NOTE:*** Avoid statements implying Government negligence, the proximate cause of the incident or similar remarks.]

The Army and city, county and State agencies are presently furnishing assistance to the community.

(Installation name) is establishing a temporary claims office to appraise the damage and handle claims against the United States arising out of this incident. At the claims office, members of the public may file claims for compensation for personal injury and property loss or damage against the Army, which will evaluate those claims based on applicable laws. The temporary claims office is located at ***(exact location)***. The claims officer is ***(rank) (name)***. This office may be contacted by telephoning ***(number)*** between the hours of ***(hours).***

Persons who wish to file claims are advised to contact that office to obtain necessary information, assistance and forms. Meritorious claims may be considered and paid locally. However, certain requirements of Federal law and Army regulations must be met before settlement of claims can be made.

Figure 1-4D. Disaster claims plan sample press release

1. Personnel.
   a. Claims office table of distribution and allowances.
   b. Civilian job descriptions.
   c. Particular achievements or problems.
   d. Level and quality of experience.

2. Training.
   a. Past personnel training.
   b. Future training planned at USARCS workshops.

3. Workload.
   a. Number of claims received during current fiscal year, compared with prior years.
   b. Breakdown by type of claim.
   c. Affirmative claims statistics.

4. Physical plant: description of claims office(s), equipment, proximity to Staff Judge Advocate (SJA).

5. Administration.
   a. Journal.
   b. Claims files.
   c. Inprocessing of claims.
   d. Small claims procedure.
   e. Settlement letter to claimant.

6. Installation support.
   a. Finance office.
      (1) Cash payments.
      (2) Hand carry vouchers.
      (3) STANFINS.
      (4) Response time for comeback vouchers.
   b. Transportation.
      (1) Inspections, DD Form 1841.
      (2) Outbound counseling.
   c. Medical treatment facility.
      (1) Risk Management Program.
      (2) Willingness to provide information and records.

7. Carrier recovery.
   a. Number on hand, with breakdown.
   b. Local recovery initiation and monitoring.
   c. Contracting office responsiveness.
   d. Unusual local circumstances.
   e. Internal controls for checks.

8. Automation.
   a. Daily entries.
   b. Regular updates.
   c. Use of SJA Report.
   d. Database matches actual claim files.

9. Quality Assurance.
   a. Use of client survey questionnaires.
   b. Action in response to claimants' complaints.

10. Supervisory
   a. Level of involvement by Claims Judge Advocate (CJA) and SJA.
   b. Other duties of CJA.
   c. Degree of SJA support for claims operations.

Figure 1-5. Claims assistance visits checklist—Continued

11. Affirmative Claims Program.
   a. Personnel.
   b. Resource materials and forms.
   c. Internal report and standing operating procedures.
   d. Journal.
   e. Review of open and closed files.
   f. Medical and property damage recovery methods.
   g. Relationship with installation resource offices.
   h. Internal check controls.

12. Other general requirements.
   a. Investigative procedures.
   b. Compliance with monetary jurisdiction.
   c. Publication of claims directives for guidance to claims processing offices.
   d. Liaison with and assistance to claims processing offices.
   e. Budget for claims training.
   f. Legal research capabilities.
   g. Written disaster/civil disturbance plan.

Figure 1-5. Claims assistance visits checklist

Chapter 2
Investigation and Processing of Claims

Section I
Claims Investigative Responsibility

2–1. General

a. This chapter addresses the investigation, process, evaluation, negotiation and settlement of tort and tort related claims. Chapter 11 sets forth procedures for processing personnel claims. In certain instances, claims initially considered under the Personnel Claims Act (PCA) must be considered in tort. In these instances, follow the procedures in this chapter.

b. Claims investigation is a team effort between the USARCS area action officer (AAO), area claims officers (ACO), including Engineer districts, claims processing offices (CPO) and unit claims officers. Investigative efforts should begin immediately after an incident that may give rise to a claim, also called a potentially compensable event (PCE), occurs. See AR 27-20, paragraph 2-2*c* for a definition of a "claims incident." The claims investigation gathers information both adverse and favorable to the government; it should include an interview of the claimant(s) when possible.

2–2. Area claims office responsibility

a. Geographic concept. The ACO in whose geographic area a claims incident occurs has primary responsibility for initiating the investigation. (See tables 2-1 through 2-5.) When subject DA or Department of Defense (DOD) personnel are assigned to an organization located in another ACO area, it is necessary for the investigators involved to conduct a joint investigation; the primary responsibility remains with the ACO in whose area the incident occurred, however, unless a formal transfer is arranged as set forth in Section III. Tables 2-1 through 2-5 defines ACO geographic areas of responsibility. Table 2-1 gives geographic areas of responsibility for CONUS offices and shows which claims processing offices are under each area claims office. Table 2-2 lists divisions and office codes for the USACE. Table 2-3 lists OCONUS area claims offices and claims processing offices; these offices are organized along command lines. Table 2-4 shows account areas and office codes for the USARCS. Table 2-5 shows office codes for the Military Sealift Command.

b. Identifying the claims incident. A claims investigation begins when claims personnel learn of an incident that has the potential for liability, not when the claim is filed. The ACO or CPO should use all available information sources to learn of potential claims.

(1) Reports from persons who know about the incident are the best source of information about potential claims. Claims offices that enjoy strong relationships with other units and activities on the installation or in their geographic area of responsibility have the best chance to learn about an incident right after it happens. It is also important to coordinate within the Office of the Staff Judge Advocate (OSJA).

(2) At a minimum, the CJA, claims attorney or senior claims examiner should screen the following sources of information daily to discover potential claims:

(a) Military Police (MP) blotters.

(b) MP and Criminal Investigation Division (CID) reports forwarded for coordination to the military justice section of the local Staff Judge Advocate office.

(c) Serious incident reports (SIR).

(d) Hospital emergency room logs.

(e) Local newspapers.

(f) Congressional and Presidential inquiries.

(g) DA Form 4106 (Quality Assurance/Risk Management Document) used in Army medical treatment facilities (MTF).

(h) Inspector General (IG) inquiries and investigations (maintaining a good relationship with this office is especially important).

(i) Attorney requests for documents and records.

(3) Potential claims are often discovered when claimants or their attorneys request claim forms. Always ask why they are requesting a claim form and obtain as much information as possible about the potential claim. If the claim is obviously not compensable, inform the claimant or the attorney of this position without delay. For example, if the potential claim is barred by the Feres doctrine (*Feres v. United States*, 346 US 135 (1950)), let the claimant or attorney know this immediately and provide a rationale for your position. This practice helps the civilian attorney evaluate the decision to represent the claimant and file a claim. This advice should be given only by a CJA or claims attorney, who should prepare a memorandum of the conversation for the potential claim file. Never advise a potential claimant or attorney not to file a claim.

c. Delegation of investigative responsibility.

(1) *ACO Responsibility.* The Army is responsible for processing DOD claims (figure 2-1, extract from DODD 5515.9). ACOs should obtain a list of all DOD and Army installations and activities in their area. This includes not only active installations, similar posts, and depots, but Army Reserve and Army National Guard units, armories, and training sites, recruiting battalions, ROTC units, DOD contracting activities, Defense Reutilization and Marketing Offices (DRMO) (which may be located on a U.S. Navy or Air Force (AF) base), Department of Defense Dependent Schools (DODDS) (which also may be located on a U.S. Navy or AF base), Defense Investigative Agencies, to name those most often involved in claims. Department of Defense Commissary Agency (DECA) claims are governed by a Memorandum of Understanding (MOU) (the DECA MOU) (figure 2-2), which imposes claims responsibility on the post or base at which the incident occurred. A directive should be published requiring serious claims incidents to be reported and the method of investigation discussed with the ACO from the onset (see figure 2-3a for a sample). The ACO will furnish a copy of such directive to the Commander, USARCS. Organizations that may generate potential claims due either to their size or the nature of their duties should be required to appoint a claims officer on standing orders. This includes units located on the post at which the ACO is located.

(2) *Serious incident reports.* A serious incident report describes serious personal injury or death or major property damage occurring to an individual other than U.S. employees or Armed Forces personnel incident to service. Figure 2-3b is an sample serious incident report setting forth the information required. The ACO or CPO will immediately inform the AAO of such an incident.

(3) *Claims processing offices.* CPOs are those posts, depots, or other organizations, including DOD depots and activities, that employ CJAs or claims attorneys. CPOs always maintain investigative responsibility for claims incidents arising out of their activities. A CPO may be assigned an area investigative responsibility upon coordination between the ACO and the appropriate commander. A CPO has claims approval authority upon delegation by an ACO of such authority to a CJA or claims attorney. For a list of claims authorities, see AR 27-20, Chapter 1. ACOs are encouraged to designate depots or small posts, including DOD activities, as CPOs, particularly if the area assigned to an ACO includes a large area of more than one state. ACOs should designate all CPOs in their geographic area of responsibility and notify each CPO's commander of such designation.

(4) *Unit claims officers.* As set forth in AR 27-20, chapter 2, commanders or heads of DOD and Army components are required to appoint a unit claims officer to conduct an initial factual investigation. Organizations that generate a significant claims load should appoint a unit claims officer on standing orders with instructions to coordinate investigations with the appropriate ACO or CPO when an incident's potential value is over $25,000. ACOs should develop a serious incident reporting system to ensure that unit claims officers immediately notify the ACO or CPO of a claims incident.

(5) *Special claims offices.* AR 27-20, Chapter 1, explains the necessity for, and sets forth the role of, the special claims office. When a claims incident occurs that will generate a large number of claims requiring immediate investigation, an ACO should consider establishing such an office. If the ACO does not have sufficient personnel to accomplish the mission, it should seek assistance from

the appropriate major command (MACOM) in coordination with the USARCS AAO.

(6) *Medical claims processing offices.* Medical claims incidents should always be investigated by a CJA or claims attorney assigned to an ACO or CPO, with any technical assistance necessary provided by a USARCS AAO. By virtue of an agreement between The Judge Advocate General (TJAG) and The Surgeon General (TSG), ACOs whose area contains an Army medical center (AMC) are assigned a medical claims judge advocate (MCJA) or medical claims attorney to operate a medical CPO (figure 2-4, extract of memorandum). In the Federal Republic of Germany (FRG), responsibility for processing all medical malpractice claims arising in any MTF has been delegated to the MCJA or medical claims attorney, Landstuhl Regional Medical Center. A CJA or claims attorney should conduct the investigation of all medical claims at Army MTFs that are not AMCs. They should maintain daily contact with the MTF risk manager, who is required to screen potentially compensable events (PCE) on AQCESS, a clinical database, review DA Form 4106 (Quality Assurance/Risk Management Document) and maintain direct contact with the MTF staff or other means. See AR 40-68 for a detailed description of these procedures. The MCJA, CJA, or claims attorney should conduct an investigation independent of any MTF investigation, such as those conducted by quality assurance (QA) or risk management (RM) committees or pursuant to AR 15-6. The MCJA, CJA or claims attorney should advise the QA or RM committee and participate in its procedures to the extent required. However, if a QA or other investigation results in a credentialing review process, the center JA or SJA, not the MCJA or CJA, should provide legal advice to the credentialing committee.

d. Incidents involving several ACOs. The primary investigative responsibility lies with the ACO of the area in which the claims incident occurred. When an incident involves several ACOs (for example, when personnel travel in a convoy or on TDY status or fly over another ACO's area), a joint investigation is required. However, the ACO of the area in which the incident occurred retains responsibility. A more difficult situation arises when a medical malpractice incident occurs at one MTF and the patient is transferred to and treated at a MTF in another area. The second MTF may belong to another armed force or it may be a civilian care facility. Frequently, the actual site of the claims incident is discoverable only after reviewing all the medical records. A transfer of responsibility may be in order. See Section III. If serious injury or major property loss involves more than one ACO, consult the AAO and assign responsibility accordingly.

2–3. Command claims service responsibility

A command claims service is responsible for the investigation of claims incidents arising in its assigned geographic area. However, the command claims service may delegate to an ACO the responsibility for advising USARCS of serious incidents. A copy of the written delegation and any changes made thereafter will be forwarded to the Commander, USARCS.

2–4. USARCS

USARCS maintains technical supervision over all claims offices and provides guidance on specific claims. It may do so at any point in the claims process. Its guidance may cover the method of claims investigation and disposition, particularly when the amount claimed is beyond an ACO's or CPO's monetary jurisdiction. An ACO or CPO may not act independently to settle or transfer such a claim unless USARCS has specifically delegated to it the authority to do so. USARCS acts through the AAO that maintains responsibility over an ACO's or CPO's geographic area. USARCS AAOs, ACOs, and CPOs should develop a close working relationship with each other that encourages an atmosphere of mutual cooperation, creating a free exchange of ideas or legal theories. An ACO or CPO should view USARCS, based on its broader experience and knowledge of precedent, as a valuable information resource. Nevertheless, ACO and CPO personnel should freely express their opinions about the law, damages, or the payment of a claim to the AAO.

2–5. Release of information practices

In an Army claims setting, the responsible attorney may not release classified material or material that violates the Privacy Act, 5 USC 552a, or other laws or regulations. (See chapter 1 for discussion of FOIA and Privacy Act.) Generally, work product may be released or withheld by the attorney who gathered the information, *Hickman v. Taylor*, 329 U.S. 495 (1947). Work product includes written recordings of interviews, statements, memoranda, briefs, correspondence and documents containing mental impressions or personal notes written by an attorney or gathered under an attorney's direct control. The purpose of any such release is to help settle the claim or avoid unnecessary litigation. When material is released, the claims file will be annotated to show what documents were released, to whom they were released, and the date of release.

a. Disclosure of Consultation Case Review Branch (CCRB) opinions.

(1) The CCRB is composed of Army physicians who routinely review medical malpractice claims and render opinions on the medical treatment provided to the claimant and any deviations from a recognized standard of care. An agreement between USARCS and CCRB stipulates that USARCS will not disclose CCRB opinions. Refer all requests for CCRB opinions to USARCS. Evaluations of injury and malpractice claims prepared by CCRB are expert opinions protected from discovery to the extent allowed by Federal Rule of Civil Procedure (FRCP) 26b(4). They are also protected by the Government's deliberative process privilege. This privilege arguably gives greater protection to CCRB evaluations than does Rule 26b(4). In addition, these opinions are considered privileged and exempt under FOIA exemption 5 (see 5 USC 552(b)(5)).

(2) CCRB opinions are prepared for USARCS and area claims offices to use in determining liability. Any request by a MTF for use in QA or peer review in Army hospitals or medical centers should be made to Medical Command (MEDCOM). Accordingly, they will not be released to MTFs without USARCS consent. Refer all such requests by claimants or MTFs to the AAO.

b. Records prepared by other Army activities or other Federal agencies. Refer requests for documents obtained from other agencies to the appropriate agency.

(1) Claims files may contain documents from other Army organizations or other Federal agencies that may not be released outside the Federal Government. The following forms each have restrictions on their release to the public:

- IG reports.
- Accident investigation reports prepared by safety personnel.
- DA Form 2397-R (Technical Report of U.S. Army Aircraft Accident—Part I, Statement of Reviewing Officials).
- DA Form 285 (U.S. Army Accident Report).
- Department of Labor Forms:
  CA1 (Federal Employees Notice of Traumatic Injury).
  CA2 (Notice of Occupational Disease).
  CA6 (Official Supervisor's Report of Employee's Death).

CID investigation reports may also contain information that should not be released.

(2) *Quality Assurance records.*

(a) Medical QA records are both confidential and privileged (figure 2-5, extract from 10 USC 1102). Health care providers (HCPs) and any other participants in QA activities are precluded from testifying about QA records, committee findings, actions, opinions, and recommendations. When asked for advice on the release of medical records, CJAs or claims attorneys should review the statute carefully to determine if the record is a QA document. Congress sought to remove the courts discretion by legislating that QA records are not subject to discovery and may not be introduced into evidence. QA records are also exempt from release under FOIA. Therefore, CJAs and claims attorneys must carefully consider the information they

release to claimants or their attorneys during settlement negotiations. Once a CJA or claims attorney obtains QA information, further disclosure may be made only to those persons or entities statutorily authorized to obtain it. Investigation reports conducted for other than QA purposes are discoverable and not exempt from release. Such an investigation may be conducted pursuant to AR 15-6, either by a MTF Commander or MEDCOM. It may include witness statements given either to the investigator or written separately and used by the QA committee. The fact that such material is included in the QA file and marked as a QA document does not preclude its release.

(b) The QA statute lists specific exceptions to the general prohibition against disclosure of QA information. These exceptions permit disclosure to Army claims personnel for use in investigating and processing claims. However, if DOJ approval of a settlement is necessary, QA documents may not be used to support the request. QA records may be released to—

1. Criminal investigators and IG officers.

2. Federal or private agencies performing accreditation or licensing functions.

3. Present or former DOD HCP regarding the limitation, suspension, or termination of that HCP's clinical privileges.

4. Other hospitals or medical licensing bodies needing the information to assess the qualifications of a present or former DOD HCP.

5. Officers, employees and DOD civilian contractors who need the information to perform their official duties.

(c) Doctor or patient disclosures are discoverable and not exempt. While a treating physician or dentist has a responsibility to keep a patient or patient's family fully informed during and after treatment, such disclosures should not constitute judgments about either past or ongoing medical care. Physicians and dentists are legally obligated to make full and frank disclosure even when doing so could give rise to a claim. They are not obligated, however, to inform the patient that the medical treatment was negligent or that the previous HCP did not meet the standard of care. No HCP should make statements such as "such conclusionary statements are admissible in evidence."

(3) *Presidential, Congressional, and IG inquiries.* When responding to Presidential, Congressional or IG inquiries about an actual or potential claimant, ACOs should screen their responses to ensure that they contain only factual material, not admissions of negligence or failure to meet standards of care. This requires close coordination with the IG and Commander's designees, who also respond to such inquiries. Many attorneys who are familiar with procedures encourage their clients to make inquiry with a view toward obtaining admissions against interest that are admissible in evidence. This guidance should in no way detract from the duty to reply honestly and completely.

Table 2–1
Claims offices—CONUS active Army areas

Area of responsibility	Area claims office	Claims processing office(s)
Area No. 1		
States of Idaho, Oregon, Washington, Montana	Fort Lewis, WA Office code 011	Madigan Army Medical Center, WA Office code 012
Area No. 2		
State of California—less counties assigned to Fort Irwin. State of Nevada—less Clark County	Presidio of Monterey,CA Office code 031	Sharp Army Depot,CA Office code 032 MTMC Western Area Office code 023
Area No. 3		
State of California—the following counties: Imperial, Kern, Riverside, San Bernardino, San Diego State of Nevada—the following county: Clark	Fort Irwin, CA Office code 041	
Area No. 4		
State of Arizona	Fort Huachuca, AZ Office code 051	Yuma Proving Ground, AZ Office code 052
Area No. 5		
State of Colorado—the following counties: Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Conejos, Costilla, Crowley, Custer, Delta, Dolores, El Paso, Fremont, Gunnison, Hinsdale, Huerfano, Kiowa, Kit Carson, Lake, La Plata, Las Animas, Lincoln, Mesa, Mineral, Montezuma, Montrose, Otero, Park, Pitkin, Prowers, Pueblo, Quray, Rio Grande, Saguache, San Juan, San Miguel, Teller State of Utah	Fort Carson,CO Office code 061	Dugway Proving Ground, UT, Office code 062
Area No. 6		
State of Colorado—the following counties: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Garfield, Gilpin, Grand, Jackson, Jefferson, Larimer, Logan, Moffat, Morgan, Phillips, Rio Blanco, Routt, Sedgewick, Summit, Washington, Weld, Yuma State of Wyoming	U.S. Army Garrison—Fitzsimons, CO Office code 071	Rocky Mountain Arsenal, CO, Office code 072
Area No. 7		
State of New Mexico	White Sands Missile Range, NM Office Code 081	
Area No. 8		
State of Kansas—the following counties: Barber, Barton, Butler, Chase, Chautauqua,1 Cheyenne, Clark, Clay, Cloud, Commanche, Cowley, Decatur, Dickinson, Edwards, Elk, Ellis, Ellisworth, Finney, Ford, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jewell, Kearney, Kingman, Kiowa, Lane, Lincoln, Logan, Lyon, Marion, Marshall, McPherson, Meade, Mitchell, Morris, Morton, Ness, Norton, Osbourne, Ottawa, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Sedgewick, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Summer, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita States of Nebraska, North Dakota, South Dakota		Fort Riley, KS Office code 09
Area No. 9		

Table 2–1
Claims offices—CONUS active Army areas—Continued

Area of responsibility	Area claims office	Claims processing office(s)
State of Oklahoma State of Arkansas—the following counties: Baxter, Benton, Boone, Carroll, Clark, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Garland, Hempstead, Hot Springs, Howard, Independence, Izard, Johnson, Lawrence, Little River, Logan, Madison, Marion, Montgomery, Nevada, Newton, Perry, Pike, Polk, Pope, Pulaski, Randolph, Saline, Scott, Searcy, Sebastian, Sharp, Siever, Stone, Van Buren, Washington, Yell State of Texas—the following counties: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Armer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler	Fort Sill, OK Office code 101	
Area No. 10		
State of Texas—the following counties: Andrews, Bailey, Borden, Brewster Cochran, Coke, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dawson, Dickens, Ector, El Paso, Fisher, Floyd, Foard, Gaines, Garza, Glasscock, Hale, Haskell, ockley, Howard, Hudspeth, Irion, Jeff Davis, Jones, Kent, Kimble, King, Knox, Lamb, Loving, Lubbock, Lynn, Martin, Menard, Midland, Mitchell, Motley, Nolan, Pecos, Presidio, Reagan, Reeves, Runnels, Schleicher, Scurry, Sterling, Stonewall, Sutton, Taylor, Terrell, Terry, Tom Green, Upton, Ward, Winkler, Yoakum	Fort Bliss, TX Office code 121	William Beaumont Army Medical Center, TX Office code 122
Area No. 11		
State of Texas—the following counties: Anderson, Archer, Baylor, Bell, Bernet, Bosque, Bosque, Bowie, Brazos, Brown, Burleson, Callahan, Camp, Cherokee, Clay, Coleman, Collin, Commanche, Cooke, Coryell, Dallas, Delta, Denton, Eastland, Ellis, Erath, Falls, Fannin, Franklin, Freestone, Grayson, Grimes, Hamilton, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jack, Johnson, Kaufman, Lamar, Lampasas, Leon, Limestone, Llano, Madison, Mason, McCulloch, McLennon, Milam, Mills, Montague, Montgomery, Morris, Navarro, Palo Pinto, Parker, Polk, Rains, Red River, Robertson, Rockwall, San Jacinto, San Saba, Shackleford, Smith, Somervell, Stephens, Tarrant, Throckmorton, Titus, Travis, Trinity, Upshur, Van Zandt, Walker, Washington, Wichita, Wilbarger, Williamson, Wise, Young	Fort Hood, TX Office code 131	
Area No. 12		
State of Texas—the following counties: Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Bexar, Blanco, Brazoria, Brooks, Caldwell, Calhoun, Cameron, Colorado, Comal, De Witt, Dimmit, Duval, Edwards, Fayette, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzalez, Guadalupe, Harris, Hays, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kinney, Kleberg, LaSalle, LaVaca, Lee Live Oak, Matagorda, Maverick, McMullen, Medina, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Val Verde, Victoria, Waller, Webb, Wharton, Willacy, Wilson, Zapata, Zavala	Fort Sam Houston, TX Office code 141	Corpus Christi Army Depot, TX Office code 142 Brooke Army Medical Center, TX Office code 143
Area No. 13		
State of Louisiana State of Arkansas—the following counties: Arkansas, Ashley, Bradley, Calhoun, Chicot, Clay, Cleveland, Columbia, Craighead, Crittenden, Cross, Dallas, Desha, Drew, Grant, Greene, Jackson, Jefferson, Lafayette, Lee, Lincoln, Lonoke, Miller, Mississippi, Monroe, Ouachita, Phillips, Poinsett, Prairie, St. Francis, Union, White, Woodruff State of Texas—the following counties: Angelina, Cass, Chambers, Gregg, Hardin, Harrison, Jasper, Jefferson, Liberty, Marion, Nacogdoches, Newton, Orange, Panola, Rusk, Sabine, San Augustine, Shelby, Tyler	Fort Polk, LA Office code 151	Pine Bluff Arsenal, AR Office code 152
Area No. 14		

Table 2–1
Claims offices—CONUS active Army areas—Continued

Area of responsibility	Area claims office	Claims processing office(s)
State of Missouri—St. Louis City and the following counties: Adair, Audrain, Barry, Barton, Bates, Benton, Bollinger, Boone, Butler, Callaway, Camden, Cape, Girardeau, Carter, Cass, Cedar, Christian, Clark, Cole, Cooper, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Franklin, Gasconade, Greene, Henry, Hickory, Howard, Howell, Iron, Jasper, Jefferson, Johnson, Knox, Laclede, Lawrence, Lewis, Lincoln, Macon, Madison, Maries, Marion, McDonald, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Newton, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Clair, St. Francois, St. Genevieve, St. Louis, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Stone, Taney, Texas, Vernon, Warren, Washington, Wayne, Webster, Wright State of Illinois—the following counties: Adams, Alexander, Bond, Brown, Calhoun, Cass, Clay, Clinton, Edwards, Fayette, Franklin, Gallatin, Greene, Hamilton, Hancock, Hardin, Jackson, Jefferson, Jersey, Johnson, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Morgan, Perry, Pike, Pope, Pulaski, Randolph, St. Clare, Saline, Schuyler, Scott, Union, Washington, Wayne, White, Williamson *Command terminates 1 October 1997	Fort Leonard Wood, MO Office code 161 U.S. Army Reserve	Components Personnel and Administration Center, MO Office code 163
Area No. 15		
State of Kansas—the following counties: Allen, Anderson, Atchison, Bourbon, Brown, Cherokee, Coffey, Crawford, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Labette, Leavenworth, Linn, Miami, Montgomery, Nemaha, Neosho, Osage, Shawnee, Wilson, Woodson, Wyandotte State of Minnesota State of Iowa State of Illinois—less counties assigned to Fort Leonard Wood State of Missouri—the following counties: Andrew, Atchison, Buchanan, Caldwell, Carroll, Chariton, Clay, Clinton, Daviess, Dekalb, Gentry, Grundy, Harrison, Holt, Jackson, Lafayette, Linn, Livingston, Mercer, Nodaway, Platte, Putnam, Ray, Saline, Sullivan, Worth	Fort Leavenworth, KS Office code 171	Fort McCoy, WI Office code 172
Area No. 16		
State of Indiana State of Michigan State of Kentucky—less counties assigned to Fort Campbell State of Ohio	Fort Knox, KY Office code 201	U.S. Army Tank Automotive Command, MI Office code 192
Area No. 17		
State of Kentucky—the following counties: Ballard, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Fulton, Graves, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, Webster State of Tennessee—the following counties: Bedford, Benton, Cannon, Carroll, Cheatham, Chester, Clay, Coffee, Crockett, Davidson, Decatur, DeKalb, Dickson, Dyer, Fayette, Fentress, Franklin, Gibson, Giles, Grundy, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Madison, Marion, Marshall, Maury, McNairy, Montgomery, Moore, Obion, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Shelby, Smith, Stewart, Summer, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, Wilson	Fort Campbell, KY Office code 211	
Area No. 18		
State of Alabama—the following counties: Colbert, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall, Morgan	Redstone Arsenal, AL Office code 221	U.S. Army Strategic Defense Command, AL Office code 222
Area No. 19		

Table 2–1
Claims offices—CONUS active Army areas—Continued

Area of responsibility	Area claims office	Claims processing office(s)
State of Mississippi—the following counties: Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, DeSota, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippiah, Tishomingo, Tunica, Union, Washington, Webster, Winston, Yalobusha State of Alabama—the following counties: Bibb, Blount, Calhoun, Chambers, Cherokee, Clay, Cleburne, Coosa, Cullman, DeKalb, Etowah, Fayette, Jefferson, Lamar, Marion, Pickens, Randolph, Saint Clair, Shelby, Talladega, Tallapoosa, Tuscaloosa, Walker	Fort McClellan, AL Office code 231	
Area No. 20		
State of Alabama—the following counties: Autauga, Baldwin, Barbour, Bullock, Butler, Chilton, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Greene, Hale, Henry, Houston, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Perry, Pike, Washington, Wilcox State of Mississippi—the following counties: Adams, Amite, Claiborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone Walthall, Warren, Wayne, Wilkinson, Yazoo State of Florida—the following counties: Bay, Calhoun, Escambia, Gulf, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, Washington	Fort Rucker, AL Office code 241	
Area No. 21		
State of Georgia—the following counties: Baker, Ben Hill, Berrien, Bibb, Bleckley, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Colquitt, Cook, Crawford, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Grady, Harris, Houston, Irwin, Jones, Lamar, Lanier, Lee, Lowndes, Macon, Marion, Meriwether, Miller, Mitchell, Monroe, Muscogee, Peach, Pike, Pulaski, Quitman, Randolph, Schley, Seminole, Stewart, Sumter, Talbot, Taylor, Terrell, Thomas, Tift, Troup, Turner, Twiggs, Upson, Webster, Wilcox, Worth State of Alabama—the following counties: Lee, Russell State of Florida—the following counties: Columbia, Dixie, Franklin, Gadsden, Gilchrist, Hamilton, Jefferson, Lafayette, Leon Liberty, Madison, Suwannee, Taylor, Wakulla	Fort Benning, GA Office code 251	
Area No. 22		
State of Georgia—the following counties: Appling, Atkinson, Bacon, Brantley, Bryan, Bulloch, Camden, Candler, Charlton, Chatham, Coffee, Effingham, Evans, Glynn, Jeff Davis, Liberty, Long, McIntosh, Montgomery, Pierce, Tattnall, Telfair, Toombs, Treutlen, Ware, Wayne, Wheeler State of South Carolina—the following counties: Beaufort, Jasper State of Florida—the following counties: Alachus, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Dade, DeSoto, Duval, Flager, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Saint Johns, Saint Lucie, Sarasota, Seminole, Sumter, Union, Volusia	Fort Stewart, GA Office code 261	
Area No. 23		

Table 2–1
Claims offices—CONUS active Army areas—Continued

Area of responsibility	Area claims office	Claims processing office(s)
State of Georgia—the following counties: Barrow, Bartow, Butts, Carroll, Catoosa, Chattooga, Cherokee, Clayton, Cobb, Coweta, Dada, Daws, DeKalb, Douglas, Fannin, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Heard, Henry, Jasper, Lumpkin, Murray, Newton, Paulding, Pickens, Polk, Rabun, Rockdale, Spalding, Towns, Union, Walker, Walton, White, Whitfield State of Tennessee—the following counties: Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Clairborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union, Washington	Fort McPherson, GA Office code 271	
Area No. 24		
State of Georgia—the following counties: Baldwin, Banks, Burke, Clarke, Columbia, Elbert, Emanuel, Franklin, Glascock, Greene, Hancock, Hart, Jackson, Jefferson, Jenkins, Johnson, Laurens, Lincoln, Madison, McDuffie, Morgan, Oconee, Oglethorpe, Putnam, Richmond, Screvens, Stephens, Taliaferro, Warren, Washington, Wilkes, Wilkinson State of North Carolina—the following counties: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania State of South Carolina—the following counties: Abbeville, Aiken, Allendale, Anderson, Barnwell, Edgefield, Greenville, Greenwood, Hampton, Laurens, McCormick, Oconee, Pickens, Saluda, Spartanburg	Fort Gordon, GA Office code 281	
Area No. 25		
State of South Carolina—the following counties: Bamberg, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Fairfield, Florence, Georgetown, Horry, Kershaw, Lancaster, Lee, Lexington, Marion, Marlboro, Newberry, Orangeburg, Richland, Sumter, Union, Williamsburg, York State of North Carolina—the following counties: Alexander, Alleghany, Anson, Ashe, Avery, Burke, Cabarrus, Caldwell, Catawba, Cleveland, Davie, Gaston, Iredell, Lincoln, McDowell, Mecklenburg, Mitchell, Rowan, Rutherford, Stanly, Surry, Unions, Watauga, Wilkes, Yadkin, Yancey	Fort Jackson, SC Office code 291	
Area No. 26		
State of North Carolina—the following counties: Alamance, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenior, Martin, Montgomery, Moore, Nash, New Hanover, Northhampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Sampson, Scotland, Stokes, Tyrrell, Vance, Wake, Warren, Washington, Wayne, Wilson	Fort Bragg, NC Office code 301	Womack Army Medical Center Office Code 302
Area No. 27		
State of Virginia—less areas assigned to Military District of Washington, Fort Belvoir, and Fort Eustis State of West Virginia—less areas assigned to Fort Belvoir	Fort Lee, VA Office code 311	The Judge Advocate General School, VA Office code 312
Area No. 28		
State of Virginia-the following counties: Accomack, Isle of Wight, James City, Nansemond, Northampton, Southhampton, Surry, Sussex, York The following independent cities: Charles City, Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg	Fort Eustis, VA Office code 321	Fort Monroe, VA Office code 322
Area No. 29		

Table 2–1
Claims offices—CONUS active Army areas—Continued

Area of responsibility	Area claims office	Claims processing office(s)
State of Virginia—the following counties: Caroline, Clarke, Culpeper, Fauquier, Frederick, Greene, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Stafford, Warren State of West Virginia—the following counties: Berkely, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton	Fort Belvoir, VA Office code 331	
Area No. 30		
District of Columbia State of Virginia—the following counties: Arlington, Fairfax Independent cities of: Alexandria, Fairfax, Falls Church New York City Long Island State of New Jersey—the following counties: Bergen, Essex, Hudson, Passaic, Union	Military District of Washington, DC Office code 341	U.S. Army Materiel Command, VA Office code 343 Walter Reed Army Medical Center, DC Office code 344 Fort Hamilton, NY Office code 391
Area No. 31		
State of Maryland—less counties assigned to Aberdeen Proving Ground State of Pennsylvania—less counties assigned to Fort Dix	Fort Meade, MD Office code 351	Fort Detrick, MD Office code 352 Fort Ritchie, MD Office code 353 Carlisle Barracks, PA Office code 354
Area No. 32		
State of Maryland—the following counties: Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, Somerset, Talbot, Wicomico, Worcester State of Delaware	Aberdeen Proving Ground, MD Office code 361	
Area No. 33		
State of New Jersey—the following counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, Salem States of Maine, Massachusetts, New Hampshire, Rhode Island, Vermont State of Pennsylvania—the following counties: Berks, Bradford, Bucks, Carbon, Chester, Columbia, Delaware, Lackawanna, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Schuylkill, Sullivan, Susquehanna, Wayne, Wyoming	Fort Dix, NJ Office code 371	 Fort Devens, MA Office code 372
Area No. 34		
State of New Jersey—the following counties: Hunterdon, Mercer, Middlesex, Monmouth, Morris, Somerset, Sussex, Warren	Fort Monmouth, NJ Office code 381	
Area No. 35 [Reserved]		
Area No. 36		
State of Connecticut—Affirmative claims including the states of: Massachusettts, Rhode Island and the following counties in New Jersey: Bergen, Passaic, Essex State of New York—the following counties: Albany, Columbia, Delaware, Dutchess, Fulton, Greene, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, Westchester	U.S. Military Academy NY, Office code 401	Watervliet Arsenal, NY Office code 402
Area No. 37		
All of New York not assigned to the U.S. Military Academy and Military District of Washington	Fort Drum, NY Office Code 421	
Area No. 38		

Table 2–1
Claims offices—CONUS active Army areas—Continued

Area of responsibility	Area claims office	Claims processing office(s)
Alaska	Fort Richardson, AK Office code 431	Fort Wainwright, AK Office code 432 Fort Greely, AK Office code 433
Area No. 39		
New Jersey—Bayonne (personnel claims only) North Carolina-Brunswick County	MTMC, Eastern Area Bayonne, NJ Office code 441	
Area No. 40		
Puerto Rico and Virgin Islands	Fort Buchanan, PR Office code 451	
Area No. 41		
State of Hawaii— and the following possessions or territories: American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnson Island, Kingman Reef, Midway Atoll, Northern Mariana Islands, Palmyra, Wake Atoll, Army—Single-Service, Responsibility per DODD, 5515.8 Marshall Islands and Kwajalein Atoll	25th Infantry Div (L) and U. S. Army Hawaii Office code P05	

Table 2–2
U.S. Army Corps of Engineers—office codes

Area	Office code	Area	Office code
Chief of Engineers	N00	Seattle District	N25
South Atlantic Division	N01	Vicksburg District	N26
Buffalo District	N02	New England Division	N27
Los Angeles District	N03	Charleston District	N28
Chicago District	N04	Wilmington District	N29
Detroit District	N05	Albuquerque District	N30
Fort Worth District	N06	Alaska District	N31
Jacksonville District	N07	Baltimore District	N32
Pittsburgh District	N08	Southwestern Division	N33
Kansas City District	N09	Tulsa District	N34
Louisville District	N10	Little Rock District	N35
Memphis District	N11	Galveston District	N36
Translantic Programs Center	N12	Huntington District	N37
Mobile District	N14	Nashville District	N38
New Orleans District	N15	San Francisco District	N39
New York District	N16	Walla Walla District	N40
Norfolk District	N17	Huntsville District	N41
Omaha District	N18	St. Paul District	N42
Rock Island District	N19	Ohio River Division	N43
Portland District	N20	Waterways Experiment Station	N44
Sacramento District	N21	Philadelphia District	N45
South Pacific Division	N22	North Central Division	N46
Savannah District	N23	Humphreys Center	N47
St. Louis District	N24		

Table 2–3
OCONUS claims activities

Major command U.S Army Claims Service	Claims office	Office code
Foreign Claims Commission	USARCS	C90
Foreign Claims Commission	XVIII Airborne Corps	C9A
Foreign Claims Commission	USARCS(Kuwait)	C9H
Foreign Claims Commission	USARCS(Haiti)	S9K
Foreign Claims Commission	USARCS(Thailand)	P91
Foreign Claims Commission	USARCS(Hawaii)	P90
Foreign Claims Commission	Bosnia-Herzegovina	E9M
U.S. Army, Europe		
U.S. Army Claims Service, Europe		E01
V Corps	Headquarters 32d Army Air Defense Comand Hanau Wiesbaden Heidelberg	E04 E43 E52 E52
(Independent)	LARMC Landstuhl	E05
1st Infantry Division	Weurzburg Katterbach Bamberg Grafenwoehr Schweinfurt Kitzingen Vilseck Augsburg	E30 E10 E11 E13 E32 E33 E34 E72
21st Theater Army Area Command	Kaiserslautern Mannheim Mons (SupremeHead-quarters Allied Powers Europe) Schinnen Menwith Hill Stuttgart (Kelly Bks)	E20 E24 E26 E28 E29 E74
Foreign Claims Commission 1st Armored Division	Bad Kreuznach Baumholder Kirchgoens	E80 E81 E41
Southern European Task Force Vicenza	Vicenza 8th Support Group (Livorno) Izmir, Turkey (LANDSOUTHEAST)	ES1 ES2 ES4
Claims Service Europe Foreign Claims Commission for:		
Foreign Claims Commission	Hungary	E9E
Foreign Claims Commission	Yugoslavia, Hungary, Slovakia, Czech Republic	E9F
Foreign Claims Commission	Yugoslavia, Hungary, Slovakia, Czech Republic	E9G
Foreign Claims Commission	Yugoslavia, Hungary, Slovakia, Czech Republic	E9H
Foreign Claims Commission	Yugoslavia, Hungary, Slovakia, Czech Republic	E9J
Foreign Claims Commission	Rwanda, Uganda	E9A
Foreign Claims Commission	Rwanda, Uganda	E9B
Foreign Claims Commission	Rwanda, Uganda	E98
Claims Service Europe Foreign Claims Commissions		
Foreign Claims Comission	Mannheim	E93
Foreign Claims Comission	Mannheim	E91
Foreign Claims Commission	Belgium	E96
Foreign Claims Commission	Belgium	E95
Foreign Claims Commission	Bosnia-Herzegovina, Hungary, Slovakia, Czech Republic	E9W
Foreign Claims Commission	Bosnia-Herzegovina, Hungary, Slovakia, Czech Republic	E9D
Foreign Claims Commission	Croatia	E9I

Table 2–3
OCONUS claims activities—Continued

Major command U.S Army Claims Service	Claims office	Office code
Foreign Claims Commission	Crotia, Yugoslavia, Hungary, Slovakia, Czech Republic	E9C
Eighth Army, Korea		
U.S. Armed Forces Claims Service, Korea*		K01
(*Area- Korea with investigative responsibility for Japan & Okinawa)		
U.S. Forces, Korea		K02
2d Infantry Division		K03
19th Support Command		
Combined Field Army		K05
Camp Humphreys		
Foreign Claims Commissions Korea		
Foreign Claims Commission		K90
Foreign Claims Commission		K91
Foreign Claims Commission		K92
Single Service Responsibility per DODD 5515.8 for Japan and Okinawa	U.S. Air Force-Japan	
U.S. Army South		
Investigative responsibility for Central and South America		
U.S. Army Claims Service, South (Panama)	Fort Clayton Honduras	S01 S03
Foreign Claims Commission	Central and South America Honduras and El Salvador	S90 S9J

Table 2–4
U.S. Army Claims Service

Office Operating Account	Code
Tort claims	C01
Maritime claims	C02
Personnel claims	C03
Recovery	C04
Affirmative claims	C05
Foreign Claims Commission	C90
Third U.S. Army/Army Central Command	C10

Table 2–5
Military Sealift Command

Office Command	code
Eastern Command, Bayonne, NJ	MSE
Western Command, Oakland, CA	MSW

SUBJECT: Settlement of Tort Claims

Reference:
(a) DoD Directive 5515.9, "Settlement of Claims Under the Provisions of the Federal Tort Claims Act" (28 USC 2671-2680) (Delegation to the Secretary of the Army), November 15, 1961 (hereby canceled)
(b) Title 28, United States Code, Sections 1346(b), 2671-2680 ("Federal Tort Claims Act")
(c) Title 10, United States Code, Section 113

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a).

2. Establishes policy for the administrative processing and, where appropriate, the settlement of claims filed under reference (b) against DoD Components other than the Military Departments.

3. Delegates authority, pursuant to reference (c), to the Secretary of the Army to process and, where appropriate, settle claims pursuant to this Directive.

B. APPLICABILITY

This Directive applied to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; the Inspector General of the Department of Defense (IG, DoD); the Defense Agencies; and DoD Field Activities (hereafter referred to collectively as "DoD Components").

C. POLICY

It is DoD policy that:

1. Claims filed under reference (b) arising from the acts or omissions of civilian personnel of DoD Components other than the Military Departments shall be processed and, if appropriate, administratively settled pursuant to this Directive.

2. DoD personnel shall cooperate in the processing of claims pursuant to this Directive, including providing such assistance as the DoD Component processing the claims reasonably requests.

D. RESPONSIBILITIES

1. The Secretary of the Army shall, pursuant to 10 U.S.C.113 (reference (c)) and on behalf of the Secretary of Defense, process and, where appropriate, settle claims that are filed under the Federal Tort Claims Act (reference (b)) and arise out of the acts or omissions of civilian personnel of DoD Components other than the Military Departments who, as determined by the Secretary of the Army, are acting within the scope of their official duties.

2. The Secretary of the Army may redelegate the responsibility assigned by subsection D.1., above, to personnel of the Department of the Army who are authorized under the regulations promulgated by the Secretary of the Army to settle claims under reference (b) against the Department of the Army.

3. The Heads of DoD Components (other than the Departments of the Air Force and Navy), when personnel of their Components are involved in incidents generating claims under this Directive, shall, upon the request of the Secretary of the Army, assist in the investigation and processing of such claims in accordance with regulations promulgated by the Secretary of the Army. The Secretary of the Army may designate DoD Components providing such assistance as "claims processing offices" and attorneys or other personnel of DoD Components providing such assistance as "claims officers."

E. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the General Counsel of the Department of Defense within 120 days.

Figure 2-1. Delegation of DOD claims to Army, extract from DODD 5515.9

SUBJECT: Defense Commissary Agency Claims

1. Purpose: To adopt procedures for processing claims involving Defense Commissary Agency employees.

2. References: DODD 5105.55 (9 November 1990)
DODD 5515.9 (12 September 1990)
DODD 5515.10 (6 July 1965)

3. Problem. DOD Directives 5515.9 and 5515.10 empower the Army to settle tort and personnel claims against and by DOD employees who are not employees of the Departments of the Army, Navy, or Air Force. Prior to consolidation of Army, Navy and Air Force commissaries into the Defense Commissary Agency, each of the military services investigated and settled claims involving that service's commissaries. Requiring Army claims activities to investigate commissary claims arising on Navy, Air Force, and Marine Corps installations would hinder settlement of these claims.

4. Scope. To expedite processing of claims from commissary employees or arising out of commissary activities, each military service agrees to investigate and, if appropriate, settle claims involving commissary personnel permanently or temporarily employed on that service's installations, regardless of where such claims occur.

5. Understanding, agreements, support, and resources.

a. Each military service will investigate and settle personnel claims presented by civilian employees of the Defense Commissary Agency employed by commissaries on that service's installations. In addition, each service will investigate and settle claims for shipment damage presented by Defense Commissary Agency employees who are transferring to commissaries on that service's installations.

b. Except for claims arising in overseas countries where DODD 5515.8 has assigned single-service responsibility, each service will process and, if appropriate, settle tort claims presented under the Federal Tort Claims Act, the Military Claims Act, the Non-Scope Claims Act, and the Foreign Claims Act which allege negligent or wrongful acts and omissions by commissary personnel employed on its installations. Each service will provide litigation support for claims involving commissary personnel assigned to its installations.

c. Each service will assert pro-Government claims for damage to Defense Commissary Agency property located on its installations, except in overseas countries where DODD 5515.8 has assigned single-service responsibility.

d. Each service will follow its own rules and regulations in investigating and settling claims. The Department of the Navy will assign responsibility for settling commissary claims arising on Marine Corps installations.

6. Effective date. The effective date of this agreement is 1 June 1992.

Figure 2-2. Memorandum of understanding—Defense Commissary Agency claims

ANME-JA

SUBJECT: Reporting and Investigating Potential and Actual Tort Claims

1. References:
   a. DODD 5515.9—12 September 1989
   b. AR 27-20
   c. DA Pamphlet 27-162

2. Purpose: This directive is to ensure the prompt reporting and investigating of all tort claims incidents arising in the area of responsibility assigned to (name of SJA and installation).

3. Serious Incidents
   a. Pursuant to AR 27-20, paragraph 1-5e(1), a geographic area of tort claims responsibility was assigned to the SJA. DODD 5515.9 assigns tort claim responsibility arising from DOD activities, except for DECA claims which are the responsibility of the Service on whose installation the Defense Commissary is located.
   b.
      (1) By the most expeditious means, Army and DOD activities in the area will report serious potential claim incidents in accordance with the guidance provided below.
      (2) A serious potential claim incident is defined as one that results in serious personal injury or death or major property damage arising from acts or omissions of U.S. Army personnel or Army or DOD civilian employees in the course of their employment. No report is required for injury or death to a soldier or employee in line of duty or any injury, death, or property damage arising out of combat operations.

   c. Appointment of Unit Claims Officer
      (1) Pursuant to AR 27-20, paragraph 2-2, Commanders and heads of Army and DOD organizations or activities will appoint a commissioned officer, warrant officer, noncommissioned officer or qualified civilian employee to conduct an initial factual investigation of all potential claims incidents.
      (2) This requirement is applicable to battalion level or brigade except where separate geographic locations indicate an appointment at a lower level. The requirement is applicable to an activity not located on a military post or depot.
      (3) It is recommended that any organization or activity whose operations may generate a significant number of claims appoint a unit claims officer on standing orders.
      (4) All appointment orders direct the unit claims officer to seek guidance from (name, location, and telephone number of ACO or their designee) prior to unit claims officer's first investigation. Thereafter, guidance will be sought only where the estimated or stated value of the potential or actual claim exceeds $25,000. A copy of all appointment orders will be furnished to the ACO.

4. Investigation Procedure
   a. Detailed guidance as to how to conduct an investigation is set forth in DA Pamphlet 27-162, Chapter 2, Section IV. Claims officers are required to interview all persons who are injured or survivors of deceased persons that may be potential claimants.
   b. If during the course of an interview, the interviewed, indicates a desire to file a claim against the United States cognizable under AR 27-20, that person will be instructed concerning the procedures to follow. The person will be forwarded SF Form 95, claim form, and assisted in completing the form. The person will not be assisted in determining the amount to claim.
   c. If the incident involves serious injuries or death, the claims judge advocate at (name of ACO and telephone number) will be contacted immediately in order to provide further instructions concerning filing the claim. Otherwise the person will be directed to mail the claim to (address of ACO) unless the two year statute of limitations is close to expiring, in which contingency the claims officer will accept the claim.

5. In vehicle accidents, DA Form 1208 will be used to report the investigation except that recommendations and

Figure 2-3A. Model claims directive for area claims offices—Continued

conclusions will not be recorded. The DA Form 1208 may be modified for reporting other types of investigations or the attached format may be utilized.

6. The point of contract for this directive is (name and telephone number).

Gary M. Perolman
LTC, JA
Staff Judge Advocate

Notes:

Information that commanders and heads of Army and DOD organizations or activities are to be provided by the area claims officer (information may be modified according to area).

Figure 2-3A. Model claims directive for area claims offices

SUBJECT: Serious Incident Report on Potential Claim Incidents (PCI)

1. A serious incident report will be completed upon notice of the following to a potential claimant resulting from an incident involving DOD or Army personnel. The report in the format set forth in paragraph 4 below will be prepared by any DOD or Army installation and reported to the nearest ACO by a unit claims officer or other person acting in that capacity or special office, claims processing or medical claim processing office.
   a. Serious personal injury.
   b. Wrongful death.
   c. Major property damage.

2. Do not report:
   a. Injury or death of service member or civilian employee incident to service (for example, in the line of duty).
   b. Unless caused by wrongful or negligent act or omission of service member or civilian employee in scope of employment.

3. Responsibility for reporting:
   a. Unit claims office.
   b. Medical claims processing office.
   c. Claims processing office.
   d. Any other DOD or Army organization or activities.

4. Format for reporting:
   a. Date of incident.
   b. Place of incident.
   c. Type of incident (for example, vehicle collision, air crash, or other traumatic events, such as explosion of ordnance or release of toxic materials).
   d. Organization involved.
   e. Name of person injured or killed or property owner.
   f. Nature of injury or death or extent of property damage.

Figure 2-3B. Serious incident report

1. **Purpose.** To define Judge Advocate General's Corps and U.S. Army Medical Department relationships, responsibilities, and procedures in providing legal support to U.S. Army medical centers and to the U.S. Army Medical Department Center & School (AMEDDC&S).

2. **Background.**

a. On 8 June 1984, a Memorandum of Understanding Between The Surgeon General and The Judge Advocate General Relating to Legal Support for Risk Management Programs at Army Medical Centers was executed (TAB A). The 1984 memorandum of understanding recognized the importance of providing legal support to U.S. Army medical centers specifically for the purpose of improving quality medical care through the establishment of a quality assurance/risk management program. The key to the program was the conversion of 16 personnel space authorizations (eight officer and eight enlisted authorizations) within U.S. Army Health Services Command (HSC) to accommodate the assignment of eight judge advocates as Medical Claims Judge Advocates and eight legal specialists as Medical Claims Investigators at designated Army medical centers. The medical claims/litigation function is an inherent responsibility of The Judge Advocate General, and the 1984 memorandum of understanding gave The Judge Advocate General the additional responsibility of legal support to medical center risk management programs. Under the 1984 memorandum of understanding, each medical center undertook responsibility for providing resources for the medical claims/litigation and risk management functions within the medical center by providing a Medical Claims Judge Advocate and a Medical Claims Investigator.

b. Dwindling medical resources and personnel have prompted the Army medical community to initiate new programs to meet the needs of soldiers and other health care beneficiaries. Use of civilian partnership physicians, the Gateway to Care program, and Army medical centers sharing resources with other government agencies, such as the Department of Veterans Affairs, require competent legal review and counsel. This Memorandum of Agreement recognizes current changes within the Army's personnel structure, the complexities of medico-legal issues, and the legal needs of the Army medical community.

c. In April 1992, the Office of The Surgeon General and the Office of The Judge Advocate General entered into a Memorandum of Agreement (Tab B), implementing that portion of the U.S. Army Health Services Command Third Party Collection Program Implementation Plan, 12 June 1991 (Tab C), that provided for legal support for HSC's Third Party Collection Program. The 1992 memorandum of agreement and the HSC Third Party Collection Program Implementation Plan provide that authority to settle, compromise, and waive Third Party Collection Program claims under paragraph E2b of Department of Defense Instruction 6010.15, Third Party collection Program, 7 March 1991, is the responsibility of The Judge Advocate General, and is to be delegated to a civilian attorney supported by a paralegal specialist provided from HSC resources at each Army medical center.

d. After reviewing the Third Party Collection Program, the medical claims/litigation and risk management functions, and other current legal support requirements for Army medical centers, the Commander, U.S. Army Claims Service, and the office of The Judge Advocate General proposed restructuring the Army medical center legal offices by making operational control of the offices a responsibility of supporting Staff Judge Advocates (SJAs), combining the present duties of the Medical Claims Judge Advocates with the duties of the civilian attorneys supporting the Third Party Collection Program, and restructuring the civilian attorney positions to support full range of responsibilities inherent in providing adequate legal support to Army Medical Department programs (TAB D). The Commander, HSC, reviewed the proposal and recommended implementation (TAB E).

3. **Legal Support.** It is agreed as follows:

a. At all Army medical centers, except Walter Reed Army Medical Center and Fitzsimons Army Medical Center, and also at the U.S. Army Medical Department Center & School, legal support will be a mission of the designated supporting SJA. Supporting SJAs are to assume operational control over existing Center Judge Advocate and AMEDDC&S legal offices, and all personnel assigned or attached. Personnel allocations will remain on the current medical center or AMEDDC&S Tables of Distribution and Allowance (TDAs).

b. Medical center legal support at Walter Reed Army Medical Center and Fitzsimons Army Medical Center will continue to be provided by the respective installation legal offices. The supporting SJA for Brooke Army Medical Center and the AMEDDC&S will be the Staff Judge Advocate, U.S. Army Health Services Command, or his organizational successor supporting Army Medical Department activities at Fort Sam Houston. The supporting SJA for all other medical centers will be the Staff Judge Advocate of the command to which the medical center is attached for the exercise of general court-martial jurisdiction. Supporting SJAs at the time of execution of this agreement are shown in paragraph 7a, below.

Figure 2-4. Extract—Memorandum of agreement
Legal support at Army medical centers—Continued

c. Supporting SJAs will maintain existing Center Judge Advocate Offices, located at medical centers, as branch offices of the supporting SJA. The staffing pattern is to be as follows:

(1) Center Judge Advocate-a field grade officer of the Judge Advocate General's Corps, serving as Officer-in-Charge of a medical center-based branch office of the supporting SJA, supervised and rated by the Staff Judge Advocate or Deputy Staff Judge Advocate, and designated to provide legal services for the medical center commander. Center Judge Advocates will ordinarily be assigned by the Office of The Judge Advocate General for minimum 2-year terms. Center Judge Advocate positions are now on the TDAs of all medical centers.

(2) Attorney-advisor-a supervisory civilian attorney, supervised and rated by the Center Judge Advocate. This attorney will take over the medical claims/litigation and risk management responsibilities which have been executed by Medical Claims Judge Advocates pursuant to the 1984 memorandum of understanding (TAB A), as well as legal work supporting the Third Party Collection Program described in the 1992 memorandum of agreement (TAB B) and the HSC Third Party Collection Program Implementation Plan (TAB C) for the region served by each medical center. The attorney-advisor will perform these functions, and will supervise the Assistant Center Judge Advocate, the Medical Claims Investigator, and the Paralegal Specialist (see paragraphs 3c(3) through (5) below) assisting with these functions. Other duties may include assertions and settlements under the Federal Medical Care Recovery Act. This position has been authorized by the HSC commander for each medical center as the Insurance Claims Settlement Attorney under the HSC Third Party Collection Program Implementation Plan (TAB C). The attorney-advisor will be a member of the Judge Advocate Legal Service pursuant to AR 27-1.

(3) Assistant Center Judge Advocate-a company grade officer of the Judge Advocate General's Corps, supervised by the attorney-advisor, assisting with medical claims/litigation and risk management programs and the Third Party Collection Program. Other duties, such as assertions and settlements under the Federal Medical Care Recovery Act, could be assigned by the Center Judge Advocate. This position currently appears on the TDAs of all medical centers as the Medical Claims Judge Advocate.

(4) Medical Claims Investigator-a Judge Advocate General's Corps enlisted member working primarily with medical claims/litigation and risk management programs, supervised by the attorney-advisor. Medical Claims Investigators will ordinarily be assigned for a minimum 2-year term. A Medical Claims Investigator is currently on the TDAs of all medical centers. The Medical Claims Investigator will be a legal noncommissioned officer (MOS 71D).

(5) Paralegal specialist-required for Third Party Collection Program claims pursuant to the HSC Third Party Collection Program Implementation Plan (TAB C), plus other duties such as assertions and settlements under the Federal Medical Care Recovery Act, supervised by the attorney-advisor. This position has been authorized by the HSC commander for each medical center as staffing for the HSC Third Party Collection Program.

(6) Administrative and clerical support-as required, but including a legal noncommissioned officer (MOS 71D) working under the supervision of the Center Judge Advocate.

d. Location of the attorneys whose primary responsibility is providing instructional support to the AMEDDC&S will be at the AMEDDC&S.

e. With the exception of Walter Reed Army Medical Center and Fitzsimons Army Medical Center, rating chains for all individuals in medical center-based legal offices, and those supporting the AMEDDC&S, will be within the office of the supporting SJA. Supporting SJAs are to include a member of the medical center command group in the rating scheme of each Center Judge Advocate. Upon request of the AMEDDC&S commander, the supporting SJA is to include an appropriate member of the AMEDDC&S staff or faculty in the rating scheme of any officer whose primary responsibility is providing instructional support to the AMEDDC&S. Letter or other input by Army Medical Department officers to rating schemes of other legal office personnel may be agreed upon locally.

f. Proper performance of the medical claims/litigation and risk management programs, the Third Party Collection Program, and other claims and litigation functions performed at medical centers, is critical. Supporting SJAs are to ensure full performance by Center Judge Advocate personnel of the medical claims/litigation and risk management functions, legal support to the Third Party Collection Program, and all other claims and litigation functions as prescribed by the Staff Judge Advocate, U.S. Army Health Services Command; the Commander, U.S. Army Claims Service; and the Chief, Litigation Division, U.S. Army Litigation Center.

g. Supporting SJAs are to provide medical centers and the AMEDDC&S with legal services to the fullest extent permitted by the staffing and other resources contributed by the supported organization. Supporting SJAs are not to reduce medical center or AMEDDC&S-based legal offices below the structure carried on HSC authorization documents without prior consultation and agreement between The Judge Advocate General and The Surgeon General.

h. Center Judge Advocate offices supporting medical centers will remain physically located at the medical centers, and medical center commanders will provide space, supplies and equipment, and administrative support. Under no circumstances are these offices to be combined with the main offices of supporting SJAs.

Figure 2-4. Extract—Memorandum of agreement
Legal support at Army medical centers—Continued

i. The requirement in paragraph 3c, above, for field grade officers assigned to Center Judge Advocate positions and for legal noncommissioned officers assigned to Medical Claims Investigator positions for minimum 2-year terms will be adhered to whenever possible. However, it is recognized that early reassignment will sometimes be necessary. Grade or tenure issues that arise involving Center Judge Advocate assignments which cannot be resolved locally will be referred to The Surgeon General and The Judge Advocate General for resolution.

j. Medical center commanders have been pleased with the high quality of legal noncommissioned officers assigned to HSC activities. The Office of The Judge Advocate General and supporting SJAs will ensure that the Army Medical Department continues to be provided with a fair share of top quality legal noncommissioned officers.

k. The Commander, U.S. Army Claims Service, and the Staff Judge Advocate, HSC, will provide specialized training for personnel assigned to all Center Judge Advocate offices relating to medical claims/litigation and risk management programs, the Third Party Collection Program, and the Federal Medical Care Recovery Act. Funding for this specialized training will be the responsibility of each medical center. General professional development training and other continuing legal education for personnel assigned to Army Medical Department legal offices will be a shared responsibility of the Army Medical Department activity and the supporting SJA.

l. At all medial centers, a portion of the money collected under the Third Party Collection Program and pursuant to 10 U.S.C. section 1095(I), will be used to pay attorney, paralegal, and overhead costs allocated for legal support to the Program.

4. **Staffing of Center Judge Advocate Offices.** The staffing pattern described in paragraph 3c, above, represents the minimum organization and staffing at Army medical centers, including Walter Reed Army Medical Center and Fitzsimons Army Medical Center, that reasonably can be expected to perform adequately the medical claims/litigation and risk management, and Third Party Collection Program settlement/compromise/waiver functions that are the responsibility of The Judge Advocate. Unless the Commander, HSC, and the Assistant Judge Advocate General (Civil Law and Litigation) agree otherwise, each HSC medical center will staff and organize its medical center-based legal office in accordance with the staffing pattern described in paragraph 3c above.

5. **Responsibilities.**

a. Reasonable efforts will be made to fill vacant judge advocate officer positions and legal noncommissioned officer positions in Center Judge Advocate offices in a timely fashion. The office of The Judge Advocate General will give judge advocates with previous health or medical law experience preference for assignment as Center Judge Advocates. Both parties agree that reasonable efforts will be taken to fill expeditiously any vacant civilian attorney-advisor and paralegal specialist positions through the appropriate civilian personnel offices.

b. The Commander, U.S. Army Claims Service, will provide technical guidance and assistance to Center Judge Advocates and attorney-advisors on all claims matters and the Chief, Litigation Division, Office of The Judge Advocate General, will provide guidance and assistance on all litigation activities.

c. The Staff Judge Advocate, U.S. Army Health Services Command, will administer the delegation of Third Party Collection Program settlement authority from The Judge Advocate General to Center Judge Advocates, and will provide technical supervision on behalf of the Commander, U.S. Army Claims Service, and The Judge Advocate General over legal support to the Third Party Collection Program.

6. **Prior Agreements.** To the extent not inconsistent herewith, the provisions of the 1984 memorandum of understanding (TAB A) and the 1992 memorandum of agreement (TAB B), are to remain in effect.

7. **Implementation.**

a. The commanders of all Army medical centers, except Fitzsimons Army Medical Center and Walter Reed Army Medical Center, and the commander of the AMEDDC&S, are to transfer operational control over all assigned legal personnel to designated supporting SJAs. At the time of execution of this agreement, supporting SJAs are:

(1) Brooke Army Medical Center and the U.S. Army Medical Department Center & School-Staff judge Advocate, HQ, U.S. Army Health Services Command.

(2) Womack Army Medical Center-Staff Judge Advocate, HQ, XVIII Airborne Corps & Fort Bragg.

(3) Eisenhower Army Medical Center-Staff Judge Advocate, HQ, U.S. Army Signal Center & Fort Gordon.

(4) William Beaumont Army Medical Center-Staff Judge Advocate, HQ, U.S. Army Air Defense Center & Fort Bliss.

(5) Madigan Army Medical Center-Staff Judge Advocate, HQ, I Corps & Fort Lewis.

(6) Tripler Army Medical Center-Staff Judge Advocate, HQ, 25th Infantry Division & U.S. Army, Hawaii.

b. Recruitment and selection by medical centers of the civilian attorney-advisor and paralegal

Figure 2-4. Extract—Memorandum of agreement
Legal support at Army medical centers—Continued

positions described in this Memorandum of Agreement will be done in accordance with procedures in AR 690-300, AR 27-1, and TJAG Personnel Policies for civilian attorneys of the Judge Advocate Legal Service. Medical Claims Judge Advocate duties will be reassigned from Judge Advocate officers to the civilian attorney-advisors as these positions are filled. Medical centers will advise the Office of The Judge Advocate General when recruiting actions are to be initiated to fill the attorney-advisor positions. Medical centers will establish and fill these positions using a standardized supervisory attorney-advisor job description conforming to the provisions of this agreement, which will be provided by the HSC Staff Judge Advocate and the Commander, U.S. Army Claims Service. The Office of The Judge Advocate General and the Office of The Surgeon General will assume joint responsibility for obtaining any high-grade or other waivers necessary for establishing and filling the supervisory attorney-advisor positions. To the extent permissible, The Judge Advocate General will utilize his Personnel, Plans, and Training Office to assist in the recruitment and selection of attorneys. The selecting official, on the initial recruitment for the attorney-advisor position at each medical center, will be the HSC Staff Judge Advocate, who will consider, as appropriate, recommendations of the Center Judge Advocate and supporting SJA, and the commanders of U.S. Army Claims Service and the U.S. Army Litigation Center. Initial selections by the HSC Staff Judge Advocate will be subject to review and approval by the Commander, U.S. Army Claims Service. Subsequent vacancies will be advertised and filled by the supporting SJA or, at Walter Reed Army Medical Center and Fitzsimons Army Medical Center, by the Center Judge Advocate. If a supporting SJA recruits an attorney-advisor pursuant to tasking of The Judge Advocate General under paragraph 4b of this agreement, the job description used will be provided by the Commander, U.S. Army Claims Service, who will also be the selecting official on the initial recruitment.

8. **Effective Date.** This agreement shall become effective upon the signature of both parties and will be reviewed and updated as required.

Figure 2-4. Extract—Memorandum of agreement
Legal support at Army medical centers

10 USC 1102.(a) Confidentiality of records. Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

(b) Prohibition on disclosure and testimony. (1) No part of any medical quality assurance record described in subsection (a) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

(c) Authorized disclosure and testimony. (1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

(A) To a Federal executive agency or private organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, of Department of Defense health care facilities.

(B) To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

(C) To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

(D) To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense.

(E) To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(F) To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

(G) In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in subparagraph (F), but only with respect to the subject of such proceeding.

(2) With the exception of the subject of a quality assurance action, the identity of any person receiving health care services from the Department of Defense or the identity of any other person associated with such department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record described in subsection (a) shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to section 552a of title 5.

(d) Disclosure for certain purposes. (1) Nothing in this section shall be construed as authorizing or requiring the withholding from any person or entity aggregate statistical information regarding the results of Department of Defense medical quality assurance programs.

(2) Nothing in this section shall be construed as authority to withhold any medical quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the General Accounting Office if such record pertains to any matter within their respective jurisdictions.

(e) Prohibition on disclosure of record or testimony. A person or entity having possession of or access to a record or testimony described by this section may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this section.

(f) Exception from Freedom of Information Act. Medical quality assurance records described in subsection (a) may not be made available to any person under section 552 of title 5.

(g) Limitation on civil liability. A person who participates in or provides information to a person or body that reviews or creates medical quality assurance records described in subsection (a) shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith based on prevailing professional standards at the time the medical quality assurance program activity took place.

(h) Application to information in certain other records. Nothing in this section shall be construed as limiting access to the information in a record created and maintained outside a medical quality assurance program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a medical quality assurance program.

(i) Regulations. The Secretary of Defense shall prescribe regulations to implement this section.

(j) Definitions. In this section:

Figure 2-5. Extract—Confidentiality of Medical Quality Assurance Records Act—Continued

(1) The term "medical quality assurance program" means any activity carried out before, on, or after the date of the enactment of this section by or for the Department of Defense to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for quality assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical records, health resources management review, and identification and prevention of medical or dental incidents and risks.

(2) The term "medical quality assurance record" means the proceedings, records, minutes, and reports that emanate from quality assurance program activities described in paragraph (1) and are produced or compiled by the Department of Defense as part of a medical quality assurance program.

(3) The term "health care provider" means any military or civilian health care professional who, under regulations of a military department, is granted clinical practice privileges to provide health care services in a military medical or dental treatment facility or who is licensed or certified to perform health care services by a governmental board or agency or professional health care society or organization.

(k) Penalty. Any person who willfully discloses a medical quality assurance record other than as provided in this section, knowing that such record is a medical quality assurance record, shall be fined not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

Effective date. Section 705(b) of Pub.L. 99-661 provides that: "Section 1102 of title 10, United States Code, as added by subsection (a), shall apply to all records created before, on, or after the date of the enactment of this Act (Nov. 14, 1986) by or for the Department of Defense as part of a medical quality assurance program."

Figure 2-5. Extract—Confidentiality of Medical Quality Assurance Records Act

Section II
Filing and Receipt of Claims

2–6. Procedures for accepting claims

Treat all persons who request claim forms or information about filing a claim as potential claimants. Each claims office should maintain a system for handling these inquiries. Standing operating procedures (SOP) should ensure that potential claimants are able to speak quickly with an attorney, investigator, or examiner. Unit claims officers and other investigators should interview an injured party or contact the injured party's attorney, if represented, and request such interview. Before such meetings, the ACO or CPO should instruct unit claims officers on proper claims filing procedures, including entering the appropriate ACO or CPO's address. The extent of assistance available to claimants is set forth on AR 27-20, Chapter 1.

a. Use the initial discussion with the potential claimant to establish a good relationship and to learn as much as possible about the claim. Be courteous and interested. If the potential claimant comes to the claims office, try to conduct an interview immediately. Arrange for follow-up interviews and close contact. If the request is made by telephone, screen the caller carefully and obtain details on the incident. Try to arrange to have the person visit the claims office to obtain forms or information, and be ready to conduct a follow-up interview. If the request is in writing, respond with a telephone call. Obtain the writer's telephone number and discuss the request directly. The goal is to have the claimant visit the office or to otherwise establish close contact with the claimant.

b. Treat each inquiry as a serious potential claim until it proves otherwise. Open a potential claim file and prepare a memorandum for record of any statements the inquirer makes. If a claimant calls about a traffic accident and asks about filing a claim for damage to an automobile, assume that there may be personal injuries or other property damage sustained. Begin the investigation as soon as you hear of the incident. If the claimant's inquiry is the first anyone knows of the incident, start the investigation by interviewing the claimant immediately.

2–7. Review of administrative claims

Figures 2-6a and b is a sample completed SF Form 95 (Claim for Damage, Injury, or Death); Figure 2-6c is a block-by-block analysis of SF Form 95 and sets forth general guidance on how to investigate deficiencies in the form. When reviewing SF Form 95 or any presentation of a tort claim, remember the following points:

a. A claimant need not fill out a claim form to file a claim. A claimant may file a claim by delivering to any Army activity a writing that seeks a sum certain (see para 2-9), signed by the claimant or an authorized representative, and containing enough information to allow the Army to begin investigating the incident that gave rise to the claim. Thus, treat any writing that meets this requirement as a claim. It should be logged and entered into the claims database. However, every claimant should fill out and file a claim form, even if the technical requirements are met by letter. An SF Form 95 contains information needed to process the claim. When a claim is filed jointly, a sum certain must be furnished for each claimant. Frequently, when one spouse is injured, both spouses' names appear on the claim. One spouse claims for personal injury and the uninjured spouse claims for loss of consortium, but they furnish only one sum. Similarly, when a minor child is injured, the parents' names, both individually and as natural guardians, appear, but they furnish only one sum. Such claims are defective because each claimant—that is, each person claiming—must name a sum certain. This rule applies equally to class action claims. All claimants involved in a class action should file separate SFs 95. Remember, for Financial Management Service (FMS) to pay a claim, each claim sent thereto must exceed $2,500. A joint payment cannot meet this requirement. Joint claims should be avoided from the outset.

b. Issues relating to whether the claim was properly filed may be raised long after the claim is filed. Therefore, claims personnel must identify all written materials accompanying the claim in some way that allows others to know what documents were originally filed (such as on a specially marked list). These accompanying written materials may correct defects in the claim form.

c. A claim form may be returned to the claimant only when the information it contains is insufficient to determine which Federal agency is responsible for processing the claim. Even in that case, however, retain a copy of the claim form in a potential claim file along with an explanation of the circumstances. In all other situations, retain the claim form and inform the claimant that the claim has not been validly filed and the reason why it is defective. If a claim form requires correction, either ask the claimant to fill out a new one or have the claimant correct, initial, and date it in person. See figures 2-6a and b for a sample completed form and 2-7 for sample authority to file a claim.

2–8. Claims acknowledgment

The claimant is responsible for properly filing a claim. A claimant is entitled to assistance in filing claims, including important information about the statute of limitations. A claim must be filed within two years of the date the claim accrues; if not filed within that time, the claim is not properly filed.

a. Acknowledging defective claims by telephone.

(1) The best way to acknowledge a claim is to telephone the claimant or attorney and then send a letter confirming the conversation. The administrative claims procedure is intended to allow investigation and settlement of claims before they result in litigation or appeal. This is best done by establishing and maintaining close contact with the claimant or claimant's attorney.

(2) Sometimes a claim is defectively filed near the expiration of the statute of limitations. In such cases, acknowledge the claim by telephoning the claimant or attorney and describing the defect. Place a memorandum of all attempts to contact the claimant and of discussions held with the claimant in the claim file. Mail a letter confirming the conversation to the claimant or attorney. If time is of the essence, instruct the claimant or attorney to file the corrected claim with the nearest Army office (such as a recruiting or ROTC office) or send it by facsimile (fax) or other expedited means.

b. Acknowledgment by letter. A properly written acknowledgment establishes the date of filing, notifies the claimant of the administrative requirements to process the claim, and explains any deficiencies in the claim. Acknowledgment letters are not required under small claims procedures. The written acknowledgment should consist of the following:

(1) *Letter to the claimant.* Use the samples set forth at figures 2-8 through 2-10. Acknowledgment of a defectively filed claim should be sent by certified mail, return receipt requested.

(2) *Date stamp.* Date stamp a copy of the claim to reflect the date the Army received the claim; attach a date-stamped copy to the letter to the claimant to show that the claim has been received and processed.

c. Acknowledging properly filed claims. Follow the sample letters in Figures 2-8 and 2-9 to acknowledge a properly filed claim. Take the following steps in preparing the acknowledgment letter:

(1) Analyze SF Form 95, block by block, to ensure the claim is properly filed. A claim may be properly filed even though SF Form 95 is improperly completed. For example, omission of the claimant's date of birth does not affect filing. However, the date of birth is necessary to evaluate a personal injury or wrongful death claim. When the claimant has failed to provide certain information on a properly filed claim form, advise the claimant why the missing information is needed.

(2) After studying the materials submitted by the claimant or claimant's attorney, send an acknowledgment letter requesting the specific materials you need to evaluate the claim. See AR 27-20, paragraph 2-1 for exceptions to this procedure, when a full investigation of a claim is not required.

d. Acknowledging improperly filed claims. The acknowledgment letter must describe the defect so the claimant can correct it. The letter will also contain the substance of any discussions held with

the claimant or claimant's attorney concerning defective filing of the claim.

(1) It is inappropriate to fail to acknowledge a defectively filed claim in the hope that the statute of limitations will run and bar the claim. Whether or not the claimant is represented by an attorney, acknowledge the claim. Claims personnel will not assume that an attorney is responsible for discovering any defect in a claim filed by the attorney on a client's behalf. A claimant or claimant's representative is entitled to an acknowledgment that specifies all errors in the claim and explains the effect of any filing errors.

(2) In the acknowledgment letter, inform the claimant of the statute of limitations and advise that the claim, as filed, does not toll the statute of limitations. See Figure 2-10 for sample language. When the claim is defectively filed and the statute of limitations is about to run, promptly notify the claimant of the defect before the statute of limitations runs. Telephone notice is appropriate in such cases.

e. Action on claims determined to be defectively filed after acknowledgment. The requirement to inform claimants of defects continues as long as the claim file is active. When a defect is discovered after acknowledgment, inform the claimant at once of the defect and its nature.

2–9. Identification of a proper claim

A claim is defined as a written document signed by the person suffering a loss or injury or that person's legal representative, which states a sum certain and identifies the PCE sufficiently to permit investigation thereof. A claim may be transmitted by letter or fax if it meets these requirements. A foreign claim arising under AR 27-20, Chapter 10, may be presented orally provided that it is reduced to writing not later than three years from the date of accrual. A claim for property loss is limited to the loss of, or damage to, actual tangible property. Consequential damages are not compensable. FTCA Handbook, section I, paragraph B sets forth the pertinent case law. Claims must be filed with the Federal agency whose acts or omissions gave rise to the claim. Section III below sets forth procedures for transferring a claim filed with the wrong Federal agency. A claim must be filed not later than two years from the date of accrual or the date on which the injured person discovered the injury and the cause thereof. Infants and incompetents are held to the same two-year filing period. There is no requirement that the injured person know that the injury or damage resulted from a negligent or wrongful act or omission (FTCA Handbook, section I, paragraph C). The claimant must submit certain supporting documents, as outlined on the reverse side of the SF Form 95, at 28 CFR 14.4 and at figures 2-6c and 4-2. Nonreceipt of such documents at the time of filing is not a basis for holding that the claim was not timely filed. However, a claimant's refusal to provide supporting documents may lead to dismissal of a subsequent suit based on failure to adhere to the Federal Tort Claims Act's (FTCA) implementing regulations, *McNeil v. United States*, 508 U.S. 106 (1993). Under the FTCA, a claimant has an absolute right to sue after the expiration of six months from the date of filing a proper claim with a Federal agency. Therefore, it is necessary to obtain sufficient documentation as soon as possible to adjudicate the claim. Under other statutes such as the Military Claims Act (MCA), claims may be denied for failure to provide documentation. See AR 27-20, Chapter 2. In computing the time remaining under the statute of limitations, exclude the first day and include the last day, except when it falls on a non-business day, in which case extend it to the next business day (FTCA Handbook, section I, paragraph D).

2–10. Identification of a proper claimant

a. AR 27-20, Chapter 2, identifies persons who may present a claim. A claim by an Indian tribe as an entity is within the exclusive jurisdiction of the Federal Court of Claims (28 USC 1505).

b. Subrogated claims are permitted only under the FTCA and the AMCSA. See AR 27-20, Chapters 4 and 8. Such claims are excluded under all other statutes. See AR 27-20, chapters 3, 5, 6, and 10.

(1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute separate claims. Except under the FTCA, the aggregate of such claims may exceed the monetary jurisdiction of the approval or settlement authority as long as each individual claim seeks an amount less than that monetary jurisdiction.

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully subrogated is a matter to be determined by State law. Some jurisdictions permit property owners to file for property damage even though their insurer has compensated them for repairs. In such instances, obtain releases from both parties in interest, either jointly or severally. The approved payment in a joint claim will be made by joint check, issued to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his or her undisputed interest. See Section IX below.

(3) When a claimant has made an election and accepted worker's compensation benefits, research the jurisdiction's statutory and case law to determine to what extent acceptance of such benefits extinguishes the injured party's claim against third parties. In those cases in which election fully extinguishes the claim, the worker's compensation insurance carrier is the only proper party claimant. Even when the injured party's claim has not been fully extinguished, most jurisdictions hold that the worker's compensation insurance carrier has a lien on any recovery from the third party and no settlement should be reached without approval by the carrier. Also, claims from the worker's compensation insurance carrier as subrogee or otherwise will not be considered payable if the United States has paid the premiums, directly or indirectly, for such worker's compensation insurance. Obtain the appropriate contract provisions holding the United States harmless in the settlement agreement. See Section X.

(4) Whether medical payments paid by an insurer to its insured may be subrogated depends on local law. Some jurisdictions prohibit insurers from submitting these claims, notwithstanding a contractual provision providing for subrogation. Therefore, research local law before deciding the issue, and include the results of this research when forwarding claims for adjudication. See Section VI. Such claims, where prohibited by State law, are also barred by the Anti-Assignment Act. See AR 27-20, paragraph 2-9g.

(5) Exercise care to require insurance disclosure consistent with the type of incident generating the claim. Every claimant will disclose in writing, as part of the claim—

(a) The name and address of every insurer.

(b) The type and amount of insurance coverage.

(c) The policy number.

(d) Whether a claim has been or will be presented to an insurer and, if so, the amount of such claim.

(e) Whether the insurer has paid the claim in whole or in part or has indicated that it intends to do so.

(6) If a delay between the filing and settlement dates occurs, update insurance information to avoid double payment. All subrogees must substantiate their interest or right to file a claim by appropriate documentary evidence; they should support the claim as to liability and measure of damages in the same manner required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of governmental liability or amount of damages. Approval and settlement authorities will make independent determinations on these matters, based upon the evidence of record and the law.

c. Joint or successor tortfeasors frequently present claims for contribution or indemnity before making payment to the injured party. While such claims do not accrue until payment is made, consider a joint settlement where there is an outstanding claim against the United States and proportionate liability exists. See Section VIII.

d. A claim presented by other than an injured person or subrogee is excluded by the Anti-Assignment Act (31 USC 3727), subject to certain exceptions. See AR 37-1.

(1) The Anti-Assignment Act bars every purported transfer or assignment of a claim against the United States or any part of or

interest in a claim, whether absolute or conditional; it also bars transfer or assignment of every power of attorney or other purported authority to receive payment of all or part of any such claim.

(2) The Anti-Assignment Act was intended to eliminate multiple payment of claims, to cause the United States to deal only with original parties, and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits the voluntary assignment of claims. It does not apply to transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidation, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. For example, subrogated worker's compensation claims, when presented by the insurer, are cognizable.

(4) Subrogated claims arising pursuant to contractual provisions may be paid to the subrogee if recognized by State statute or case law. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by State law and are, therefore, not barred by the Anti-Assignment Act. In addition, payments of subrogated claims may be made pursuant only to the FTCA and the Federal admiralty statutes.

e. Before paying claims, it is necessary to determine whether a valid subrogated claim under Federal or State statute or a subrogation contract held valid by State law exists. If there is a valid subrogated claim forthcoming, withhold payment for this portion of the claim. If it is determined that the claimant is the only proper party, full settlement is authorized.

2–11. Amendment of claims

a. Prior to final agency action, the claimant may amend a claim by changing the amount, the bases of liability, or the elements of damages concerning the same incident. Final agency action includes a final offer by the claims settlement authority who has delegated denial authority. For FTCA claims under AR 27-20, Chapter 4, USARCS is the claim settlement authority because all denials or final offers made by an ACO are subject to reconsideration. Under Chapters 3, 6 and 10, the correct final authority is that from whose action no appeal is permitted. This depends on the amount claimed (FTCA Handbook, section I, paragraph B6). However, the denial and final offer authority set forth in Section I is not affected. Parties may be added only if the additional party could have filed a joint claim initially. If the additional party had a separate cause of action, that claim may be treated not as an amendment but only as a separate claim—thus it is barred if the statute of limitations has expired. For example, if a claim for personal injuries is timely filed on behalf of a minor, a parent's subsequent claim for loss of services is considered a separate claim arising out of the same incident and is barred if not filed before the statute of limitations expires. Another example is a separate claim filed for loss of services or consortium by a spouse arising out of injuries to that claimant's husband or wife. On the other hand, if a claim is timely filed by an insured for the deductible portion of his or her property damage coverage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim. If, however, the statute of limitations has expired, the insurer may not file a property damage claim as an amendment to its insured's timely filed personal injury claim.

b. Under the FTCA, amending a claim by the methods described above constitutes a new claim and begins anew the six-month period during which the claimant must wait before filing suit. Notify the claimant in writing of this new six-month period.

CLAIM FOR DAMAGE, INJURY, OR DEATH	INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	FORM APPROVED OMB NO. 1105-0008 EXPIRES 3-31-91

1. Submit To Appropriate Federal Agency:	2. Name, Address of claimant and claimant's personal representative, if any (See instructions on reverse.) (Number, street, city, State and Zip Code)
U.S. Army Claims Service Fort George G. Meade, Maryland 20755-5360	Kenneth R. Roberts 111 East 2nd Street Fort Wayne, Indiana 46815

3. TYPE OF EMPLOYMENT	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)
☐ MILITARY ☒ CIVILIAN	5 May 1948	Married	1 May 1995	7:00 a.m.

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurence and the cause thereof) (Use additional pages if necessary.)

I was driving my POV on 1st Street, between A and B Avenues, when an Army truck driven by Specialist Charles E. Brown, crossed the center line and struck my vehicle head-on. I did not have passengers in my vehicle.

9. **PROPERTY DAMAGE**

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)

N/A

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)

1979 Firebird - total loss - located in the Roberts' storage facility.

10. **PERSONAL INJURY/WRONGFUL DEATH**

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.

Multiple bruises and contusions, fractured right leg, herniated disc, six inch laceration to face.

11. **WITNESSES**

NAME	ADDRESS (Number, street, city, State, and Zip Code)
William E. Bryson	100 East 1st Street Glen Burnie, MD 21061

12. (See instructions on reverse) **AMOUNT OF CLAIM** (in dollars)

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.)
$3,000	$150,000		$153,000

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)	13b. Phone number of signatory	14. DATE OF CLAIM
/s/ Kenneth R. Roberts	(312) 555-9898	2 January 1996

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM	CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS
The claimant shall forfeit and pay to the United States the sum of $2,000. plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)	Fine of not more than $10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)

95-108
Previous editions not usable.

NSN 7540-00-634-4046

STANDARD FORM 95 (Rev. 7-85)
PRESCRIBED BY DEPT. OF JUSTICE
28 CFR 14.2

Figure 2-6A. Completed SF Form 95, front

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

INSTRUCTIONS

Complete all items - Insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

and to the
Office of Management and Budget
Paperwork Reduction Project (1105-0008)
Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes, If yes, give name and address of insurance company *(Number, street, city, State, and Zip Code)* and policy number. ☐ No

Local Insurance Company, Inc.
111 East 4th Street
His Town, His State 99999-9999 Policy # 12345678-A

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

Yes, his deductible

17. If deductible, state amount

$100.00

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? *(It is necessary that you ascertain these facts)*

My insurance agent told me the Army should pay this claim.

19. Do you carry public liability and property damage insurance? ☐ Yes, If yes, give name and address of insurance carrier *(Number, street, city, State, and Zip Code)* ☐ No

*U.S. Government Printing Office: 1990 — 281-782/20243

SF 95 (Rev. 7-85) BACK

Figure 2-6B. Completed SF Form 95, reverse

Block 1. Claim forms handed out by your office should be stamped or overprinted with your office address. This helps claimants mail the form to the proper address. If the claimant completes the form and lists more than one address, the claims office should be aware that a transfer or designation of lead agency may be needed. If the claim is being filed with more than one Federal agency or non government defendants, the claimant should be requested to furnish the identifying information on all addresses.

Block 2. The claimant's name is the first indication of the type of claim being presented. While a claimant cannot be required to furnish his or her SSN in order to file a claim in medical malpractice cases, the patient's or spouse's SSN is needed to locate the medical records.

a. Each claimant should submit a separate claim form. For example, if spouses are filing for personal injury and loss of consortium, each files a form. If both claims are presented on the same form, send new claim forms to the claimant, but separately log all the claims properly presented on the one form.

b. If a person is filing a claim on behalf of another person, the names and addresses of both should be listed. The claim is not filed in the name of the agent, and the legal title of the representative must be listed. For example, if the person presenting the claim has a power of attorney to file a claim, the words "Agent for" followed by the claimant's name should follow the name of the agent.

c. Proof of representative capacity must accompany the claim form. For an agent, it is the power of attorney or other document indicating representative capacity. For an executor or administrator of an estate, it is a copy of the court appointment. For a person filing on behalf of a corporation, it is proof that the person signing the claim is authorized to file a claim on behalf of the corporation. Local forms should be devised for this purpose (see fig 2-7). Note that the same person cannot sign both the claim form and the letter designating that person as a representative of the corporation.

d. Attorneys hired by a claimant do not have representative capacity by virtue of their agreement to represent the claimant. An attorney must present a power of attorney or other document that contains specific authorization to file a claim form on behalf of the claimant. A retainer or employment agreement is not sufficient for this purpose unless it contains language specifically empowering the attorney to present the claim.

e. The claimant's representative will be asked in writing to provide a copy of the basis for representative capacity. If the statute of limitations has not expired, the representative will be informed that the statute of limitations has not been tolled by receipt of the claim form. If the representative produces a document that was effective as of the date the Army received the claim, the claim is properly filed. If the document was prepared in response to the request for proof of representative capacity, the claim is probably defectively filed (because the representative was not appointed at the time the claim was filed), and the representative should be asked to fill out a new claim form. An exception to this is the corporate representative. Research state law to determine whether the corporate representative was authorized to file the claim.

f. In some cases, the representative may have a separate claim from that of the claimant being represented. For example, a wife might have a power of attorney to present a claim on behalf of her husband for personal injury to both. The representative should prepare two claim forms.

Blocks 3 through 5. This information must relate to the claimant, not the representative. In a death case, information should relate to the deceased.

Blocks 6 and 7. For most claims, this will be the date of the accident or incident causing injury. If the discovery rule applies in a medical malpractice claim, the dates the alleged malpractice occurred should be listed. An in-depth interview with the claimant on this point will be necessary and should be conducted immediately. (*See figure 2-23 for specific instructions on conducting this interview.*)

Block 8. Facts alone are not enough. The claimant must be encouraged to explain why the claimant believes he or she has a claim against the United States. The goal is to determine if the claimant or the claimant's attorney has investigated the claim.

a. Some attorneys and claimants try to evade this requirement by inserting the words "See attached accident report" or similar language. Even if the accident report seems to provide a basis for liability, it is only one version of the facts and not necessarily the claimant's version.

b. A similar tactic is followed in medical malpractice cases. Attorneys will often simply refer to medical records without commenting further, or they will just list a series of events without indicating why they believe the care was substandard. Attorneys who use this practice are often trying to get an investigation and settlement without investigating on their own to support the claim. In medical malpractice cases, it is crucial that claimants specify what care they believe was improper and what injury resulted from it.

c. When a claim form is presented without the required explanations, the claim form should be acknowledged and considered properly filed. However, the claimant should be informed in writing that the filing is insufficient and that further information is needed to support the claim. Further, in a medical malpractice case, the claimant should be asked for the identity of any physician who has told the claimant the care was substandard. The claim

Figure 2-6C. Instructions for completing SF Form 95—Continued

will still be investigated. The claimant's attorney should be advised of the need for an expert opinion except in a case of obvious liability.

Blocks 9 and 10. These blocks should contain specific information. Inform the claimant that the property damage or injuries must be described in detail or compensation cannot be paid. Do not allow the claimant to include damage estimates or medical bills by reference without an explanation.

Block 11. The usual problem here is the tendency of the claimant to list only names on an accident report or in the medical records. Be sure full names and addresses are listed. SF Form 95 does not require the claimant to list telephone numbers for witnesses, but this information should also be requested. In addition, ask the claimant to list the names and addresses of other persons who are not in the reports but who know about the incident.

Block 12. A sum certain must be listed, broken down by property damage, personal injury, and wrongful death. The amounts must be totaled.

a. The term "sum certain" means the amount of money the claimant seeks as compensation for the loss; an actual dollar figure must be listed on the claim form. Words such as "uncertain" or "to be determined" do not satisfy this requirement.

b. If a claimant is unable to break down the amount of the claim in blocks 12a through c, simply ask the claimant to list a total figure in block 12d. Inform the claimant, however, that the amounts must be broken down before the claim can be paid.

Block 13a. Compare the claimant's signature with the name in block 2 and other documents in the file. The name should be signed as it appears in block 2, and it should be the claimant's signature. Inquire about any discrepancy you find. Attorneys often sign their names to a client's claim. Be alert to the practice.

Block 14. The claimant must fill this out. But remember that the true (or legal) date of the claim is the date the Army receives the form. The acknowledgment letter spells this out.

Blocks 15 through 19. Insurance data are mandatory. Many people refuse to list insurers for fear that the Army will contact their company and their insurance premiums will rise. The information must be filled out whether or not the claimant has filed an insurance claim.

Figure 2-6C. Instructions for completing SF Form 95

1. **Company**

a. The undersigned is (position title) of (company and address) and in such capacity has access to the books and records of (company).

b. (Name of agent) is (position title) of (company) and has the power and authority to file, adjust, and settle claims for and on behalf of (company) as its duly authorized agent.

(Signature and Seal)

2. **Attorney Format**

(Name) has been retained as representing attorney of (name of claimant(s)) and has attached a copy of a power of attorney authorizing me to (state terms, such as to file, adjust and settle claims) on behalf of my clients.

(Signature)

Figure 2-7. Sample authority to file a claim

(Letterhead)

January 5, 1996

Claims Office Symbol

SUBJECT: Claim of Jane Wright, 96 _____0123

Mr. John Evans
Attorney at Law
111 East 2nd Street
Cleveland, Ohio 23102

Ms. Jane Wright
100 Northwest Street
Parme, Ohio 23104

Dear Mr. Evans (or) Dear Ms. Wright

The (your) claim was received on January 2, 1996. A copy of the claim, with the date-stamp from this office reflecting the date of receipt, is attached. You may contact Sergeant Samuel S. Scott (the investigator assigned to this claim) or me at (416) 888-9999.

The claim will be processed under the Federal Tort Claims Act (28 USC 2671-2680). The Act contains a mandatory six-month administrative investigation and settlement period.

The following information is provided concerning the statute of limitations:

Filing of an administrative claim tolls the statute of limitations indefinitely or until the Army takes final administrative action in writing on the claim. Final administrative action consists of a denial or final settlement offer.

The Act permits you to file suit six months after the claim was filed, provided the claim has been properly filed and adequately documented, Title 28 United States Code, Section 2675(a). However, filing suit is not required, particularly if satisfactory progress is being made in the administrative claims process. If you do not file suit, the statute of limitations will be tolled until you are notified in writing by certified mail of the final administrative action by the Army.

The following information is provided concerning the Federal Tort Claims Act:

Attorney fees are limited by statute to 20 percent of any administrative settlement and 25 percent of any recovery as a result of suit (28 USC 2678). The attorney fee is paid by the claimant out of the settlement.

No jury trial is allowed under the Act.

A copy of the Attorney General's Regulations, Administrative Claims Under the Federal Tort Claims Act, is attached. You are required by 28 CFR 14.4 to provide the evidence listed in that section to support the claim.

(Add the following paragraph for claims in which a settlement offer appears likely:)

There are a number of advantages to administrative settlement under the Federal Tort

Figure 2-8. Sample—Federal Tort Claims Act acknowledgement letter—Continued

Claims Act. The investigation is informal and faster. Costly and time-consuming trial preparation is avoided.

Sincerely,

David K. Dalition
Captain, U.S. Army
Claims Judge Advocate

(Attachment Listing)

Notes:
If Claimant is not represented, do not use a subject line and place claim number below Claims Office Symbol.

Figure 2-8. Sample—Federal Tort Claims Act acknowledgement letter

(Letterhead)

January 5, 1996

Claims Office Symbol

SUBJECT: Claim of Jane Wright, 96-C01-0123

Mr. John Evans
Attorney at Law
111 East 2nd Street
Cleveland, Ohio 23102

Ms. Jane Wright
100 Northwest Street
Parma, Ohio 23104

Dear Mr. Evans (or) Dear Ms. Wright

The subject claim was received on January 2, 1996. A copy of the claim, with date-stamp from this office reflecting date of receipt, is attached. You may contact Sergeant Samuel S. Scott (the investigator assigned to this claim) or me at (416) 888-9999.

The claim will be processed under the Military Claims Act (10 USC 2733). The following information is provided concerning the Act:

a. The Act is a purely administrative remedy; no judicial remedy is available under the Act. Unfavorable action on the claim may be appealed to higher authority.

b. Attorney fees are limited to 20 percent of any settlement and are paid by the claimant out of the settlement.

c. The claims investigation will be informal. There are no depositions or other formal discovery procedures required or followed under the Act. Sergeant Scott or I will contact you concerning the specifics of the investigation.

You are required to submit evidence to support your claim. The following information should be provided: (List the information not provided by the claimant. Use 28 CFR 14.4 as a guide. Be specific.)

Sincerely,

David K. Dalition
Captain, U.S. Army
Claims Judge Advocate

Enclosure

Notes:
[1] This letter may be modified for use in FCA claims.

[2] If Claimant is not represented, do not use a subject line and place claim number below Claims Office Symbol.

Figure 2-9. Sample—Military Claims Act acknowledgement letter

(Letterhead)

January 5, 1996

Certified Mail Return Receipt Requested

Claims Office Symbol

SUBJECT: Potential Claim of Jane Doe

Mr. John Doe
Attorney at Law
111 East 2nd Street
Fort Wayne, IN 46815

Dear Mr. Doe:

Attached is a copy of a Standard Form 95 (SF Form 95) received by this office on January 5, 1996. The form as filed does not comply with the requirements of the (Federal Tort Claims Act) (Military Claims Act). As a result, no claim has been filed and the statute of limitations is not tolled.

The claim is improperly filed because:

The claim fails to allege a sum certain in damages. The claim must allege a definite amount that the claimant seeks as compensation for the loss.

You signed the claim form as representative of the claimant without providing proof of representative capacity with the claim. You must provide a power of attorney or other document authorizing you to file the claim on behalf of your client. A representation agreement or contract of employment is not sufficient for this purpose, unless the agreement or contract expressly authorizes you to file a claim on behalf of your client. Any document you provide must have been executed before you prepared and forwarded the claim. If you were not empowered to execute the claim form, a new claim form must be prepared and forwarded to this office.

The claim was filed by your client as executor of the estate of Jane Doe and was not accompanied by proof that your client has been appointed personal representative of the estate of Jane Doe.

The claim form was not signed by the claimant.

You may contact Sergeant Samuel S. Scott (the investigator assigned to this matter) or me at (999) 999-9999 if you have questions.

Sincerely,

David K. Dalition
Captain, U.S. Army
Claims Judge Advocate

(Attachment Listing)

Figure 2-10. Sample—Defective acknowledgement claim letter

Section III
Processing of Claims

2–12. Actions upon receipt of a claim

a. The ACO or CPO will date- and time-stamp all copies of a claim, including the SF Form 95, on the date it receives a claim. For dating and logging purposes, any written demand on SF Form 95 will be considered a claim. Neither the absence of a claimant's signature or a sum certain nor the presence of an improper signature precludes dating and logging. However, the claimant must be informed immediately of any deficiencies as set forth in paragraph 2-8 above. If the two-year SOL is at issue, the log-in date should reflect the date the post mailroom receives the claim. Maintain a system by which the claims office is made aware of such date by the post mail handlers; for example, the post mailroom might date-stamp the incoming envelope. The ACO or CPO employee who date-stamps the claim will supply either initials or signature for identification.

b. If a unit or organization that has no Army claims office receives a claim, it should nevertheless date-stamp the claim in the manner prescribed above. Upon receipt of a claim without a date stamp, the ACO or CPO should ascertain the date of its receipt and record this information on the chronology sheet placed in the claims file. Receipt of an Army claim by the USAF, USN, or any DOD organization tolls the SOL. Receipt by another Federal agency does not. Receipt of a tort claim against the Army by a State does not toll the SOL, unless it is received by a full-time officer or employee of the ARNG.

c. As soon as possible after receipt of a claim, an ACO or CPO will enter it into the database using the next available claim number in a series assigned to that particular office, as required by AR 27-20, chapter 13. See figure 2-11 for a sample automated screen printout. Similar entries will be made in DA Form 1667 (Claims Journal) (figure 2-12a and b). Enter the claims number in the claims file so that thereafter it will appear on all correspondence and documents, including the claim itself.

d. If the claim is based on an incident occurring in another ACO's geographic area, close and transfer the claim to that ACO, which will continue to use the same assigned claim number when entering the claim into its database and journal. The following examples illustrate proper procedure:

(1) A unit from Fort Stewart debarks at San Diego and proceeds by military convoy to Fort Irwin. A collision between a military vehicle and a civilian vehicle occurs in Fort Irwin's area of responsibility. The civilian vehicle is driven by a resident of northern California whose San Francisco attorney files a claim for serious personal injury, such as quadriparesis, in the amount of $1 million, at the Presidio of Monterey. The Presidio should date stamp, assign a claim number, and transfer the claim to Fort Irwin for processing then submit a copy to USARCS. Fort Stewart should assist Fort Irwin in the conduct of its investigation.

(2) A Louisville, Kentucky, Reserve unit's vehicle crashes into an office building in eastern Tennessee while en route to Fort Bragg for two-week annual training. A claim is filed with the Reserve unit for damage to the building; but the unit does not respond. A Congressional inquiry to the Pentagon is referred to Fort Campbell, Kentucky. That office should contact and direct the claimant to the correct ACO, which is Fort McPherson, Georgia.

e. When other uniformed service's claims offices are involved, the same general guidelines should apply. However, a claim under AR 27-20, chapter 11, is payable by the Army only when filed by a soldier or by a DOD civilian employee. If a claim by a member of another uniformed service is payable under AR 27-20, chapters 3 and 4, and also under the Personnel Claims Act, refer the claim to the member's service for a determination whether it is so payable and, if not, request its return for the Army's consideration. Finally, mutual assistance between uniformed services claims offices in the investigation and processing of claims is a long-standing policy that Army personnel should follow.

f. Transfer all companion claims simultaneously; transfer those filed later to the same office upon receipt. If the transferring office will play a role in processing, investigating, or settling the case, duplicate as much of the file as necessary and retain it until all claims are closed. Dispose of it as an organizational record.

g. Upon receiving a claim, USARCS personnel will enter the claim into its database with the claim number obtained from the appropriate ACO. In certain claims, such as those wherein final action may be taken without investigation, USARCS will retain responsibility, assigning the claim a new claim number. In this case, the ACO or CPO will not assign a new claim number but use the number assigned by USARCS.

2–13. Opening claims files

a. A potential claim file will be opened when an incident occurs that could result in a claim either in favor of, or against, the United States. This decision may be based on the following occurrences:

(1) Receipt of information concerning an incident, which results in the initiation of a claims investigation as required by AR 27-20, chapter 2.

(2) Receipt of a request for records or other documentation by, or on behalf of, a potential claimant, indicating a potential claim either in favor of, or against, the United States.

b. Create and mark all such files as potential claims. Files will be arranged alphabetically by name of the injured party as authorized in AR 25-400-2.

c. Upon concluding the investigation and determining the facts and circumstances surrounding the incident, maintain the file as "active" until another claim is received, or for six months after the statutory period for filing a claim has expired. Retire all investigation reports of matters in which a claim has not been received within the established statutory period in accordance with AR 25-400-2.

d. Actual presentation of a claim in writing will require the opening of a claim file or the conversion of a potential claim file to an active one. This must be done whether or not the claim is properly filed or technically correct (under AR 27-20, paragraph 2-8, or other directives). However, if there are jurisdictional deficiencies, such as the absence of a sum certain, inform the claimant that a proper claim has not been filed.

2–14. Arrangement of file

Maintain all tort claim files in standard order as prescribed in this paragraph. Following a standard format permits personnel to review the contents and prevents oversights or mistakes caused by overlooking a document in the file or failing to recognize that a document is missing. Forward all files transferred to USARCS in this format, unless USARCS has previously received all documents as a result of compliance with the mirror file system.

a. File standards. The following rules apply to all tort claim files:

(1) When possible, use a six-sided folder (available through supply channels) to contain the file contents. The following parts of the claim file correspond to the sides of such a folder. (A six-sided folder is not required for files less than one-half inch thick.)

(2) Parts are subdivided into sections and sections into subsections. A table of contents is recommended for all files and should be prepared for any part that has multiple sections. Parts are designated by Roman numerals; sections are assigned by letters. Tab each section or separate with dividers. Subsections are designated by Arabic numerals.

(3) When the number of claims arising out of a single incident makes it impractical to place all the documents in one folder, establish separate files containing the information unique to each claimant. For example, if an explosion breaks windows in 50 houses, establish a separate file for each claimant, maintaining the liability information in a master file. In this situation, keep all basic information about each claim (such as a copy of the claim form) as well as information pertaining to the claims generally in the six-sided folder and establish a separate file folder (manila) for each individual claimant.

(4) When a claim is settled but there is the potential for additional claims stemming from the same incident, retain the file as a potential claim file. Do not retire it until all claims are settled or the SOL has run on all potential claims.

b. Part I, Chronology. Use this section for only the case chronology sheet, which is a mandatory part of each tort claim file.

(1) *Format.* Use plain or ruled paper, or locally prepared forms for chronology sheets. Enter the date in the left-hand margin, followed by the information to be recorded, followed by the initials of the person making the entry.

(2) *Contents of entry.* Ordinarily, only administrative data and case review information will be placed in the entry. Record the interviews, inspections, and similar events in the memoranda for record (MFR) placed in part IV, V, or VI. A chronology sheet entry is intended as a guide for those reviewing a file and a management tool for case status, not an "aide memoire." Personnel may place telephone numbers and addresses in a chronology sheet entry but should place notes from a claimant interview in a MFR kept in part V.

c. Part II, Claim form and allied papers. This part of the file contains matters pertaining to the administrative claim form and attachments. If a document pertains to one or more parts, it should appear in the part of the file most relevant to the claim. For example, if a claimant tries to submit hundreds of pages of medical records by reference in the claim form, file the medical records in part VI and place a MFR, specifying which records accompanied the claim, in part II. Place the following documents in separate sections in the order specified:

(1) Claim form (with continuation sheets).

(2) Attachments (other than documents that belong elsewhere in file).

(3) Agent's authority to file claim, letters testamentary or letters of administration, power of attorney, or similar documents.

(4) Acknowledgment letter from the claims office to the claimant or attorney.

(5) When there are multiple claims, maintain the documents pertaining to each claim in a separate section, designating the sections above as subsections.

(6) If the claim is settled, place settlement documents (including the settlement agreement, transmittal letter, voucher, and action) in a single section on top of this part.

(7) If the claim is not settled, place final action, final offer, denial notice, reconsideration, or appeal notice in a single section on top of this part.

d. Part III, Correspondence. All correspondence, including memoranda on administrative matters, belongs in this section, unless it contains information that logically belongs in another section. For example, when a claimant tries to file a claim by letter, the letter belongs in part II. Arrange the correspondence or memoranda in chronological order, with the most recent document on top. Attachments to correspondence should not appear in this section unless there is no other logical place to put them.

e. Part IV, Research. This part consists of copies of any relevant case law or statute as well as legal, medical or scientific research, regardless of source. Use any logical order. Place liability and damages information in separate sections.

f. Part V, Liability. The following sections appear in the order below (from top to bottom):

(1) *Claims investigation.* Place documentation of any investigation performed by the claims office on top of the other investigations. Investigatory materials include interview memoranda, witness statements, accident scene diagrams, and photographs.

(2) *Consultants' reports.* Place reports prepared by experts, accident reconstructionists, and other consultants in a separate section following the claims investigation.

(3) *Other investigations.* Place each investigation other than a claims investigation in a separate section, with the most recent investigation on top. For example, a MP report could be section D, followed by a report of survey in section E.

g. Part VI, Damages. Separate the damages information by tabs and place it in the file as separate sections. When a claimant has received medical treatment from more than one HCP, establish a subsection for each HCP, further subdividing into the provider's reports, records and bills. Tab medical records that are too bulky to fit in a six-sided folder and place them in a separate folder. The following is a sample section for a single claimant treated by one physician:

(1) Claimant interview.

(2) Research provided by the claimant.

(3) Medical reports.

(4) Medical records.

(5) Medical bills.

(6) Property damage estimates, repair bills or appraisals.

h. Multiple claims. When more than one claim is filed pertaining to a particular incident, personnel will maintain one file (the "master file" for all related claims. Such claims forwarded to USARCS for retirement may be retired as one file if the claim numbers are sequential. If the claim numbers are not sequential, prepare separate files for each nonsequential file. All files will contain a memorandum identifying all related claims by number and claimant name. Upon retirement, it is permissible to place the file in a more economical folder.

2–15. Mirror file system

The AAO is required to monitor the progress of all claims reportable to USARCS through close telephone contact with the ACO or CPO and by maintaining a mirror file of all reportable claims and claim incidents. The mirror file is mandatory. This system expedites disposition of a claim and is, in fact, critical in determining Federal liability within the FTCA's six-month administrative period and meeting the goal of disposing of all claims expeditiously.

a. Forwarding to AAO. Contact the AAO for guidance and submit a complete copy of the file forwarded to the AAO on all claims seeking amounts beyond the monetary jurisdiction of an ACO, when a serious potential claims incident occurs, or when a claim presents a policy issue or a new precedent or point of law. AR 27-20 sets forth the ACO's monetary jurisdiction according to the statute; such jurisdiction is based on the amount claimed, not the estimated settlement amount. For example, under the FTCA, an ACO's monetary jurisdiction is $25,000 per claim and $50,000 per incident. Under the MCA, the jurisdiction is $25,000 per claim without limitation per incident. Similarly, forward copies of all new written materials prepared or received to the AAO. The following is a reliable method for forwarding these updates:

(1) Prepare the mirror file copy, including the claim number, when you prepare or receive documentation.

(2) Put all mirror file copies in a distribution box for the AAO mirror file. Note the claim number on each document.

(3) Empty the box once a week and mail the contents to the AAO.

(4) Record in Part I, Chronology, of each file, all the items forwarded for inclusion in the mirror file.

b. This system is flexible. For example, if a claim is forwarded for denial and the field claims office anticipates litigation or appeal, it can keep the original file and forward the claim form, memorandum, and any documents not previously forwarded to USARCS. This simplifies preparation of a report when suit or appeal is filed. The system also ensures that the USARCS AAO knows the status of the claim and can assist as needed because the field and USARCS have identical files.

c. Special instructions. When placing each document (a copy of which has been forwarded to USARCS in accordance with AR 27-20) in a tort claim file, enter a note that a copy has been forwarded as required. Do the same with documents forwarded to the claimant or the claimant's attorney, to Health Services Command, CCRB, or another destination. Such a notation will clearly indicate to all subsequent action officers, including the U.S. Attorney, what information has been released previously to the claimant, the claimant's attorney, or other parties.

2–16. Transfer of claims

a. Upon receipt of a claim, which on its face obviously has been filed with the wrong Federal agency, the ACO or CPO will transfer it to the correct agency, informing the claimant or legal representative in writing of the recipient agency's name and address and stating that any action the latter takes will represent final action on the part of the Army.

b. Contact the claimant or legal representative when agency identity is in question. If the claim has been filed with other agencies because the claimant is unfamiliar with governmental organizations, try to identify which agency should process the claim. Send it there. However, if the claimant intends to file with multiple agencies, contact the other agencies and try to establish a lead agency in conjunction with the appropriate ACO and the regulatory guidance.

c. Medical malpractice claims frequently involve more than one military service's MTFs. In such cases, delay the decision on the lead agency pending review of the medical records or related material. Question the claimant about which MTF is the subject of the claims.

d. In the event that the agencies cannot agree on which one will act as lead agency, USARCS will request the Chief, Torts Branch, Department of Justice (DOJ), to designate the lead agency.

e. If the Army is the lead agency, the ACO or CPO will request all involved Federal agencies to take no final action, such as denial, to forestall the imposition of the six-month period for filing suit. If the Army and another agency are involved and the claim is not meritorious, a denial letter will be issued either for both agencies or by each at the same time to avoid any extension of the six-month period. If another agency has already issued a denial letter for a claim the Army deems meritorious, inform the claimant that the six-month filing period does not apply because the Army will consider the claim as a request for reconsideration. Figure 2-13 provides a sample letter to a claimant rescinding the denial.

f. When another Federal agency is designated the lead agency, transfer the file to that agency, requesting that any final action taken represents the Army's final position as well. Also request the other agency to provide the Army a copy of the final action so the Army may close its file. When transferring the file, notify the claimant of the transfer by certified mail, providing a point of contact at the lead agency.

g. When it is impossible to determine the correct agency's identity, return the claim to the claimant and explain the reasons in a letter. Retain a copy of the properly date-stamped claim and a record of all discussions with the claimant.

2–17. Use of small claims procedures

a. Rationale. Small claims procedures save the Army time and expense. Meritorious claims are settled more efficiently, granting claims personnel more time to work on other, more complex claims. The Army's small claims procedures are consistent with the insurance industry practice of settling minor tort claims on the spot. Using these procedures also avoids escalation of damages since delays in settlement may cause claimants to grow increasingly dissatisfied and to amend their claims, seeking greater compensation. Finally, all claims settlements reflect the judgment and discretion of the CJA or claims attorney who settles the claim. Small claims procedures are simply a means of reducing legwork and the paperwork necessary to document a claims settlement decision.

b. General. Small claims procedures are described in AR 27-20, paragraph 2-17. (See para 2-42 for procedures used to process traffic incident small claims.)

(1) Although their use is optional, small claims procedures should be used when a tort claim can be settled for $2,500 or less. Note that the small claims limit applies to each claim and not to the entire incident. For example, if an incident gives rise to three claims, each having a settlement value of $900 (totalling $2,700), use small claims procedures to settle all three claims. If an incident gives rise to claims with a total estimated settlement value greater than the ACO's or CPO's settlement authority, small claims procedures cannot be used without the permission of the authority responsible for settling the claims. Do not use these procedures in any claims incident that requires complete investigation, including a split claim.

(2) Small claims procedures should be used as much as possible. Many claims offices fail to use them because they believe tort claims are different and require more formal proof than do personnel claims. This practice contravenes the intent of AR 27-20.

2–18. Determining the correct statute

The Congress intended the claims statutes it enacted to permit Federal agencies to settle meritorious claims. Unless one particular statute precludes using others, consider an otherwise meritorious claim under all statutes that may possibly apply. For example, a soldier's FTCA (chapter 4) claim based on negligence is not payable under the FTCA if and because it arises incident to service, but it may be payable under the PCA (chapter 11). If not payable under chapter 11, it may be payable under the MCA, chapter 3. Each claim requires analysis under all statutes before denial.

a. Property claims.

(1) In the absence of tortious conduct as defined by the FTCA, claims for property losses caused by a "taking" under the Fifth Amendment, U.S. Constitution, are tried exclusively in the Court of Federal Claims or by a U.S. District Court for a demand not exceeding $10,000. As neither the FTCA nor the MCA provides a basis for payment, refer such claims to USARCS immediately.

(2) Property losses caused by a contract, express or implied, are also Court of Federal Claims cases; however, losses arising from the use and occupancy of real estate are compensable under AR 405-15 pursuant to the Meritorious Claims Act, (figure 2-14, extract 31 USC 3702). See also paragraphs 2-28, 2-32*b*(4) and 2-66*a*(2). They also may be compensable under the MCA.

(3) Intangible property losses are Court of Federal Claims cases. The FTCA and the MCA limit compensation to actual property loss. Thus, refer claimants who file claims for losses caused by mistakes of administrative personnel to the Court of Federal Claims (28 USC 1346, 1491) or to the General Accounting Office (GAO) (31 USC 3702).

(4) Within the United States, property losses grounded in tort fall under the FTCA, with the following exceptions:

(a) Soldiers' property damage claims are excluded if they occur incident to service as defined by the *Feres* doctrine. The claim must be paid under the PCA or, if not payable thereunder, pursuant to the MCA. The *Feres* bar does not apply to the MCA—rather, this statute's incident-to-service bar does not exclude property losses.

(b) If the property damage occurs incident to service, the claim must be considered first under the PCA, whether or not it arose in tort.

(c) If the property is damaged incident to service, but the facts do not fall within the "incident to service" definition of AR 27-20, chapter 11, thereby barring the claim, the claim must be considered under the MCA if it constitutes a tort. If it is not clear whether it is a tort, give the claimant an opportunity to clarify the matter by amending the claim.

(d) Payment of soldiers' chapter 11 property claims should be withheld pending resolution of any personal injury or death claim arising out of the same incident. Coordinate settlement action with the claims authority having jurisdiction over the highest dollar actual or potential personal injury or death claim.

(e) Payment of property and small personal injury claims under the MCA should be withheld until coordinated with the claims authority having jurisdiction over the highest dollar actual or potential personal injury claim. Determine the extent of all injuries as to claims not filed. If hardship exists, notify USARCS, by phone, to permit an early decision. However, if an incident involves tortious conduct, actual and potential claims with an estimated settlement value in excess of $200,000, claims arising therefrom may not be settled until the Commander, USARCS, determines whether prior approval by DOJ is needed.

(5) Within the United States, property damage claims by civilian

employees are covered by the FTCA, even if they arise within the scope of employment; the FECA exclusivity provision does not apply to property damage . See figure 2-15, extract from 5 USC 8116(c). However, civilian employee property damage claims are first considered under AR 27-20, chapter 11. If the damage arises from a tort and is not compensable under chapter 11, the claim should be settled under the FTCA.

(6) If the claim arises outside the United States, claims by both soldiers and civilian employees follow the same priority rules. They are considered first under the PCA, and then under the MCA if the claimant is a U.S. national. If the claimant is a civilian employee who is not a U.S. national, and who normally resides in a foreign country, the FCA should be used in the absence of an applicable Status of Forces Agreement (SOFA).

b. Personal injury and death claims.

(1) *Claims by soldiers and civilian employees.* Under State law, personal injury and death claims arising from an employment contract or relationship are usually payable under workers' compensation insurance, which bars tort suits against the employer even when the personal injury or death is due to the employer's negligence. Federal law applies the same concept.

(a) Claims by soldiers arising incident to service as defined by the *Feres* doctrine are barred under both the FTCA and the MCA. See figure 3-1, extract from 10 USC 2733(b)(3). See paragraph 2-66*b*.

(b) Claims by civilian employees arising within the scope of employment are payable under FECA (see figure 2-15, extract from 5 USC 8116(c)). Similarly, claims by NAFI or AAFES employees are payable under the Longshore and Harbor Workers Compensation Act, 33 USC 8116(c). Both statutes provide the exclusive remedy against the United States. The Department of Labor defines scope of employment according to the law of the place of occurrence and agency law. See paragraph 2-66*c*.

(c) Claims by prisoners serving unexecuted sentences fall under *Feres*. If the sentence is executed, the claims may fall under the Prison Industries Act or LSHWCA. See paragraph 2-32*c*(2).

(2) *Claims arising in the United States.* Within the United States, personal injury claims by persons with whom the United States has no contractual relationship or which do not arise incident to service or within the scope of employment must be considered initially under the FTCA, if based on tortious acts or omissions, except for maritime claims. If it cannot be determined whether the claim is a maritime claim, or if the claimant insists that it is such despite USARCS contrary belief, advise the claimant in writing of the need to file suit within two years of the occurrence.

(a) If the claim is based on a tort, it must be processed under the FTCA unless it arises out of a Non-Scope act. In this event, it may be considered under the Non-Scope Claims Act. If processed under that Act, all parties, including the subrogee who is barred from receiving payment, must agree to the settlement.

(b) The MCA may be used, as appropriate, for claims arising out of noncombat activities. See paragraph 3-3.

(c) Tort claims caused by NATO soldiers within the United States are handled exclusively by USARCS (except for investigation). USARCS is the receiving State Office (RSO) for all armed services. Claims by NATO soldiers for their own personal injuries, sustained while in scope, are barred by the *Feres* doctrine.

(3) *Claims arising outside the United States.*

(a) Soldiers' claims based on a single act or incident cognizable under the MCA, the Army Maritime Claims Settlement Act (AMCSA), and the PCA will be considered first under the AMCSA or PCA. If not payable under either of those statutes, consider the claim under the MCA.

(b) A claim may not be paid under the MCA if it is payable under the FCA, 10 USC 2733(b)(2).

(c) If a SOFA or other agreement provides for host country adjudication of a claim, the treaty process may be the claimant's exclusive remedy. Where a foreign country is responsible for adjudication of the claim under the terms of such an agreement, it may not be paid under the provisions of the MCA or FCA. If the foreign country refuses to recognize legal responsibility for the claim or to consider it under applicable treaty provisions, the Commander, USARCS, may authorize adjudication of the claim for good cause shown. The mere fact that a foreign country has failed to pay a claim on its merits is not sufficient basis for invoking this authority. See AR 27-20, chapters 3, 7, and 10.

(d) If claims cognizable under the MCA are based on more than one act or injury and one or more of the acts or injuries are also cognizable under the FTCA (for example, claims alleging medical malpractice both in a foreign country and in the United States or claims alleging negligence in the conduct of a noncombat activity), the claims will be processed as follows:

(4) *Meritorious claims.*

(a) If the primary act or incident upon which the claim is based is not cognizable under the FTCA, the claim may be considered and paid under the MCA. However, the settlement agreement must expressly release the United States from any further liability under the FTCA or any other statute or regulation for all acts or incidents upon which the claim was based. If the amount exceeds $25,000, coordinate any proposed settlement with USARCS before final action.

(b) If the primary cognizable act or incident upon which the claim is based is cognizable under the FTCA, the claim will first be considered under the FTCA. If the claim is determined by proper authority to be nonmeritorious under the FTCA but meritorious under the MCA (for example: negligence occurred only overseas, not within CONUS), it may be considered and paid under the MCA. However, settlement that expressly releases the United States from further liability under the FTCA or any other statute or regulation for all acts or incidents upon which the claim was based must be reached. If the claim was presented in an amount over $25,000, coordinate any proposed settlement with USARCS.

(c) Civil works projects that may generate claims include dams, bridges, and reservoirs and are specifically identified by legislative history and appropriation. The U.S. Army Corps of Engineers (USACE) investigates and processes claims arising out of civil works projects in the same way as any tort claim. Payment procedures, however, are different. Whereas payment of the claim would normally be disbursed from the USARCS claims expenditure allowance (CEA), payment is made from civil works funds instead. Thus, FTCA claims are paid from civil works funds if they are settled for $2,500 or less; otherwise, the claim is paid by the FMS. For MCA claims, the first $100,000 is paid from civil works funds, the balance is paid by the FMS. Most construction on active Army installations is funded from sources other than civil works funds.

2–19. Status of Forces Agreement claims

See chapter 7 for the statutory schemes that underlie the applicable SOFA.

a. Federal Republic of Germany. In the FRG, the Army has single-service responsibility, which it exercises from the U.S. Army Claims Service Europe (USACSEUR), Office of the Staff Judge Advocate, USACSEUR. SOFA claims must be submitted to a FRG Defense Cost Office (DCO) in the German State where the incident occurred for statutory schemes that underlie the applicable SOFA. ACOs and CPOs must screen all tort claims to determine whether the claimant is a proper claimant under the SOFA and whether the claim arose from an act or omission of a member or civilian employee of the U.S. Armed Forces stationed in the FRG. In the FRG, any of the following may be a proper claimant under the NATO SOFA:

- An inhabitant of a foreign country.
- A dependent of a member of the force or civilian component accompanying the force.
- An American civilian not a member of the force or civilian component.

USACSEUR should be consulted in this regard. However, members of the force and civilian components are not proper claimants under

the German Supplementary Agreement to the NATO SOFA when the claim is based on an act or omission of the U.S. Armed Forces stationed in the FRG. When a claim is filed with an ACO or CPO, assign a claim number, date- and time-stamp it, and instruct the claimant to forward it to the appropriate DCO. The claims office will retain a copy of the claim. If the claim is returned to the claims office, process it in accordance with paragraph 2-19.

b. Republic of Korea (ROK). In the ROK, the Army has single-service claims responsibility, which it exercises from the U.S. Armed Forces Claims Service, Korea. The screening procedures are similar to those used in the FRG, except that members of the force and civilian components, and their dependents, are not proper claimants under the ROK SOFA. In Korea, a claim by a foreign inhabitant for medical malpractice at a MTF is processed under the ROK SOFA.

c. Belgium, the Netherlands, and France. The Army has single-service claims responsibility for claims originating in France, Belgium, and the Netherlands. Claims arising in these countries are usually filed with the closest military installation in the country involved. As a general rule, there are no local civilian offices in these countries at which a claimant may file a claim. In France, claimants will present or mail claims to the nearest French military installation. These installations collect information relevant to the claim and deliver that information, along with the claim, to the French Ministry of Defense. The Ministry of Defense then acts as conduit to the Northern Law Center, part of 21st Theater Army Area Command (TAACOM) located at Mons, Belgium. Similar procedures are used in Belgium and the Netherlands. Members of the force, civilian components, and their dependents are proper claimants.

d. The Federal Republic of Germany. In the FRG, medical malpractice claims by family members or relatives of the U.S. force in FRG arising in a U.S. MTF are not considered SOFA claims. Such claims by foreign inhabitants, not family members, are considered to fall under the SOFA.

2–20. Foreign Claims Act

See chapter 10.

To qualify as a proper claimant, the claimant must have been an inhabitant of a foreign country at the time of the incident giving rise to the claim. In countries such as the FRG, the ROK and the Republic of Panama, making this determination may be particularly difficult. Normally, foreign-born spouses are not considered proper claimants under the FCA, even if the foreign spouse has never been to the United States; however, a foreign-born spouse may be a proper claimant under the MCA. If, however, the spouse clearly exhibits an intent to remain a foreign inhabitant and never to emigrate to the United States, the FCA is the proper remedy. Children of the marriage who are born in a foreign country would be claimants under the MCA. Dependent parents of a foreign-born spouse would normally claim under the FCA, unless they had resided in the United States, or intended to emigrate to the United States. ACOs and CPOs should develop a questionnaire designed to elicit sufficient information to determine the proper claim authority. Figure 10-2 provides a sample questionnaire.

2–21. National Guard Claims Act

See paragraph 2-82*c* and chapter 6.

a. Members of the Army National Guard (ARNG) are employees of the State unless ordered into the Federal service, such as during a national emergency or while performing duty under Title 10, United States Code. ARNG personnel remain State employees even when the United States has assumed tort liability under the FTCA's 1981 amendment (AR 27-20, chapter 6) (*United States v. State of Hawaii*, 832 F.2d 1116 (9th Cir. 1989); *Maryland for Use of Levin v. United States*, 85 S. Ct. 1293 (1965)). That amendment provided coverage for ARNG activities giving rise to claims in these situations:

(1) Instructing civilians at rifle ranges (32 USC 316).

(2) Attending drill assemblies or participating in exercises or encampments—typically inactive duty training (3 USC 502).

(3) Participating in certain maneuvers—typically two weeks annual training (32 USC 503).

(4) Participating in small arms competition or attending schools for the ARNG (32 USC 504).

(5) Attending regular service schools (32 USC 505).

(6) Recruiting full-time (32 USC 502(f)).

(7) Performing Active Guard Reserve (AGR) duties with the State (32 USC 502(f)).

(8) Federal drug enforcement duty (32 USC 502(f)).

b. For an activity to fall under any of these categories, the State must issue orders (figure 2-22, extract from 10 USC 2737) or, for drills, a unit training schedule. An ACO or CPO should investigate the following situations carefully and discuss FTCA coverage with the appropriate AAO.

(1) The ARNG is often involved, incident to Federally funded training in Title 32 status, in projects that assist State or local Governments or various private organizations, usually youth groups or national military associations. Specific statutory authority for such incident-to-training assistance is contained in 32 USC 508, 10 USC 2012, 10 USC 2548, and other statutes. Claims arising from such duly authorized projects are cognizable, notwithstanding the fact that a government entity or private organization may derive a benefit. Other projects, particularly those that cannot be supported on an incident-to-training basis, may be accomplished in a State active duty (SAD) status. Claims arising from SAD missions are exclusively a State responsibility.

(2) The ARNG is involved under 32 USC 112 in providing assistance to law enforcement agencies in counter-drug operations. Such support is generally provided in a Title 32 duty status (other than training) and claims arising therefrom are cognizable. Separate and apart from 32 USC 112, Section 1004 of the 1991 National Defense Authorization Act authorizes assistance, incident to training, to law enforcement agencies in counter-drug operations. Again, such claims arising in Title 32 training status are cognizable. However, where a State employee is actively participating in the operation, investigation must be sufficient to determine whether any claim is a State or Federal responsibility.

(3) Claims based on premises liability at a State-owned or leased armory or training site are generally the State's responsibility. Examples of such claims include an exploding dud, motorcyclist running into wire barriers, person falling into a trench dug across a roadway, person falling on an icy stairway or parking lot, or vehicle damage from grass mowing operations.

2–22. Third party claims involving an independent contractor

See subparagraphs 2-67*c*, *d* and *e* and 2-82*b* of this publication. The United States is not liable for claims arising from the act of an independent contractor (28 USC 2671), including NAFI or AAFES contractors or concessionaires. Upon receipt of a claim, the ACO and CPO should determine if a contractor is involved. Frequently, claimants file for loss or damage stemming from housekeeping contracts for the Commissary, MTF, Army motor pools, or other buildings and maintenance of facilities (such as spraying of paint or insecticides). AAFES concessionaires or contractors may be involved. Army MTFs use the services of CHAMPUS partners or contractors who supply physicians and related services, such as emergency room and radiology services. When there is contractor involvement, examine the contract, obtain the contractor's address and name of its insurer and recommend to the claimant that the contractor should be the subject of the claim. When there is joint liability, furnish this information anyway. Such warning should be made as soon as possible to avoid the running of a State SOL which is applicable to a suit against a contractor.

a. If the damage is considered to be primarily due to the contractor's fault or negligence, refer the claim to the contractor or the contractor's insurer for settlement. Although the claim against the Army will not be processed under AR 27-20, the advance notice procedure to the AAO contained in AR 27-20, chapter 2, will be followed. When possible, ask the claimant to refer the claim personally to the contractor.

b. If the contractor does not dispose of the claim within a reasonable period of time, determine whether the Army is legally liable to the third-party claimant for the damage. Base this determination on the same standards used to determine contractor liability. When the United States exercises sufficient control over the contractor's operations or a specified process (such as spraying) at a place where such operations or processes could cause the damage, Federal liability may be invoked.

c. If it is determined that the United States may be liable, ask the contracting officer to withhold funds due the contractor. Funds may be withheld as long as the contract specifies that the contractor is responsible for damages that occur as a result of its fault or negligence and provided that the contract contains no clause to the effect that the contractor is not responsible for negligence of the United States or its employees, see *Motor Ins. Corp. v. Aviation Specialties, Inc.*, 304 F. Supp. 973 (W.D. Mich. 1969). It is not necessary that a claim actually be paid under AR 27-20 before funds can be withheld.

d. If withholding is not considered permissible, forward claims payable under the FTCA to the Commander, USARCS, for disposition. Include all pertinent data concerning contribution or indemnity in the file.

2–23. Claims for injury or death of contractor employees

See paragraphs 2-67*c* and 2-82*b* of this publication.

a. Claims by contractor employees for injury or death are payable from workers' compensation benefits provided by the contractor and should first be processed in this manner. In most U.S. jurisdictions, the workers' compensation remedy bars further action against the contractor except at management level. In this regard, determine whether insurance coverage of management activities is available. Such coverage usually does not bar action against the United States, and if a claim not satisfied wholly by workers' compensation is pursued further against the Army, it will be processed under AR 27-20. However, this is a matter of local law; examine it carefully in each case. In any event, a payable claim must be based on negligent acts or omissions of U.S. employees, not contractor employees.

b. In processing such claims, examine the contract between the United States and the employer, or any related subcontract, to learn whether it holds the United States harmless and imposes liability on the contractor. Unless the provisions make it clear that the contractor is not liable to any extent, try to get the contractor to assume the burden of settling the claim. For example, such provisions often provide that the contractor will hold the United States harmless from claims arising in part from the negligence of the United States. In such cases, contractor liability should be pursued, *United States v. Accrocco*, 297 F. Supp. 966 (D.D.C. 1969). Should the claim arise in part from the negligence of the United States and the contract is silent as to whether the contractor will hold the United States harmless in such a case, examine appropriate case law and pursue contractor liability, if appropriate.

c. Generally, the contractor need not be pursued when the claim arises solely as a result of the negligence of the United States and the contract does not expressly provide for the contractor to hold the United States harmless in such a case. *Piscopo v. United States*, 167 F. Supp. 777 (E.D.N.Y. 1958). When the claimant is an employee of the contractor who has received workers' compensation benefits provided by the contractor, Federal law controls the right of the United States to indemnification under a Federal indemnity contract. Include the contractual provisions in the claim file since they will determine the right to contribution or indemnification, *United States v. Seckinger*, 397 US 203 (1970). This is true regardless of whether State law provides that workers' compensation benefits are the employee's exclusive remedy against the employer. Cf. *American Agricultural Chemical Co. v. Tampa Armature Works, Inc.*, 315 F.2d 856 (5th Cir. 1963); *Spurr v. LaSalle Construction Co.*, 385 F.2d 322 (7th Cir. 1967).

d. If the United States has compensated the contractor for the latter's workers' compensation premiums, the Army may be able to deduct any payments made thereunder to the claimant from any award the Army makes. Further, in such instances a claim by the workers' compensation carrier will be forwarded for resolution by the AAO. Similarly, the United States may have paid the premiums for other coverage (such as life insurance and funeral expenses in a death case), and these may also be deductible. Ask the contractor if such benefits exist, since the contract itself may not reveal their existence. Place a record of the results of the inquiries in the file.

e. If the claim by the contractor's employee is based on the theory that the United States was, in fact, in control of the contractor or otherwise in charge (such as regulating safety) rather than on a specific act of negligence by a Federal employee, examine local law to determine whether a statutory employer defense is available to the United States. This defense is generally based on the extent of control, for example, the contract is performed on U.S. property, concerns an activity in which the Government is normally engaged (mess hall or motor pool activities), and the Government has paid the cost of workers' compensation premiums, directly or indirectly, as part of the contract price, *Roelofs v. United States*, 501 F.2d 87 (5th Cir. 1974), cert. denied 423 U.S. 830 (1975). See FTCA Handbook, section II, paragraph D7.

2–24. Maritime claims

See chapter 8.

Maritime torts are excluded from consideration under the FTCA. See 28 USC 2680(d). Moreover, there is no requirement to file with an agency preliminary to bringing suit under either the Suits in Admiralty Act or the Public Vessels Act. An administrative claim is required, however, under the Act Extending the Admiralty and Maritime Jurisdiction (AEA). See paragraph 8-2. In any administrative claim brought under the Army Maritime Claims Settlement Act, all action must be completed not later than two years from its accrual date or the SOL will expire. Outside the United States, a maritime tort may be brought under the MCA or FCA. The body of water on which it occurs must be navigable and a maritime nexus must exist. Once a maritime claim is identified, give the claimant written notice of the two-year filing requirement. In case of doubt, the ACO or CPO should discuss the matter with the appropriate AAO. Even when the claimant does not believe that a maritime claim is involved, provide the claimant with precautionary notice. See paragraph 8-8.

2–25. Postal and United States Postal Service claims

There are three types of postal claims:

- Those filed by the U.S. Postal Service (USPS) pursuant to the Postal Agreement with the Department of Defense (see figure 2-16d and para 2-53) USPS Publication 38, February 1980).
- Those filed under the MCA by individuals for loss of registered or insured mail in the possession of the Army (10 USC 2733(a)(2)).
- Personnel claims under AR 27-20, chapter 11.

The FTCA specifically excludes claims for losses due to transmission of postal matter (28 USC 2680(b)). Registered and insured postal claims are discussed at paragraph 2-53. Claims for packages delivered by United Parcel Service (UPS) are discussed below.

a. Interagency agreement claims.

(1) Interagency agreement claims are claims brought by USPS for funds and accountable postal stock embezzled or lost through the negligence or error of unbonded Army postal clerks, assistant Army postal clerks or persons acting in those capacities, and commissioned or warrant officers of the Army designated as custodians of postal effects by the appropriate commanding officer. These claims almost invariably arise in foreign countries.

(2) Interagency postal claims must be filed by the USPS within one year of the discovery of loss. The loss must be due to fault on the part of Army personnel listed in subparagraph (1) above. A claim may not be brought on the basis of a bailment. For example, a claim for loss of postal monies due to robbery of a postal clerk is not payable unless there is evidence that the clerk or other Army postal personnel was at fault. Similarly, if the loss is caused by the

fault of nonpostal personnel, the claim is also not payable. For example, if mail is destroyed in an Army truck involved in a collision and fire, the USPS claim is not payable under the interagency agreement unless there is evidence that the driver was one of the persons listed in subparagraph (1) and that the accident was due to the driver's negligence.

(3) Local claims offices do not become directly involved in interagency claims because the USPS files the claims with USARCS. However, local JAs or legal officers who learn of a potential claim due to theft or dereliction of duty on a postal clerk's part should take steps to see that the postal clerk reimburses the USPS for the loss. For example, a postal clerk may be required to make restitution prior to separation or as part of a plea bargain.

b. MCA postal claims. See paragraph 2-53.

(1) *Types of mail subject to claims.* The postal loss must involve registered or insured mail. This is a matter of statutory construction since the MCA covers only these types of mail. Further, the mail must be controlled by use of a registry or some other device allowing its course to be traced and responsibility for its loss to be affixed. Otherwise, the loss or damage is not within the terms of the MCA. For example, the USPS once created a type of insured mail known as "insured-minimum fee," for which no record was kept of delivery to the recipient. This type of mail was not included in the provisions of the MCA because of its lack of registry. Other types of mail, including certified mail and Express Mail, also are not included within the terms of the statute, even though the USPS guarantees Express Mail's delivery times and document reconstruction.

(2) *Responsibility for loss.* It must be determined that the Army is responsible for the loss. When a claimant, either the sender or recipient, alleges that a registered or insured package was lost or damaged while in postal channels, the claimant should be directed to file the claim with the USPS. The USPS will trace the parcel and determine whether the loss occurred in USPS channels. If the USPS determines that it is not responsible for the loss, it forwards the claim, with a complete investigation, to the Army for further action.

(3) *Damages.* The measure of damages depends on when the loss occurs.

(a) If the loss occurs while the article is in Military Postal Service (MPS) channels, the insured or registered value is the measure of damages. Since the MPS operates under procedures similar to those of the USPS, the risks of loss are substantially the same as those the sender chose to insure against.

(b) If the loss occurs while the article is in military possession such as that of a unit mail clerk but after it has left the MPS, the measure of damages is determined in the same way as any other MCA property damage claim (for example, when a courier or other soldier picks up the mail at the MPS post office and rifles it).

c. Claims for United Parcel Service packages. UPS has agreed to be liable for payment of claims for loss or damage to packages delivered in CONUS to Army mailrooms or other Army employees for delivery to the addressee (figure 2-17, extract from AR 600-8-3). Claimants seeking reimbursement for losses covered by the agreement should be given a copy of the agreement and referred to UPS. UPS offices sometimes seek reimbursement for payment to a customer for loss or damage to a package. These claims should be denied on the basis of the UPS agreement.

(1) UPS remains liable for all property damage to package contents even though a unit mail clerk has signed for the item.

(2) UPS agrees to hold harmless and reimburse the United States for any claims or judgments that the United States is legally required to pay as a result of property loss or damage to packages received from UPS.

(3) UPS will remain liable for a lost package even though a unit mail clerk has signed for the package pursuant to its tariff provisions on file with the Interstate Commerce Commission and the individual Public Service Commissions in the States in which UPS operates.

2–26. Blast damage claims

See paragraphs 2-46 through 2-48.

a. Blast damage claims are payable under the MCA. While the claimant need not prove negligence, the claimant must prove a connection between the blast and the damage. Only causation need be established. See paragraph 3-3b.

b. To achieve consistency in determining causation, AR 27-20, chapter 2, requires that blast damage claims should be forwarded to USARCS along with the information set forth in paragraphs 2-46 through 2-48 for review by a blast damage expert located at or used by USARCS. If another claim under the exact circumstances has already been reviewed, such as similar damage to the house next door, the ACO or CPO should coordinate with the AAO to waive the requirement for USARCS technical review. Similar damages usually mean the type of damage caused by air blast, such as broken windows, and not ground shock, such as a cracked basement wall.

c. Payment for nuisance value alone leads to other claims or protests by neighbors, particularly those whose claims have been denied previously. This should not be done.

2–27. Privately owned vehicle claims

See paragraph 2-82.

a. AR 27-20, chapter 2, requires that third parties' tort claims against the United States arising from the use of a privately owned vehicle (POV) by a soldier allegedly within the scope of employment be forwarded to USARCS for a decision prior to any final action. This requirement arises from the difficulty in determining scope in such cases and maintaining any degree of consistency. See FTCA Handbook, section II, paragraph B3.

b. Always determine whether the liability insurance on the POV may be used to fund at least part of the settlement. Of particular interest are insurance policies that contain exclusions made without regard to reduction of the premium. Research the law of the State in which the contract was entered to determine if it prohibits such an exclusion. This is significant because soldiers use their POVs for various errands of possible benefit to the Army. See FTCA Handbook, section II, paragraph D8.

c. Before forwarding, conduct an investigation to assist in a scope determination. While the nature of the investigation varies from case to case, always determine whether mileage was reimbursable and, if not, whether the use was specifically authorized by the command. If the POV was used for more than one purpose on one trip, list the various purposes and routes.

2–28. Real estate claims

a. Claims for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA are generally payable under AR 405-15, paragraphs 5 and 6. Claims for damage to real property and incidental personal property damage sustained during Army noncombat activities are payable under either AR 405-15 or AR 27-20, chapters 3 or 10. Such claims usually arise during a maneuver or training exercise or an emergency deployment. If the property is occupied pursuant to a lease or use permit and if operation and maintenance funds are available for payment of damage claims, refer to AR 405-15.

b. Take care to avoid splitting the claim (by considering the real property claim under AR 405-15 and the incidental personal property claim under AR 27-20, chapter 3 or 10). Instead, consider the entire claim under AR 405-15 by referring to the lease's restoration clause. If this is not possible, or if operation and maintenance funds are not available, include a statement to this effect in the file and process the remainder of the claim under AR 27-20, chapter 3 or 10. There should be careful coordination with the USACE district real estate claims office to avoid duplicate payments. See AR 405-15, paragraph 9*b*. Note that a lease may be entered into after the fact of occupancy. See AR 405-15, paragraph 5.

c. Claims for damage to real property and incidental personal property damage arising out of Army activities considered to be neither combat nor noncombat activities are payable under AR 405-15. They are also payable under AR 27-20, chapters 3 and 10, but

only if founded in tort. Normally, such claims arising during civil emergencies should be processed under AR 405-15; contingency planning should include adequate operations and maintenance funding for such claims.

d. Real estate claims based on a Fifth Amendment taking of property such as navigation easements, or claims based on continuous invasion of property (such as by overflight, noise, smoke, gases, or water emanating from Government sources) fall under the Tucker Act. See paragraph 2-32*b*(4). Take care to distinguish these claims from those based on tort or noncombat activities—that is, distinguish claims based on a continuing invasion, including a taking, temporary or permanent, from claims based on damage to the property.

e. If the invasion is found to be of a continuing nature, try to settle the claim through real estate acquisition procedures. In such instances, claims offices should coordinate with the appropriate division and district engineers or the Directorate of Real Estate, Office of the Chief of Engineers.

f. Under certain conditions, process these claims under the Federal Acquisition Regulations (FAR), part 50 and 50 USC 1431—for example, if a contract instead of a lease was used to rent certain real estate and claims that are not payable under the contract arise.

2–29. Claims by contractors for loss or damage to their property located on DOD or Army installations or activities

a. Claims by contractors for damage to or loss of their property located on Army installations for the purpose of performing the contract are not payable under AR 27-20 unless the property is damaged by an in-scope act or is the subject of a bailment. Losses of such property caused by wrongful appropriation or theft by Army personnel generally are not compensable under AR 27-20. However, if the contract permits and if operations and maintenance funds are available, modification of the contract would be in order. It may be that the loss occurs during a bailment that the contract specifically provides for or arises out of it or the Army has agreed by contract to provide for the property's security. If that is the case, do not accept the claim from the contracting officer for processing under AR 27-20 without an express determination by that officer that the claim is not payable under the contract.

b. If the contracting officer's finding is considered to be erroneous and efforts to resolve the matter locally are to no further avail, or if the claim is not deemed payable under AR 27-20, forward the file to the Commander, USARCS, stating the reason for forwarding. A copy of the contract should accompany the file. If the Commander, USARCS, cannot resolve the matter after consulting with the Chief, Contract Law Division, OTJAG, it will be resolved by TJAG or a designated representative. Such resolution might include referring the claim to the Comptroller General, who has broad authority to settle claims.

c. Claims by contractors for damage to, or loss of, property being rented, leased, loaned or sold to an agency of the United States that is in the Army's possession to facilitate performance of such contracts (for example, property is in transit or in temporary storage) will be processed in accordance with subparagraph *a* above. Also, sometimes insurance coverage purchased by the contractor and included as a contract cost may be available to pay the cost (for example, if a soldier or civilian employee rents a car while on TDY, 35 Comp. Gen. 553 (1956)). Accordingly, scrutinize contractual provisions and refer the claim to the insurance carrier, if appropriate. If such property is rented, leased, loaned by or sold to the Army and is in the possession of the Navy or Air Force for shipment or storage when the damage or loss occurs, forward the claim to the Navy or Air Force for settlement as a MCA bailment claim.

2–30. Claims arising out of gratuitous use of DOD or Army installations, vehicles, or equipment

Frequently, nonfederal organizations, companies or individuals are granted free use of Government land, vehicles, or equipment, and such use results in tort claims. Gratuitous user claimants may be students, volunteers, members of scouting organizations, foreign military personnel, or persons injured during fundraising or recreational activities. Third parties whose property is damaged during debris removal following a natural disaster in which a State Governor requests Federal assistance may also be gratuitous claimants. See subparagraph *e* below. Liability may exist under AR 27-20; before processing such claims, however, consider the following issues:

a. Departmental or local directives often require the execution of a hold harmless or similar clause before Army facilities, transportation, or equipment are used. Whether such clauses are legally enforceable should be determined by local law, based on the following factors:

(1) Whether the arrangement between the United States and the sponsoring agency is binding on the individual claimant.

(2) Whether a benefit is derived by the Army, the individual claimant, or both.

(3) Whether the Army is furnishing the benefit under an obligating statute or authority or on a voluntary basis.

(4) Whether public policy considerations are involved.

b. Generally, hold harmless clauses are ineffective unless agreed to by both the individual claimant and the sponsoring organization and unless the latter maintains a program or method of compensation similar to workers' compensation or other insurance. Examine any insurance policy involved to see whether the DA is an insured party. (If not, the insurance carrier may be subrogated to the claimant's interests.) Urge Army officials arranging such functions for gratuitous users to enter the DA as an insured party. In any event, scrutinize such claims to see whether other benefits are available to the claimant before processing under AR 27-20 or whether such benefits are considered a collateral source and thus are not deductible from any payment made under AR 27-20.

c. If contribution or indemnity applies but the matter cannot be resolved, forward the claim to the Commander, USARCS, 28 CFR 14.6(d)(1)(iii). Attach a copy of the contract, any insurance policy, and a record of the status of the negotiations, including efforts to obtain contribution or indemnity in the file. If the claim involves Army transportation, state whether any guest statute applies.

d. Third party claims may arise from acts or omissions of individuals such as students, volunteers, members of scouting organizations, foreign military personnel, or other persons present on a military installation in connection with fundraising or recreational activities. These persons may be liable under the "loaned servant" doctrine or other employment-type relationship—generally, these do not depend on compensation from Federal sources but turn on either the extent of direction and control exercised by the United States or its responsibility as the owner of land or equipment. See paragraph 2-67*e* and *f*. Hold harmless clauses do not bar third party claims unless the third party is privy to the agreement permitting use of DA premises. The clause's main value is derived from any insurance or other third party compensation program provided by the sponsoring organization or the individual involved. Refer third party claims to the sponsoring organization or individual concerned or to either party's insurer. If not resolved by such referral and if contribution or indemnification is considered inapplicable or cannot be obtained, refer the claim to the Commander, USARCS, with all pertinent data concerning contribution or indemnity included in the file. See paragraph 2-82*a*.

e. Debris removal claims present a different problem in that a State or local government must agree to indemnify the Government against any claim arising from debris removal from private property (see figure 2-18, extract from 42 USC 5173). The Federal Emergency Management Agency (FEMA) represents the Federal Government in providing disaster relief. Past experience has indicated that the senior Army JA of a task force engaged in such a mission should arrange with a State to assume responsibility for the settlement of such claims after a special claims processing office investigates. Attempts should be made to have the State assume liability not only for claims arising at the site but in addition for claims

arising from travel to and from the home station of any unit to be used for debris removal.

2–31. Environmental claims

a. General. This paragraph presents a general discussion of the unique issues involved in the receipt and processing of tort claims based on environmental contamination allegedly attributable to CONUS Army operations. Most environmental contamination problems facing the installation lawyer do not involve claims under AR 27-20.

(1) There are two types of environmental claims. The first group asserts damage or injury resulting directly from the contamination; these claims are processed under AR 27-20. The second type seeks to recover the costs of or, damages attributable to, the necessary "clean up" response; these claims are processed under the Defense Environmental Restoration Account (DERA). The line between these types is often obscure and difficult to draw, requiring close coordination between claims and environmental personnel.

(2) For a claim to be classified as either an environmental or a "toxic tort" claim, the claimant must allege that the damage or injury was due to a legally recognized civil wrong. Many claims do not assert a State tort based on the Government's "wrongdoing." Instead, they typically allege an activity (such as disposal of industrial chemicals) and an adverse result (risk of cancer). Often, claimants file after an environmental survey has been conducted, at which time the ACO or CPO must review such claims carefully to determine whether to refer them to environmental personnel for processing under DERA. The claimant should be advised of proper procedures.

b. Comprehensive Environmental Response, Compensation, and Liability Act.

(1) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is an environmental restoration program administered by the Environmental Protection Agency (EPA). See 42 USC 9601-75. Although the statute does not create new tort remedies for individuals damaged or injured by environmental contamination, Congress, by enacting it, demonstrated its intent that the Federal Government shoulder the burden of environmental cleanup together with private industry. The statute expressly permits a private individual to sue, not for damages, but to ensure compliance with the CERCLA mandate. The DOD, by agreement with the EPA, administers the DERA program which is designed to carry out CERCLA objectives and remedies.

(2) When presented with a claim alleging damage or injury resulting from the release of a hazardous substance into the common environment, the ACO or CPO must determine whether CERCLA procedures may abate the release or ameliorate both its short-term and long-term effects. If the installation elects to respond affirmatively to a release of contamination, whether as the result of a claim or not, its legal staff must inform the command and the civilian community that the Army is responding under the mandate of the Installation Restoration Program and not because of potential tort liability.

c. Defense Environmental Restoration Account.

(1) The Army first responded formally to the need for cleanup of hazardous waste sites in 1975 by instituting the Installation Restoration Program. This program was aimed originally at a few known trouble spots but soon expanded to cover all Army installations. In 1976, DOD expanded the program throughout the Services, naming the Army its executive agent.

(2) The DERA was established pursuant to the Defense Appropriation Act of 1984. The program was expanded to include cleanup of former DOD sites as well as open and operating installations. Although the military departments individually identify, develop and implement their own cleanup projects, the Secretary of Defense controls the DERA. As funding needs are identified and developed, DOD transfers funds to existing accounts administered by the military departments.

(3) Local military or civilian environmental law specialists are responsible for active installations or activities. USACE Headquarters Environmental Restoration Division, Washington, DC, is responsible for closed installations or activities.

d. Theories of tort liability and damages.

(1) Environmental tort litigation is replete with diverse theories of liability, some traditional and some new and creative. Several of the more novel theories that a few courts have adopted originate in product liability cases against multiple pharmaceutical company defendants. The traditional theories commonly urged in support of toxic tort liability include trespass, nuisance, negligence, assault and battery, and strict liability. Trespass does not usually apply to claims against the Government because there is rarely evidence of the necessary intent. The same is true of assault and battery. However, under the proper circumstances, State nuisance laws may provide a viable remedy against the Federal government, especially on contamination release caused by waste disposal practices.

(2) Plaintiffs seek compensation for such damages as emotional distress resulting from knowledge of exposure to a toxic substance, the need for future medical surveillance because of such exposure, cancerphobia, and the increased risk of suffering future injuries or illness. Although the courts have rejected such damages, which often amount to new causes of action, as too speculative, plaintiffs have made significant inroads in some jurisdictions. For the most part, however, these theories have failed because of the scientific uncertainty about causation rather than from the conceptual basis of liability. See FTCA Handbook, section II, paragraph C30.

e. Typical installation contamination situations. The following are typical scenarios, each presenting its own problems and challenges:

(1) Groundwater contamination arising from—

(a) Past solid waste disposal practices (such as landfill disposal).

(b) Past or present industrial operations (such as evaporation basins, solvent disposal, and chemical storage).

(2) Lead paint or asbestos exposure to occupants of quarters, installation employees, contractor employees, and the public.

(3) Use of pesticides, herbicides, fungicides, and rodenticides.

(4) Sales of excess or salvage property containing hazardous materials, such as polychlorinated biphenyls found in transformers sold by local property disposal offices or contaminated drains or boilers used in the manufacture of explosives.

(5) Defective or inadequate water treatment.

(6) Defective or inadequate sewage treatment.

(7) "Chance" exposure to military chemical munitions, usually due to past practices of canister or drum storage or disposal.

(8) Exposure to bacteria used in Army tests for establishing dispersal patterns.

f. Role of the ACO or CPO.

(1) Most allegations do not arise out of a single incident of exposure to a toxic agent that produces immediate, identifiable personal injury. The more typical toxic claim involves many potential claimants who allege long-standing exposure to multiple hazardous substances. This usually occurs against a background of public concern and media attention. However, causation is often obscured by scientific and medical disagreement. The passage of time, witnesses' fading memories, and the routine destruction of documentary evidence all combine to "contaminate," or blur, the facts relevant to a negligence inquiry. Because multiple toxic tort claims involve potential class action lawsuits, plaintiffs often file administrative claims merely as the necessary first step to litigation: they have no real expectation of administrative settlement. In this atmosphere, it is not surprising that the Environmental Tort Branch of DOJ closely monitors these claims from their inception. The ACO or CPO, faced with a claim asserting a toxic tort, must investigate the claim as thoroughly as possible. Since lawsuits will likely ensue, this thoroughness is in the Army's interests.

(2) Obtain investigative assistance from the following sources:

(a) Virtually all Army installations that conduct operations likely to affect the environment employ one or more environmental specialists. These experts, either soldiers or civilian employees, are professionals charged with guiding the installation's environmental

management. They are usually well-trained in both science and the Federal and local legal framework.

(b) Another good source of information is the State environmental regulatory agency, which has a long-standing relationship with the installation, often in a watchdog role.

(c) Each MACOM employs one or more environmental law specialists within the OSJA who are well versed in DOD and DA regulatory requirements and policies. Environmental Law Division, OTJAG, has extensive experience in environmental matters and is the focal point for DA policy and litigation in this field. Consult the AAO upon receipt of an environmental claim or upon learning of potential claims.

(d) Army or DOD sources of technical assistance include the USAEHA, the USACE Headquarters Environmental Restoration Division, the U.S. Army Medical Bioengineering Research and Development Laboratory, and the DOD Hazardous Materials Technology Center.

2–32. Related Remedies

a. Scope. This paragraph provides information and guidance on processing demands for monetary compensation outside the Army claims system. See AR 27-20, chapters 3 through 12. This compilation is by no means exhaustive, and claims personnel should research the law on incoming cases to ensure that no other means of claims disposition resides elsewhere within the Army, other Federal agencies or the courts. Even if no such means is available, forward the claim to USARCS with both a factual summary sufficiently detailed to permit proper disposition and a statement as to why no means for settlement are available.

b. Remedies of General Application.

(1) *Combat claims.*

(a) Most claims statutes explicitly exclude claims arising out of war or armed conflict. In certain cases, the United States and the host government may mutually waive such claims through a status of forces agreement. In others, the host government has discharged and held the United States harmless from such claims in exchange for either a lump-sum payment or economic and military assistance. Belligerent nations have released the United States in certain cases.

(b) Under the War Claims Act of 1948 (50 USC App. 2001-2016), the War Claims Commission initially adjudicated—

1. Certain claims of U.S. citizens who were interned or in hiding in specified areas of the Pacific during World War II.

2. Certain claims of U.S. personnel who were imprisoned by the enemy during World War II and were not fed in accordance with the precepts of the Geneva Convention of 27 July 1929.

3. Certain claims of Philippine religious organizations or their personnel for costs incurred in aiding U.S. military personnel or U.S. civilian internees.

(c) Thereafter, the War Claims Act was amended to cover—

1. Claims of U.S. military personnel who were mistreated during their imprisonment during World War II and claims of Philippine religious organizations or their personnel for certain property damage sustained during World War II, 66 Stat. 47.

2. Claims of U.S. internees in Korea and of U.S. military personnel captured during the Korean hostilities, 68 Stat. 759.

3. Claims of U.S. prisoners of war who served in Allied forces during World War II.

4. Claims of U.S. merchant seamen interned during World War II.

5. Certain claims for losses resulting from the Imperial Japanese Government's seizure of accounts, deposits, and other credits in the Philippines. See 68 Stat. 1033.

6. Claims of civilian internees or soldiers or their survivors held in captivity during the Vietnam conflict. This is the only program that is still open at the Foreign Claims Settlement Commission (FCSC) as successor to the War Claims Commission.

(d) Congress enacted Titles III and IV of the International Claims Settlement Act of 1949, as amended (22 USC 1641-1642), 64 Stat. 13. This authorized the FCSC to determine certain claims of U.S. nationals against the Governments of Bulgaria, Czechoslovakia, Hungary, Rumania, Italy, and the Soviet Union. The FCSC started similar programs concerning Yugoslavia, Cuba, Iran, the People's Republic of China, the Democratic Republic of Germany, Vietnam, Ethiopia and Egypt. Currently, the FCSC is adjudicating property claims against Albania which is the only 22 USC 1621 program still open. It is anticipated that legislation will permit claims against Iraq (such as those of survivors and veterans of the conflict there.) Address inquiries to the Foreign Claims Settlement Commission, Suite 6002, 600 E Street, N.W., Washington, DC 20579-0001, telephone: (202) 616-6993.

(e) For a claims view of the conflict in Grenada, see J. L. Harris, "Grenada—A Claims Perspective," *The Army Lawyer*, Jan. 1986, p. 7. Both the Grenada and the Dominican Republic deployments have been construed to bring the combat exclusion rule into play. See paragraph 2-66. This accords with the United Nations practice barring claims arising out of acts based on military necessity in the Gaza Strip, Cyprus, and the Congo. When the United States joins a multinational force and an international body assumes operational control (as the Organization of American States did in the Dominican Republic and the United Nations did in Somalia) that international body becomes responsible, at least concurrently, with its member nations for settling claims that their forces generate. Accordingly, the approval or settlement authority should seek advice from the Commander, USARCS, before paying any claims under the FCA.

(2) Claims based on soldiers' personal affairs—

(a) Private indebtedness; see AR 600-15.

(b) Nonsupport of dependents; see AR 608-99. This includes court-ordered garnishment of pay for alimony and child support.

(c) Paternity claims; see AR 608-99.

(d) Claims for property willfully damaged or destroyed or wrongfully taken; see UCMJ, Article 139, and AR 27-20, chapter 9.

(e) Other complaints and allegations against soldiers; see AR 600-20, paragraph 5-8.

(3) *Meritorious Claims Act.* See figure 2-14, extract from 31 USC 3702. The GAO is authorized to consider meritorious claims against the United States that are not otherwise subject to lawful adjustment. When, in the judgment of the Comptroller General of the United States, a claim or demand contains elements of legal liability or equity that make it deserving of Congressional consideration, the Comptroller General may submit it to Congress with a recommendation for action. Relief under this law is discretionary and administered according to established equitable principles and the circumstances of the particular case.

(4) *Tucker Act.* See figure 2-19, extract from 28 USC 1491. Claims filed under the Tucker Act include those founded upon the U.S. Constitution (a Fifth Amendment taking of property), an Act of Congress, any regulation of a Federal executive department, any express or implied contract with the United States or those seeking liquidated or unliquidated damages in cases not sounding in tort. However, the Tucker Act itself is not a waiver of sovereign immunity. Separate authority must provide the basis for jurisdiction. Tucker Act plaintiffs must file in the Court of Federal Claims in any amount or in a U.S. District Court, in which original jurisdiction is vested concurrently with the Court of Federal Claims, for amounts not over $10,000, 28 USC 1346. Claimants excluded from recovery under the FTCA by 28 USC 2680 or by Army regulations may invoke Tucker Act jurisdiction when suing on an express or implied-in-fact contract, *Burtt v. United States*, 176 Ct. Cl. 310 (1966).

(5) *Private relief legislation.* The scope and nature of this remedy is within Congress' discretion, an authority stemming from the constitutional provisions empowering it to pay the debts of the United States (U.S. Const., Art. I, sec. 8) and to honor petitions for the redress of grievances (U.S. Const., Amendment I). This category includes debts or claims that rest on a merely equitable or honorary obligation and would not be recoverable in a court of law if brought against an individual, *United States v. Realty Co.*, 163 US 427 (1896). There is no established procedure under which the DA sponsors private relief legislation; usually a claimant contacts a Member of Congress directly. DA claims personnel will remain neutral in all private relief matters. They should make no statements

or predictions about what HQDA will do after the Member has introduced a Bill.

(6) *Remission of indebtedness.* Defense Finance and Accounting Service (DFAS) processes claims by enlisted personnel for remission of indebtedness to the Federal government under 10 USC 4837. Remission of indebtedness is available to enlisted Army soldiers while serving on active duty, inactive duty training or active duty for training. See AR 600-4. The indebtedness of ARNG soldiers, based on reports of survey, may be remitted under 32 USC 710(c). See AR 600-4. Remission of indebtedness procedures are not authorized to effect offsets under Article 139, UCMJ (implemented in AR 27-20, chapter 9), since the soldier's debt under Article 139 is owed to the victim, not to the Government.

c. Claims cognizable by other agencies.

(1) *Department of State.*

(a) These claims may provide compensation for the personal injury or death of an individual not a national of the United States located in a foreign country in which the United States exercises privileges of extraterritoriality. The Secretary of State may settle such claims when the injury or death is caused by an officer, employee, or agent of the U.S. Government, other than members and employees of the Armed Forces (31 USC 3725). Settlement is limited to amounts not exceeding $1,500 in any one case. Negligence, wrongful acts, or acts within the scope of employment need not be proven.

(b) The Secretary of State may also pay tort claims in foreign countries arising out of U.S. Government operations abroad. Settlement is limited to not more than $15,000. A foreign government must present such claims for damage to, or loss of, real or personal property of, or for personal injury to or death of, a national of that foreign country, 22 USC 2669(b). These claims may not be cognizable under any other U.S. statute or international agreement.

(c) The Secretary of State may pay tort claims arising out of Department of State operations in foreign countries. Payment is made in the manner authorized under the FTCA in 28 USC 2672. There is no provision for the institution of suit if a claim is denied, 22 USC 2669(f).

(d) Under the auspices of the Department of State, the International Boundary and Water Commission, United States and Mexico, may pay claims, not exceeding $1,000, for property damage arising from the activities of the Government or its personnel in connection with any Commission project. Such claims may not be cognizable under the FTCA. They are payable from funds appropriated for the project giving rise to the injury, death or loss (22 USC 277e).

(e) The U.S. Constitution (Art. I, sec 9, clause 8) prohibits acceptance without consent of Congress of "any present, emolument, office, or title" from a foreign State by U.S. employees, including members of the Armed Forces and their families. The Department of State processes foreign government claims for return of gifts and decorations that it holds on deposit, 22 CFR Part 3, Chapter I, except for Vietnamese decorations, which are governed by PL 89-257.

(2) *Department of Justice.*

(a) Federal prisoners injured while engaged in work activities under the Federal Prison Industries Program are limited to the exclusive remedy provided by the fund such industries have established (18 USC 4126); see also *United States v. Demko*, 385 U.S. 149 (1966). Those prisoners under the custody or control of the Army who have been discharged and are engaged in the Federal Prison Industries Program are also covered, as are their dependents. The Disciplinary Barracks, Fort Leavenworth, has not joined this program but it plans to do so shortly. Recovery is barred, however, if injury is sustained as a result of willful conduct, is not related to work assignment, or occurs while the claimant is away from the work location. Recovery may not exceed that permitted under the FECA. Claimants are entitled to procedural due process with limited judicial review. See *Saladino v. Federal Prison Indus.*, 404 F. Supp. 1054 (D. Conn. 1975); *Sturgeon v. Federal Prison Indus.*, 608 F.2d 1153 (8th Cir. 1979).

(b) The Attorney General is authorized to settle and pay claims of no more than $1,000 for damage to, or loss of, personal property of Federal penal and correctional institution employees incident to their employment. Neither negligence nor causation is required, but recovery is barred if the damage or loss results from the claimant's or an agent's contributory negligence (31 USC 3722).

(c) Claims based on unjust convictions may be payable under 28 USC 1495 and 28 USC 2513 by the Court of Federal Claims or a District Court, 28 USC 1346. Such claims must be based on an actual conviction and are limited to a total of $5,000.

(d) Owners of property seized under the Trading with the Enemy Act (50 USC app 9) are entitled to the exclusive remedy this Act provides for the payment of damages or the return of the property held by the Attorney General as custodian, provided the owners prove they were neither enemies nor allies of an enemy of the United States.

(e) Claims based on actions of the Director, Assistant Director, inspectors, or special agents of the FBI, which are not cognizable under the FTCA, may be compensable in a limited amount from agency appropriations.

(f) Claims arising out of operations of the Drug Enforcement Agency conducted in a foreign country may be settled in the manner authorized by the FTCA.

(g) Claims for death or disability of a public safety officer, including State and local officials, arising in the line of duty are payable by the Bureau of Justice Assistance, 42 USC 3796 et. seq.

(3) *Department of Treasury.* Army disbursing officers are authorized to recertify checks that have been issued by the Army and later lost or stolen. However, not all Federal agencies have this authority. An inquiry regarding a check issued by another agency should first be referred to that agency or, for cases in which it is known that such agency cannot recertify the check, to the U.S. Department of the Treasury, for processing through the Check Forgery Insurance Fund (31 USC 3343, 31 CFR 235.1-235.6).

(4) *Department of Agriculture.* The Secretary of Agriculture is authorized to pay up to $2,500 for damage to private property caused by any Federal employee, including Army personnel, in connection with the protection, administration, or improvements of National forests (16 USC 574). Negligence is not a requirement. This remedy is available only for claims not cognizable under the FTCA.

(5) *Department of the Interior.*

(a) Claims for damage, loss, or destruction of horses, vehicles, and other equipment occurring while in the custody of the National Park Service may be settled by the Secretary of the Interior, if the National Park Service exercises such custody for fire-fighting, trail or other official business (16 USC 17f). Such claims may not be cognizable under the FTCA and are payable from appropriations for the rental of such equipment.

(b) The Secretary of the Interior is authorized to settle and pay claims to owners of private property for damages resulting from Government operations in the survey, construction, operation, or maintenance of tribal Native American irrigation projects. Such claims are payable from project funds but may not exceed five percent of total project funds available that year (25 USC 388).

(6) *Department of Health and Human Services.*

(a) Claims for injury and death caused by the administration of vaccines may be payable by the Court of Federal Claims under the National Vaccine Injury Compensation Program (42 USC 300aa-10 through 23). A claimant unsatisfied with the Court of Federal Claims judgment may bring a civil suit for damages in a State or Federal Court. Such claims are also cognizable under the FTCA.

(b) Claims for injury or death arising from the acts or omissions of employees or contractors engaged in the performance of medical, surgical, dental or related services within the following entities: migrant health centers (42 USC 254b); community health centers (42 USC 254c); and health centers for the homeless (42 USC 256). Health services for residents of public housing (42 USC 256a) are covered by the FTCA when such entities are deemed, in writing, to be covered by the Secretary of Health and Human Services.

(7) *Department of Veterans Affairs.*

(a) Tort claims arising in foreign countries in connection with the

Department of Veterans Affairs (DVA) operations abroad are authorized under 38 USC 515. Administrative claims authority parallels that set forth in the FTCA, but judicial review is not available.

(b) Loss of personal effects sustained in a fire, earthquake or other natural disaster while stored in a DVA hospital or residence is covered under 38 USC 1726.

(8) *U.S. Information Agency.* 22 USC 14745 applies to tort claims that arise in foreign countries in connection with U.S. Government information and educational exchange programs conducted abroad.

(9) *Nuclear Regulatory Commission.*

(a) Claims resulting from the detonation of a nuclear or nonnuclear explosive device in the course of conducting a Nuclear Regulatory Commission program are payable under 42 USC 2207. This statute expressly covers acts or omissions of Army personnel engaged in such a program. Such claims, which may be brought for damage or injury from explosions or radiation, are based on causation; negligence need not be established. Although such claims are limited to not more than $5,000, the Commission may report claims in excess of that amount to Congress for consideration if they are meritorious and otherwise covered by this provision. Such claims are not payable if caused in whole or in part by the negligent or wrongful act of the claimant or the claimant's agents and employees. An action may also be brought under the FTCA unless the claim arises outside its geographic scope. See also 42 USC 2210 and 10 CFR 8.2 for information on indemnification agreements in claims against third parties held liable for nuclear incidents.

(b) The Nuclear Regulatory Commission is authorized to settle and pay claims for property damage or personal injury or death resulting from a nuclear incident involving the nuclear reactor of a U.S. warship (42 USC 2211.3). Additionally, the President may authorize payment of claims from available contingency funds or certify them to Congress for appropriations. Such claims are not payable if they arise from combat or civil insurrection.

(10) *National Aeronautics and Space Administration.* The National Aeronautic and Space Administration (NASA) is authorized to pay claims arising out of the conduct of its functions that are not covered under the FTCA. See 42 USC 2473(c)(13), 14 CFR 1261.300—1261.317. The statute expressly covers the acts or omissions of Army personnel engaged in NASA programs. Such claims may be based on causation alone; negligence need not be shown. There is a ceiling of $25,000; claims in excess of that amount, however, may be reported to Congress for consideration if they are meritorious and otherwise covered by this provision.

(11) *National Oceanic and Atmospheric Administration.* The Secretary of Commerce is authorized to settle claims not to exceed $2,500 for property damage, personal injury or death arising from National Oceanic and Atmospheric Administration activities that are not cognizable under the FTCA (33 USC 853).

(12) *Peace Corps.* The Peace Corps is authorized by 22 USC 2509(b) to pay, in amounts not exceeding $20,000, claims of foreign nationals for property damage, personal injury, or death resulting from tortious acts committed abroad by Peace Corps employees or volunteers.

(13) *United States Postal Service.* Claims for property damage, personal injury or death resulting from United States Postal Service (USPS) operations that are not cognizable under the FTCA are covered by 39 USC 2603.

(14) *Tennessee Valley Authority.* Claims arising from the activities of the Tennessee Valley Authority are not cognizable under the FTCA but Tennessee Valley Authority may settle and pay them in its capacity as a quasi-governmental corporation, 16 USC 831c(b).

(15) *Panama Canal Commission.* Claims arising from the Panama Canal Commission's activities or the acts or omissions of its employees are not cognizable under the FTCA but may be paid by the Panama Canal Commission. The comparative negligence of canal employees, the vessel master, crew, or passengers may be used to apportion liability. Such claims are subject to judicial review by the U.S. District Court for the Eastern District of Louisiana. See Panama Canal Act of 1979, 22 USC 3761, 3771 et seq.

(16) *American Battle Monuments Commission.* Claims arising from the American Battle Monuments Commission's activities in foreign countries are payable under 36 USC 138b (see extract figure 2-20) and processed under the FCA and AR 27-20, chapter 10.

d. Claims related to Army service or employment.

(1) *Claims by Reserve Component personnel.* Claims of Reserve Component (USAR and ARNG) personnel arising pursuant to inactive duty training or active duty are discussed below. For purposes of this paragraph, active duty includes all Federally funded full-time duty or training, such as annual training, active duty training, active duty special work, active duty other than for training and full-time training or ARNG duty (all full-time National Guard duty under 32 USC 316, 502, 503, 504 or 505).

(a) Claims for loss, damage, or destruction of personal property of Reserve Component members incident to inactive duty training or active duty are payable under AR 27-20, chapter 11, or if not payable thereunder, chapter 3, the Military Claims Act, may apply.

(b) Claims for personal injury to, or death of, Reserve Component members pursuant to inactive duty training are barred by the incident to service doctrine. The incident to service bar applies to inactive duty training only after the soldier reports for duty and does not cover the soldier's travel to or from duty by POV. The bar does not apply to POV travel to inactive duty training or two weeks training if the soldier's travel is so authorized.

(c) Claims for payment or reimbursement of expenses for treatment of injury or disease at civilian medical facilities incurred by Reserve Component members as a result of performing inactive duty training or active duty are processed by Army medical authorities pursuant to AR 40-3. Generally, payment for civilian medical care is authorized only if the appropriate Army medical official approved it in advance or during a bona fide medical emergency. Reserve Component members are expected to receive as much care at MTFs as possible.

(d) Claims for continuation of basic pay and allowances (such as incapacitation pay) brought by Reserve Component members who are disabled by injury or disease in the line of active duty or inactive duty training are processed under regulations issued pursuant to 37 USC 204(g) and (h). Such coverage includes in-line-of-duty travel to and from inactive duty training, even though the member is not on active duty.

(e) Claims for disability-retirement or -separation with severance pay are processed under regulations implementing 10 USC 1201 through 1206.

(f) Claims for pay and allowances due for periods of inactive duty training are processed under AR 37-104-10 by DFAS.

(g) Reserve Component members who must be discharged due to a service-connected disability but who are not eligible for DA disability retirement may be eligible for DVA medical care, 38 USC chapter 17. Dependents of members who die as a result of service-connected injury or disease may be eligible for dependent indemnity compensation, 38 USC chapter 13.

(2) *Claims by ROTC cadets.*

(a) Claims for injury to, or illness of, senior ROTC cadets during authorized, scheduled and supervised training or instruction or while traveling to or from such training while on Government transportation or on Government orders fall under FECA (figure 2-21, extract from 5 USC 8140). Such training or instruction may be conducted on or off campus and includes Basic Camp, Advanced Camp, and Cadet Professional Development Training (Airborne Northern Warfare Training, Air Assault). Claims for death or permanent disability are submitted to the Department of Veterans Affairs.

(b) Claims for injury to, or death of, ROTC cadets with Reserve status are payable under FECA when they arise in the line of duty and while the claimant is attending, or traveling to or from, training or instruction described in subparagraph (*a*) above.

(3) *Claims by applicants for enlistment or by inductees.* The DVA processes all claims brought by applicants for enlistment or inductees for injury, disease, disability or death incurred en route to, from, or while at the place of entry into active service, 38 USC 106(b). The DVA's authority supersedes the Army's authority to consider a negligence claim based on the same injury or disease.

However, the Army may deduct any benefits recovered or recoverable from the DVA. In addition, applicants and inductees are entitled to free medical care at Army facilities for such injury or disease; see AR 40-3. The Selective Service may authorize reimbursement for expenses of emergency medical care obtained from civilian sources (50 USC App 461, 32 CFR 1659).

(4) *Claims to upgrade discharges.*

(a) If it is alleged that a discharge was inequitable or improperly executed, the ex-soldier may apply to the Army Discharge Review Board to change, correct, or modify the discharge or dismissal under AR 15-180. Such review does not apply to discharges or dismissals by general court-martial, nor may the applicant regain active status in the Army. An applicant who succeeds in upgrading a discharge, however, may receive certain statutory benefits previously withheld because of the inferior discharge class.

(b) Soldiers or former soldiers may request correction or adjustment of their military records from the Army Board for Correction of Military Records (10 USC 1552, AR 15-185). The Board may grant any relief it deems just and proper, including reinstatement of active service with back pay. In such a case, DFAS processes the payment pursuant to AR 37-104-4, chapter 20, with Army claims budget funds.

(5) *Claims for pay, allowances or other demands processed by DFAS.* DFAS routinely handles many types of monetary demands that come through finance and accounting channels:

(a) Soldiers' and former soldiers' claims for adjustments in pay or allowances after separation or for prior periods of service.

(b) Claims for lump-sum accrued leave.

(c) Claims for uniform allowances.

(d) Claims for travel and transportation allowances. (See AR 37-106.) These may include reimbursement of excess shipping or storage expenses that the soldier has paid on a Government shipment or that arise when a soldier, entitled to Government shipment, instead ships the property at own expense. Postage costs for mail shipments are excluded. Such claims should first be presented to the installation transportation office (ITO) for consideration.

(e) Claims for interest on savings deposits are payable under AR 27-20, paragraph 11-5*d*. Otherwise, claims for interest should be forwarded to DFAS.

(f) Claims for repayment of amounts collected erroneously from military and civilian personnel and deposited in the U.S. Treasury are processed through DFAS. Refunds, if appropriate, are paid from available Army claims budget funds.

(g) Claims for bridge, ferry, tunnel and highway tolls and parking fees are payable pursuant to the provisions of Joint Federal Travel Regulation (JFTR), Chapter 3, Parts C, D, and E.

(h) Claims for local commercial transportation taken in connection with official business, see AR 37-106, chapter 7.

(i) Claims for emergency roadside service, see AR 37-106.

(j) Claims for telephone and telegraph service, see AR 25-1 and AR 37-106, paragraph 3-47.

(k) Soldiers' claims for clerical support hired or rented while they are on TDY, see AR 37-106, paragraph 3-46.

(l) Claims for registration fees incident attendance at meetings of private organizations such as technical, scientific, or professional associations, see AR 1-211, and AR 37-106, paragraph 3-44. See also the JFTR.

(m) Claims for proceeds of undelivered checks issued by DFAS, see AR 37-103, paragraph 5-42.

(n) Claims for recertification of lost, stolen, or mutilated checks issued by DFAS, see AR 37-103, chapter 5, section IX.

(o) Claims arising out of forged DFAS checks, see AR 37-103 and AR 37-104-4.

(p) Claims for conversion of Military Payment Certificates or for the command's refusal to convert such certificates, see AR 37-103, paragraph 15-8.

(q) Claims for reimbursement for monetary losses incurred or anticipated by a soldier or civilian employee from the sale of a residence or from a residence mortgage foreclosure incident to closure of the military installation at which the claimant is stationed are cognizable under 42 USC 3374. At the installation level, the appropriate military or civilian personnel officer is generally responsible for assisting applicants and forwarding completed applications with supporting documents to the appropriate U.S. Army Engineer District for processing. DFAS pays the claims from funds allocated under the Homeowners' Assistance Program.

(r) Claims for reimbursement of closing costs associated with the sale or purchase of a residence incurred by an Army civilian employee who is authorized travel under 5 USC 5724 pursuant to a permanent change of duty station are cognizable under 5 USC 5724a. Since such costs often arise incident to base closing, departmental directives published at the time of the base closing typically control and set forth filing and payment procedures. Check any local directives published when the base closes to determine the correct procedure and where to submit the claim—usually the civilian personnel or industrial relations office. DFAS pays these claims from funds specifically set aside for their administration.

(s) Claims for overdraft charges incurred at a bank, credit union or savings and loan institution where the soldier's or employee's sure-pay account is located, caused by Government error, are payable by DFAS (10 USC Chapters 3 and 81).

(6) *Inconvenience claims pursuant to household goods shipments.* Claims for inconvenience due to a carrier's failure to meet a scheduled or preferred delivery date and for claimant's personal expenses incurred above normal living expenses that are not covered by AR 27-20, chapter 11, or any other regulation or statute, may in certain cases be paid by the responsible carrier. Generally, however, the dislocation allowance granted on a change of duty station is intended to cover those personal expenses incurred above normal living expenses.

(7) *General average claims.* "General average," a principle of maritime law that has been adopted by all civilized nations, is illustrated in its simplest form by Rhodian language: "If the goods of an owner are thrown overboard to lighten the ship, the loss occasioned for benefit of all must be made good by the contributions of all." Modern maritime situations are considerably more complex but the underlying principle remains the same: the sacrifice of one owner's cargo to save the ship or other owners' cargo is shared by all on a ratable basis.

(a) Military Sealift Command (MSC) has exclusive responsibility for the investigation, determination of liability and payment of general average contribution claims for all DOD cargo and DA-sponsored baggage, household goods and personal effects shipments (including POVs and professional books, papers and equipment).

(b) Send general average contribution claims to the MSC area or subarea commander whose contracting officer chartered the vessel or booked the cargo for shipment or in whose area or subarea the shipment originated. If the proper MSC is not known, send the claim to the Commander, Military Sealift Command, Department of the Navy, Washington, DC 20398-5100.

(8) *Claims involving Government life insurance.*

(a) If a potential beneficiary of a life insurance policy issued to a soldier of the armed services under National Service Life Insurance, U.S. Government Life Insurance, or yearly renewable term insurance disagrees with the distribution of the policy proceeds, the aggrieved party may bring suit against the United States in the appropriate District Court (38 USC 1984).

(b) Additionally, Federal District Courts have original jurisdiction over actions founded on contract for Servicemen's Group Life Insurance (38 USC 1975). They exercise original jurisdiction concurrently with the Court of Federal Claims on actions on contracts for life insurance under 5 USC Chapter 87 and for health insurance under 5 USC Chapter 89. Actions based on negligence of Army personnel in administering the foregoing programs are covered, *Shannon v. United States*, 417 F.2d 256 (5th Cir. 1969); *Barnes v. United States*, 307 F.2d 655 (D.C. Cir. 1962).

(9) *Claims by foreign national employees for loss of salary due to imprisonment.* Process claims for loss of salary and other benefits sustained by foreign national employees of U.S. Governmental agencies incident to their imprisonment by a foreign government

because of their employment by the United States under 22 USC 3970.

(10) *Claims for personal effects.* Claims for personal effects brought on behalf of deceased and missing personnel should be processed under 10 USC 4712 and AR 638-2, part 2; claims for lost and abandoned property of AWOL soldiers and deserters; and for prisoners pursuant to AR 190-47, section II, chapter 10. Claims by deceased or missing personnel's next of kin may be payable under AR 27-20, chapter 11, if efforts to locate the property fail.

(11) *Claims for property seized as evidence and lost or abandoned property.* Claims for property seized or confiscated by MPs or commanders as evidence, contraband, and prohibited property are processed under AR 190-22 and AR 608-4 unless brought by soldiers or civilian employees, who may claim pursuant to the PCA. Process claims for lost, abandoned or unclaimed property under 10 USC 2575, AR 37-103, paragraph 16-21d, and DOD 4160.21-M.

(12) *Claims for property lost while in possession of bonded Army personnel.* For prisoners' or patients' claims for lost property, see the regulations applicable to military and civilian personnel engaged in disbursal, logistical or postal operations, or employed at stockades, prisons, hospitals and other places to administer prisoners' and patients' personal property and funds. For NAF personnel, see AR 215-1 and AR 60-20; also contact the particular installation or activity concerned to find out if bonding has been required locally.

e. Claims arising from the provision of supplies, services, and vehicles to the Army.

(1) Claims based on irregular procurement of supplies and services:

(a) The Army occasionally acquires property, supplies, perishables or services for its use or consumption through other than prescribed procurement procedures. For example, during a deployment or maneuver, consensual acquisition of such property or services is not susceptible to contractual adjustments such as amendment without consideration, correction of mistakes, and formalization of informal commitments. These informal procurements will be processed under 50 USC 1431, and FAR, part 50. Formalization of an informal commitment will occur only if normal procurement procedures were impractical at the time the commitment was made to the vendor. Such requests for compensation must be submitted through procurement channels to the appropriate MACOM. This provision may be effective only during a declared national emergency. Claims for noncontractual acquisitions of supplies or perishables may be processed under FAR, part 50.

(b) Claims for personal services rendered at the request of a soldier or civilian employee may be cognizable under the Meritorious Claims Act, see para 2-32*b*(3) of this publication.

(2) Claims for hospital, medical and ambulance services furnished to soldiers in emergencies may be payable under AR 40-3. Refer such claims to the appropriate approval authority listed in AR 40-3. If treatment was furnished during a soldier's prior period of service, forward the claim to DFAS (AR 37-104-4). Refer claims for such services furnished to dependents of active duty or retired personnel and dependents of deceased active duty or retired personnel to the appropriate CHAMPUS fiscal administrator or overseas commander: Director, CHAMPUS, Aurora, CO 80045-6900; or Director, Tri Care Europe Support Office, Unit 10310, APO AE 09094-0310.

(3) Claims for damage to rental vehicles. See paragraph 2-82*e*.

(a) The U.S. Government Car Rental Agreement, effective 1 November 1986, provides that all soldiers and employees on TDY who rent a vehicle are furnished extra collision insurance by the lessor and its insurer. Under this coverage, the lessor assumes responsibility for all collision damage to its vehicle, provided the member or employee driving the vehicle did not cause the damage through willful conduct or wanton negligence. Deny any claim for damage covered by this insurance with an explanation that it is not cognizable under any statute or regulation.

(b) If the lessor refuses to accept liability for damage to its vehicle under the rental contract based on the lessor's belief that the driver's conduct voids the rental contract, the claim will be processed by referring the claimant (lessor, lessee or lessor's insurer) to the appropriate Army disbursing office for disposition under the JFTR, paragraph U3415-C2b or JTR paragraph C2102-D2, but only if the renter did not purchase extra collision insurance. In such cases, reimbursement may be made to the lessor or its insurer, or to the lessee if the latter spent personal funds to pay for repair.

(c) Processing of claim for damage or injury to third parties under the vehicle rental contract is discussed in paragraph 2-82*e*.

(4) *Claims for counsel (attorney) fees.* Claims for counsel fees, bail and expenses are limited to cases in foreign tribunals and are processed under 10 USC 1037 and AR 27-50.

(5) *Rewards for recovery of lost Army property.* If someone recovers lost Army property pursuant to an express invitation made by the authorized representative of the Army for the recovery of such property, see AR 735-5, chapter 9, for instructions on how to obtain the reward.

(6) *Payments for apprehension of deserters, prisoners, and AWOL soldiers.* Payment for apprehension of deserters, prisoners, and AWOL soldiers is authorized when the prisoner is delivered. Actual expenses may be paid in lieu of reward, for example, travel, meals, phone calls, and property damage caused by the prisoner. See AR 190-9, chapter 6.

(7) *Salvage claims.* Claims for towing and salvage service rendered to a vessel of or in the service of the Army are processed under AR 27-20, chapter 8.

(8) *Claims for assistance given to U.S. prisoners of war.* Claims for the provision of such assistance, whether given voluntarily or pursuant to a contractual arrangement, may be considered in accordance with the guidance in subparagraph *e*(1) above or under the Meritorious Claims Act.

f. Claims against the Army by Federal agencies.

(1) *District of Columbia.* An agency of the District of Columbia is not considered a Federal agency for the purpose of filing a claim (36 Comp. Gen. 457 (1956)); and thus is not barred from claiming under AR 27-20.

(2) *Interdepartmental waiver.* Tort or tort-type claims for damage to the property of one U.S. department or agency are not asserted against another U.S. department or agency, regardless of whether an agency is fully supported from appropriated funds or partly supported by revenue-producing activities, a Government corporation, or a NAF activity, 25 Comp. Gen. 49 (1945). This interdepartmental waiver is predicated on the doctrine that property belonging to the Government is not owned by any department of the Government. The Government does not reimburse itself for the loss of its own property except where the law specifically provides. Forward claims by other Federal agencies and by organizations within the Army such as NAFs or AAFES for property loss or damage, or for reimbursement of amounts paid as compensation or other benefits to injured persons or on behalf of deceased persons, to the Commander, USARCS, for disposition.

(3) *General Services Administration (GSA) vehicle damage claims.* These claims are, in effect, charges by GSA to cover "elements of costs" and "increments for replacement costs." If arising from damage caused by an Army soldier or employee, they are payable out of operational and maintenance funds, not as tort claims but as expenses incurred (41 Comp. Gen. 199 (1961); 40 USC 491(d)). If the GSA vehicle was within the custody and control of the Army or DOD and a soldier or civilian employee caused the damage through negligence, conduct a report of survey under AR 735-5. If the GSA vehicle was damaged through the negligence of someone other than a soldier or civilian employee, send the file to the appropriate GSA regional counsel. For GSA vehicles over which the DOD or DA does not exercise custody or control, damage caused by the negligence of a soldier, DOD or DA employee, or someone operating another vehicle is subject to the interdepartmental waiver rule. When the soldier or employee operating a GSA vehicle negligently causes damage jointly with an employee of another Federal agency, the interdepartmental waiver rule precludes the Army from seeking indemnification for the elements of costs it must pay to GSA.

(4) *Railroad Retirement Board claims.* The Railroad Retirement Board is subrogated under the Railroad Unemployment Insurance Act to railroad employees injured by a Federal government employee's negligence. As subrogee, the Board may be reimbursed from appropriations of the responsible Federal agency for the amount of sick benefits the employee receives from the Railroad Unemployment Insurance Account (29 Comp. Gen. 470 (1950)). See 45 USC 362(o)). Process the Railroad Retirement Board's subrogation claims against the United States the same way any other cognizable subrogation claim is processed.

g. Claims against the Army by State or local governments.

(1) *General.* Local governments within the United States may assert claims against the Army. However, AR 27-20 bars a State's claims for damage caused by activities of its own National Guard during Federally funded training duty or service. The same principle generally applies to foreign governments, except when counter to treaty provisions such as those found in Article VIII, NATO SOFA.

(2) *Access and replacement road claims.*

(a) Claims for road repairs are restricted by AR 55-80 to those occasioned by large-scale maneuvers and exercises, and surveys must be made before and after such activities. Further, regulations under the Defense Access Road Program preclude retroactive payments for improvements. Thus, damage that has already occurred should be paid under AR 27-20, chapter 3, 4, 5, 6, 7 or 10, as appropriate, except when a State is claiming for damage caused by its own National Guard. Process anticipated (future) damage under the Highways for National Defense Program (23 USC 210 and AR 55-80) pursuant to AR 55-80.

(b) Damage caused to highways, railways, or utilities by the operation of any dam or reservoir project under the Army's control may be corrected by the use of funds for the project's construction, maintenance or operation. Such funds may be used to repair, relocate, restore or protect highways, railways or utilities. This provision does not apply, however, to highways, railways, and utilities provided for by the Army unless the damage exceeds that for which provision was previously made (33 USC 701q).

(3) *Claims for local fire department services.* Claims for local fire department services used to extinguish fires started by Army operations (through weapon fire or negligence, for example) are not payable. As there is no loss of or damage to property, such claims are not considered to merit money damages, *Idaho ex. rel. Trombley v. U.S. Dept. of Army*, 666 F.2d 444 (9th Cir. 1982), cert. den. 459 U.S. 823 (1982). However, when the fire occurs on property under Federal jurisdiction, FEMA may authorize payment under 15 USC 2210. Contact the AAO for guidance on payment procedures. If the local fire department has been called in to assist and such assistance is not covered by a mutual support agreement, the claim may be processed on a small purchase basis under procurement procedures. See FAR, part 13.

(4) *Claims for taxes.* Claims for taxes by State and local governments that may affect the Army include those—

(a) Against procurement contractors. See FAR subpart 29.3 and AFARS subpart 29.3.

(b) Against lessee's interest in Wherry Act housing. See AR 210-47.

(c) Against exchange sales and services. See AR 60-20, paragraphs 6-2 through 6-4.

(d) Arising out of purchase or sale of alcoholic beverages. See AR 60-20, paragraph 2-16, and AR 215-1, paragraph 7-23.

(e) Against NAF fund activities. See AR 215-1, paragraph 3-13.

New Claim Entry

ENTERING DATA IN A NEW CLAIM RECORD

Selection "A" (PROCESS claim records) of the MAIN MENU will cause the PROCESS CLAIMS SUBMENU TO BE DISPLAYED.

Selection of the submenu choice "A" (CREATE new records) will permit the user to create new claim or PCE records in the TORCLAIM.DBF database file.

***** NOTE *** A new claim number is generated automatically by the program when the "Filed" and "Amt" fields are filled in for the first time.**

The "CREATE new records" screen display is shown below.

```
_____Basic Data_____                    _____Master File_____

Claim: 96-ZZZ-T000      Settld: No _____        Claim Number:_____-T
Chap: 4        Type Claimant: A        Retired: No
Tort Type: VA        Inj/Damage Code: IX        _____Claimant's Attorney
Incident: 2/05/96        Filed: 06/25/96        Title: John Doe
Amt: $2,000,000        City: Baltimore        Adr: 13 Autumn Place, No Name
ZIP: 1234        Dte Last Action: 07/01/96        State: MD ZIP: 21144 Tel: (301) 000-0000


                                  Claimant Data
_____________________________________________________________________________

Last, First MI: Doe, Mary                    SSN: 000-00-0000 H: (401) 000-0000
Address: 222 Blue Street, Apple, Va 00000                     W: (401) 000-0000
Damage Synopsis: Traffic Accident
_____________________________________________________________________________

Date   Act Ofc    Amount    Dest ___   Date    Act Ofc   Amount    Dest ___
       / /        ^ ZZZ     0.00       / /     ^ ZZZ     0.00
       / /        ^ ZZZ     0.00       / /     ^ ZZZ     0.00
       / /        ^ ZZZ     0.00       / /     ^ ZZZ     0.00
       / /        ^ ZZZ     0.00       / /     ^ ZZZ     0.00
```

Figure 2-11. Sample—Database screen

CLAIMS JOURNAL FOR *(PERSONNEL) (TORT) (AFFIRMATIVE)* CLAIMS

For use of this form, see AR 27-20; the proponent agency is TJAG

PAGE NO 1

LINE NO	FILE NUMBER	NAME AND ADDRESS OF CLAIMANT *(Including Grade and SSN)*	DATE CLAIM RECEIVED AND AMOUNT CLAIMED	INCIDENT				CO-CLAIM OR MASTER FILE	LINE NO
				DATE OF INCIDENT	PLACE OF INCIDENT	TYPE/NATURE *(Category)*	GBL OR GOV'T VEHICLE/HOSPITAL INVOLVED		
1	T001	Roger Honomichl	21 Feb 96 $1,000,000	5 Mar 96	Odenton, MD	Traffic Accident	Personal Injury		1
2	T002	Charles E. Brown	4 Mar 96 $750,000	2 May 94	Ft. Rucker Ala.	Toxic Waste Disposal	Personal Injury		2
3	T003	William E. Bryson	5 Mar 95 $120,000	7 Mar 94	Wash, DC	Failure to Diagnose	Personal Injury		3
4	T004	Ken Roberts	5 Mar 96 $15,000	17 Apr 95	Denver Fla	Day Care Center	Personal Injury		4
5									5
6									6
7									7
8									8
9									9
10									10
11									11
12									12
13									13

Figure 2-12A. Completed claims journal, front

CLAIMS JOURNAL FOR *(PERSONNEL) (TORT) (AFFIRMATIVE)* CLAIMS CONT'D

PAGE NO. 2

LINE NO.	DISPOSITION OF CLAIM, DATE AND AMOUNT				PROCESSING TIME (Calendar Days)	RECONSIDERATION/ APPEAL		AFFIRMATIVE CLAIM RECOVERY DATE AND AMOUNT	DATE FILE FORWARD FOR RECOVERY/ RETIREMENT	LINE NO.
	WITHDRAWN/ ABANDONED	DATE & PLACE TRANSFERRED	DATE DENIED	DATE & AMOUNT APPROVED		DATE RECEIVED	ACTION TAKEN AND DATE			
1	Withdrawn 12 Mar 96									1
2		8 Mar 96 WRAMC								2
3			1 May 96							3
4				4 May 96 $15,000						4
5										5
6										6
7										7
8										8
9										9
10										10
11										11
12										12
13										13

Reverse of DA Form 1667, APR 88

☆U.S. Government Printing Office: 1989-242-450/02584

Figure 2-12B. Completed claims journal, reverse

(Letterhead)

April 3, 1996

Certified Mail—Return Receipt Requested

Claims Office Symbol

SUBJECT: Claim of Richard Rogers, # 96-C01-T123

Mr. John Joseph James
Attorney at Law
321 lst Street
Claiborne Landing, MD 21133

Dear Mr. James;

The subject claim was received on April 1, 1996.

This Service has been informed that an identical claim was filed with the Department of Labor on March 15, 1996, and that Department has taken final action and informed your client of the need to bring suit not later than six months from the date of mailing of the notice of denial by the Department of Labor.

The receipt of subject claim by the Department of the Army is considered as a request for reconsideration. This Service will promptly investigate the claim including any future information which you may desire to submit in support of the claim; and advise you as to whether it is meritorious. The requirement that your client file suit in a United States District Court within six months of the mailing of the denial notice by the Department of Labor is rescinded under the authority contained in 28 C.F.R. 14.2b(4). Suit may not be filed until the expiration of six months from April 1, 1996, the date of filing with the Department of the Army. The actual requirement to file suit will not become effective until we advise you in writing of the need to file suit. In addition, your client's option to file suit under [28 USC §2675(a)] [Section 2675(a) of Title 28 of the United States Code] will not accrue until six months after the date upon which we received subject claim.

Any questions should be directed to [name and telephone number]

Sincerely,

Joseph H. Rouse
Deputy Chief, Tort Claims
Division

Figure 2-13. Sample—Withdrawal of denial notice—FTCA claim

31 USC 3702. Authority of the Comptroller General to settle claims

(a) Except as provided in this chapter or another law, the Comptroller General shall settle all claims of or against the United States Government. A claim that was not administratively examined before submission to the Comptroller General shall be examined by 2 officers or employees of the General Accounting Office independently of each other.

(b)(1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the Comptroller General within 6 years after the claim accrues except—

(A) as provided in this chapter or another law; or

(B) a claim of a State, the District of Columbia, or a territory or possession of the United States.

(2) When the claim of a member of the armed forces accrues during war or within 5 years before war begins, the claim must be presented to the Comptroller General within 5 years after peace is established or within the period provided in clause (1) of this subsection, whichever is later.

(3) The Comptroller General shall return a claim not received in the time required under this subsection with a copy of this subsection and no further communication is required.

(c) **One-year limit for check claims.**—(1) Any claim on account of a Treasury check shall be barred unless it is presented to the agency that authorized the issuance of such check within 1 year after the date of issuance of the check or the effective date of this subsection, whichever is later.

(2) Nothing in this subsection affects the underlying obligation of the United States, or any agency thereof, for which a Treasury check was issued.

(d) The Comptroller General shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the Comptroller General believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the Comptroller General.

Figure 2-14. Meritorious Claims Act, extract from 31 USC 3702

Title 5 U.S.C. Section 8116(c)

(c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel.

Figure 2-15. Federal Employees Compensation Act, extract from 5 USC 8116(c)

800. PURPOSE. This chapter, USPS Transportation Handbook, Series T-7, and Part 911, DMM (reference (i)), prescribe policy and procedure for the processing and transportation of registered mail within the MPS. Refer to Volume II of this manual for delivery procedures to units and addressees.

801. GENERAL

1. Accountability. Precise care shall be taken in the receipt, documentation, handling, delivery, and dispatch of registered mail. It shall be afforded the highest security at all times and shall remain under direct and constant surveillance by military postal personnel or be secured properly in an approved safe or other secure area while in custody of the MPS.

2. Transferring Accountability. To ensure accountability, an unbroken chain of receipts shall be maintained for registered mail at all times while in MPS channels. Accountability for registered mail may be transferred to another agency or person on PS Form 3854, "Manifold Registry Dispatch Book," PS Form 3883, "Firm Delivery Book--Registered, Certified, and Numbered Insured Mail;" DD Form 1384, "Transportation Control and Movement Document," DD Form 1385, "Cargo Manifest," or OP-NAV Form 5110/9, "Mail Manifest." Dispatching activities may use PS Form 3830-A, "Registry Dispatch Record," when dispatching registered mail in closed-body type vehicles. PS Form 3830-A or PS Form 3854 shall be used with PS Form 2900 and PS Form 3854 shall be used with DD Forms 1372 and 1384 to maintain proper accountability.

3. Classified Material. To maintain proper security, military postal personnel always shall assume official registered mail contains classified material up to and include SECRET.

4. Registry Clerks. Registry clerks include all postal clerks with the responsibility for registered mail.

5. Coded (High Value) Shipments. Coded shipments are registered mailings consisting of one or more pieces transported together whose total value is $250,000 or more. They shall receive armed protection while in military postal channels. The following actions and rules shall apply when transporting coded shipments:

a. Arrange for armed escorts through the local military law enforcement agency to accompany mailings transported between postal activities.

b. Coordinate with local mailers to ensure high value mailings are not entered into postal channels until necessary security arrangements have been accomplished.

c. Require mailers to erase or otherwise blot out any information on mailings that would indicate its value or that armed protection is necessary.

d. Notify postal personnel at enroute points so they can make arrangements for appropriate security while in their area of responsibility.

e. Do not dispatch shipments to arrive on Saturdays, Sundays, or holidays.

f. Notify the appropriate CONUS terminal managers by telephone, if possible, with follow-up confirmation by electrical message when dispatching the mailings on CONUS-destined flights. Notification shall be made in enough time to permit terminal managers time to make proper security arrangements before arrival of the aircraft. Information shall include number of pieces, origin, destination, carrier, flight number, date and time of shipment, aircraft compartment location, tail number of aircraft, weight of shipment, and container number or numbers. The CONUS terminal commander shall be notified as expeditiously as possible of any flight delays or cancellation.

g. Treat information regarding coded shipments of registered mail as "For Official Use Only."

6. Distribution of Registered Mail Labels (L 200 A or B). DoD Components and other mailers who frequently mail registered articles may be given a quantity of labels to approximate their annual usage. Additional quantities may be issued as required. The labels are not an accountable item and a record of transfer is not required.

7. Personnel Requirements. Postal personnel who are assigned as registry clerks in AMTs, FMCs, or MPOs shall be U.S. citizen personnel and be eligible for a SECRET clearance (a Favorable Entrance National Agency Check (ENTNAC) or National Agency Check (NAC) is on file). This does not preclude uncleared or non-U.S. citizen personnel from accepting personal registered mail at a finance window.

8. Witnesses. When actions on registered mail require a witness and the postal activity is operated by one clerk, prior arrangements shall be made with a local unit or installation commander to provide

Figure 2-16A. DOD Postal Manual extract, December 1989, Volume I, Chapter 8—DOD 4525.6-M—Continued

such a witness. Under unusual circumstances and only when approved by responsible commanders in writing, the phrase “no witness available” (NWA) may be used instead of a witness signature.

802. REGISTRY SECTION

1. Designation. Postal activities that handle and store registered mail shall designate a secure area or registry section for this purpose. The registry section for land-based permanent structure MPOs shall be constructed and equipped properly to provide appropriate security and suitable protection for accountable clerks responsible for the registered mail. The registry section shall be separated from the rest of the work areas by a wire partition extending to the ceiling or with top provided. Refer to Chapter 13, paragraph 1307.11 for more detailed instructions on construction of registry cages. Small land-based MPOs operated by one or two personnel and shipboard MPOs may be exempt from the requirements to construct a separate registry section. Exceptions shall apply where lack of floor space or other physical constraints make it impracticable or impossible.

2. Security of the Registry Cage. The registry cage shall be secured by a three-position changeable combination padlock. Unless staffed at all times, the registry sections shall also be equipped with a safe with a built-in, three-position, dial-type combination lock for the storage of official registered mail. The use of a General Service Administration (GSA) approved, three-position, dial-type combination lock for the storage of official registered mail and the use of a General Service Administration (GSA)-approved, three-position, changeable combination padlock to secure the container is also authorized. To maintain proper security, the following policies shall be complied with at all times:

a. Containers used for official registered mail may not be used to store postal effects or personal property.

b. During business hours, the container and the registry section shall be secured when not in direct control of registry clerks.

c. After business and during nonduty hours, official registered mail shall be stored in an authorized secure container within the registry section, if possible. Oversize pieces shall be secured in the registry cage.

d. Opening and closings of registry safes shall be documented and a security review conducted at the close of registry business each day.

3. Access to Work Areas. Only registry clerks on duty, witnesses, the section supervisor, and personnel authorized to inspect and audit DoD postal facilities are allowed entry to the registry work areas. The on duty registry clerk or clerks shall control access to the area. Operations that run on a shift basis shall provide each shift with a separate 3-position, changeable combination padlock. This will limit access of registry clerks to their specific tour of duty.

4. Recording and Storing Combinations. Combinations to registry sections and containers shall be recorded and stored as described in Chapter 9, paragraph 906.2.

5. Handling Procedures. Registered mail shall be accepted, processed and handled in registry sections as follows:

a. Place the registered mail label (L 200) above the address and to the right of the return address; the top edge of the label should be flush with the upper edge of the article. If this placement is not possible, the label may be placed anywhere on the address side of the article. The accepting postal clerk shall require the mailer of registered articles with the postage affixed to declare if the mailing contains any official matter pertaining to the U.S. Government, as distinguished from personal matter. If the mailer declares the contents to be official, the accepting postal clerk shall stamp or print the word “official” directly below the registry number. The mailing shall then be treated as official registered mail.

b. Personal items may be accepted as registered mail through the MPO on PS Form 3806, “Receipt for Registered Mail.” Prepare the form in duplicate. The full value of the article shall be declared and endorsed on PS Form 3806 in the space provided. The letters “NV” (no value) may not be used in the declared value space on PS Form 3806, unless the article contains papers or written matter on which the customer places no monetary value. Rate the article for postage and fees and other required services and enter amount in the spaces provided on PS Form 3806. Give the original to the customer and file duplicate in numerical sequence. All mail requirements shall be met. The mailer is responsible for the proper packaging and sealing of the item to be registered (see Section 911.3, DMM reference (i)). For withdrawal or recall procedures, see Section 911.39, DMM. If withdrawn or recalled, postage and fees may not be refunded.

c. Volume mailers provided registered mail labels shall prepare PS Form 3877, “Firm Mailing Book,” in duplicate. NOTE: Mailers may use special firm mailing bills or forms that contain all necessary postal information instead of PS Form 3877. The mailer shall enter the registration number for each article. The accepting clerk shall check the articles against the entries on the form and complete the form as shown in figure 8-1. The accepting clerk shall keep the original bill and give the

Figure 2-16A. DOD Postal Manual extract, December 1989, Volume I, Chapter 8—DOD 4525.6-M—Continued

duplicate to the mailer. If the mailer insists, the clerk may place an original signature on the duplicate. Treat errors in preparation of PS Form 3877 or substitute forms as follows:

(1) Do not change the registration numbers on the form. If a mistake is made, place a line through the entry, initial it, and start again.

(2) If an error is detected in the numbers after acceptance and the mailer has departed the facility, do not prepare a new form. Explain the error on the bill and correct the information.

d. Postmark letters twice on the back at the crossing of the upper and lower flaps, or if return receipts are used, postmark partially on the receipt and partially on the flaps of the letter. Postmark packages sealed with paper strips across opposite edges of the strips. Use additional postmarks if this would make detecting rifling easier. All seams on the wrapping shall be postmarked if paper strips are not used. When large mailings consist of letters containing written or printed matter of little value, the envelopes may be postmarked once on the back by running them through a canceling machine. Cancel the postage stamp using a rubber or hardwood canceler.

e. If the acceptance window is a separate operation from the registry section, use PS Form 3854 to make transfer to the registry section.

f. A PS Form 3854 or DD Form 2261, “Registered Mail-Balance and Inventory,” shall be used to transfer accountability between registry clerks upon change of shifts or when a registry clerk surrenders custody of registered items.

g. If the registry section is operated by only one clerk, it shall close, if feasible, during periods of temporary absences. If closure is not possible, the registry account shall be transferred temporarily to another postal clerk. The transfer shall be accomplished by completing PS Form 3854 in two copies. Number the bills consecutively, starting with number 1 on January each year and retain the original in the book. The clerk being relieved shall retain the second copy. When the regular clerk returns, the procedure is repeated. A single PS Form 3854 book shall be used for these transfers.

h. At the close of business each day or at each shift change, as applicable, the registry clerk shall conduct a balance and inventory by completing DD Form 2261. The DD Form 2261 shall be retained with backup documentation. In cases involving one person MPOs or postal units operated by only one clerk at locations separated from the postal facility, prior arrangement shall be made with appropriate authorities to provide a verifying official. The verifying official does not have to be a postal clerk. If desired by the MPO supervisor, clerks may retain this documentation in the registry cage until the first balance and inventory is conducted on the first workday of each month. The previous month’s DD Form 2261 shall then be transferred to the MPO supervisor or designated representative for file.

i. When completing a “Registered Mail-Balance and Inventory Sheet,” entries on DD Form 2261 are self-explanatory. Enter in the “Remarks” section the name of each clerk working in the registry section during the period and comments on significant actions occurring during the period. Correction of errors is not permitted, except in the heading, Part III, and Part IV of the form. Prepare a new form if an error is made. If the number of items on hand exceeds the number of lines in Part IV, use the back of as many forms as needed and staple them together for filing. When a balance cannot be attained, recheck the computations of each entry against the related forms processed during the period. Next, determine that a form is on hand for each transaction performed. If necessary, go back to the previous balance and inventory and begin a cross check of the numbers for each transaction since that time. The process of verifying the disposition of each item should identify the article causing the accounting error.

j. If, after performing a recheck, the balance and inventory still show a missing registered item, take the following steps:

(1) Identify the number of the missing item and the source from which it was supposedly received.

(2) If the mailer is served by your activity, notify that person that the article is missing and determine if it may have been returned to the sender accidentally. If the response is negative, contact all units or activities to which articles were dispatched during the period to determine if the items may have been included in a pouch but not listed, or if the item was accepted in error.

(3) Send a letter or electrical message to accountable postmaster or postal officer of dispatch with instruction to notify the sender of the possible loss. In addition, request the following:

(a) The name and address of the sender and addressee.

(b) The contents of the item.

(c) The classification, if official.

(d) Any evidence that the addressee has or has not received the item.

k. Complete supporting documentation for registry transactions shall be maintained at all times. To fulfill this requirement, the following procedures are required:

(1) Retain the PS Forms 3854 and 3883 used in dispatches in the respective books.

(2) File PS Form 3849, used to deliver registered mail, numerically by the last two digits of the accountable mail number.

Figure 2-16A. DOD Postal Manual extract, December 1989, Volume I, Chapter 8—DOD 4525.6-M—Continued

(3) File duplicate copies of PS Form 3806 in numerical sequence in MPO files.

(4) Retain the following documents with the completed DD Form 2261, in the MPO files:

(a) PS Forms 3877.

(b) Incoming inside bills (PS Form 3854).

(c) Incoming Manifests.

(d) Incoming truck bills.

(e) Evidence of items received from other sources.

(f) Outgoing outside manifests.

(g) Outgoing outside bills (PS Form 3854) (returned by addressees).

805. PROCESSING INCOMING REGISTERED MAIL

1. Open all registered pouches individually in the presence of a witness. Do not discard the seal and slide label until a check of the contents is completed and no discrepancies are noted.

2. After verifying the contents, the registry clerk and witness shall sign (first initial and last name is sufficient) the manifold dispatch bill (inside bill). Signature of the witness shall be preceeded by the notation “WITNESS” or “WIT”. At one-clerk locations, when no witness is available, the bill shall be annotated with “NWA” (see paragraph 801.8). Enter a clear impression with the all-purpose dating stamp on the bill to show office and date of receipt.

3. Report discrepancies and irregularities as follows:

a. In cases involving damaged registered mail, if there is no evidence of depredation, repair the article, annotate the wrapper, bill, and coupon “Received in Damaged Condition” and return the coupon to the dispatching activity. When matter is found loose in a sack or pouch and there is only one damaged article, the loose matter, in the absence of evidence to the contrary, may be assumed to relate to the damaged article. Place the loose contents in the damaged article and rewrap and make appropriate annotation on the wrapper. If loose matter is found in a sack or pouch without an envelope or other container, note all particulars on the bill and coupon. Postmark and sign the statement and have it also signed by a witness, if practical. Return the coupon to the dispatching office. If in doubt as to the name and address of the person for whom intended, or the owner, report the facts to the gateway postmaster’s chief inspector and hold the matter, pending receipt of instructions. When depredation is suspected, initiate a postal offense investigation, have addressee inventory any contents in an attempt to determine if they are intact, summarize damage on the bill and coupon, return the coupon to the dispatching activity, and process the article according to the instructions received from the investigating agency.

b. If pieces received do not agree with the inside bill, the office sealing the pouch shall be contacted immediately by phone or message. If the pouch originated in CONUS, notify the appropriate JMPA.

c. If the article received is not listed on the bill, follow procedures in paragraph 804.1.d.

d. For bills improperly prepared, follow procedures in paragraph 804.1.e.

e. When a bill is missing, prepare a new bill in duplicate and return the duplicate to the dispatching activity indicated on the slide label. The original dispatching activity then compares the duplicate with its file copy. If the bills agree, they are filed together. If discrepancies exist that cannot be reconciled, notify the receiving activity to follow procedures outlined in paragraph 804.

f. If official registered mail is received in damaged condition and actual or possible compromise of classified information is apparent, report the incident in accordance with security procedures outlined by each Military Service. When only the outer wrapper is damaged and there is no possibility that contents have been disclosed and when personal registered mail is received in damaged condition, rewrap and endorse the envelope or wrapper and the bill “Received in Damaged Condition,” postmark, and sign.

g. All discrepancies or irregularities of registered mail indicating evidence of depredation shall be reported in accordance with Chapter 14.

h. When irregularities in the preparation or acceptance of a registered article are detected, notify the accepting post office by PS Form 3826, “Registry Irregularity Report.”

Figure 2-16A. DOD Postal Manual extract, December 1989, Volume I, Chapter 8—DOD 4525.6-M

406. DELIVERY OF ACCOUNTABLE MAIL (REGISTERED, NUMBERED INSURED, CERTIFIED, AND EXPRESS MAIL)

1. Personal accountable mail shall be delivered by the serving post office to the addressee. When delivered through a PSC or UMR overseas, the following procedures shall apply:

a. Use PS Forms 3849A for initial notification that accountable mail has been received. Prepare the form on the day that article is sorted for delivery and deliver with the nonaccountable mail.

(1) Exception. Prepare PS Form 3849B for initial notification that Express mail has been received. Express mail may only be held for 5 working days. A second or final notice shall not be prepared for Express mail. If Express mail has not been called for after 5 working days, verify the addressee's status through his or her unit. Make disposition of the mail based on information received from the unit.

b. Mark the article with the date the notice is prepared and store it separately from nonaccountable articles.

c. If the mail has not been claimed after 5 days, prepare a PS Form 3849B (Second/Final Notice). Annotate the date of the notice on the article.

d. If the mail has not been called for after 10 days from the final notice (5 days for registered mail), verify the addressee's status through his or her unit. Make disposition of the mail based on information received from the unit.

e. Prepare a PS Form 3849A or 3849B for each undeliverable, express, registered, certified, and numbered insured article. Show the disposition on the back of the form. Sign and date the form. If there are return receipts, leave receipts attached to the article. Show the reason for nondelivery on the return receipt, initial, and postmark the card.

f. Registered mail shall be stored in the registry section until delivered.

g. Require positive customer identification before delivering accountable mail. Personal recognition, I.D. card, or U.S. passport identifying the bearer by photograph and signature is acceptable. (See paragraph 404.4.)

h. Accountable personal mail shall be delivered to the addressee or to a person bearing written authorization to receive such mail. Positive identification shall be required before delivery is made. When delivery is made to the addressee, the addressee shall sign the delivery form. If delivered to an agent, the agent shall sign his or her own name. The addressee's written and signed authorization shall be shown on the reverse of the form or be on file at the releasing activity. The name of the person signing the form shall be printed below the signature if the signature is illegible.

i. File PS Forms 3849A and 3849B numerically by the last two digits of the identifying article number. The forms shall be commingled in a single file. A separate file may be established for registered articles if volume warrants. Retain these forms for 2 years.

j. If a PS Form 3811, "Return Receipt, Registered, Insured, and Certified Mail," is attached to accountable mail, it shall be signed and dated by the addressee or authorized agent. These receipts shall be returned promptly to the source from whom received.

2. When personal accountable mail is received at an MPO for delivery to an addressee served by a UMR or PSC that is not a section of the MPO, a PS Form 3849A or 3849B shall be prepared by the MPO and given to the mailclerk, who will deliver the form to the addressee. In CONUS, the serving post office shall provide the PS Form 3849A or 3849B to be delivered to the addressee.

Note. When units are isolated geographically from the serving postal activity, unit commanders may authorize mailclerks and mail orderlies to receive and deliver personal accountable mail. This authorization must be in writing and kept on file at the unit and serving postal activity. When this authority is granted, the responsibility to prepare and maintain the PS Forms 3849A or 3849B also shall be transferred to the unit (see paragraph 406.1.a. thru 406.l.j.) Personal "Restricted Delivery" mail can be handled by mailclerks only if the addressee is located at an area remote from the post office and the addressee requests this in writing.

3. Accountable mail shall be covered by a chain of receipts from acceptance by unit mailclerks until delivery has been made to the addressee or mail is returned to the serving post office. Mailclerks must account for accountable mail for which they have signed by producing either the article or an authorized receipt showing transfer. Accountable mail does not have to be receipted for at PSCs that are a section of the serving MPO when handled by civilian or military members designated to work at the MPO.

4. The mailclerk shall receipt for accountable mail from the source of pickup. Receipts shall be

Figure 2-16B. DOD Postal Manual extract, February 1987, Volume II, Chapter 4—DOD 4525.6-M—Continued

prepared in duplicate on USPS forms. The duplicate signed copy of the PS form shall remain at the post office. The original copy and the article shall be taken to the mailroom. Before receipting for the accountable mail, the mailclerk shall be certain that all articles listed have been received. Articles shall be checked carefully to ensure they are in good condition and that they have not been tampered with. If wrappers or contents are damaged or torn, the serving postal activity shall repair and endorse them as "Damaged in Handling in the Postal Service."

5. When accountable mail is transferred from mailclerks to other authorized individuals, it shall be listed and signed for on PS Form 3850, "Record of Delivered Registered, Numbered Insured, Certified, and COD Mail," or PS Form 3883, "Firm Delivery Book - Registered, Certified, and Numbered Insured Mail."

6. If the mailclerk has the commander's authority to open official mail, it is considered to be delivered when receipted for at the post office and no further transfer receipts are required.

7. Accountable mail received as ordinary mail shall be returned to the serving post office for accountability.

8. Official "Restricted Delivery" mail can be delivered to the addressee's agent. Personal "Restricted Delivery" mail shall be given only to the addressee or an agent who has been authorized in writing by the addressee to receive his or her mail.

9. When accountable mail is returned to the MPO after being signed for by a unit mail clerk, the clerk shall return this mail by preparing a PS Form 3877 in duplicate. The original copy shall be given to the MPO with the mail, and the duplicate copy shall remain in the book.

Figure 2-16B. DOD Postal Manual extract, February 1987, Volume II, Chapter 4—DOD 4525.6-M

AMF	Airport Mail Facility
AMT	Aerial Mail Terminal
APDS	All Purpose Date Stamp
APO	Army Post Office; Air Force Post Office
APOD	Aerial Port of Debarkation
APOE	Aerial Port of Embarkation
AWOL	Absent Without Leave
CDR	Commander
CoD	Collect on Delivery
CONEX	Container Express
CONUS	Continental United States
COPE	Custodian of Postal Effects
CTUS	Customs Territory of the United States
DA	Department of the Army or Director of Administration (USAF)
DET	Detachment
DMM	Domestic Mail Manual
DoD	Department of Defense
DP	Direct Pouch
FAM	Financial Adjustment Memorandum
FAO	Finance and Accounting Office (r)
FCM	First-Class Mail
FPO	Fleet Post Office
HQ	Headquarters
IAMRU	International Airmail Reporting Unit
ID	Identification
IDS	Intratheater Delivery Service
IEO	International Exchange Office
IG	Inspector General
IMM	International Mail Manual
JMPA-A	Joint Military Postal Activity - Atlantic
JMPA-P	Joint Military Postal Activity - Pacific
JUMPS	Joint Uniform Military Pay System
LOGAIR	Logistic Airlift
AMC	Air Mobility Command
MAMAS	Military Automated Mail Accounting System
MAO	Mail Address Only
MCA	Mail Control Activity
MDILAH	Mail Distribution Instructions and Labeling Handbook
MDS	Mail Distribution Scheme
MILSTAMP	Military Standard Transportation and Movement Procedures
MO	Money Order
MOA	Money Order Account
MOB	Money Order Business
MOM	Military Ordinary Mail
MPO	Military Post Office
MPOLL	Military Post Office Location List
MPC	Military Postal Clerk
MPS	Military Postal Service
MPSA	Military Postal Service Agency
MSC	Military Sealift Command
MTMC	Military Traffic Management Command
NWA	No Witness Available
OFL	Official
OJT	On the Job Training
OL	Operating Location
OPLAN	Operation Plan
OSM	Outside Mail

Figure 2-16C. Postal Manual extract, Section 2 (Acronyms and Abbreviations)—Continued

OSP	Outside Piece
PAL	Parcel Airlift
PARS	Postal Activity Reporting System
PB	Postal Bulletin
PC	Postal Clerk
PCS	Permanent Change of Station
PDO	Publication Distribution Office
PFO	Postal Finance Officer
PFSO	Postal Finance and Supply Office
PM	Postmaster
PO	Post Office
POD	Ports of Debarkation
POE	Ports of Embarkation
PP	Parcel Post
PRC	Postal Rate Commission
PS	Postal Service
RCS	Reports Control Symbol
RDD	Required Delivery Date
RNLTD	Report No Later Than Date
SAM	Space Available Mail
SM	Service Member
SOFA	Status of Forces Agreement
SOP	Standing Operating Procedure
SSN	Social Security Number
TCMD	Transportation Control and Movement Document
TTISMM	Transit Time Information System for Military Mail
UCMJ	Uniform Code of Military Justice
UIC	Unit Identification Code
UMR	Unit Mailroom
UPS	United Parcel Service
UPU	Universal Postal Union
USAF	United States Air Force
USC	United States Code
USMC	United States Marine Corps
USN	United States Navy
USPS	United States Postal Service
WSP	Weapon Systems Pouch

Figure 2-16C. Postal Manual extract, Section 2 (Acronyms and Abbreviations)

I. TRANSPORTATION

A. The Department of Defense agrees to arrange for military mail transportation from overseas postal facilities to commercial or military terminals in the United States and between military postal activities within overseas areas.

B. The Postal Service agrees to:

1. Arrange for military mail transportation to overseas postal facilities from commercial terminals in the United States and make transportation arrangements when the postal services of another country are required. However, this does not preclude Military Departments from making direct arrangements for the transportation of military mail to or between designated overseas points on a short term basis when operational requirements dictate.

2. Provide inbound and outbound mail transportation between the postal concentration centers and military or commercial air or surface carriers.

3. Transport mail between civilian post offices on military installations and the receiving or dispatching Postal Service facility.

II. PERSONNEL

The Department of Defense agrees to:

1. Appoint mail clerks and issue them uniform identification cards.

2. Assign only qualified personnel to duties in military post offices, mailrooms, mail control activities, and other postal facilities. No persons convicted of a crime involving theft or moral turpitude or disciplined for any action reflecting unfavorably upon their integrity shall be assigned to postal duties. Those having a history of psychiatric disorder, alcoholism, or drug abuse may be so assigned if medical evidence of current good health, sufficient to meet published Postal Service standards, is available. This does not preclude the Department of Defense from establishing requirements that are more stringent than the published Postal Service standards.

III. EQUIPMENT

A. The Postal Service agrees to:

1. Provide equipment and furniture necessary for the operation of civilian post offices located on military installations.

2. Furnish equipment and supplies for use in military post offices. Equipment shall be new or serviceable and shall be issued in accordance with mutually determined issuance standards. Supplies and accountable equipment shall be furnished without charge. Nonaccountable equipment shall be furnished on a reimbursable basis beginning in FY 1982.

3. Repair equipment for which it has a unique capability.

B. The Department of Defense agrees to transport such equipment between the continental United States and the overseas destination.

IV. DELIVERY

A. The Department of Defense agrees to:

1. Decline to accept Collect on Delivery mail for delivery at military post offices.

2. Not provide special delivery service.

3. Deliver mail to personnel in a temporary duty status, in training, and where delivery requirements exceed Postal Service standards.

4. Deliver accountable mail, delivery of which is restricted by the sender, through mail clerks, only upon the written authorization of the addressee when it is impracticable for the addressee to accept delivery in person at the civilian post office.

B. The Postal Service agrees to:

1. Neither accept nor forward to military post offices any Collect on Delivery mail.

2. Provide delivery service on military installations in the United States commensurate with the delivery service that would be provided for civilian communities of comparable characteristics. Postal Service criteria shall be used in considering extensions of delivery service. Mail to principal administrative buildings or commands shall be delivered in bulk. The Postal Service agrees to also provide the mail in bulk to personnel and basic units in a transient or temporary duty status of 180 days or less. Where criteria will not allow free delivery service to be established or extended, the Postal Service agrees to provide the mail for individuals in bulk to basic units. However, in locations with adjacent civilian communities having delivery service, the Postal Service agrees to submit proposals to the Department of Defense to furnish service to groups of receptacles consistent with mutually agreed criteria and funding.

Figure 2-16D. Postal Manual extract—Appendix B (Supplemental Postal Agreement: Administrative Details) Extracted From DOD Instructions 4525.7, reference (h)—Continued

3. Deliver accountable mail addressed to military personnel, at military installations served by civilian post offices, to the addressees or mail clerks upon proper receipt.

V. CLAIMS

A. The Department of Defense agrees to:

1. Assume financial liability, under military claims procedures, for loss, damage, theft, wrong delivery, or rifling of accountable mail after receipt from or prior to delivery to a civilian or military post office by a mail clerk employed by the Department of Defense.

2. Reimburse the Postal Service for claims submitted by the Postal Service for the value of postal effects embezzled or lost through negligence, errors or defalcations while in the possession of military post office personnel. Reimburse the Postal Service for claims paid by the Postal Service for losses of accountable mail through negligence, errors, or defalcations while in the possession of military postal office personnel.

a. To be reimbursable, claims must be submitted within one year from the discovery of the loss by the Postal Service.

b. In all just and expedient cases, the military departments may request the Postal Service to take action under 39 U.S.C. 2601(a)(3) to adjust, pay or credit the account of a Military Post Office, Postal Finance Officer, Military Postal Clerk, Financial Postal Clerk, Custodian of Postal Effects, or persons acting in those capacities for any loss of Postal Service funds, papers, postage, or other stamped stock or accountable paper, under the same standards as such credit is granted to Postal Service employees.

B. The Postal Service agrees to relieve custodians of postal effects of responsibility for the amount of the invoice of any shipment of stamps or stamped paper lost in transit as a result of causality.

Figure 2-16D. Postal Manual extract—Appendix B (Supplemental Postal Agreement: Administrative Details) Extracted From DOD Instructions 4525.7, reference (h)

Under an agreement between the United Parcel Service (UPS) and the Department of the Army (DA), delivery of UPS material through unit mailrooms (UMR) is authorized. The following provisions apply to UPS delivery:

1. Handling procedure

a. For the total number of parcels received from UPS, unit mailclerks (UMC) will sign in the signature column on the UPS delivery record. UPS will provide Army unit mailclerks with a copy of the Delivery Record.

b. UMCs will store UPS parcels in the same room but separately from U.S. mail. To notify patrons of parcels on hand, UMCs will use a "reproduced" copy of PS Form 3849. Original copies of PS Form 3849 will not be used.

c. When a patron reports to pick up a parcel, the UMC will check for identification. The UMC will then ask the patron to sign in the remarks column of the UPS Delivery Record. The patron must sign on the line identifying the parcel. This form will be provided by the UPS delivery person.

d. Parcels received for personnel who have been reassigned PCS or relocated off-post (but still in the local UPS delivery area) will be endorsed with the forwarding address and returned to UPS on the next business day. Parcels received for personnel who are temporarily absent (TDY, leave or field exercise) will be held in the mailroom. Parcels received for personnel whose duty status cannot be determined within 10 calendar days will be returned to UPS for return to the shipper. Delivery of parcels by UMC to off-post locations is strictly forbidden. The decision to forward parcels or return them to the sender is the responsibility of the UPS.

e. Returned parcels will be entered on the UPS Delivery Record for the current day's delivery. On the UMR copy of the Delivery Record, the UMC will enter the shipper number of the returned article, the address of the UMR in the address column, the individual's forwarding address in the signature column, and the reason for forwarding the article in the remarks column. The UMC does not need to obtain the carriers signature since UPS is responsible for all parcels which are delivered to the UMR.

f. UMCs will not mail parcels through UPS on behalf of unit members.

g. UMCs will contact the local UPS for pickup of undeliverable parcels.

2. Lost and damaged parcels

UPS is liable for all damaged and lost parcels sent through their service. A UMCs signing for an item does not relieve the UPS of its liability.

a. When a parcel is damaged, the patron should be advised to keep it intact because the UPS may wish to inspect it. The patron must contact the local UPS Delivery Information Office to file a claim. (UPS has a toll free number listed in the white pages of the telephone book). Payment for a damaged parcel may be made directly to the patron.

b. When a loss occurs in the UPS system, the sender must begin a tracer action through UPS. Payment for lost parcels is normally made directly to the sender.

3. Prohibited items

UMCs will not accept COD parcels, hazardous material, or items prohibited from the normal mail channels. These parcels will be lined out on the delivery record.

4. Guidance for installations

a. Installations are advised that unit mailroom service will not alter the present direct delivery and dispatch of official parcels to Government agencies by UPS.

b. Installation commanders may make special arrangements with the local UPS manager and issue supplemental instructions based on the needs of the installation. No supplemental instructions, however, are to change the basic agreement or the instructions given in paragraphs 1 through 3.

Figure 2-17. United Parcel Service Agreement (extracted from AR 600-8-3)

(a) Presidential authority

The President, whenever he determines it to be in the public interest, is authorized—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement

No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots

The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

Figure 2-18. Disaster Relief Act, extract from 42 USC 5173 (Debris Removal)

28 USC 1491. Claims against United States generally; actions involving Tennessee Valley Authority

(a)

(1) The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(2) To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act.

(3) To afford complete relief on any contract claim brought before the contract is awarded, the court shall have exclusive jurisdiction to grant declaratory judgments and such equitable and extraordinary relief as it deems proper, including but not limited to injunctive relief. In exercising this jurisdiction, the court shall give due regard to the interests of national defense and national security.

(b) Nothing herein shall be construed to give the United States Court of Federal Claims jurisdiction of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any against, or founded on conduct of, the Tennessee Valley Authority, or to amend or modify the provisions of the Tennessee Valley Authority Act of 1933 with respect to actions by or against the Authority.

Figure 2-19. Tucker Act, extract from 28 USC 1491

36 USC 138b. Acquisition and disposition of land in foreign countries; operation of vehicles; establishment of offices; printing authority; contract power; effective date; delegation of authority; claims against Commission

Within the limits of any appropriation or appropriations made for the purposes of sections 121, 122b to 125, 127, 128, 131, 132, and 138 to 138b of this title, the Commission is authorized (1) to acquire land or interest in land in foreign countries for carrying out the purposes of said sections or of any Executive order conferring functions upon the Commission without submission to the Attorney General of the United States under the provisions of section 255 of Title 40; (2) to maintain, repair, and operate motor-propelled passenger-carrying vehicles and other property, which may be furnished to the Commission by other departments of the Government; (3) to establish offices in the District of Columbia and elsewhere in or outside of the United States; (4) to rent office and garage space in foreign countries which may be paid for in advance; (5) to procure printing, binding engraving, lithographing, photographing, and typewriting, including the publication of information concerning the American Activities, battlefields, memorials, and cemeteries with respect to which it may exercise any functions.

Notwithstanding the requirements of existing laws or regulations, under such terms and conditions as the Commission may in its discretion deem necessary and proper, the Commission may contract for work, supplies, materials, and equipment outside, or for use outside, of the United States and engage, by contract or otherwise, the services of architects, firms of architects, and other technical and professional personnel.

The Commission may under such terms and conditions and in such manner as it may deem proper dispose of any land or interest in land in foreign countries which has been or may after June 26, 1946, be acquired by the Commission in connection with its work; Provided, That this subsection shall not be effective until the expiration of the Surplus Property Act of 1944.

Claims of the type described in section 2734 of Title 10, on account of damage to or loss or destruction of property both real and personal, or personal injury or death of any person, arising on or after July 25, 1956 and caused by the negligent or wrongful act or omission of any officer or civilian employee of the Commission while acting within the scope of his office or employment, may be considered, ascertained, adjusted, determined, and paid in the manner provided in section 2734 of Title 10 for the settlement of Army claims, except that in such cases one or more officers or employees of the commission may be appointed by the Secretary of the Army to a claims commission or commissions or as officers to approve settlements of claims made by such commission or commissions, and all payments in settlement of such claims shall be made out of appropriations made for the purposes of sections 121, 122b to 125, 127, 128, 131, 132, and 138 to 138b of this title.

The commission may delegate to its Chairman, secretary, or officials in charge of any of its offices, under such terms and conditions as it may prescribe, such of its authority as it may deem necessary and proper.

Figure 2-20. American Battle Monuments Commission Claims Act, extract from 36 USC 138b

5 USC 8140. Members of the Reserve Officers' Training Corps

(a) Subject to the provisions of this section, this subchapter applies to a member of, or applicant for membership in, the Reserve Officers' Training Corps of the Army, Navy, or Air Force who suffers an injury, disability, or death incurred in line of duty—

(1) while engaged in a flight or in flight instruction under chapter 103 of title 10; or

(2) while performing authorized travel to or from, or while attending, field training or a practice cruise under chapter 103 of title 10.

(b) For the purpose of this section, an injury is incurred in line of duty only if it is the proximate result of the performance of military training by the member concerned, or of his travel to or from that training, during the periods specified by subsection (a) (2) of this section. A member or applicant for membership who contracts a disease or illness which is the proximate result of the performance of training during the periods specified by subsection (a) (2) of this section is considered for the purpose of this section to have been injured in line of duty during that period. Subject to review by the Secretary of Labor, the Secretary of the military department concerned, under regulations prescribed by him, shall determine whether or not an injury, disease, or illness was incurred or contracted in line of duty and was the proximate result of the performance of military training by the member concerned or of his travel to or from that military training.

(c) In computing the compensation payable under this section, the monthly pay received by the injured or deceased individual, in cash and kind, is deemed $150.

(d) The Secretary of the military department concerned shall cooperate fully with the Department of Labor in the prompt investigation and prosecution of a case involving the legal liability of a third party other than the United States.

(e) An individual may not receive disability benefits under this section while on active duty with the armed forces, but these benefits may be reinstated when the individual is released from that active duty.

(f) Expenses incurred by a military department in providing hospitalization, medical and surgical care, necessary transportation incident to that hospitalization or medical and surgical care, or in connection with a funeral and burial on behalf of an individual covered by subsection (a) of this section shall be reimbursed by the Secretary of Labor from the Employees' Compensation Fund in accordance with this subchapter. However, reimbursement may not be made for hospitalization or medical or surgical care provided an individual while attending field training or a practice cruise under chapter 103 of title 10.

(g) For purposes of this section, the term "applicant for membership" includes a student enrolled, during a semester or other enrollment term, in a course which is part of Reserve Officers' Training Corps instruction at an educational institution.

Figure 2-21. Federal Employees Compensation Act—Reserve Officer Trainer Corps, extract from 5 USC 8140

Section IV
Investigative Methods and Techniques

This section provides guidance for unit claims officers, ACOs and CPOs responsible for conducting tort claims investigations. (See FTCA Handbook, section II, para E for discussion of the advantages of an administrative settlement.)

2–33. Importance of the claims investigation

The investigation is the most critical part of the administrative claims process. Its purpose is to learn, gather and preserve the facts as quickly and completely as possible. Facts are best collected and preserved while memories are fresh, witnesses are available, and physical evidence is unchanged. The evidence developed during an investigation provides the basis for either settling or denying a claim.

2–34. Elements of the investigation

a. Unit claims officers. Unit claims officers are essential to the claims investigation. Paragraph 2-2 explains their relationship to the ACO, CPO, or USARCS.

(1) The unit claims officer, who usually is a member of the unit generating the alleged incident, is privy to crucial facts and information (such as the unit operating procedures).

(2) An ACO or CPO is responsible for guiding the claims officer throughout the latter's investigation. The unit claims officer should not hesitate to contact the ACO or CPO for assistance at any time during the investigation.

(3) The unit claims officer's investigation is limited in scope to determining the facts and circumstances of the incident and describing the injuries of all participants. The unit claims officer's investigative report should not contain a conclusion as to liability and damages. The ACO or CPO will use the facts gathered during this investigation to determine liability and assess damages.

(4) While the unit claims officer usually prepares a report of investigation on DA Form 1208 (Report of Claims Officer), this is within the ACO or CPO's discretion, since they may find it more helpful if the report is prepared in a different format. The ACO or CPO will so inform the unit claims officer.

b. When applicable, the unit claims officer's report should include the following attachments:

(1) MP, CID, and State or local police accident reports.

(2) Report of survey on the Government vehicle, with all attachments, regarding whether or not the Government driver is pecuniarily liable. Attach appeals and reconsiderations when available. An investigation should not be delayed, however, pending final action on a report of survey.

(3) Line-of-duty investigation, regarding whether or not the Government driver's injury was determined to be in the line of duty.

(4) SF Form 91 (Motor Vehicle Accident Report), completed by the Government driver.

(5) Scope of employment information, including the supervisor's or commander's certificate (figure 2-22).

(6) Incident scene diagram.

(7) Interview with Government tortfeasor and all eyewitnesses.

(8) Results of any civilian trial or court-martial or other adverse action taken against Army personnel.

(9) Releasable portions of the safety investigation.

c. When the ACO or CPO may conduct all or part of the investigation. In most cases of death or serious injury, the ACO or CPO will inform the unit claims officer what information, if any, is needed. The ACO or CPO should explain the reason for this decision and keep the unit claims officer informed about the investigation's progress so the latter may furnish additional assistance.

d. Events that require coordination with AAO. When an incident occurs that may result in the filing of claims that are reportable to USARCS under AR 27-20, paragraph 2-15, or is otherwise within USARCS settlement authority, the AAO is responsible for technical supervision of the local claims investigation. Accordingly, when the ACO or CPO learns of an incident that may result in a filing of a claim within USARCS authority, or when a claim within USARCS authority is filed, it should contact the AAO by telephone immediately and follow up with a written notice of the incident or claim. Close telephone and written contact on all claims investigated in the field is essential. Note that mirror file procedures apply to potential claims. See paragraph 2-15.

e. Coordinating claim investigations with other investigations. Although both civilian and military authorities may investigate an incident, the claims investigation pursues an independent inquiry into civil liability under State law. Follow this general guidance on claims investigation when other investigations are proceeding:

(1) Determine what other entities are investigating and why they are doing so. How useful their investigations will be depends on several factors beside the investigator's skill. For example, a report of survey is limited in purpose, that is, to determine whether a soldier or an Army employee is financially liable for damage to Government property. The survey may help in developing the facts surrounding liability, but it will probably be of little help in assessing comparative negligence or whether such defenses as last clear chance apply.

(2) Contact the investigating agency early and discuss the scope of both your and their investigations. Obtain copies of their report and, if possible, advance copies of statements they take even if their report is not final. Include all other investigations in the claims report, tabbing them as enclosures. Always obtain final copies of other investigations.

f. Witnesses. A witness is anyone who has personal knowledge of an incident by virtue of being at or near the scene at the time it occurred or shortly thereafter. Such witnesses may have observed the incident or its results.

(1) *Eyewitnesses.* There is no substitute for an eyewitness. This person's knowledge of the incident derives from actually seeing or hearing the incident take place. An eyewitness version of the events leading up to the incident is often the deciding factor in the determination of liability. This is especially true if the witness is disinterested and impartial. Accordingly, it is imperative that all investigations include an exhaustive search for eyewitnesses.

(a) Locating eyewitnesses. Any search for eyewitnesses should begin with a review of all available accident or incident reports. Most provide witnesses' names, addresses and telephone numbers. Sometimes, however, the authors of such reports do not list the names of all the witnesses they know; this is especially true of police officers. Be sure to question police officers and other investigators to determine whether they have any information pertaining to witnesses not set forth in their reports. Also ask the claimant, claimant's attorney, all witnesses and any Government employee(s) involved in the incident if they know of anyone else who witnessed the incident.

(b) Method of locating witnesses. Search for eyewitnesses by visiting homes and businesses located near the scene of an incident. The ACO or CPO should canvass door-to-door asking whether anyone saw or has information about the accident. House-to-house inquiry often turns up eyewitnesses who would not have been found otherwise.

(2) *Other witnesses.* Locate other witnesses using the same methods. Although their statements may not be as compelling as those of eyewitnesses, do not underestimate their value; carefully interview these witnesses, particularly as to any statements or exclamations the injured parties made at the time. Persons who did not see the accident take place but have personal knowledge of it include—

(a) Those who were at the scene of the incident but were looking away when it occurred.

(b) Those who arrived at the incident scene shortly after it occurred, such as ambulance or medical personnel.

(c) Those who have any personal knowledge of the incident's cause.

g. Witness interviews. Follow the procedures listed below for interviews conducted by an ACO or CPO, or under their supervision.

(1) Witnesses should always be interviewed by claims personnel, even if they have given statements to other investigators. Witnesses

often give claims investigators statements that differ from the version they give to police or other investigators. A personal interview also allows them to clarify or expand on their previous interviews and lets the investigator observe and form impressions about the witness.

(2) Before interviewing a witness, try to obtain copies of any or all of the prior statements made by the witness and review them carefully.

(3) Claims personnel conduct witness interviews orally and informally. The claims personnel conducting the interview will prepare a MFR of the interview. Place the interviewer's observations and impressions relevant to assessing the witness credibility in a separate memorandum, which will not be released to the claimant's attorney. Ask a witness to review and correct but not to sign the notes or memorandum; signing could make them discoverable. This method is designed to ensure that the investigation represents a privileged attorney work product. It also speeds the investigation.

(4) Do not obtain a written signed statement from the witness.

(5) Do not use a stenographer, tape recorder, or other means to create a verbatim statement.

(6) Do not obtain sworn statements.

(7) Requests by claimants or their attorneys for discovery of witnesses who are soldiers or Federal employees will be met with the release of MFRs of interviews if—

(a) The ACO or CPO determines that their release will help in settling the claim.

(b) The claimant agrees to cooperate in a general exchange of information.

(8) If the claimant or the claimant's attorney asks to interview Federal witnesses, apply the following conditions:

(a) The claimant should explain why the claims memoranda or statements obtained in other investigations are inadequate.

(b) The claimant must agree to allow the United States to interview informally the claimant and other witnesses made available at the claimant's behest.

(c) The interviews may not be taped or otherwise recorded.

(d) The ACO or CPO must be present at the interview.

(9) Avoid depositions. Report all requests for depositions to the AAO immediately. If a claimant makes such a request to a court while the administrative claim is pending, resist the request by informing the appropriate U.S. Attorney of it and of the policies of both the Army and the Torts Branch, DOJ, not to grant such a deposition.

(10) The AAO and the DOJ must concur in any decision permitting a soldier or Federal employee witness to be deposed. A common example in which deposition might be appropriate is the case of a party whose injury severely shortens normal life expectancy. Transfer of a witness to another area or country is not a sufficient basis for taking sworn recorded testimony.

h. Safekeeping of physical evidence. Physical evidence must be preserved for analysis by Army experts, inspection by the claimant and use in future litigation. The ACO or CPO is responsible for storing physical evidence in a secure location. If necessary, claims personnel should take possession of evidence and safeguard it. Here are areas in which problems may arise:

(1) *Evidence in the possession of the CID or MP.* CID and MP evidence custodians are responsible for securing evidence in an evidence room to safeguard it for use in criminal prosecution. After it is used, the evidence is released to the owner or destroyed. It is up to the trial counsel responsible for the criminal prosecution or the Chief of Military Justice to permit release of the evidence. To avoid improper release, inform both the evidence custodian and the criminal law or military justice section that they may not release evidence without the ACO or CPO's concurrence.

(2) *Army aircraft and vehicles involved in accidents.* The unit or organization responsible for the vehicle will usually want to repair or dispose of it. However, it is vital to preserve the evidence or create acceptable secondary evidence before the aircraft or vehicle is repaired or lost through salvage. Ideally, the part or portion that allegedly contributed to the accident should be preserved for expert analysis. For example, if faulty brakes or a defective tire allegedly caused a vehicle accident, they should be inspected and preserved until the AAO agrees that its preservation is no longer necessary. Prompt action to secure and preserve physical evidence is essential.

(a) Damaged vehicles or aircraft. Photograph the damage and obtain a copy of the repair facility's estimated cost. Again, if equipment failure is a suspected cause of the accident, the involved part must be inspected and preserved. Where indicated, arrange examination of the aircraft by the Army Teardown Facility, Corpus Christi Army Depot, Texas, or of the motor vehicle by the Army Safety Center, Fort Rucker, Alabama.

(b) Destroyed vehicles. Destroyed vehicles must be preserved until their evidentiary value is ended. A unit will usually try to turn in the vehicle as surplus as soon as possible because it cannot requisition a replacement vehicle as long as the original is carried on the property book. Since serious accidents may require reconstruction or tear-down analysis, the vehicle should be preserved as long as possible. Coordinate with the DOL or the installation property book officer to prevent the vehicle's loss.

(3) *Property in the possession of investigating officers.* Always contact investigating officers or boards that have possession of physical evidence and ask them how they plan to dispose of it. Ask the officer or board to coordinate with the ACO or CPO before destroying or otherwise disposing of the evidence.

(4) *Requests by claimant to examine physical evidence.* Ordinarily, physical evidence will not be released to the claimant's attorney. If the attorney asks to examine physical evidence, coordinate with the AAO before allowing access or releasing it to the claimant's attorney.

i. Claimant interview. The claimant interview is a crucial part of the investigation. Use the claimant interview checklist set forth at figure 2-23 as a guide. Plan the timing of this interview wisely, considering several factors:

(1) What is the claimant's situation? If the claimant is terminally ill, moving away, or growing confused, keep these points in mind and complete the investigation quickly. Often, investigators who expect to interview claimants when their own schedules allow overlook such obstacles, only to find that the claimant is not available. Thus, one of the first steps in any investigation is finding out as much as possible about the claimant. The typical interview takes time. Make sure that the claimant's counsel understands that. Inform counsel of the estimated number of hours needed for the interview.

(2) What other witnesses must be interviewed before the claimant is interviewed? Will they be available?

(3) If the claimant is represented, it may be difficult to obtain an interview and the attorney will probably permit only one to take place.

(4) Ordinarily, an investigator will interview the claimant about liability and damages at the same time. Accordingly, assemble and study all documents pertaining to these issues before the interview and have them available at the interview. When planning preparation time for a claimant interview, do not forget that the claimant or the claimant's attorney must supply many documents.

(5) If at all possible, conduct the interview at the claimant's home. This eliminates the claimant's attorney's "home field" advantage. It also eliminates inevitable disruptions from the claimant's attorney's partners, associates, staff or other clients. Most importantly, it affords an invaluable opportunity to observe the claimant's lifestyle, interactions with family members, and ability or inability to perform some daily living activities.

(6) *Pre-interview preparation.*

(a) Obtain as many of claimant's medical, military, and financial records as possible.

(b) Prepare a chronology of the medical care provided, relating it to key events in the claimant's life (marriage, birth, permanent move, and retirement).

(c) List any matters that need clarification (such as internal contradictions in the records or conflicts between records and allegations).

(d) Always prepare a detailed list of questions to ask the claimant. If not, you will invariably forget to ask an important question!

(e) Research the applicable State law on damages so that you can ask relevant questions.

(7) *Attendees at the interview.*

(a) When possible, two claims personnel should attend. It is extremely difficult for one individual to establish rapport, observe the claimant, ask questions, take detailed notes, and devise follow-up questions at the same time; it is even harder to do all these things without disrupting the interview.

(b) For complex injury cases that are likely to involve a medical trust (such as brain damage or quadriplegia), it is helpful to bring the medical fund advisor who will be working with the family to serve as an additional observer or take notes.

j. Conducting the claimant interview.

(1) Try to create a relaxed, informal atmosphere, not an interrogation. Keep your demeanor as informal as possible. If the claimant is willing and able, permit the claimant to narrate the incident without interruption.

(2) Since a structured settlement may be used, obtain detailed information about the claimant's family background and living arrangements, financial resources and family members, including grandchildren. Design the initial interview questions to elicit as much background information as possible. Not only is this critical to a damages assessment, but the casual interchange in which the claimant reveals some personal information should relax the claimant and facilitate the subsequent exchange of more critical information. Even if you are familiar with the claimant's personal or military background (through review of the official military personnel file), let the claimant relate his or her own personal history. If you are already familiar with the information, you will spend less time taking notes and have greater opportunity to maintain eye contact and establish rapport. If the claimant's spouse is also present, make sure that you ask about the spouse's personal background and health, even if not a claimant. The spouse's own life expectancy may be a factor in settlement.

(3) Before ending the interview, always check your question list as well as your interview notes. Make sure the claimant's answers are clear, complete, and unambiguous. Make sure the claimant has no additional questions. Summarize what you have understood from the interview and give the claimant an opportunity to correct your understanding.

(4) At the end of the interview, try to have the claimant consent to a re-interview at a later date if necessary.

k. Interviewing claimant on liability. A complete history of the claimant's medical care and treatment before the incident is critical to the investigation.

(1) Determine whether the claimant is a poor historian by referring to medical records. Elicit from the claimant the facts of any major or chronic illnesses, hospitalizations and long-term medication use. Bring a list of major medical conditions, such as hypertension, heart disease and diabetes and ask if the claimant now has, or has ever had, any of these conditions. Invariably, the claimant may forget to mention one or more chronic conditions, having learned to ignore it as an inevitable and manageable fact of life.

(2) Obtain the claimant's family medical history. Again, refer to the list of major medical problems and conditions. Make particular notes of any relevant family medical history that the claimant's medical record does not note (but which the claimant's physician, perhaps, should have elicited and noted). The claimant's family medical history is also useful in assessing the claimant's life expectancy in the absence of the injury, which is subsequent to the claim and may serve to rebut or reinforce statistical figures.

(3) Have the claimant relate the incident by recall. Determine not only how much the claimant recalls independently, but also which events the claimant mentions or emphasizes, thereby shedding light on what really motivated the claimant to file a claim.

(4) Go back and review the same events with the claimant, referring specifically to the medical investigative reports and records or documents. Ask the specific questions that are key to a liability determination. These questions are case specific, and the interviewer should prepare them before the claimant interview with the AAO's assistance, as needed. Carefully explore any contradictions between the medical entries and the claimant's recollection of events.

(5) Make sure to cover all periods of nontreatment—how the claimant felt and what the claimant was doing during intervals between medical treatment is critical.

(6) After thoroughly exhausting the claimant's recollection of events, ask the claimant about any discrepancies between these recollected events and the medical records or those of the treating physician.

1. Interviewing the claimant on damages. See Section VI. When indicated, stress that although you have not yet determined whether liability exists, you want to avoid subsequent inconvenience or delay in the event that liability is established.

(1) In addition to covering the issues and questions noted in figure 2-23, ask how the alleged injury has affected the claimant's ability to perform or to enjoy the following:

- Employment.
- Conjugal duties.
- Parental responsibilities.
- Social responsibilities.
- Leisure time activities.
- Basic activities of daily living.

(2) In serious injury cases, ask the claimant to describe a typical day or week.

(3) If the claimant needs medication, therapy or other special care or treatment on a regular schedule as a result of the injury, have the claimant relate the nature and schedule of each administration.

(4) If permanent pain and suffering are alleged, ask the claimant to describe in detail the pain's nature and frequency as well as what course of action improves or worsens it.

(5) If the claimant seeks compensation for physical disfigurement, obtain "before" and "after" photos. The latter should be enlarged color photos taken by a medical photographer.

(6) In a devastating injury case, a videotape is helpful in ascertaining the nature and extent of the injured party's disabilities. The videotape should include, at a minimum, footage of the injured party eating, bathing, dressing, playing, undergoing therapies, communicating and interacting with family members and health caregivers.

m. Post-interview actions. Draft a MFR of the interview as soon as possible. First, record a factual narrative of the claimant's statements. Have the colleague who attended the interview with you draft a separate MFR and compare the two. Resolve any discrepancies and furnish a copy to the claimant for review. Then, in a separate MFR, record your personal observations of the claimant, the claimant's home, family and neighborhood as well as your personal assessment of the claimant's credibility.

(1) Verify information provided, as needed, and follow-up on any leads, such as interviewing other witnesses or obtaining additional documentation.

(2) If you suspect the disability is not as severe as the claimant alleges, ask for statements from neighbors, friends, or associates and for permission to interview them if necessary.

(3) Speak with the claimant's employer and coworkers to determine the claimant's actual ability to perform the job as well as to assess the claimant's future employment prospects.

n. Statute of limitations investigation. See paragraph 2-67*a*. Use these basic criteria and techniques during any claimant interview in which the SOL may affect the claim.

(1) A SOL investigation involves determining when the claimant reasonably should have known of the injury and its cause, and is most frequently used in medical malpractice claims. Accordingly, it is one of the most difficult investigations to conduct.

(2) This investigation should involve the collection of the patient's complete medical records and a list of all attending HCPs pertinent to the case. Additionally, the investigator must obtain the claimant's comments on the outcome of the treatment in question and determine the current medical problems. The investigator must

also identify which HCPs (such as doctors, nurses, physical therapists, and speech therapists) the claimant has consulted since the alleged injury, as well as schools and employers. This will develop into a list of witnesses to be interviewed.

(3) The claimant should be allowed to give a narrative account unless specific questioning is essential. Once the claimant commits to one story or one set of facts, try to reconcile differences between the claimant's version, those of other witnesses, and that contained in the medical records. Ask for as specific information as possible about what the claimant was told, when and by whom. Obtain the names of corroborating witnesses.

(4) Use the medical records to establish dates of treatment and the specific medical condition by asking if the claimant agrees with the record description of the condition and dates of all visits. If the claimant disagrees with the notes in the records, ask what complaint the claimant actually presented. Ask what the claimant was told regarding findings and treatment recommendations. Continue this line of questioning page by page until all the different examination dates or inpatient progress notes involving the alleged negligent care and its follow-up have been covered.

(5) Ask what the HCP told the claimant or the survivors about the cause of the injury. Have the claimant specify who furnished the information and when. Determine if the claimant discussed or complained about the injury or unexpected result with or to any Government or Army official (such as the Army Inspector General, a Member of Congress, the hospital commander, a patient representative, nurse or the claimant's own commanding officer) or any neighbors. Then contact and interview these sources and obtain copies of any documents they may have.

2–35. Conducting the investigation

a. Issues. A proper claims investigation requires a thorough inquiry into procedural defenses (such as subject matter jurisdiction) as well as liability and damages. Before initiating an investigation, it is essential to form a complete understanding of the law relevant to the claim. ACOs and CPOs are responsible for instructing claims investigators on the relevant legal issues. Only if approved by the AAO can the claims investigation be limited in scope, confined to the issues listed:

(1) *Claims barred by the incident to service doctrine.* Review paragraph 2-66*b* below. Investigate the facts establishing the defense. For example, if a soldier is injured in an automobile accident, on or off-post, a finding that the injuries were incurred incident to service requires more support than the fact that an active duty soldier claims for medical malpractice while treated in an Army hospital. It is crucial to know whether a soldier is on an ordinary leave status. This limitation also applies to Government employees injured or killed in the scope of employment. In both instances, obtain the personnel file as well as all documents pertaining to disability benefits.

(2) *Claims barred by the SOL.* If the SOL obviously applies, investigate only those facts pertaining to the defense. When it is questionable, investigate the merits of the claim. Always investigate all facets of a medical malpractice claim when the SOL is an issue.

(3) *Claims where there is obviously no liability.* Occasionally a claim under AR 27-20 is not stated or the facts, as presented, do not support liability. In these cases, the claims investigator has two goals: to investigate liability thoroughly and to deter a suit by the claimant. Once the first goal is accomplished, discuss the claim with the claimant's attorney, disclosing the facts you have discovered and your reasons for believing the claim should be denied. This approach may deter suit because the claimant's attorney has the facts needed to evaluate liability. It also avoids the pitfall of needlessly requesting detailed damages information, such as physician's statements or medical evaluations, in cases where there is obviously no liability.

b. Organization. Knowledge of the law applicable to the claim is essential to a proper investigation. Legal research starts when the claim is first investigated so that legal issues are addressed during its course. Use the approach outlined below to assist in legal research and claims investigation.

(1) Gather the facts available at the time the incident is reported to the claims office or the claim is filed. Collect and analyze all reports, tangible evidence, and site visit memos before beginning in-depth interviews or investigation. Know what others before you have done. Learn who has investigated and make personal contact (by telephone, if possible), asking for copies of their reports. In many cases, you will have to press for information. Do not hesitate to insist that others provide you with copies of their investigations immediately. This is especially important in criminal investigations. Carefully coordinate with criminal investigators to avoid conflicts with their pending investigations. Air crash investigations require similar coordination. However, request the air crash safety investigator to conduct a collateral investigation as the safety investigation cannot be released for claims purposes.

(2) Start legal research immediately. Do not rely on what you learned in law school or from past cases. Take time to refresh your knowledge. Study the law of the State where the claim arose and keep an outline of the issues presented. Separate this research in one part of the investigation file.

(3) Coordinate early with the responsible AAO. If the case is reportable to USARCS, call with a preliminary report and discuss the issues as available information reveals them.

(4) Evaluate liability issues in light of the proof available and avoid prematurely assuming a defensive position. Remember, in investigating claims, you represent the Army, not the local installation, the command or the tortfeasor. Learn the claim's strengths and weaknesses and carefully evaluate the interests of witnesses and others involved in the incident or its investigation.

c. Damages. Damages are almost always investigated at the same time as liability. Always think of damages issues when interviewing witnesses. For example, when interviewing a police officer about a traffic accident, always ask whether vehicle occupants or pedestrians were injured or killed. The exact time of death is almost always an essential fact. Do not assume that the report contains everything. However, analyzing the strength of a claim solely in terms of potential damages is a mistake. A claim does not have settlement value simply because the damages are high.

2–36. Consultants and appraisers

a. General. ACOs or CPOs are responsible for obtaining consultants and appraisers to assist them in evaluating a claim. Consider using such experts on any claim in which liability or damages are disputed and the issue cannot be resolved without resorting to an expert's opinion. Examples of such issues are medical malpractice, damage to farm and ranching operations, automobile accident reconstruction, and equipment failure analysis. An ACO should ensure that the SJA's budget includes funds to hire experts. The AAO can assist in estimating local requirements.

b. Use of U.S. Government experts. The U.S. Government employs a variety of subject matter experts capable of assisting the claims process. For example, experts within the Army include The Army Depot, Corpus Christi, Texas (aircraft); Army Safety Center, Fort Rucker, Alabama; and Tank and Automotive Command, Warren, Michigan (vehicle accidents). Other Federal agencies, such as the Agricultural Research Center, Beltsville, Maryland; National Institutes of Health, Bethesda, Maryland; and Center for Disease Control and Prevention, Atlanta, Georgia, can also provide expert opinions within specialty areas. Obtain such services in coordination with the appropriate AAO.

(1) When seeking a Government expert, always consider using local personnel who have expertise in a particular area first. For example, many installations employ ordnance, aviation, real estate and automobile accident reconstruction experts who can help evaluate liability and damages.

(2) Each ACO should assemble and maintain a desk book of such experts on the installation. This will not only assist in handling future claims but will be available for any Army claims office that needs an expert opinion.

c. When to hire an external expert. As a general rule, an expert

from outside the Government should not be hired if a Government expert's opinion will suffice, or if the cost outweighs the value of the claim. If a Government expert cannot be located, hire an outside expert. An outside expert may be hired in situations in which the claimant's counsel agrees to accept an expert's opinion only if the expert is not a Government employee. This sometimes occurs because claimant's counsel wants to ensure that the expert is absolutely impartial. In this situation, it is best to reach an agreement with claimant's counsel as to the expert you intend to hire. Depending on the circumstances, it may be appropriate to request that the claimant share the cost of hiring the expert. Consult the AAO for guidance.

d. Locating and hiring an expert.

(1) Always hire an expert who has recognized expertise on the subject evaluated. Avoid hiring experts with a reputation for plaintiff or defense bias. The AAO or the U.S. Attorney can often provide names of proper experts. Government experts usually know of capable civilian counterparts who are willing to provide expert opinions. For example, Army physicians often can provide the names of highly qualified civilian physicians who are willing to provide expert opinions.

(2) Never hire an expert and just hand over a copy of the file for review. Prepare a letter with issues to be reviewed and specific questions to be answered in the expert's report. When the claimant is cooperating with the expert's review, allow the claimant to submit questions for the expert.

(3) The expert must provide a written report to obtain payment. Consider releasing a copy of the report to the claimant if this will assist in settling the claim or deterring suit if the claim is denied. A copy of the report must be provided when the claimant has cooperated in the hiring of, and preparing questions for, the expert. All decisions to release or deny access to an expert report must be coordinated with the AAO.

e. Independent medical examination (IME). See AR 27-20, paragraph 2-36. IMEs may be used to resolve issues regarding causation or damages. Consider conducting an IME on cases in which a claimant alleges temporary or permanent disability or where there are unresolved questions on causation.

(1) An IME is often helpful in objectively defining the nature and extent of a claimant's injuries. An IME may also be essential in establishing a claimant's prognosis and the cost of future medical care.

(2) An IME may be used to determine damages in complex injury or medical malpractice claims when issues of causation have not been resolved through the usual exchange of expert medical opinions. In this situation, seek an agreement with claimant's counsel to have the claimant undergo an IME to resolve remaining causation or damages issues. Contact the AAO for guidance before discussing an IME with claimant's counsel. Be sure that the physician or hospital conducting the IME is satisfactory to both the Government and claimant's counsel. Ask claimant's counsel for assurances that he or she will resolve the claim based on the IME's findings and conclusions. In some cases, it is appropriate to ask claimant's counsel to share the IME's cost. A medical report by the treating physician may suffice in lieu of an IME. If in doubt, have a same-specialty practitioner at the local MTF review the claimant's injury file and X-rays.

f. Property damage appraisals. Use property damage appraisers in cases where the ACO or CPO and claimant's counsel cannot agree on the monetary amount of property damage.

(1) Before hiring an appraiser, attempt the following steps:

(a) Request the claimant substantiate the claim with a second estimate. It is appropriate to provide claimants with the names of individuals or firms considered reliable and fair.

(b) Provide claimant's counsel information showing how the Government arrived at its valuation of the claimant's property loss. Encourage claimant's counsel to share their property damage analysis. This exchange of information allows the Government and claimant to understand each other's position. In many cases, this leads to a satisfactory settlement.

(2) Be sure that the appraiser is satisfactory to both the Government and claimant's counsel and that claimant's counsel is willing to settle the claim based on the estimate of the hired appraiser. Request that claimant's counsel share the cost of the appraiser. If claimant's counsel wants to use his or her own appraiser, arrange for the appraisers to conduct a joint appraisal. Make sure the claimant is present at the appraisal. Consult the AAO for guidance.

2–37. Investigation of motor vehicle accident claims

Motor vehicle accident claims are probably the most common claim that a field claims office must investigate. These accident claims range from "fender benders" to fatal multiple-vehicle crashes. The following paragraph provides a starting point for the investigation by reviewing its components. Contact the AAO if you need assistance in conducting your investigation.

2–38. Interviewing the Government driver

Interview the Government driver as soon as possible after the traffic accident. Follow the checklist provided in figure 2-24, which may be adapted to most accidents. Also use these guidelines when preparing to interview the Government driver:

a. As soon as you learn of the accident, contact the driver. Caution the driver not to discuss the accident with the claimant, an investigator or an attorney representing the claimant without first speaking to you. Instruct the driver to refer the claimant or the claimant's representative to you if either asks about the accident.

b. Determine whether the driver is under criminal investigation or pending criminal charges. If either is pending, do not interview the driver until the investigation or charges are resolved or until the driver or driver's attorney consents to an interview. It is in the interest of the United States to ensure that the U.S. Attorney's Office appropriately represents or defends the Government driver. The ACO or CPO should attend the criminal court proceeding and obtain a verbatim copy of the record of the proceeding.

c. Before the interview, get copies of the driver's military driver's license, DA Form 348 (Equipment Operator's Qualification Record (except Aircraft)) and, if the driver is a soldier, the driver's DA Form 201 (Military Personnel Records Jacket, U.S. Army) if still in existence, or official military performance file (OMPF). Also obtain a copy of the accident report and any written statements the driver made. Analyze these documents carefully before the interview and bring them with you. When indicated, obtain the driver's civilian driving record.

d. The driver should be interviewed at the scene of the accident if at all possible. Conduct the initial interview outside the claimant's or the claimant's attorney's presence. When indicated, reinterview the driver at the scene when the other driver and attorney are present with a view toward resolving actual issues.

e. Be prepared to fully explain the Westfall Act (see figure 4-1, extract from 28 USC 2679).

f. Be prepared to ask questions pertaining to whether the driver was acting within the scope of duty at the time of the accident. Figure 2-25 presents a checklist for scope of duty analysis. State law controls whether a driver was in scope at the time of the accident. Become familiar with State law before interviewing the driver.

g. A rights warning will not ordinarily be necessary. Commissioned officers and NCOs senior to a soldier suspected of an offense under the UCMJ must warn the soldier of the soldier's rights under Article 31, UCMJ. Rights warnings are not required if the driver is civilian, if the investigator is civilian or if the charges have been resolved by court-martial, civil trial or nonjudicial punishment. Ask the AAO about rights warning.

2–39. Claimant's investigation

a. Always find out whether the claimant has hired an investigator or accident reconstructionist. If the claimant does not have an accident investigator, do not encourage the claimant to hire one. If the claimant's attorney asks, state that claims personnel will share information about the accident. Review all statutory and regulatory guidance on the release and sharing of information. See paragraphs 1-10 and 2-5.

b. Do not adopt an adversarial attitude toward a claimant's investigator. Try to determine as much as possible about the investigator's qualifications. The Army's level of cooperation will depend on the claimant's response in kind.

c. If possible, interview the claimant at the scene with the investigator or reconstructionist present.

2–40. Site investigation

A visit to a scene will assist in resolving questions about the accident. A site visit may also make it easier to understand how the accident happened. A site investigation should always be conducted when issues of liability exist or when substantial damages are involved.

a. Materials needed. Any investigator can conduct a professional site investigation with the following simple tools: unlined or graph paper; a ruler; a pencil (not a pen, since erasure may be required on the diagram); a steel tape measure (with a loop on the end) or measuring wheel (may be available from the MPs); a large nail (for use as a stake to hold the tape measure loop); and a camera, preferably panoramic (do not use "instant" cameras as their photographs are difficult to copy).

b. Preparation.

(1) Before visiting the scene, carefully analyze all available reports and bring copies. Be prepared to compare any previously prepared accident scene diagrams with the scene's actual layout. Have your equipment ready. In particular, be sure you know how to operate the camera, and bring extra film and flash equipment.

(2) Arrange for the Government driver and other relevant witnesses to be present when you arrive. If you are to interview the claimant and attorney at the accident scene (always a good idea), arrange for them to arrive after you have had a chance to complete your interview with the driver and witnesses. Never interview the driver for the first time in the claimant's and attorney's presence.

(3) Know the time of day, weather conditions, and lighting that existed when the accident occurred. If the accident occurred after dark, visit it during daylight and at night. Conduct a candlepower test to measure lighting where indicated.

c. Actions at the site.

(1) *Measurements.* Begin by selecting a central reference point that allows triangulation of distances. Always correlate photos and measurements. Use the steel tape measure with a loop at the end and always measure to the center of an object. Measure the width of lanes and shoulders, the distances from point of impact to point of rest, the distance between the vehicles at rest, the distance between the point at which drivers or witnesses say a driver perceived the other vehicle in the accident to the point of impact, and the distance between witnesses and the point of impact or other relevant points.

(2) *Photographs.*

(a) Always check and see if the installation has a photographer available to help. If you must do this yourself, be sure to take a good camera and extra film. Wide angle and telephoto lenses are useful.

(b) On the back of the prints, record the date and time the photos were taken and the photographer's identity.

(c) Once you know what is at issue in the claim, you will know what to photograph. Be sure your photos are accurate and include any details or unusual features of the site, such as potholes, that may have affected the accident. For example, if a large tree blocked the driver's vision, photograph a panoramic view, including the tree, from the driver's perspective in a way that reveals the tree problem to someone unfamiliar with the scene.

(d) Use objects or people as a reference in the pictures. For example, have the Government driver stand at the point of impact. Take both panoramic and zoom views to depict the entire scene accurately; do not distort perspectives or distances. Do not try to photograph involved sequences. In high-dollar cases in which the Army initially appears liable, print the photographs on 8-by-10-inch glossy paper.

(e) Assume that your photographs will be available to the claimant's attorney.

(f) Plan to prepare a detailed memorandum of your investigation, using the pictures as exhibits. Do not use only the pictures and your memory.

(3) *Accident scene diagrams.* Accident scene diagrams need not be drawn to scale nor be overly detailed. Have such a diagram sketched at the scene, sufficiently accurate to correlate with photos. At a minimum, include the following information in every diagram:

(a) The intersection involved, identifying the streets and indicating the type and location of traffic control devices.

(b) The direction of each vehicle's approach, the point of impact, skid marks (length and direction), and each vehicle's final resting point (noting the distance from point of impact).

(c) Any obstructions or road hazards that contributed to the accident. Be sure to show distances from the reference point.

(d) Any source of artificial lighting and its distance from the point of impact for accidents occurring after lighting sources are activated.

2–41. Other investigations

Motor vehicle accidents generate a number of other investigations, copies of these should be obtained as your investigation begins.

a. Types of investigations.

(1) MP reports.
(2) CID investigation.
(3) State or local police investigation.
(4) Report of survey.
(5) Line-of-duty investigation.
(6) Safety investigation.

b. Use of police investigations. State or local police and MP accident investigations pose recurring problems to claims investigators. To understand why a police traffic investigation may not substitute for a claims investigation, the investigator should know some of the police motor vehicle investigation's purposes:

(1) *Law enforcement.* Police investigations are used to charge motorists with traffic or other offenses. In many cases, a police officer will not charge a motorist with an offense even if the motorist is at fault in causing an accident. Avoid drawing conclusions on liability from the absence of charges against an apparently responsible party. Even if charges are brought, it is often difficult to determine who is responsible.

(2) *Accident reporting.* Traffic reports are used to obtain statistics concerning accidents. This is why police accident reports enter data using codes and numbers. A copy of the code should be obtained and appended to each accident report. The code number may indicate the police's belief as to causation.

(3) *Safety.* Accident reports help officials determine whether corrective action is needed to prevent future accidents. Such correction may be general (such as establishing educational programs) or specific (such as altering a particular intersection). The local safety office is not always aware of accidents. The ACO or CPO should regularly communicate with the safety office to verify the occurrence of accidents. When assistance is needed, the ACO or CPO should ask the safety office for investigative help; it is usually willing to cooperate and provide the claims office with releasable portions of the safety report.

c. The police interview. Interview the police officer who actually investigated the accident (figure 2-26). In some cases, the official signing the accident report will not be the actual investigating officer, or the latter may have been assisted by another officer. Interview the police officer at the accident scene. Always ask the police officer to review and bring any personal notes to the interview. It is crucial to ask for the police officer's opinion about the cause of the accident and find out its basis.

2–42. Small claims traffic accident procedure

See paragraph 2-17.

Any claims office may use the following procedure to screen, investigate, and settle automobile accident claims. Experience has shown that many field claims offices spend too much time and effort documenting liability investigations of small claims for motor vehicle property damage. Ideally, a claimant who files a meritorious

small claim for such damage should receive an immediate settlement from the claims office. Such a claim may be resolved with the claimant when the claim is filed, if a system for discovering and investigating the claim is followed regularly. This procedure reduces both the claimant's frustration and the number of open small claims.

a. Discovering potential claims. Review all the sources mentioned in subparagraph 2-2*b* daily. Upon discovering a traffic accident that may generate liability, open a potential claim file and begin investigating. When the damage appears small and there is no evidence that anyone received medical treatment, investigate the matter as a small claim.

b. Securing report copies.

(1) *Police reports.* Obtain the MP or State or local police report immediately. The claims office should have a system in place allowing the office NCO in charge or a senior examiner to request the report by telephone, with written follow-up. Enter into an agreement with the MPs on this point. The Provost Marshal liaison office often can obtain State or local police reports.

(2) *Other reports.* Contact the unit supply or logistics staff and arrange to speak with the surveying officer about the accident. If possible, get a copy of the surveying officer's report. Follow the same procedure for other reports.

c. Obtaining scope of duty information. Request that the responsible officer or supervisor forward pertinent scope of duty information, along with the operator's accident report, SF 91, to your office. Use the sample scope of duty statement shown at figure 2-22 and scope of duty checklist at figure 2-25 to draw up a statement and forward it to the unit for a response, with a suspense of five working days.

d. Maintaining the small claims file. In many cases, the accident reports and scope of duty information will arrive before the claim is filed. If the information confirms that the claim should be processed under small claims procedures, make a notation to that effect on the chronology sheet in the potential claim file. Keep the potential claim file where personnel who meet with claimants have access to the files.

e. Actions when the claimant arrives. The goal is to obtain enough information to assess liability and settle the claim, on the spot if the claimant can substantiate damages. If the potential claim file is fully documented, all that is necessary is documentation on damages.

(1) *Immediate interview.* When the claimant arrives to ask about filing a claim, a properly trained or experienced person should interview the claimant on the spot. This can be an ACO or CPO, a claims examiner, or an experienced claims clerk. At a minimum, all personnel who work at the front desk should be trained to interview the claimant about the accident by referring to the potential claims file and filling in missing information.

(2) *Damages.* Few claimants visit the claims office with estimates of repair in hand. This is the time to ask about the claimant's damages. The claims office should keep a camera to photograph any damage. Instruct the claimant on filling out the claim form and on local policy concerning repair estimates. Tell the claimant to return with the repair estimate and a completed claim form. If the claimant contends that the police or other reports were wrong, try to resolve the contradiction by visiting the scene, if nearby, with both drivers.

(3) *Incomplete claims files.* If the data on scope of duty or other information is missing, obtain it by telephoning the unit responsible for the accident either while the claimant is at the office or before the claimant returns. As long as the settlement authority is satisfied that the Government is at fault, a handwritten memorandum of the conversation is sufficient. When the damage is minimal, try to agree on repair costs without an estimate.

(4) *Settlement.* When the claimant has secured an estimate of repair and completed a claim form, the claim should be settled while the claimant is still in the office. The key to this step is delegating authority to settle the claim. ACOs and CPOs should allow experienced claims personnel to interview the claimant and settle the claim. Train new personnel to do this. The claimant should sign the settlement agreement before leaving the claims office.

2–43. Premises liability claims

Field claims officers often encounter premises liability issues. These matters are frequently litigated and, therefore, there are usually reported cases to research. There may also be statutes pertaining to the duty of care. As a rule, these cases present similar factual issues; the basic principles are discussed in the following subparagraphs.

a. Presumption of negligence. Claimants and their attorneys often approach slip-and-fall cases presuming negligence, from the fact that the claimant fell. Occasionally, a claimant or attorney will assert "res ipsa loquitur," a legal doctrine meaning "the thing speaks for itself." Most State laws, however, do not presume negligence from the fact of the fall alone. The burden of proof rests on the claimant to prove what caused the fall and that the United States acted without due care for persons in the area. Research the law carefully and always be ready to state the law correctly when the issue arises.

b. The claimant's status. Some States continue to adhere to the common law distinctions between invitees, licensees, and trespassers. Others have abolished these distinctions in favor of a duty/risk analysis based on all facts and circumstances. Know which approach the State follows.

c. Duty to maintain a safe area. Many States have solidly developed case law on the duty to clean up spills or remove foreign objects that pose a hazard. These cases allow a landowner a certain amount of time to discover and correct a deficiency and often discuss the duty to warn. Read these cases carefully and be prepared to apply them to the claim. Be specific in your research; look for analogous fact situations. For example, if the claimant alleges having slipped on a grape at the commissary, look for cases about slip and falls in supermarkets caused by food on the floor.

2–44. Investigation of premises liability claims

Address the following issues specifically in the investigation, the claims officer's report, and the tort claims memorandum of opinion:

a. Scene investigation. Compose a diagram of the scene, taking photographs that relate to it. Figure 2-27 provides a slip-and-fall investigation checklist. Interview the claimant at the scene or later using photographs.

b. Joint tortfeasors. Place any joint tortfeasor on written notice. In premises liability cases, two types of joint tortfeasors should routinely be considered:

(1) *Building maintenance contractors.* Janitorial and maintenance services are often provided by independent contractors. Always determine whether the contractor may be responsible for the hazard that caused the claimant's injury.

(2) *Manufacturers of floor coverings or floor wax.* Always determine whether the claimant's injury was caused by a defective product. When you suspect that a product manufacturer is at fault, contact it with specifics of the accident and invite it to join the investigation.

c. The duty of care. As paragraph 2-43 instructs, carefully research the law and determine the duty owed to the claimant. Then determine if and how that duty was breached. Avoid settling simply because the claimant fell.

d. Reason for claimant's fall. If the claimant cannot state a reason, do not offer one. The investigation should always seek to determine the cause of the accident, even if the claimant cannot furnish one.

e. Expert evaluations. If a claims investigation reveals the need for an expert, discuss this with the AAO, who can assist in locating one. Some areas in which expert evaluations have helped in the past are—

(1) *Friction tests.* When the claim is based on an allegation that a surface was excessively slippery, conduct a friction test on the surface.

(2) *Chemical analysis.* Floor wax may be chemically analyzed to determine if it is an appropriate product to apply to a floor.

(3) *Candlepower tests.* Many posts have equipment to test an

area's illumination. Such a test should be conducted under the same lighting conditions present at the time of the incident, including both natural and artificial light. Check with the post safety office for assistance. The U.S. Army Center for Health Promotion and Preventive Medicine is also capable of conducting illumination tests and the AAO can provide additional assistance.

f. Weather data. When weather is a contributing factor, obtain a summary from the local Air Force weather detachment or the National Weather Service. For example, if the fall occurred in an area where the amount of natural light is a factor, get a weather summary showing cloud cover, sun and moon data and other illumination factors. If rain, snow or ice factored in the accident, the weather data should include a temperature summary and the amount and type of precipitation that fell that day (and on previous days, if relevant).

g. Applicable safety standards. Safety issues raise factual and legal issues. Consult the post safety office to find out what standards apply under Federal, State, and local law. For example, determine what Occupational Safety and Health Administration (OSHA) standards apply to the activity, duplicate and add them to the file. In addition, determine what standards activity personnel recognized and applied. These should include local regulations and SOPs, which also must be copied and filed. Finally, determine whether personnel followed the standards. Interview the individuals responsible for maintenance or safety. Look objectively at what happened and decide whether the rules were followed. Once this has been done, legal research should reveal whether the standard that was violated forms a basis for liability. The claimant's attorney will sometimes argue that Federal law, as evidenced by statutes, rules, regulations and SOPs applicable to the activity, establishes the standard of care. This is incorrect. State law sets the standards for liability and therefore establishes the duty. Stricter Federal standards do not necessarily control.

2–45. Recreational users investigation

a. General. Whether the Government is liable as landowner when the claimant is injured in a recreational activity is a recurring issue. On all claims involving outdoor recreational activities, personnel must specifically investigate whether the FTCA discretionary function exception (28 USC 2680(a)) or individual State recreational use statutes apply. If a flood control project is involved, determine whether the flood or flood waters exception applies.

b. Discretionary function, 28 USC 2680(a). See paragraph 2-66d(1) and (2).

(1) The FTCA discretionary function exception bars claims based upon acts or omissions involving the exercise of discretion in the furtherance of public policy goals. Undertake a two-tier analysis to identify protected discretionary functions. The first inquiry is whether the Governmental action involves an element of judgment or choice. If the Government employee's act or omission is inconsistent with any mandatory Federal statute, regulation or formal agency policy prescribing a specific course of action, the discretionary function exception does not apply.

(2) The second tier asks whether the choice or judgment is one based on, or susceptible to, public policy considerations (social, economic, political and military considerations). Allegations of negligence regarding the design, maintenance, and construction of recreational and other Government facilities often involve the types of social, economic, and political policy considerations that the discretionary function exception has placed beyond the reach of the FTCA. See FTCA Handbook, section II, paragraph B(4)(c)(2).

(3) At the onset of every claim investigation in which the discretionary function exception may apply, it is critical to identify and review any statutes, regulations, guidelines, directives or policy statements that may affect the activity forming the basis of the claim. Activities may be impacted by, for example, road or trail design, placement of warnings, guardrails or other precautions, and design of recreational areas. Interview an official familiar with the Army's policy considerations underlying the conduct in question to establish that no one has violated any mandatory standards, regulations, guidelines, directives or policies. Be prepared to state what policy considerations an Army representative will articulate in terms of the social, political, economic, or military factors influencing the discretionary activity.

c. State recreational use statutes. See figure 2-28.

(1) These statutes relax the standard of care imposed on landowners who make their land available to the public without fee. Because the Government's FTCA liability mirrors that of a private party under like circumstances, recreational use statutes affect FTCA claims. They vary considerably from state to state. In some states, the statute's applicability is negated if the landowner receives direct or indirect compensation as a result of the activity, has actual knowledge of the dangerous condition on the land, or engages in conduct which is willful, wanton or grossly negligent. A fee is not necessarily considered compensation when used entirely to maintain the recreation project.

(2) In investigating whether a recreational use statute applies, determine, at a minimum:

(a) Whether the United States fits the definition of landowner contemplated by the statute.

(b) Whether the activity that resulted in the claimed injury was one of those the statute specified.

(c) The claimant's motive in entering the area.

(d) Whether the Government charges entrance or user fees or receives a percentage of revenues from commercial activities conducted on the land.

(e) Whether the claimant or anyone in the claimant's party actually paid a fee, and whether the fee was used to maintain the project or activity or for another purpose. (Did the fee generate profits?)

(f) Whether the Government had actual knowledge of the dangerous condition on the land.

(g) The history of prior similar incidents.

(h) If the condition is unique, whether there were appropriate warnings. See FTCA Handbook, section II, paragraph B4c(2)(d).

d. Under the Flood Control Act, 33 USC 702c. See paragraph 2-66*e*(2). The Government is immune from liability for claims resulting from flood or waters emanating from flood control projects, including multipurpose works. In investigating a claim involving flood waters, determine which act of Congress authorized the project for flood control as well as the degree to which the project is currently used for flood control. Determine whether or not the that act required the local beneficiary assume liability for claims and, if so, obtain a copy of the local agreement. Ascertain the specific method of operation on the dates in question and whether or not they complied with established regulations or standard operating procedures (such as a control plan for water fluctuation). Obtain the water levels for a relevant period of time, both before and after the date in question. Determine whether any underwater objects are involved in causing the claimed injury, for example, a tree stump or concrete marker. See FTCA Handbook, section II, paragraph B(4)(o) for case situations.

2–46. Explosion and blast damage claims

a. General. When possible, claims for property damage caused by air blast or ground shock due to artillery firing and similar training activities, including claims arising from destruction of ordnance, should be settled under the MCA as incident to Army noncombat activities. Do not attempt to settle these claims under the FTCA without first consulting a USARCS AAO. However, if the explosion cannot be considered as part of an Army noncombat activity (for example, if caused by a contractor's manufacture or transport of ordnance), investigate State law. Explosion claims should not be settled for "nuisance" value alone since small nuisance settlements can easily result in several claims being filed once the neighbors learn that the local claims office is paying such claims.

b. Review by a ballistic research and analysis expert. All claims for property damage or loss due to explosions are investigated by local claims personnel who forward them to their AAO for review by a ballistics expert prior to adjudication. See paragraph 2-48. The

requirement for a ballistic expert review is based on USARCS long experience with problems in adjudicating explosion claims. These problems include causation and the lack of a uniform approach to settling these claims at each installation. The ballistic expert's finding as to causation is binding on local claims offices in the absence of other expert opinions to the contrary. Experience has shown, however, that few experts really understand the effect explosions have on structures.

c. Data maintenance and retention. Unit, range, and ordnance personnel should be required to maintain data needed for the ballistic expert's investigation for three years. Visiting units should be required to report the same data to range control.

d. Local procedures for receiving explosion damage complaints. All installations that conduct routine firing activities should designate one office to receive complaints. This office's existence, and its telephone number, should be widely and regularly publicized in the local media.

(1) When a complaint is received, take the following actions:

(a) Require the complainant to give specific information about the time of the explosion and the nature of any damage.

(b) A response team, consisting of a claims representative, a photographer, and an engineer representative should investigate serious complaints immediately.

(c) Coordinate all reports with the claims office. Both offices should treat all incidents involving property damage as potential claims.

(2) If the claimant alleges that firing activities conducted over a period of time caused damage, interview the claimant to establish the following facts as precisely as possible:

(a) The date the claimant first became aware of blasting or firing at the installation. Also establish subsequent firing dates. For example, has the firing gone on for years or just since the claimant moved in? How often has it occurred?

(b) The date the claimant first decided the firing was a problem and why. For example, the claimant may have been bothered by noise for years but tried at first to tolerate it.

(c) The date the claimant noticed damage and a precise description of it. This is especially important when a claimant alleges cumulative damage, such as cracks in walls, ceilings or driveways, that is growing worse.

(d) The date the claimant "connected" the damage with artillery firing and why.

e. Explosive ordnance demolition reports. When an incident involves or has been investigated by explosive ordnance demolition personnel, obtain a copy of DA Form 3265-R (Explosive Ordnance Incident Report) and forward it to USARCS.

2–47. Investigation of explosion and blast damage claims

a. Causation. Determining causation causes the most trouble in explosion damage claims. There are several reasons for this: claimants do not always report damage promptly; they may take weeks or months to come to the claims office. Poor reporting procedures within the command are often at the root of this problem; this can be avoided if the installation implements the procedures set forth in subparagraph 2-47*b* below. Further, claimants often associate loud noises or slight earth tremors with structural damage they find upon inspecting their home after hearing the explosion. Typically, when a strong explosion occurs nearby, windows rattle and small objects fall down. Airblasts from explosions rarely cause structural damage, but most claimants will never believe that the crack in their wall or ceiling is not due to the blast they heard or felt.

b. Investigative procedures. Follow these procedures when investigating property damage claims that are due to explosions and treated as incident to Army noncombat activities. (It is not necessary to investigate negligence issues unless it is obvious that FTCA litigation will result or unless the AAO directs):

(1) Determine if and when an explosion actually occurred. Range control or a similar entity at most active Army installations will know of any training activity that could have caused the damage. Since many installations have multiple ranges and train many units simultaneously, it is important for the claimant to provide exact times.

(2) Determine who detonated the explosion. This information is usually available from range control, based on the time of the event.

(3) Determine whether the explosion caused the actual damage that the claimant alleges. The claimant must indicate what property was damaged or destroyed. Pictures and descriptions of the property (including locations) are very important.

2–48. Review of explosion and blast damage claims by a ballistics expert

Forward a request for review by a ballistics expert to the AAO. It should contain—

a. A topographic map showing the information listed below (an installation may submit an overlay only if it has previously submitted a topographic map, with a request that it be retained for future reference):

(1) Location of the damage.

(2) The impact area, if applicable.

(3) The firing point(s) involved, if applicable.

(4) The specific location, height, and nature of any obstruction to air blast or concussion if the obstruction is not shown on the map.

b. A report or study on geological structure or formation of land between the damage point and explosion point, if damage from ground shock is alleged. Such a report is available from various sources, including the U.S. Geological Survey or the USACE. This report may be submitted once and referred to in future claims.

c. A report by an installation employee or other person familiar with the type of construction involved, if structural damage is claimed. This report should include—

(1) Type of structure and its construction (general details)—for example, "a two-story frame house with aluminum siding."

(2) Age of structure.

(3) Condition or state of repair of structure.

(4) Date and nature of any repairs to the structure.

(5) Date and nature of any additions or remodeling.

(6) Type of heating and air-conditioning system and the dates and types of changes to the system.

d. Photographs of all alleged damage, including wall, ceiling, swimming pool and driveway cracks. Inspect the damage personally to estimate the age of the damage. For example, if the claimant alleges that a blast earlier in the day caused a crack in the basement wall and you see that the crack is full of dirt, report that observation. Do not rely on photographs alone to show the damage.

e. Location and extent of any other damage in the vicinity. Also report the lack of any damage, especially to nearby structures.

f. Other sources of the damage, including sonic booms, quarry blasting, severe weather disturbances or heavy vehicular traffic.

g. Specific information about explosives:

(1) Amount and type.

(2) Date and time fired.

(3) The depth, if buried.

(4) Minimum and maximum weights of any propellant or filler used.

(5) The number of inert or "sand" rounds used, if any, as well as the total number of rounds fired.

h. Wind speed and direction from true north at ground level and at all accessible altitudes to 5,000 feet.

i. Temperature at all accessible altitudes from ground level to 5, 000 feet.

2–49. Detonation of unexploded ordnance

a. General. Ranges and other areas where unexploded ordnance (duds) are present exist on many Army installations. Duds attract children and curiosity seekers as well as scavengers who salvage scrap by illegally entering ranges. Such persons are sometimes injured or killed by detonation of ordnance on the range or by items they remove.

b. Investigation and research.

(1) Whether the case involves an injury occurring within an impact area or one sustained when the claimant or others took munitions from a range, research State law to determine the existence and scope of a landowner's duty to warn of a hazardous condition and whether the Army breached this duty. In this regard, the Army is entitled to operate an impact area for training purposes but it must do so safely. The presence or absence of warning signs is especially important. Many states have adopted, and impose, strict liability on those who injure others by conducting ultra hazardous activities, such as blasting. Strict liability does not apply to claims brought against the United States because the FTCA requires that negligence must be shown to recover compensation.

(2) Carefully investigate the existence of any published notices and any warning signs. The claims officer's report must include:

(a) A picture of the signs used to mark the impact area. If possible, photograph any signs the claimant saw. Their wording and any symbols used must be clear and legible in the photograph.

(b) A map showing the entry and exit points and the area that the claimant traversed inside the impact area. Clearly mark any warning signs on the map.

(c) Any notices published in the local media about the impact area's hazards.

(3) Determine the claimant's actual knowledge of the hazard posed by the impact area from various sources. Interview the claimant and the claimant's friends, relatives and coworkers on this specific point. In the case of scavengers, check police, FBI, and Bureau of Alcohol, Tobacco and Firearms records to learn if the claimant has ever been investigated or arrested for trespass on, or theft from, the impact area.

(4) Investigate range-clearing activity. Request explosive ordnance demolition records of the dates and extent of destruction of duds on the range for at least one year before and one year after the incident. Determine the procedures used for clearing the range and identifying the duds, the type of ordnance removed, and the numbers of each type of ordnance. Review FM 9-15 and TM 43-0001-37 before investigating the incident.

(5) Find out how many prior incidents occurred at the site and obtain pertinent records. Range control can usually provide this information.

(6) If the claim involves an abandoned range or impact area, obtain the following:

(a) Date when the range or impact area was deactivated and reasons why.

(b) A map showing the extent of the major impact area, both at the time of deactivation and at the time of the incident.

(c) Try to locate records of the procedures used to clear the range or impact area, or witnesses who supervised or actually performed the task. If a contractor performed the cleanup, obtain a copy of the contract file. Also determine the type and numbers of duds cleared or removed from the range.

(d) The procedures followed to turn over the range or impact area for public inspection and use. Investigate whether any restrictions were placed on the use of the property.

(e) If there were prior incidents in which authorities found ordnance on the abandoned range or impact area, determine what procedures they followed to dispose of the ordnance (and if such measures were appropriate). Find out if the Army or other Federal agency was notified that ordnance was found and took part in its disposal. Obtain incident and police reports.

(7) If the explosion occurred at a distance from the range or impact area, but claimant alleges that the ordnance came, or was removed, from it, the investigator must determine whether the ordnance was actually removed—that is, whether the item that exploded was Army ordnance. In such a case, specifically investigate the following points (in addition to those noted above):

(a) The precise type of ordnance that detonated.

(b) The range or impact area from which the ordnance allegedly came. This is established by contacting range control to determine if training had been conducted using that type of ordnance.

(c) How the item came into the claimant's possession and how long the claimant had it. In some cases, the item is often passed from one person to the next by sale or gift. Many people collect ordnance as souvenirs or for other reasons. Remember that the item may actually have been in the possession of the claimant or others for many years.

(d) Serial numbers of the exploded ordnance and of any other rounds at the scene or associated with the claimant. Obtain serial number identifications. For assistance in tracing the source of ordnance, CJAs or claims attorneys should contact the Anniston Army Depot, Anniston, Alabama 36202, DSN 571-6686.

(e) Photographs of the exploded shrapnel. Submit the shrapnel to an ordnance expert to identify the type of round and how long ago it was fired.

(f) If the ordnance is not uniquely military (such as hand grenades), determine whether anyone else in the community possesses similar ordnance. Find out if anyone is conducting mining or other activities in the area and if the item could have come from one of those sources.

2–50. Claims involving Army aircraft

a. An over-flight claim alleges property damage due to low-flying aircraft. The claim may allege one over flight or a series of over flights. Over-flight claims present problems in verifying the fact that an over flight occurred, identifying the origin of the aircraft involved, proving that the alleged damages were due to the over flight, and deciding whether the MCA or the FTCA applies to the claim. Over-flight claims may also lead to inconsistent decisions. See paragraph 2-46.

b. Certain requirements are unique to claims involving aircraft and over flight. Figure 2-29 provides an investigative checklist. To investigate an over-flight claim successfully, a claims officer should consider the following points:

(1) Which aviation units are assigned to installations within the claims area, their missions, and the type of aircraft used on these units. Establish liaison with the appropriate staff agencies for major units to facilitate exchange of information should a claims investigation be necessary. With their assistance, the claims officer should maintain a map depicting the local flying area, marking well any low-flying training routes. The local flying area will extend beyond the installation.

(2) Installations with activities that fly frequently should designate an office to receive complaints concerning over flights as set forth in paragraph 2-46.

(3) The Federal Aviation Agency's (FAA) suggested minimum altitude requirements (1,000 feet for congested areas and 500 feet for others). As shown in figure 2-30, DOT minimum safe altitudes, do not apply to helicopters. Helicopters may be flown at less than minimum altitudes if they are operated without hazard to persons or property on the ground. Additionally, neither standard may apply when nap-of-the-earth (NOE) flying is involved. Determine the best available NOE route.

(4) How to contact the local FAA representative in case a claim is filed.

(5) The claims office should have a copy of any local regulations on aircraft operations and of FM 44-80, which aids in eyewitness identification of aircraft by publishing photographs, silhouettes, and characteristics of U.S. and foreign aircraft.

(6) Always seek an experienced aviator's help when investigating or evaluating an over-flight claim. Such assistance is especially valuable in determining the identity of the aircraft and crew involved in an over flight.

(7) Retain files from past over-flight claims in the claims office to allow comparison and to provide historic information about such incidents. The claims office should also keep information concerning the establishment and frequency of use of flight patterns and training routes; this can be critical to the evaluation of over-flight claims. Such information should include file copies of studies and decision memoranda pertaining to the establishment of these routes for use in evaluating claims.

2–51. Claims that do not involve Army aircraft

a. If the claim does not involve Army aircraft, find out whether another agency's (such as the Air Force) aircraft is involved. A computer register for Air Force aircraft is available through the Aviation Claims Branch, U.S. Air Force Litigation and Claims Service, (703) 696-9055. When an alleged over flight involves subsonic aircraft, do not try to transfer the claim until you are absolutely certain that Army aircraft are not involved. For example, the Air Force and Navy both use helicopters and subsonic fixed-wing aircraft. When it is possible that aircraft from these Services may be involved, be sure eyewitnesses examine silhouettes of these aircraft to identify them.

b. The Army does not operate supersonic aircraft; in rare cases, however, Army claims offices handle sonic boom claims, for example, those involving NATO SOFA foreign aircraft. Claims involving sonic boom damage resulting from the flight of a foreign aircraft or crew may be cognizable under a SOFA (AR 27-20, chap 7). The Army is responsible for investigating and paying these claims. Contact the appropriate USARCS AAO for guidance. However, if the claim involves Air Force aircraft, contact the nearest Air Force claims office or Aviation Branch, USAF Litigation and Claims Service, for assistance. They maintain a register of all sonic boom flights in accordance with AFI 13-201. When requesting assistance from Headquarters, U.S. Air Force, provide the date, Zulu time, north and west coordinates and geographic location of the alleged damage.

2–52. Investigation of over-flight claims

The following issues must be specifically addressed in the investigation, the claims officer's report, and the tort claims memorandum of opinion:

a. Identity of the aircraft. The initial focus of the investigation is identifying the aircraft involved in the over flight, not ruling out over flight by Army aircraft. Therefore, do not use the claimant's inability to identify the aircraft positively as a primary basis for denial. When interviewing a claimant or witness, refer to FM 44-80, supra, and consult an experienced aviator to establish the aircraft's class and identity (figure 2-29). Silhouette charts are helpful. If the claimant or witness interviews are inconclusive, screen all units that normally train in the area, including Army Reserve and ARNG. Also contact the SJA, 1st Special Operations Command (SOCOM), for over flights involving aircraft that may be assigned to it.

b. Unit and crew. If Army aircraft are responsible for the damage, determine the unit allegedly responsible for the over flight. This is easier to do if you are familiar with the units stationed within your claims area and have established liaison with the G-5 or G-3 (air). Once you identify the unit, you can usually identify the crew involved. Interview its members about the incident.

c. Map of the incident site. The location of the over flight, the local flying area, aircraft routes and any other information relevant to the claim must be marked on the map.

d. Applicability of the MCA, FTCA, and the Tucker Act.

(1) Although it is possible to apply the FTCA to determine liability, traditionally, claims personnel have paid over flight claims under the MCA. This is because negligence is hard for the claimant to prove and the amount of the claim is too small to justify a lawsuit. The over flight usually involves normal military activity conducted according to military requirements and thus is not subject to the same standards as civilian activity. In most cases, if the claim can be settled under either Act, it should be investigated and settled under the MCA. Where the claimant alleges negligence and the claim is not payable, deny the claim under the FTCA.

(2) Over-flight claims alleging that repeated overflights have interfered with the use and enjoyment of property may be cognizable under the Tucker Act (28 USC 1491). Information on the establishment and use of training routes may be essential in evaluating these claims. The claims must be carefully investigated and coordinated with the AAO. Claims cognizable under the Tucker Act are not subject to the administrative claims procedure and filing an administrative claim does not toll the SOL. Screen such claims carefully and inform the claimant that the SOL continues to run on the Tucker Act claim.

e. Causation and damages. Causation is an issue frequently presented in over-flight claims. A finding of causation must be supported by facts, not assumptions. When the adjudicator determines that the flight met the FAA's suggested minimum altitude requirements (see para 2-50*b*(3)), unless there is an acceptable expert opinion to the contrary, the claim should be denied. There are no known scientific studies, however, establishing causation where an aircraft is flying at suggested minimum altitudes. In addition, it is often difficult to calculate the amount of damages sustained. Use of Army or civilian experts or appraisers may be essential in evaluating damage claims. Coordinate this action with a USARCS AAO.

2–53. Registered and insured mail

Consider the following issues when investigating mail claims for MCA claims for loss of registered or insured mail:

a. The fact of loss while in the possession of the Army must be established. To that end, attach these documents as exhibits to the report:

(1) The mail registry reflecting that the lost mail was receipted by an Army postal clerk.

(2) Evidence that the Army mail clerk's signature is genuine. A mail clerk's statement to this effect will generally suffice. If the signature was allegedly forged, obtain a copy of the postal clerk's signature on a document of undisputed reliability, such as a personnel document. Compare the signatures. If there is no reliable evidence of forgery, there is no need for handwriting analysis to substantiate the loss.

(3) Evidence that the alleged recipient received the mail (the actual receipt) along with reliable evidence of the recipient's signature. Again, handwriting analysis is not required if it can be determined that the signature is either genuine or forged.

b. A specific finding whether the sender or addressee owned the article.

c. The sender's and the intended recipient's statements about the loss. This ensures that each knows that a claim has been filed and that the proper claimant will receive any payment. Both parties should address the following issues in their statements:

(1) A description and valuation of the contents of the letter or parcel, supported by estimates, sales receipts, or other evidence.

(2) The registered or insured mail receipt reflecting the fee paid for insurance, postage and the parcel or letter's declared value.

(3) Evidence of the parcel or letter's damage or loss.

(4) The time and place the USPS first delivered the letter or parcel to the MPS or other authorized Army military or civilian personnel for distribution.

(5) Whether the letter or parcel was redelivered to the USPS for forwarding or any other purpose.

(6) Whether either received reimbursement from any other source, including private insurance.

d. A copy of any USPS or other investigation concerning the loss.

e. DOD 4525.6-M is essential to conducting a proper investigation of these claims. See extracts, figures 2-16a through d.

2–54. Claims involving family child care providers

See Chapter 12.

a. Contents of FCC investigations.

(1) Assemble the following basic documents in all FCC cases:

(a) MP and CID reports.

(b) The complete contents of the FCC provider's file.

(c) The power of attorney and agreement between the FCC caregiver and parent(s) of the injured or deceased child.

(d) The physical examination (FCC providers usually have a copy) administered to the child prior to its entry into the FCC program.

(2) Visit the FCC caregiver's home as soon as possible after the incident. Photograph the scene, even if others have done so, and include these photographs.

(3) Examine the incident carefully to see if there is a basis for

holding the United States liable independent of the care rendered to the child. For example, if a child is burned by hot water in a bathtub, claimant will almost certainly allege that the hot water heater was defectively maintained. Discuss Federal liability issues in the tort claims memorandum of opinion.

(4) Investigate the incident with a view toward determining whether the United States or another party is liable for the injury. For example, an operator of leased housing may be responsible for premises liability, or the manufacturer of a hot water heater may be responsible under a products liability theory.

(5) Although FCC caregivers are not required to maintain private insurance, always interview the FCC caregiver about its existence. Always obtain copies of any liability policy that covers the care given and include it. Be sure that the caregiver complies with the insurance policy's notice provisions.

(6) Always decide whether to assert an affirmative claim when someone other than the Army or FCC provider may be liable. Before doing so, coordinate with the AAO and the Chief, Affirmative Claims Branch, USARCS.

(7) Determine if the provider is certified by the FCC coordinator.

(8) Make sure the child was authorized to be kept in the home under the provisions of AR 608-10. If the child was not covered by a valid FCC agreement, find out whether the FCC director or inspector knew that unauthorized children were present. Always look beyond the agreement to ensure that the child was entitled to FCC care. The lack of a valid agreement will not necessarily invalidate the claim, if the parent and the FCC provider attempted to comply with the FCC requirements.

(9) Determine whether the claim falls within the coverage limits set forth in AR 27-20.

(10) Secure a copy of the State and local standards for licensing in-home daycare operations. On this point, remember that AR 608-10 allows, but does not require, State certification. If the FCC provider holds a current State certification, obtain a copy of the State certification file (this may require a release from the FCC provider). When interviewing the FCC provider, ask about prior State certifications in other locations. Always ask about prior allegations of child abuse or neglect, including those involving the FCC provider's own children.

(11) When the claim involves an allegation that the FCC provider burned the child with hot water while the child was bathing, test the hot water heater and plumbing system to determine the hot water temperature at the tap. Water heater thermostats in FCC provider quarters should not be set higher than 110 degrees Fahrenheit.

b. Determination of liability. Upon completion of the investigation, determine whether any U.S. employee was responsible for the injury. If not, the claim may be payable under AR 27-20, Chapter 12. Discuss how to proceed with the AAO.

2–55. Claims arising from shoplifting

a. Claims by persons suspected of shoplifting usually arise from their physical detention by AAFES employees (typically store detectives). These claims must be adjudicated under the law of the State in which the claim arises. It is important to remember that under the FTCA, the United States is liable only to the same extent as a private person would be. Most States have enacted statutes authorizing merchants or their employees to detain or arrest suspects. These statutes also grant authority to conduct a reasonable search.

b. Under the FTCA, a claim arising from false arrest is excluded from consideration except when the arrest is made by a Federal law enforcement officer. AAFES personnel have been held not to be Federal law enforcement officers, despite their denomination as store detectives. See *Solomon v. United States*, 559 F.2d 309 (5th Cir. 1977). Military Police (MP) personnel have been held to be Federal law enforcement officers. Accordingly, an MP's involvement in a shoplifting detention or arrest may bring the claim within the FTCA's purview.

c. AAFES rules prohibit their personnel from searching a suspect. Store personnel should notify the MPs immediately and request that they come to the scene, take charge of the case, and conduct any search of suspects. However, store personnel need not call the MPs when it becomes evident that the suspected shoplifter does not have the merchandise.

d. ACOs and CPOs must become familiar with their State shoplifting laws and properly advise local AAFES personnel. If possible, develop local procedures within the guidelines of the AAFES Exchange Service Manual EOP 57-2 to avoid using MPs while nevertheless complying with its edict not to search a suspect. Suspects should always be given the opportunity to demonstrate voluntarily that they are not in possession of the suspected stolen merchandise. The goal of AAFES and claims personnel is to avoid occurrences that lead to the filing of claims.

e. The investigator should review the store's videotape, if any, and obtain a copy where indicated. Interview all witnesses, including the claimant, on location and devise an exact-time chronology based on these interviews. Rarely is the MP report adequate. Of primary importance is the physical description of the place where the suspect interview and search occurred, and whether it was open to public view.

2–56. Dram shop and social host claims

See paragraph 2-69*e*(1).

a. General. Claims arising from the overuse of alcohol sold at Army clubs or stores or from overserving at Army functions, formal or informal, require investigation when an injury or death results from these activities. For review of statutory and case law, see FTCA Handbook, section II, para B4a(1)(d).

b. Nature of investigation.

(1) What regulatory restrictions—including those established at the installation and unit levels—were violated in holding the function at the particular time, place, and manner, or in celebrating that particular event?

(2) What regulatory restrictions—including those established at the installation and unit levels—did the Federal employees violate in possessing, using, or serving alcoholic beverages at the particular time, place, manner or type of event in question? See, for example, AR 215-1.

(3) What additional guidance on this subject did the allegedly negligent actors receive through safety briefings, counseling sessions, or meetings?

(4) Was the site of the function the participants' assigned place of duty when the incident occurred?

(5) What was the participants' duty status at the time of the function?

(6) Was the function held during normal duty hours?

(7) Did anyone with supervisory authority compel or encourage personnel to attend or participate in the function?

(8) Was the function held in a Government-controlled facility?

(9) Did any supervisor or military superior authorize the function or know of it in advance and somehow acquiesce in permitting it to be held?

(10) What was the source of the funds used to purchase the alcoholic beverages and other refreshments, food or supplies for the function?

(11) What levels or signs of intoxication or sobriety did the allegedly negligent actors observe? What was the character and duration of their contact with the intoxicated individual?

(12) If significant signs of intoxication were not observed, could that be due to the failure of a particular individual, such as a doorkeeper or charge of quarters, to perform a mandatory inspection or other assigned duty?

(13) What was the military relationship between the allegedly negligent actor and the intoxicated individual?

(14) What measures, if any, did the allegedly negligent actor undertake to determine whether the allegedly intoxicated individual actually was intoxicated?

(15) What measures, if any, did the allegedly negligent actor undertake to discourage or prohibit the intoxicated individual's subsequent use of a motor vehicle, and why were those measures ineffective?

2–57. Conducting medical malpractice investigations

a. Introduction. Medical malpractice cases resemble any other tort claim requiring specialized knowledge, and their scientific or technical aspects should be the subject of preliminary study. See figure 2-31 for a list of references to review before conducting an investigation.

(1) One of the problems medical malpractice cases present is that people store much of the pertinent evidence and documents (equipment, personal notes and letters, journal article drafts, computer data, pathology material) for only short periods. Furthermore, MTFs often maintain clinics at many different locations within their confines or their satellite facilities. Thus, the first goal of any medical malpractice investigation should be to locate, retrieve and safeguard all data and items associated with the patient's treatment. See Table 2-6 for a list of source material.

(2) To facilitate the investigation of a medical malpractice claim properly, the ACO or CPO should have a working relationship with the MTF staff. The importance of direct access to hospital personnel (Deputy Commander for Clinical Services (DCCS), Chief of Nursing, Chief of Patient Affairs Division (PAD), Quality Improvement Coordinator (QIC), Risk Manager and chiefs of major medical departments) cannot be overstated. The ACO or CPO is part of the risk management team (see AR 40-68, chapter 3) and should visit frequently to determine if any incidents have occurred. The ACO or CPO should attend all QA Committee meetings as a non-voting member. On an occasional basis, the ACO or CPO should attend morning report meetings. Such participation is necessary to learn of potential claims and commence early investigation. Claims personnel should not participate in any credentialing action; to do so may create the impression that information obtained in a claims investigation will be used against the HCP. Such participation could constitute a conflict of interest.

b. Identifying a potentially compensable event.

(1) The following are signals that may identify a PCE—

(a) Unexpected or unexplained death.

(b) Unexplained paralysis to any extremity.

(c) Coma.

(d) Any neurological damage that results in unexplained brain insult (brain damage).

(e) Loss of any sensory ability: hearing, sight, taste, smell or touch.

(f) Disfigurement resulting from chemical or electrical burns.

(g) Unexplained loss of sexual function.

(h) Unexplained loss of bladder or bowel control.

(i) Unexplained loss of any body part.

(j) Unexplained seizure activity.

(k) Any infant born with an Apgar score of less than 4 at one minute or less than 6 at five minutes.

(l) Any patient who dies within 24 hours after discharge from the MTF or emergency room.

(2) If the ACO or CPO learns of a PCE during a RM meeting or from a DA Form 4106 or other reporting system within the MTF, it should ensure that the PCE is informally investigated and the medical records secured. In a serious incident, advise the AAO by the most expeditious means.

c. Preservation of evidence. As an investigation begins, the ACO or CPO must obtain and secure all relevant evidence, including all medical and pharmacy records, physician notes and orders, convenience files, laboratory results, X-rays, scans, and fetal tracings. See Table 2-6 for sources of medical records. This evidence may be preserved through coordination with the Chief of PAD. They should be stored in a separate locked container with the notation that the consent of the ACO or CPO is needed prior to retirement, destruction, transfer or release.

(1) The best evidence consists of contemporaneous notes, special studies and documents created at the time the treatment was provided. Such evidence is crucial because it reflects the physician's impartial impressions and care plan.

(2) The ACO or CPO should request the PAD in writing and in specific detail to sequester and preserve the necessary evidence and to submit copies of the medical records. See AR 40-68, chapter 3.

(3) Furnish a copy of the military records to claimant's counsel who should in turn furnish a copy of all civilian medical records and names of civilian treating facilities and physicians. If counsel responds to the request for civilian records by claiming that the expense is too great, obtain a release or permission to obtain such records (see figures 2-32 and 2-33). If the civilian records are lengthy, the ACO or CPO should review them to determine which are necessary. Funds to purchase civilian records should be available locally.

d. Records review and analysis.

(1) Once the medical records have been obtained, review each page, outlining dates of each treatment received, and create a detailed written chronology. These records contain many abbreviations unique to the medical field; AR 40-66 provides a list of authorized abbreviations. Often, the records will contain unauthorized abbreviations. If the records contain unauthorized abbreviations or the handwriting is illegible, request the HCP who prepared the record furnish a legible version. The chronology should include the patient's medical condition, the date and type of treatment rendered, and the name of the treating HCP(s). These entries may reveal gaps in the patient's treatment and provide clues to any civilian treatment not disclosed by the claimant or any visits omitted.

(2) Prepare a witness list containing the names of HCPs and their current and permanent addresses and telephone numbers for present residence and permanent home of record. Obtain their ETS or PCS dates. Service and department chiefs and their secretaries, the QA committee, the Graduate Medical Education Office, the relevant corps branch office (Medical Corps, Dental Corps, Nurse Corps, Medical Service Corps), the college or professional school from which they graduated, and the American Medical Association may prove helpful in locating HCPs.

e. Identifying HCPs. Establish each HCP's role in the patient's treatment. Was the HCP following the orders of another, such as a senior HCP? When was the medical care actually provided? Often, a senior medical staff member stays behind the scenes but actually directs and oversees the patient's treatment through the ward staff: the residents, interns, fellows, medical students, and registered nurses. Many times the senior medical officer will not write notes in the patient's chart and, if surgery occurs, will not even be listed as present in the operating room. This practice permits junior trainees to receive credit for performing medical procedures when they later seek board certification.

(1) Determine the HCP's employment status: Government employee (active duty or civilian), independent contractor, CHAMPUS provider or civilian consultant.

(2) If the HCP is not a Government employee, obtain copies of these documents: credentials file, contract or partnership agreement, and certificate of insurance. See paragraphs 2-62*c* and 2-82.

(3) Notify the HCP's insurance company that the claim has been filed and that, in the Army's view, the United States is not liable for their insured's conduct. Establish the existence of any third party liability insurance. See paragraph 2-79.

(4) Inform the claimant's attorney if the HCP is not a Federal employee. Provide the attorney with information pertaining to the HCP's insurance company. Be sure to inform the claimant's attorney as soon as possible, particularly before the applicable State SOL has run. Failure to do so will leave the claimant with little choice but to sue the United States to force a third party action. Also, it may lead the claimant to assert, if the case goes to suit, that the Government should be equitably estopped from invoking the independent contractor defense because it concealed or otherwise failed to reveal the status of the non-Federal employee until the State SOL had run. Where the HCP is employed under a personal services contract which states that insurance is not required, contact the AAO for instructions before informing the claimant's attorney.

(5) *Ex-parte provider interviews.* Military and DOD treating physicians are Federal employees and may be interviewed without the claimant's consent. However, before conducting an ex-parte interview of a CHAMPUS HCP or independent contractor, research

applicable State law. Some States deem the filing of a lawsuit to waive the plaintiff's physician-patient privilege, others require the plaintiff's consent before the physician may be interviewed. When researching, determine whether the State considers filing a FTCA claim analogous to filing a lawsuit. If the State law seems to favor claimant's position or is not clear, inform claimant's counsel that the claimant must sign a release allowing you to interview the HCP, that the claim cannot be investigated and processed without such a release and that you will provide them with a copy of a written summary of the interview.

f. Use of Quality Assurance investigations. See paragraph 2-5*b*(2). Claims personnel, because they are DOD employees whose duties require it, have access to QA records. See 10 USC 1102. These documents should always be obtained and made part of the file. But a claims office should never substitute QA investigations for a thorough claims investigation. A QA report or investigation often provides insight into the medical care involved, potential witnesses' names and other leads or helpful directions. It may be necessary to reinterview witnesses and cover the same ground. See paragraph 2-5*b*(2).

2–58. Research of a medical malpractice claim

Claims personnel should read and become familiar with the standard treatment approaches to the claimant's original medical problem. Through such study, the ACO or CPO may learn that there is more than one acceptable treatment. This issue bears on the physician's medical training, judgment, and length of time served as a clinician. Typically, every medical problem may be met with several valid and equally acceptable treatments. The primary physician may use a technique that is different from, but as valid as, the treatment another physician uses or recommends. If a particular technique is accepted in its medical specialty, the question of the best, most appropriate treatment comes down to one of medical judgment, not substandard care. The ACO or CPO must conduct research and interview witnesses and experts to establish the standard of practice in the particular medical field. More importantly, there is an acceptable percentage-of-failure rate for most medical procedures. Use the acceptable failure or complication rate as a guide to which methods of treatment usually lead to undesirable results. These rates are based on treatment experience, the physician's technical ability, training and experience level, and the physician's own percentage of failure based on the number of cases actually handled in the past. The goal here is to discover the standard of care and determine whether the outcome in claimant's case was due to inherent treatment risks or to HCP negligence. There are several methods by which the ACO or CPO may spot problems with the care provided.

a. Standard medical textbooks and journal articles. Be familiar with current medical textbooks, journal articles and other relevant literature before interviewing witnesses. These resources will help establish the standard of practice for a particular medical problem. Furthermore, they will also provide failure and complication rates and different but acceptable results of a particular medical procedure. Use the local MTF's medical library.

b. Physicians' Desk Reference. The *Physicians' Desk Reference* is the standard text that medical professionals use as a prescribing source or guide for the thousands of pharmaceutical products licensed and approved by the Food and Drug Administration. It provides information on prescribing, risk and complications, adverse reaction warnings and symptoms, rescue of overdose, drug interactions, and contraindications to use.

2–59. Medical malpractice claims deriving from defective drugs, medical equipment or devices

a. Timeliness. Timely investigations are important when equipment fails to perform properly or a drug is mislabeled or mistaken for another with a similar name or package. Often, items are designed to be discarded after a single use. They may be lost or destroyed if claims personnel fail to involve themselves immediately upon learning of an injury. The injury should be reported (on DA Form 4106) to the head of the medical department or service within 24 hours of the occurrence and to the RM within 48 hours. Upon receiving a DA Form 4106 or discovering the PCE by other means, the ACO or CPO should immediately secure the drug, equipment or device.

b. Necessary procedures. When equipment fails (for instance, a needle snaps; a catheter breaks off subcutaneously or an equipment item shocks, burns or injures a patient in any way), the claims investigator, after obtaining the equipment or device, takes the following steps as rapidly as possible: obtain and secure the MTF's Medical Equipment Division's maintenance records; the technical manuals for the operation and suggested maintenance schedule for the equipment in question; and the manufacturer's sales brochures describing recommended uses. The claims investigator must interview the staff involved when the equipment failed—to establish exactly how they were using it, for what purpose, and if there was an electrical power surge or failure at the time. The investigator should try to establish if the patient and equipment were properly grounded, if the equipment was being used as the manufacturer suggested, if the MTF staff put the manufacturer on written notice of the equipment's failure and of a patient's resultant injury, and if the Food and Drug Administration or the U.S. Army Medical Research and Development Command were notified of such failures or issued post warnings or recalls. The investigator should arrange for an independent analysis and invite the manufacturer to join in the analysis.

2–60. Use of medical experts in medical malpractice claims

See paragraph 2-69*i*. To investigate and evaluate a medical malpractice claim properly, an ACO or CPO must discover the standard of care in a particular situation. Establishing the standard of care, common treatment outcomes, and failure rate percentage of such treatments is key to the investigation.

a. Having a qualified medical provider within the appropriate medical specialty at the MTF involved review the records is a good starting point for determining the standard of care. Such review is helpful because the reviewing physician is accessible to the MTF where the ACO or CPO is assigned. The reviewing physician can explain the condition's correct diagnosis and its proper treatment, the complications associated with each type of treatment, and which complications are considered unusual or unexpected, all information that the ACO or CPO needs to spot the key issues requiring in-depth investigation and analysis. Although such lateral review is helpful, the ACO or CPO should bear in mind that physicians working within the same MTF sometimes avoid criticizing each other.

b. The CCRB, whose physicians work directly at USARCS, is a primary source of independent medical advice. Its members analyze each medical malpractice case filed against the Army, basing their review on all medical records and other materials submitted, such as interviews and factual data. The CCRB reviewers will suggest factual areas to develop during the investigation.

c. After consultation with the AAO, the claims office may hire a civilian expert in the manner set forth in AR 27-20, paragraph 2-36. The expert should be recognized by peers as an authority and should be willing to testify in the event of suit. Claims personnel should obtain an expert opinion in response to written questions. Such expert opinion may be used to attempt a compromise or to convince the claimant to withdraw the administrative claim. This is indicated especially when conflicting expert opinions confront the claims reviewer.

2–61. Interviewing health care providers in medical malpractice claims

The objectives of a HCP interview are not unique:

a. Obtain the witness' curriculum vitae, training and experience levels, number of procedures performed, and educational courses taken to qualify to perform the procedure in question. Establish the HCP's role in the patient's treatment, review the sequence of events (facts) leading to the injury, and learn the HCP's opinion of how or why the injury occurred.

b. Witness interviewing sequence is extremely important because

you must identify and interview the primary witnesses. You may want to interview the nursing staff first to establish the general facts and sequence of events and to identify the "key players" involved in the incident.

c. Establish each medical staff member's role during the interview. What was the person's role in the patient's clinical treatment? Was this person following orders of another more senior person while treating the patient? When interviewing a medical witness, always try to identify all members of the treatment team on the ward, in the operating room or in a clinic treatment office.

d. Each witness may have a unique perception of the facts. Remember that they can greatly assist claims personnel if approached correctly and treated with respect. The facts are best told in narrative form, but if the witness is unable to recall the events, the investigator must still obtain the witness' view of the facts. Insist that the witness review and state whether the standard of care was met. Keep in mind that in some medical malpractice cases, investigators may need to interview primary witnesses two or more times. This is not unusual when many people play different roles in the normal course of treatment. Someone who at first does not appear significant may provide critical data that requires reinterviewing the other witnesses; doing so may be the only way to establish, or flesh out, all the essential facts.

2–62. Preparing for the HCP interview

a. Preliminary actions.

(1) Before the interview, review the chronology you have prepared.

(2) Review the applicable standard of care previously established.

(3) Review the HCP's credentials file. A credentials file documents a physician's training and licensure as well as practice privileges that have been granted by the MTF. Similar documents for residents are obtainable from the MTF graduate medical education office or the director of the particular resident's training program. Determine whether any restrictions have been imposed. Review the file and, if indicated, the HCP's own medical records for other factors which might impede or affect the provider's ability to perform (such as visual handicap, lack of fine motor coordination, existing neurological conditions or substance abuse problems.).

(4) Make sure that the HCP has had time to review the medical records and notes before the interview. Have two copies of the records present during the interview.

b. Conducting the Interview.

(1) Explain your role and the purpose of the interview. Tell the HCP that accuracy and honesty are crucial in determining the claim's merits. The medical records must always be present during the interview.

(2) Take notes during the interview and prepare a memorandum based on them after it concludes. Have the HCP review the memorandum. Do not create a verbatim recording of the interview or have the HCP provide a signed written statement.

(3) Discuss the HCP's experience in the medical field involved, such as the number of procedures he or she had performed (with and without assistance) before the incident.

(4) Have the HCP explain in narrative form all direct involvement with the patient and the medical care at issue. Prepare a specific list of open-ended questions designed to elicit the HCP's broadest response.

(5) After the HCP commits to one version of the facts, review the data set forth in the medical records with the HCP, such as—

- How often did the HCP visit or attend the patient?
- Why are certain visits not recorded?
- What complaints did the patient present at each visit and were these complaints recorded in the records?
- Why are there conflicts between what the HCP states and the contemporaneous notes in the records?
- What was the HCP's day-to-day involvement with the patient?

(6) Determine what treatment choices the treating medical staff considered. Determine whether it requested and obtained consultations with other departments. If so, discover who the consultants were and what treatment they recommended. If not, why were necessary consultations not obtained? You must also find out what the physician-witness told the patient about the latter's medical condition, treatment choices, and the expected treatment results. Did the physician tell the patient, in detail and in language the patient could understand, about the treatment choices and their known risks and complications?

(7) Ask about the HCPs own health at the time of treating the patient.

(8) Ask the HCP whether the Army should defend or settle the claim based on the medical records. The HCP should explain his or her involvement in the case and all interactions with other involved HCPs. Ask questions to clarify the events. Always allow the HCP to review the allegations (stated on the claim form) and any expert opinions the claimant has offered. Ask the HCP to comment about both the allegations and the claimant's expert medical opinion, if any. The HCP may make valid points about either or both, and these comments may in turn assist in the overall defense of the case.

(9) Establish what counseling the patient received, when and by whom, and what subject was discussed with the patient.

(10) Avoid these situations:

(a) Arguing with or confronting the witness.

(b) Leading the witness rather than asking who, what, when, where, and why questions.

(c) Failing to ask hard or tough questions (for example: Why didn't you do anything about the patient's elevated white blood count?)

(d) Failing to prepare properly for the interview; not knowing the right terms or not understanding the medical records.

(e) Not knowing the medical background (for example, normal values for blood chemistry, such as a complete blood count (CBC)), subject matter, or treatment standards involved and not reviewing general medical texts and articles before conducting the interview.

(f) Allowing the witness to respond at great length and not asking the witness to separate or break down the answer into understandable segments.

(g) Allowing the witness to respond in "medicalese" and not asking the witness to explain the subject involved in plain, easily understandable English.

(h) Failing to understand the witness' answer but not asking for clarification.

(i) Failing to ask follow-up questions.

(j) Letting the witness intimidate you.

c. Documenting the opinion. Obtain copies of any personal notes and research HCP's files on the patient. Also request copies of—

(1) MFRs concerning treatment or discussions with the patient or patient's family.

(2) Letters to and from civilian consultants used by the treating physician concerning the patient.

(3) Photographs, slides and/or videotapes of the patient's condition before and after treatment or procedure performed (such as a videotape of an endoscopy or photographs of patient before and after plastic surgery).

(4) Personal computer files containing progress notes, personal notes, MFRs and drafts of medical journal articles.

2–63. Interviewing claimants in medical malpractice claims

The claimant interview is crucial to a complete investigation of a medical malpractice claim. See paragraph 2-34*i* for guidance.

2–64. Claims memorandum of opinion

Upon completion of the investigation and determination of liability and damages, the ACO or CPO will prepare a memorandum of opinion on claims required to be forwarded to USARCS for action. This requirement may be eliminated by agreement between the ACO or CPO and the AAO. Compose the report in the following format:

a. Part I. Identifying data

(1) Each claimant's or plaintiff's name, current address, permanent address, date of birth, and social security number.

(2) Each attorney's name, address and telephone number.

(3) Date and place of incident.

(4) Date and amount of claim or ad damnum of complaint.

(5) Brief (one-sentence) description of claim or case.

(6) Actual or potential companion claims (their nature and status).

b. Part II. Jurisdiction. Discuss any applicable statute(s), whether the claim was timely and properly filed and other jurisdictional matters.

c. Part III. Facts. Provide a complete statement of the facts upon which the claim and any defenses thereto are predicated. In each instance in which witness statements support a fact, make reference to an exhibit documenting the fact. Use subparagraphs with descriptive headings, if appropriate (for example, background facts or facts about the incident).

d. Part IV. Legal analysis. List issues related to liability and the controlling law with applicable citations. Again, use subparagraphs with descriptive headings as appropriate and necessary (for example: law controlling factual issues, factual bases for claim as related to issue (duty, proximate cause), defenses, existence of joint tortfeasors). If the claim is barred by a jurisdictional defense, for example, Feres, FECA, or the SOL, discuss this separately. State your position on liability at the end of the section.

e. Part V. Damages. Discuss the following issues under appropriate subheadings in the order listed:

- Who may claim under applicable law.
- Elements of damage for wrongful death or personal injuries.
- Description of injuries and treatment, including the injured party's or decedent's premorbid life expectancy.
- Description of property loss and proof offered.
- Types of special damages (such as loss of earnings, loss of services, past and future medical care).
- Type of non-economic or general damages (use a summary in tabular form, if necessary, for special and general damages).
- Effect of diminished liability on the claim value.
- Effect of subrogation, if any, and the subrogor's identity.

f. Part VI. Proposed settlement or action. Discuss any proposed structured settlement. Discuss any prior offers or negotiations and their status. If a denial or final offer is indicated, so state.

g. Part VII. Recommendation. State whether the claim should be denied or settled. A recommendation to settle a claim should include a monetary range.

h. Part VIII. Documents and witness list.

(1) The witness list will include the name, Social Security number (SSN), telephone number, and present and permanent address for each witness or medical reviewer.

(2) Identify each document in the file.

i. Part IX. Responses to pleadings (for claims in litigation only).

(1) Proposed answer.

(2) Defenses.

(3) Counterclaims.

(4) Cross claims.

(5) Dispositive motions (identify and list).

Table 2–6
Sources of medical records

Record Name	Description/Media	Location
Outpatient chart	DA Forms/paper/Computer Log of Visits	PAD
Inpatient chart	DA Forms/Computer	PAD
Special Records systems including Psychiatry and Social Work Services convenience files.	Originals/Copies of records (copies are routinely retained)	Psych Dept.Social Work Services
Clinic "Convenience" file	Copy of medical records	Clinic treating patient
OB/GYN Service		
Labor and Delivery log	Log Book or Paper Form/Computer Log	Labor and Delivery Ward
Fetal Heart Tapes	Paper Tapes (continuous)/Computer	OB/GYN Clinic or PAD
Fetal Activity Determination Studies	Paper Tapes (continuous)/CD-Rom Computer Tape Laser	OB/GYN Clinic or PAD
Non-stress Test	Paper Tapes (continuous)/CD	OB/GYN Clinic or PAD
Ultrasound printouts	Computer Storage/Paper printouts/Film/ Video Tape file/Special Studies Section/ Radiology	OB/GYN Clinic
Internal Medicine Service		
Electrocardiogram (EKG)	Paper Strips Computer Electronic Tapes CD-Rom Disc Storage	Cardiology Dept./Medical Service Involved
Double Echo Cardiogram	Printout, computer tapes, film/Video Tape	Cardiology Clinic
Stress test strips (Treadmill) and logs	Printout/Paper Strips/Electronic Storage CD-Rom	Cardiology Clinic
Cardiac Catheterization films	Movie/Video Tape	Cardiology Cath lab
Coronary Artery Balloon Angioplasty	Movie/Video Tape	Cardiology Cath lab
Electroencephalogram (EEG) and log	Printout/Paper Strips/ComputerTape	Neurology Clinic
Radiology		
X-rays	Plastic film/Computer Tapes/Electronic Storage	Radiology Dept.
Special Studies (MRI, CAT Scan, etc.)	Computer Tapes/Electronic Storage Tapes	Radiology Dept.
Radiation therapy, log book, Radiation daily or weekly RAD plan Computer Tape	DA Form, Paper and Civilian forms	Nuclear Medicine Hematology/Oncology
Mammogram	Plastic film/Paper/Computer Storage	Radiology Dept.
Ultrasound scan	Plastic film/Video Tape	Radiology Dept.
Emergency Medicine		
Emergency Room log	Paper/Computer Tape Logs of Visits	Chief, ER or PAD
Schedules and list of personnel filing all positions in the emergency room each day and night in question, Chief Nurse Office	Paper Log or Computer File	Chief, ER Chief, Nursing
Ambulance log	Paper/Computer Data	Chief, ER or Ambulance Section
Duty rosters for the ambulance section	Paper Log/Computer Log	Ambulance Section
Emergency Room telephone call recording system	Paper Log/Tape Recording	Chief, ER
"Code" flow sheet (this form used anywhere in hospital)	Paper Log or Informal notes to be transcribed to form	Designated Recorder
Code team duty roster	Paper	Chief, ER Chief, Nursing
Pathology		
Lab slips	Paper/Computer Log/Tapes	Pathology Dept.
Lab Log in/out books	Electronic Storage	Pathology Dept.
Slides, blocks and specimens, log books, accession logs	As described	Pathology Dept.
Autopsy reports/Slides specimens	Paper/Slides/Tissue blocks/Organs	Pathology Department or AFIP (if forwarded)
Pharmacy		
Drop and device procurement logs	Computer Logs/Paper	Pharmacy
Records of procurement	Computer Tapes/Logs	Pharmacy
Prescription slips and logs	Paper/Electronic Storage	Pharmacy
Package inserts and manufacturer's information	Paper	Pharmacy
Medical Material		
Medical Material Inventory	Computer printout	Medical Material Section
Equipment procurement	Log Book	Medical Services
Maintenance documents	Paper/Log Books	Support Section
Purchase Request	Paper	Contracting
Sales Brochures	Paper	Medical Maintenance Section
Technical Manual	Paper	Support Service
Quality Assurance /Risk Management		
JACH Survey Report	Paper, Report	DCCS/ Risk Management/QA
Quality Assurance	Paper Report	DCCS/Risk Management/QA
Committee minutes, reports and logs	Letter, MFR's/MOU's	
Incident Reports	Paper, MFR's (DA Form 4106)	Chief of Medical Service involved, DCCS/ QA Office
Morbidity and Mortality meeting notes	Paper MFR's Computer	DCCS, Chiefs of Services

Table 2–6
Sources of medical records—Continued

Record Name	Description/Media	Location
Tumor Board Reports and Registry	Paper/MFR's Computer	Tumor Board Office
Patient Encounter Forms	Paper	Patient Representative
Credentials Files	Paper/Computer	DCCS/IG/QA/Risk Management/Chief of Service Involved
Credentials Files and Credentials Committee minutes, notes and logs	Paper/Computer	QA Office, DCCS
AR 15-6 Investigation Report	Paper	DCCS/QA/Risk Management
Surgeon General consultant's letter of Inquiry	Paper	DCCS or Chief of Service
In-house investigations, files, movies, photographs, physician-patient correspondence, journal articles drafts teaching files, talks or presentations given at medical conferences, unpublished research papers, drafts, paper, MFRs and electronic storage.	Paper/MFR	Chief of Service Civilian consultant Treating physician
Patient Administration Division		
Billing Records	Computer/Paper	PAD, Treasurer's Office
CHAMPUS or other Insurance Forms and Applications	Paper/Computer Tapes/Logs	PAD
Social Security Forms, applications and responses	Paper	PAD
Hospital Census Record	Computer Electronic Storage, Paper	Chief Nurse DCCS, Service Chief
Record of release of medical records and medical statements by physicians	Card File/Computer	Correspondence Section
Serial list of Inpatient records by register number	Computer Storage Copy of clinical cover sheet and narrative summary	Medical Records
Air Evacuation Paperwork	Logs, Orders, Manifests, Duty rosters, Doctor's/Nurse's notes, Computer Log	Air Evac Section
Occupational Health		
Occupational Health records and chart	Paper/Computer Clinic Services	Occupational Health
Physical Therapy		
Physical Therapy progress chart	Treatment Cards, Paper, Computer storage, MFR's/Forms	PT/OT Section, Clinic Office, Rehabilitation Section
Evaluation Chart	Paper	PT Clinic
Attendance log	Card/Paper/Computer	PT Clinic
ICU		
Flow Sheets	Paper, Computer Logs, Storage Print out strips, nurses crib	Chief, Medicine Department, OR Service Involved
Hard Copy from Cathode-Ray Terminals with trending capability Electronic Data storage	Computer storage tapes	DCCS, Involved
Hard Copy printouts	Computer storage tapes Electronic Data storage CD-ROM Storage or Computer	Dept. Chief of Service Involved
Miscellaneous		
"Historical file" of physicians or other health care providers ssigned to hospital (w/last known address)	Card file/Computer Storage	Hospital Commander's/DCCS office, QA Coordinator, Risk Manager
Experimental protocols kept by Clinical Investigation teams regarding human use related studies, i.e., Institutional	Paper/Computer storage	DCCS - Service Involved
Review Committee meeting notes and data and agenda.		
Chief Nurse Daily Report, DA Form 3839	Paper/Computer Data	Chief Nurse DCCS/QA
Ward or Operating Room	Paper/Computer Data DCCS/QA	Chief Nurse
Nurses "worksheet" "Crib notes" or "Throw-aways"	Paper/Computer Data	Chief Nurse DCCS/QA
Appointment Books	Paper/Computer Data	Clinic
Clinic sign-in logs	Paper/Computer Data	Clinic
Inspector General Report	Paper/Computer Data	Clinic
Complaint Letters	Paper/Computer Data	IG: Patient Representative
Operating Room Logs	DA Forms/Computer Storage	Surgery Clinic OR Office
Schedules and list of personnel filling all positions in each operating room	Log (paper/computer) Logs/personnel rosters Duty rosters OR schedules	Surgery Clinic Service responsible for patient
Hospital daily bulletin	Paper/Computer	Adjutant
Complaints to specific department, Commanding Officer of hospital or DCCS	Paper/Computer	Adjutant/Commander/QA/Risk Management
Grand rounds notes, attendees and rosters	Paper/Computer	Information Office/IG Dept. Service Chief
Pre-surgery, post-surgery operation photographs	Paper/Computer	Surgeon or Service Chief
I/O Sheets	Paper/Computer Data	Ward (destroyed after patient discharged--retrieve before chart)
Exceptional Family Member Program	Paper File/Computer Storage	EFMP Office
Child Development	DA Forms/Paper File/Computer Storage (goes to PAD for collation or consolidation)	EFMP Office
Personnel Information		

Table 2–6
Sources of medical records—Continued

Record Name	Description/Media	Location
Ward Personnel Rosters Rosters, Paper/Computer (daily, weekly and monthly)	Paper/Computer Storage	Chief RN of Services; Chief RN of Service
Military Personnel Records (201 File)	Paper	Personnel Office (Medical Centers), MILPO (Hospital)
Academic Reports	Paper/Computer	QA/DCCS/Credentials (residents and interns)
Board Certifications	Paper/Computer	Service Chief/Physicians concerned/Credentials Committee or Credentials File
Civilian consultant contract	Paper/Computer	QA/DCCS
Civilian Personnel:Job descriptions, Appraisals Manpower surveys or Schedule X	Paper/ Computer	CPO Clinic or Service concerned
Hospital Adjutant		
Administrative Officer of the Day Report (AOD Report)	DA Form/Computer	Adjutant
Congressional Correspondence and Responses	Paper/Computer	Hosp. CDR, DCCS/QA IG
Regulations	Paper/Computer Data	Adjutant
Guidelines	Paper/Computer Data	Adjutant
SOPs	Paper/Computer Data	Clinic or Service; Adjutant
Freedom of Information Request and Answers (File, Log, etc.)	Paper/Computer	DCCS/QA/Risk Management Dept Service Chief
Hospital Rules	Paper/Computer Data	Adjutant

Whereas, on (date) at (time), an accident occurred that could result in a non-contractual claim against the United States Government, arising out of a (state the activity type, such as United States Army or National Guard) activity; in particular, fatal traffic accident at intersection of First and 2nd Street, Elm Grove, Ohio, USA. Now, therefore, I hereby affirm:

1. That, I, the undersigned, am the commanding officer of (unit/activity), which is a federally recognized unit of the United States.

2. That, the (United States Army)(National Guard) personnel involved in this accident are Federally recognized members of the (US Army) (Army/Air National Guard); their names are as follows (state name, grade, SSN, unit, unit address).

3. That, I, the undersigned, on 1 January, 1999, authorized (name of driver(s)) to operate the government vehicle, identification number, license number, on 1 January 1999, with the specific mission of (state purpose of dispatch of vehicle and duty of vehicle operator).

4. The starting point of the authorized dispatch vehicle operated by (state name of vehicle operator) was Fort Meade, Maryland with a departure time and date of 0500, 1 January 1999. The normal time required for the trip is 2 hours 30 minutes and the actual route of travel was from (state itinerary for vehicle).

5. In my opinion, the route taken by (name of vehicle operator) was the most direct and practicable under the circumstances.

6. (Name of vehicle operator/personnel) at the time and place of the above described incident, were engaged in military (Federal) training or duty and are entitled to pay under (state authority)

(Examples of National Guard categories for use in National Guard claims only)

Title 32, United States Code, Section 316 (ARNG rifle instructors for civilians)
Title 32, United States Code, Section 502 (IDT drills, AT)
Title 32, United States Code, Section 503 (participation in IDT field exercises)
Title 32, United States Code, Section 504 (NG schools and small arms competition)
Title 32, United States Code, Section 505 (Army schools/field exercises)
Title 32, United States Code, Section 206 (IDT, for which pay has been waived)
Title 32, United States Code, Section 709 (federal technicians)

If applicable, attach a copy of the orders authorizing such duty.

John A. Smith
CPT, FA
Commanding

Figure 2-22. Sample—Scope of employment statement

1. Personal data
a. Full name.
b. Maiden name.
c. Nicknames or previous names.
d. Social Security number.
e. Service or serial number.
f. Birthdate.

2. Addresses
a. Current.
b. Address at the time claim arose.
c. Permanent address (where claimant can always be contacted).

3. Family
a. Marriages.
(1) Date of current marriage.
(2) Spouse's name (including maiden name, if applicable).
(3) Spouse's birthdate.
(4) Prior marriages.
(a) Name of each spouse.
(b) Date of each marriage.
(c) Date of each divorce/annulment.
(d) Former spouse's address/telephone number.

b. Children.
(1) Full name.
(2) Birthdate.
(3) Names of parents (necessary if claimant has a number of children by multiple spouses).
(4) If parents are/were divorced, custody arrangement (get copy of agreement or court order).
(5) If child is adopted, full names of natural and adoptive parents.
(6) Child's address (if not living at home).
(7) If child is emancipated:
(a) Whether child is still living at home.
(b) Degree of support the child requires from or provides to parent.

c. Other relatives. Include data similar to that above for relatives who have or may have a claim.

4. Education
a. High school and college degrees.
b. Special or technical training.
c. Military education/training.

5. Military service
a. Branch of service.
b. Years of service.
c. Type discharge.
d. VA claims of any sort (get release for VA file).

6. Employment
a. Employer's name.
b. Address/telephone number.
c. Home office address (if different from above).
d. Names of immediate and higher supervisors.
e. Job title/description.
f. Length of time employed there.
g. Approximate number of hours worked per week.
h. Compensation history.
(1) Hourly wage/weekly salary.

Figure 2-23. Claimant interview checklist—Continued

(2) Fringe benefits

i. Job evaluations (all that are available).
j. Employment history.
(1) Dates of employment.
(2) Type of job/duty description.
(3) Pay.
(4) Supervisor's name/address/telephone number.
(5) Reason for leaving job.

k. For personal injury cases in which substantial loss of earnings is alleged, request tax returns for last 5 years.

7. Insurance

a. Consider the following insurance sources when preparing for the claimant interview:
(1) Automobile insurance.
(a) Claimant's own (even if claimant's vehicle was not involved).
(b) Owner of automobile.
(c) Driver of automobile.
(2) Homeowner's insurance.
(3) Medical insurance (furnished as a benefit or purchased by the claimant).
(4) Workers' compensation.
(5) Life/accidental death or dismemberment.
(6) Property insurance.

b. Always ask for the following information about an insurer:
(1) Full name of company.
(2) Address/telephone number of insurer.
(3) Name of adjuster/representative.
(4) Amount of claim, date filed, and date of payment.

8. Government benefits

a. Type—VA, Aid to Families with Dependent Children, food stamps, workers' compensation, Social Security, CHAMPUS, military medical care, etc.
b. If the claimant is eligible for a benefit, is it being used? If not, why not?
c. Was claimant receiving benefits before the claim arose?
(1) What sort of benefit?
(2) Amount of payment.

d. Get a release from claimant for entire compensation file from the agency responsible for the benefit program.

Figure 2-23. Claimant interview checklist

1. General Guidelines.

a. Be prepared to discuss the effect of the Drivers Act with the driver.

b. Remember that the driver is our employee.

c. Remember that the supervisor's certification that the driver was in scope of duty is not a final determination. In the end, the DOJ decides if a driver was in scope. What is important is determining whether the driver was authorized to drive the vehicle and was performing an assigned mission at the time of the accident.

d. Obtain copies of driving records before or at the time of the interview.

(1) Military driver's license.

(2) DA Form 348 (Equipment Operator's Qualification Record).

e. Ask the driver if the claimant or an attorney or investigator has interviewed (or tried to interview) him or her. Tell the driver to decline future interviews with the claimant or the claimant's agents until clearing it with you or USARCS.

f. Before interviewing the driver, make sure the driver is not pending charges or being represented by an attorney.

2. Personal Information

a. Full name.

b. Birthdate.

c. Social Security number.

d. Unit.

e. Home address.

f. Permanent home address.

g. Expiration term of service date (ask about plans for reenlistment).

h. Date eligible for return from overseas (ask about extension).

i. Pending reassignment orders, reporting date at new installation. (Get a copy of orders and find out about the soldier's plans.)

3. Driving experience

a. When did driver start to drive?

b. When did driver first obtain a driver's license?

c. What types of driver's licenses and what are the dates of these licenses (get copies)?

d. What driver training courses has the driver taken; what are the dates of instruction?

e. What types of vehicles has the driver operated in the past for pleasure or business (get specifics on experience and training)?

f. Has the driver has been awarded a wheeled vehicle military occupational specialty (find out specifics of training and experience)?

g. Has the driver had previous accidents (get a copy of the accident record).

h. Does the driver have an enforcement record?

4. Employment background

List specific jobs and dates held; address and telephone number of business; and how to contact former supervisors.

5. Vehicle involved in the accident

a. How familiar was the operator with the vehicle (was it the operator's assigned vehicle or the first time the operator ever drove it)?

b. PMCS (Preventive maintenance, checks, and services).

(1) Was PMCS pulled?

(2) Who pulled it?

(3) Where is the PMCS checklist for that day?

(4) If necessary, have the driver show you how PMCS was performed.

(5) Find out who else assisted with PMCS, witnessed the PMCS, or checked that PMCS was performed.

c. Was there any problem with the vehicle (especially if the PMCS checklist is not available or does not list the defect)?

Figure 2-24. Government driver interview checklist—Continued

d. Did the vehicle develop a problem after the trip started? Was this a problem that had happened before? What action was taken once the problem was recognized?

6. The trip

a. What were the driver's normal assigned duties?
b. Was the trip part of these duties?
c. Had the driver driven the route before or was the driver unfamiliar with the route?
(1) How many times did the driver drive the route?
(2) If unfamiliar with the route, what directions did the driver get or what maps were provided?

d. Who authorized the trip?
e. Why was the trip authorized?
f. How long did the driver expect the trip to take?
g. Before the driver set out on the trip, how much sleep did he or she have the night before and what did the driver do before starting? Was the driver tired or alert? This is the point to ask about alcohol and drugs.
h. Who else was along? (Get full personal information.)
(1) Why were they in the vehicle?
(2) What did they do during the trip?

i. Have the driver take you through the trip from start point/time to destination and then to return. Ask the driver to describe the trip as planned and then as it actually happened.
(1) Get a map and ask the driver to show the route on the map.
(2) If the route is not the most direct route, ask the driver to explain any deviation and to include any reasons for deviation.
(3) Indicate any interruptions or rest stops. Determine the reason for each stop, what happened during the stop, and the duration of the stop.

7. The accident

a. Visit the accident scene with the driver.
b. If relevant (and possible), drive the route with the driver.
c. Have the driver describe the sequence of events up to, during, and after the accident.
(1) When did the driver see the other vehicle?
(2) What was the driver's speed at the time of the accident?
(3) What evasive or other actions did the driver take?
(4) Did the other driver see our vehicle?

d. If the driver completed an accident report, ask the driver to review it and explain any omissions or errors.

8. Injuries

a. Was our driver injured?
b. Names of other injured parties (compare with claims and accident reports).

9. Witnesses

a. Names of any witnesses known to the driver.
b. What did these witnesses supposedly see?
c. Any oral statements by witnesses the driver recalls.

10. Prior statements by the driver

a. Oral or written.
b. When made and to whom.
c. Oral statements: Have driver give you the substance of the statement he or she recalls having given.

11. Accident diagrams

Show the driver other accident diagrams and ask if they are accurate. If not, have the driver explain why.

12. Alcohol/drugs

a. Find out if the driver is a drinker.
b. If the driver does drink, when was alcohol last consumed before the accident?

Figure 2-24. Government driver interview checklist—Continued

(1) How much alcohol?
(2) Types of drinks.
(3) Was the alcohol taken with a meal?

c. Drug use? Get specifics if you suspect it.
d. Was the driver taking medication?
(1) Name of drug.
(2) Get bottle or record of purchase if a prescription medication.
(3) Why was the driver taking medication? (Prescription or over-the-counter)
(4) Did it affect his or her driving?
(5) Get specifics on amount taken, when, and whether the driver had used it before.

Figure 2-24. Government driver interview checklist

1. Operator
a. Name.
b. Title and job classification (civilian employee) or duty assignment (soldier).
c. Organization.
d. Duty hours on date of accident.

2. Operator's supervisor
a. Name.
b. Title.

3. Vehicle
a. Type/nomenclature.
b. Bumper number or license number.
c. Ownership.
(1) Government-owned.
(2) Not Government-owned (name of owner).
d. If Government-owned, unit or activity to which vehicle is assigned.
e. How did operator receive authority to operate the vehicle?
(1) Oral.
(2) Written.
(3) Assigned.
(4) Other.
f. Who gave authority to operate vehicle?

4. Details of trip during which accident occurred
a. Origin.
b. Destination.
c. Purpose.
d. Date/time of departure.
e. Date/time of accident.

5. How did operator receive authority for trip?
a. Oral.
b. Written.
c. Give details as to how authority was granted.

6. Was there deviation from the most direct route from point of departure to destination?
a. No.
b. Yes (Give details).

7. Did the operator engage in any activity while enroute other than that for which the trip was authorized?

8. List any stops.

9. Was the trip made during established duty hours?
a. No.
b. Yes (Give details).

10. Other information concerning trip not covered in above questions

Figure 2-25. Sample—Scope of employment checklist

1. General Guidelines

a. Always identify yourself and your status.

b. Ask the officer to visit the scene.

c. Always ask the officer to bring a copy of the accident report and any field notes. Remember that the notes may have information not in the report.

d. If photos were taken, ask for a copy (you may have to pay for them).

e. Try to get off to a good start with the interview. Remember that most police officers are professionals and assume that you are too. Also, many police officers are former military personnel (or in the Reserves or ARNG). It should be easy to begin the interview if you start off with polite inquiries about any military background.

2. Personal data

a. Full name.

b. Birthdate, birthplace.

c. Home address/telephone number.

d. Office, station, or barracks address/telephone number.

e. Badge number.

3. Law enforcement background

a. Years working for police force.

b. Jobs held, dates; supervisor's name, address, and telephone number.

c. Other law enforcement-related jobs held, dates, supervisor's name and address/telephone number.

d. Law enforcement training and education (start from high school). What institution/organization, type of course, grades?

e. Inquire specifically about experience/education in accident investigation/reconstruction. If the officer identifies himself or herself as an accident reconstructionist, ask for the officer's qualifications.

f. Has the officer testified in court or deposition about an accident scene investigation he or she conducted? How many times and when? Determine if the court was criminal or civil.

4. Parties

a. Does the officer know the claimant, the claimant's family, or any witnesses or their families? Get specific details.

b. Has the officer received inquiries or been interviewed about the accident by anyone else? If relevant, get specifics, to include the identity of the person(s) making the inquiry.

c. Note any obvious bias the officer may have. Inquire discreetly about it.

5. Events prior to the accident

a. How long had the officer worked that day? Was it the officer's normal shift? Had the officer worked other accident scenes that day?

b. Was the officer alone in the car or was his or her partner along? Find out how to contact the other officer.

c. How did the officer learn of the accident (radio call, witness the crash, came on scene)?

d. How far away was the scene? How long did it take to respond?

6. At the scene

a. Were other emergency vehicles already present or called? Who called them? Get full identification of the services called to the scene.

b. What did the officer do and in what sequence? Get general descriptions of the officer's actions at the scene.

c. What witnesses were identified? Be sure to ask the officer to examine field notes to determine whether there are other names.

d. If photos were taken, who took them?

e. If you are at the scene, have the officer identify key locations, such as point of impact and the final resting point of each vehicle.

f. Have there been other accidents at the scene? Is it identified as a problem? Is any corrective action pending? If the officer does not know the answers to these questions, ask how you can find out.

g. Is the accident scene different now? How and why? (such as the foliage has changed due to change of seasons).

Figure 2-26. Police officer interview checklist—Continued

h. Witnesses.
(1) What did the witnesses tell the officer?
(2) What did the claimant and our driver say?

i. What other investigation did the officer perform?
j. Traffic signals.
(1) Were the traffic signals functioning properly?
(2) If not, did the officer watch the lights change and time the traffic lights?
(3) Was any corrective action taken on the lights? Who knows about it?

k. Who maintains the intersection and the lights?

7. Enforcement action
a. Was anyone cited? Is enforcement action pending?
b. If no one was cited and it appears someone (including our driver) should have been, ask why no one was.
c. If someone was cited, ask why.

8. Vehicles
a. Were they moved before the accident was investigated?
b. Were the vehicles retained in police custody?
c. Was any lab or reconstruction work done on the vehicles? If so, get copies of the reports and the name of the person doing the analysis.
d. Where are the vehicles now (if you do not already know)?

9. Fault
What is the officer's opinion as to fault and why?

Notes:
The information obtained with this checklist would be appropriate if the police officer is a key witness in a major claim.

Figure 2-26. Police officer interview checklist

1. Documents

a. SOPs for cleaning/inspection.
b. Records of scheduled maintenance.
c. Labels from cans/bottles of floor wax, oils, or cleaning compounds.
d. Separate instructions for applying wax, oils, or cleaning compounds.
e. Product alerts from the Consumer Products Safety Commission.
f. Draw a diagram of the scene, with references to the pictures. Label the hazard, location where the fall started, and the location where the claimant landed.
g. All work orders pertaining to the area where the accident occurred. Determine relevance after reviewing the work orders.
h. Maintenance contract.
i. Blueprints pertaining to area where hazard existed.
j. Weather data (Air Force or National Weather Service).
k. Copies of State and local laws or regulations.

2. Location of the accident

a. Determine the exact location where the fall occurred.
(1) Where did the claimant land?
(2) Where did the fall begin?

b. What warnings were available to the claimants?
c. Lighting.
(1) Source and type of artificial lighting.
(2) Natural lighting available? Obtain weather data pertaining to lighting conditions.
(3) Were all artificial lights operational at the time of the accident?
(4) What lighting, if any, is required by local law or Occupational Safety and Health Administration?
(5) Who can testify concerning the lighting? Get full witness information.
(6) Consider asking an expert to determine candle power.

d. Tape photographs of the accident scene, including—
(1) A general picture showing the locations where the fall started and where the claimant landed.
(2) The approach to the locations in paragraph 1.
(3) A picture of the hazard that allegedly caused the fall. For example, if the fall was caused by a lump in the wall-to-wall carpet, set the camera on the floor, stand a ruler next to the lump, and take the picture.
(4) The location of light sources.
(5) Note: Photos taken at night are usually not helpful.

3. Floor accidents

a. Type of floor covering (carpet, tile), width and length of aisle.
b. Condition of floor.
(1) Is the floor surface rough, smooth, or depressed?
(2) If the floor was sloped, degree and direction of slope.
(3) General characteristics of the floor (waxed, oiled, recently cleaned).
(4) Work order history on the floor.

c. Maintenance.
(1) When was the floor last stripped, cleaned, waxed, or otherwise maintained?
(2) Method of cleaning and maintenance.
(3) Maintenance and inspection schedules.
(4) Who performs the maintenance? When was it last performed?
(5) Who inspects the work? When was it last inspected?

d. Waxed floor claims.
(1) Name of wax product and all printed matter on its use.
(2) Name of manufacturer and insurer.
(3) Preparation of floor for waxing.

Figure 2-27. Slip and fall investigation checklist—Continued

(4) Manufacturer's directions for applying wax.

(5) Did the person applying the wax read the label or other written material available beforeapplying the wax? Were the directions followed? If not, did the method of application comply with the directions?

(6) Chemical analysis of wax.

(7) Friction test results.

e. Structural defects.

(1) Who created the defect?

(2) When was defect created?

(3) Were personnel in building aware of defect?

(4) Prior and subsequent corrective actions, if any.

4. Stairway accidents

a. Full description of the stairway, including photographs.Where possible, get a blueprint of the stairway. The description should include --

(1) Number of steps, landings, size of treads, and height of risers.

(2) Composition of steps (wood, marble, concrete, iron).

(3) Whether the stairway is steep, straight, or curved; narrow or wide.

b. Handrails.

(1) Location.

(2) Were they located on both sides?

(3) Were handrails required by law?

(4) Do the handrails reach the entire length of the stairs?

c. What was the intended purpose of the stairway (e.g., fire escape, employee access, use by general public)?

d. Stairway surface.

(1) See questions on floors.

(2) Were there nonskid or safety treads installed on the stairs?

e. Maintenance (see questions on maintenance for floors).

f. Obstructions on stairs; permanent or temporary? Source?

5. Claimant interview

a. Reason for visit to premises.

b. Scheduled and actual time of arrival.

c. Was claimant in a hurry?

d. Had claimant been there before? How many times? When exactly were these prior visits?

e. How familiar was claimant with the premises?

f. How long was claimant in the building/area before the fall?

g. What clothing, especially shoes, was the claimant wearing?

h. Does the claimant wear glasses/contact lenses? Were they being worn that day?

i. Was the claimant carrying anything?

j. Was the claimant wearing or carrying anything that obstructed or limited his or her view?

k. Claimant's description of the premises on the day of the accident.

(1) Lighting.

(2) Floor surface.

(3) Was the area crowded?

(4) Cleanliness of floor.

l. Other witnesses.

(1) Was claimant accompanied by anyone?

(2) Was the area crowded?

(3) Did anyone else see what happened?

(4) Name of anyone else who knows something about the incident?

m. Description of fall in claimant's own words.

(1) Was the claimant pushed?

(2) Direction of fall?

(3) Did one foot slip or both slip?

Figure 2-27. Slip and fall investigation checklist—Continued

(4) How did the claimant land?
(5) Did the claimant lose consciousness?
(6) Did the claimant try to grab another person or object?
(7) Did the claimant twist suddenly? Was there immediate pain?

n. Has the claimant ever fallen before?
(1) Reasons for previous falls.
(2) Any medical condition that contributed to falls.
(3) Was the claimant compensated for injuries as a result of the falls?

Figure 2-27. Slip and fall investigation checklist

State	Statute
Alabama	Ala. Code sec. 35-15-1 to 35-15-28
Alaska	Alaska Stat. sec. 09.65.200
Arizona	Ariz. Rev. Stat. Ann. sec. 33-1551
Arkansas	Ark. Stat. Ann. sec. 18-11-301 to 18-11-307
California	Cal. Civil Code sec. 846
Colorado	Colo. Rev. Stat. sec. 33-41-101 to 33-41-105
Connecticut	Conn. Gen. Stat. Ann. sec. 52-557f to 52-557k
Delaware	Del. Code Ann. Tit. 7 sec. 5901 to 5907
Florida	Fla. Stat. Ann. sec. 375-251
Georgia	Ga. Code Ann. sec. 51-3-20 to 51-3-26
Hawaii	Haw. Rev. Stat. sec. 520-1 to 520-8
Idaho	Idaho Code sec. 36-1601 to 36-1604
Illinios	Ill. Comp. Stat. Ch. 745 secs. 65-1 to 65-7
Indiana	Ind. Code Ann. sec. 14-22-10-2
Iowa	Iowa Code Ann. secs. 461C.1 to 461C.7
Kansas	Kan. Stat. Ann. sec. 58-3201 to 58-3207
Kentucky	Ky. Rev. Stat. Ann. sec. 411.190
Louisiana	La. Rev. Code Ann. sec. 9:2791
Maine	Me. Rev. Stat. Ann. Tit. 14 sec. 159-A
Maryland	Md. Code Ann. Nat. Res. sec. 5-1101 to 5-1109
Massachusetts	Mass. Ann. Laws Ch. 21. sec. 17C to 17D
Michigan	Mich. Comp. Laws Ann. sec. 324-73301
Minnesota	Minn. Stat. Ann. sec. 604A.20 to 604A.27
Mississippi	Miss. Code Ann. sec. 89-2-1- to 89-2-7
Missouri	Mo. Ann. Stat. sec. 537.345 to 527.348
Montana	Mont. Code Ann. sec. 70-16-301, 70-16-302
Nebraska	Neb. Rev. Stat. sec. 37-1001 to 37-1008
Nevada	Nev. Rev. Stat. sec. 41.510
New Hampshire	N.H. Rev. Stat. Ann. sec. 212:34
New Jersey	N.J. Stat. Ann. sec. 2A:42A-2 to 2A:42A-8
New Mexico	N.M. Stat. Ann. sec. 17-4-7
New York	N.Y. Gen. Oblig. Law sec. 9-103
North Carolina	N.C. Gen. Stat. sec. 38A-1 to 38A-4
North Dakota	N.D. Cent. Code sec. 53-08-01 to 53-08-06
Ohio	Ohio Rev. Ann. sec. 1533.18 to 1533.18.1
Oklahoma	Okla. Stat. Ann. Tit. 16, sec. 10 to 15
Oregon	Or. Rev. Stat. Ann. sec. 105.655 to 105.680
Pennsylvania	Penna. Stat. Ann. Tit. 68 sec. 477-1 to 477-8
Rhode Island	R.I. Gen. Laws. sec. 32-6-1 to 32-6-7
South Carolina	S.C. Code Ann. sec. 27-3-10 to 27-3-70
South Dakota	S.D. Codified Laws Ann. sec. 20-9-12 to 20-9-18
Tennessee	Tenn. Code Ann. sec. 70-7-101 to 70-7-105
Texas	Tex. Civ. Prac. & Rem. Code Ann. sec. 75.001 to 75.003
Utah	Utah Code Ann. sec. 57-14-1 to 57-14-7
Vermont	Vt. Stat. Ann. Tit. 10, sec. 5212
Virginia	Va. Code Ann. 29.1-509
Washington	Wash. Rev. Code. Ann. sec. 4.24.200 to 4.24.210
West Virginia	W. Va. Code sec. 19-25-1 to 19-25-7
Wisconsin	Wis. Stat. Ann. sec. 895.52
Wyoming	Wyo. Stat. Ann. sec. 34-19-101 to 34-19-106

Figure 2-28. State recreational use statutes

1-1. Resources

a. FM 44-80, Visual Aircraft Recognition.

b. Grid map that includes affected area, including routes and location of incident.

1-2. Identification of the aircraft (questions for eyewitnesses)

a. Elicit as much information as possible about the aircraft involved before showing the witness FM 44-80. The description given by the eyewitness should include:

(1) Color, markings, and tail number.

(2) Type (fixed-wing or rotary).

(3) Unusual characteristics (fuel tanks, landing gear, armaments, and shape of tail).

(4) Sound made as it approached and departed.

(5) How long the sound could be heard.

(6) Intensity of the sound.

(7) Approximate height above the ground (avoid an estimate in feet unless the witness has the expertise to estimate.)

(8) Could the witness see the crew members or passengers on the aircraft? Describe them.

(9) Did the aircraft hover? How long? How high?

b. Show the witness FM 44-80. Do not just hand the book to the witness.

(1) If the identity of the aircraft is obvious, just show the page that contains the aircraft.

(2) If there is a question as to the identity, narrow down the aircraft as much as possible and show those pictures to the witness. For example, if the aircraft involved appears to be a helicopter, show pictures of helicopters. If the witness gives a good description that fits one of several different helicopters, show those to the witness. Do not try to trick or mislead the witness.

c. If necessary, confirm the identification by consulting an experienced aviator.

Figure 2-29. Eyewitness interview checklist (aviation claims)

General.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) **Anywhere.** An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) **Over congested areas.** Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) **Over other than congested areas.** An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(d) **Helicopters.** Helicopters may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with any routes or altitudes specifically prescribed for helicopters by the Administrator.

Figure 2-30. Federal Aviation Administration guidelines—minimum safe altitudes (14 CFR 91.119)

1. Pertinent Health Service Command and hospital regulations and standing operating procedures.

2. AR 27-20, Chapters 2 and 4.

3. AR 27-40.

4. AR 37-108, paragraph 3-74.

5. AR 40-3.

6. AR 40-66.

7. AR 40-68.

8. The *Merck Manual* and/or *Harrison's Principles of Internal Medicine*, or other general medical subject texts such as the "Appleton and Lange Medical Publications" book series (updated by publisher every four to five years).

9. *Physician's Desk Reference* (PDR) or equivalent (updated by publisher yearly).

10. Medical dictionaries (such as *Taber's Cyclopedic Medical Dictionary*; *Dorland's Illustrated Medical Dictionary*; or *Stedman's Medical Dictionary*; and *Jablonski's Dictionary of Medical Acronyms and Abbreviations*) (updated by publisher every three to four years).

11. Anatomy text or atlas (such as *Gray's Anatomy of the Human Body*; or *Grant's Atlas of Anatomy*; and *McMinn & Hutchings Color Atlas of Human Anatomy*) (updated by publisher as needed).

12. Teaching aids. Each medical treatment facility (MTF) has teaching aids for various operative and medical procedures. These include textbooks that have graphic step-by-step photographs and diagrams of medical and operative procedures, and viodeotapes of actual operative procedures. These aids should be reviewed prior to a factual investigation or interview of key medical personnel.

Figure 2-31. Medical malpractice claims—reference materials

1. To obtain dependent medical records for treatment at an Army, Air Force or Navy Hospital, that have been transferred for retirement, you must prepare a written request to the Dependent Medical Records Division at the National Archive and Administration in St. Louis, Mo. This office also maintains inpatient medical records on retired and separated service members. The point of contact is Mr. Robert Anderson Tel 314-425-5766. Mr. Anderson will accept a request by fax. His fax number is 314-425-5719. To obtain these records the following information should be included in the request:

a. Name of Patient
b. Military Sponsor's Social Security Number
c. Name of Medical Treatment Facility

2. If Inpatient medical records are requested, Mr. Anderson will need the year and location of hospitalization. If outpatient medical records are requested, he will need the location of the last outpatient military treatment facilities. Inpatient medical records are transferred to the records holding area in St. Louis, MO by the community hospital after three (3) years and after five (5) year by the Medical Centers, in accordance with Army Regulation 40-66. They are both maintained for 50 years after transfer by the records holding area. All x-rays, MRI's, CT Scans and radiographic materials are maintained at the Medical Treatment Facility and destroyed after five (5) years. Mammograms are maintained at the Medical Treatment Facility for 10 years and then destroyed. Outpatient medical records will be transferred to the records holding area if no treatment is received in a two year period.

3. In requesting personnel and outpatient medical records on prior service members and retirees, you must prepare a written request to Ms. Linda Bowman at the Army Correspondence Division, National Archives and Administration in St. Louis. Her telephone number is 314-538-4132. She will accept a fax request. Her fax number is 314-538-4034. For this request you only need the Social Security number.

4. In requesting personnel and medical records on Department of Defense civilian employees, you must prepare a written request to Ms. Barbara Foley of the Civilian Records Division, National Archives and Records Administration in St. Louis, Mo. X-rays and scans are maintained at the medical treatment facility and destroyed after five (5) years. These records are medical records on retired DOD employees and terminated DOD employees or inpatient and outpatient medical records three years old or greater.

5. In conducting investigations, there are times when you must locate physicians. For active duty Army physicians, you should contact the Medical Corps Officer Assignment Branch, telephone number 703-325-2387. For physicians that have been separated from the service, you must prepare a written request to the American Medical Association Physician Locator Service, telephone number 312-464-4184. They will accept a fax request. The fax number is 312-464-5827.

/s/ Charles E. Brown
Charles E. Brown
Senior Claims Investigator
Foreign Torts Branch

Figure 2-32. Obtaining medical records

I, Joseph H. Rouse, residing at 111 Main Street, Fort Meade, Maryland 20755 having filed a claim against the UNITED STATES for personal injury under the provisions of (Title 28, United States Code, Section 2671, et seq.). (Title 32, United States Code, Section 715), do hereby authorize any person assigned to or acting on behalf of the United States Army Claims Service, Office of the Judge Advocate General, Fort George G. Meade, Maryland 20755-5360, to examine, copy or otherwise reproduce, any record, memorandum or other document, in the possession or custody of any/or, to be informed by any physician, dentist, nurse, therapist, or any other health care provider concerning (my) (his) (her) medical history. This shall also include any present or former employer, school, Veterans Administration, Workman's Compensation Commission or Social Security Administration records. This shall also include any other person, concerning employment or school history, or any other matter relevant to economic or health background and/or health needs or conditions.

DATE: 27 January 1998 SIGNED Joseph H. Rouse

SSN: 000-00-0000 DATE OF BIRTH: 26 June 1960

Notary Seal:

Figure 2-33. General/medical information release

Section V
Determination of Liability

2–65. Introduction

A prompt and thorough investigation of all the facts is the key to properly assessing liability in any claim. Even if an unsophisticated claimant or an incompetent attorney advances a meritless argument, the facts may indicate Governmental liability on some other basis. Apply the entire law of the place where the act or omission occurred, including its choice of law rules, to determine liability and damages. In the typical FTCA case, law of the situs of the incident applies to the determination of duty, breach of that duty, and causation. In small value claims, determining the damage award is more likely to involve the law of the place of occurrence than the law of the place where the claimant currently resides. Where local law conflicts with Federal statutes, the latter govern. In assessing the Government's liability, it is important to remember that Federal statutes and common law as well as State law may bar the claim or provide Governmental immunity. Consider these issues when assessing the standard issues of duty, breach, causation, and damages. Additionally, where liability is not clear or the facts remain uncertain, consider compromise settlements. Compromise is particularly important in MCA claims, as the parties cannot litigate contested issues. The amount of the compromise settlement should represent a reduction in the claim's full value in accordance with the strength of the arguments mitigating full values, whether based on comparative negligence or uncertainty as to the injuries.

2–66. Threshold exclusions

AR 27-20 does not provide a remedy for many different claims that may be brought against the Government—

a. Constitutional claims. Claims for violations of constitutional rights are not cognizable under the FTCA, which holds the United States liable to the same extent as a private person would be according to the law of the place where the act occurred. The "law of the place" refers to State law, and State law cannot impose liability for the violation of Federal constitutional rights. Therefore, constitutional wrongs cannot be remedied through the FTCA unless the alleged violation also constitutes a State tort, *Federal Deposit Ins. Corp. v. Meyer*, 510 U.S. 471 (1994).

(1) *Bivens-type actions.* Suits alleging violation of constitutional rights may be brought against U.S. employees individually, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 US 388 (1971). See FTCA Handbook, section II, paragraph B-1*b*. The Federal Employees Liability Reform and Tort Compensation Act (the Westfall Act) (28 USC 2679(b)) provides absolute immunity from individual suit for employees of the United States acting within the scope of their employment. This statute specifically excludes from FTCA coverage any civil action against a Government employee "brought for a violation of the Constitution of the United States" or "for a violation of a statute of the United States under which such action against an individual is otherwise authorized," 28 USC 2679(b)(2)(A) and (B). However, Federal officials performing discretionary functions continue to have qualified immunity from liability as long as the official's conduct did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known," *Harlow v. Fitzgerald*, 457 US 800 (1982); *Davis v. Scherer*, 468 US 183 (1984); *Mitchell v. Forsyth*, 472 US 511 (1985); *Anderson v. Creighton*, 483 US 635 (1987). The affirmative defense of qualified immunity is a judicially created doctrine spurred largely by the rise of suits against public officials under 42 USC 1983 (holding public officials liable for violations of an individual's constitutional or Federal statutory rights as a result of actions taken under color of State law). Additionally, the Westfall Act does not preclude suit against a HCP under the Gonzales Act. For example, if a HCP acting within the scope of employment, commits an excluded tort such as an assault or false imprisonment, the HCP may be sued individually despite the Westfall Act. In view of the provision of the Gonzales Act, however, permitting suit against the United States for willful torts of HCPs, a suit against the United States rather than the individual HCP is likely. (See FTCA Handbook, section II, paras B-1*b* and D-1*b*(3) for case law; see also 10 USC 1089(e).)

(2) *Property damage and confiscation.* Neither takings under the Fifth Amendment of the U.S. Constitution nor contract claims are cognizable under the FTCA.

(a) The Fifth Amendment to the U.S. Constitution provides in part ". . . nor shall private property be taken for public use without just compensation." The Tucker Act provides exclusive jurisdiction in the Court of Federal Claims over causes of actions alleging property loss caused by a Fifth Amendment "taking," 28 USC 1346(a), 1491. Such takings include inverse condemnation actions. See FTCA Handbook, section II, paragraph B-5c. The FTCA provides no basis for paying these claims; refer them to USARCS immediately. Investigate the facts of the claim thoroughly before referring it because often it is difficult to determine whether there was, in fact, a taking (either temporary or permanent) the property was damaged by a tort or noncombat activity. See FTCA Handbook, section II, paragraph B-5*c*(3). Real estate claims based on a Fifth Amendment taking include navigation easements and claims caused by a continuous invasion of property, such as overflight noise, smoke, gases or water emanating from Government sources. See *United States v. Causby*, 328 US 256 (1946), and *Griggs v. Allegheny County*, 369 US 85 (1962) (both involving overflights). The Court of Federal Claims has exclusive jurisdiction of Tucker Act claims in excess of $10,000. If the claimed amount is less than $10, 000, suit may be filed in the appropriate U.S. District Court or the Court of Federal Claims. See paragraph 2-18*a*.

(b) Contractual claims for rent, janitorial, custodial, utility and other contractual services; damage to real property sounding in express or implied contract, and permanent or recurring damages to real property resulting in a Government "taking" of an interest in the real estate may also be investigated and settled under AR 405-15. See AR 27-20, paragraph 3-3*b*. The USACE is the Army agency that maintains liaison with the GAO for settlement of real estate claims sounding in contract. Claims based upon contract theory, either express or implied, have a six-year SOL, 28 USC 2401 and 2501. An implied contract theory may be used to pay a maneuver damage claim presented after the MCA's two-year SOL has expired.

(c) Exclusive jurisdiction over intangible property losses rests with the Court of Federal Claims. Refer claims for such damage based on mistakes made by administrative personnel to Army Litigation Center or to the GAO (31 USC 3702) as Tucker Act claims.

b. Claims by active duty soldiers.

(1) A claim for the personal injury or death of, or the loss of or damage to property belonging to, a member of the Armed Forces of the United States that occurs "incident to service" is not payable under the FTCA, *Feres v. United States*, 340 US 135 (1950); AR 27-20, paragraph 2-39*b*. Additionally, the MCA expressly bars claims for personal injury to, or death of, a member of the Armed Forces or Coast Guard occurring outside the United States and "incident to service," 10 USC 2733(b) (3); however, the MCA does permit recovery for property damage claims. The courts interpret "incident to service" very broadly; this concept is far greater in breadth than is "acting within the scope of one's employment."

(2) Here is a current list of significant justifications Federal courts invoke to uphold the Feres or "incident to service" doctrine:

(a) The distinctively Federal nature of the relationship between the Government and members of its armed forces, which argues against subjecting the Government to liability based on the fortuity of the situs of the injury.

(b) The availability of alternative compensation systems, such as military pay and benefits, including medical disability and retirement.

(c) Fear of disrupting the military command relationship, *United States v. Johnson*, 481 US 681 (1987).

(d) Such factors as the soldier's duty status, location of the incident, what the claimant was doing at the time of the incident and the soldier's access to a benefit not generally available to the public at the time of the incident (such as medical treatment at a Federal

facility, use of the post exchange or commissary or space available flights). (See FTCA Handbook, section I, paragraph E10).

(3) All "incident to service" cases must be investigated in a timely fashion to determine the soldier's exact status at the time of the incident, how much control the military service exercised over the action or conduct, and when and under what circumstances the alleged negligent act or omission occurred. Note that obvious facts such as whether the soldier was on or off duty, located on or off post, are not triggers for or against immunity—this exception does not operate automatically under any circumstances. Variations in case law demand detailed investigation of each claim. Compare *Parker v. United States*, 611 F 2d 1007 (5th Cir. 1980) with *Thomason v. Sanchez*, 398 F. Supp. 500 (D.N.J. 1975 aff'd 539 F 2d 955 (3d Cir. 1976) cert. denied, 429 US 1072 (1977) and *Warner v. United States*, 720 F.2d 837 (5th Cir. 1983).

(4) The "incident to service" exception bars claims by members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve Components of the armed forces and National Guard, 10 USC 261. It applies also to soldiers on convalescent leave, the extended enlistment program or the delayed enlistment program, to service academy cadets, military prisoners serving a sentence in which the discharge is not yet executed, and to members of visiting forces present in the United States under the NATO SOFA or similar international agreements. Currently, the question whether the "incident to service" exclusion applies to soldiers on the temporary disability retirement list (TDRL) remains unsettled. The Federal circuit courts of appeal are divided on the issue, *Kendrick v. United States*, 877 F.2d 1201 (4th Cir. 1989), cert. dismissed, 493 US 1065 (1990), and *Ricks v. United States*, 842 F.2d 300 (11th Cir. 1988), cert. denied, 490 US 1031 (1989) (held: Feres bar applied); contra, *Harvey v. United States*, 884 F.2d 857 (5th Cir. 1989), and *Cortez v. United States*, 854 F.2d 723 (5th Cir. 1988) (held: soldiers on the TDRL are not barred by Feres). FTCA Handbook, section I, paragraph E10x. The "incident to service" rule does not bar veterans' claims if the tortious act occurred after the claimant retired from military service.

(5) The "incident to service" doctrine bars constitutional and intentional tort claims brought by soldiers against the United States. FTCA Handbook, section I, paragraph E10y, suits brought by one soldier against another or against a Federal civilian employee, and third party indemnity claims brought against the United States. FTCA Handbook, section I, paragraph E10x.

(6) If medical care is provided based on an individual's military status, a claim for medical malpractice will be barred by the "incident to service" doctrine. This doctrine has been held to bar suit for negligent medical examination at a pre-induction physical provided the applicant is subsequently enlisted or inducted; if the applicant is not sworn in, Feres will not apply. The doctrine has also been held to bar a claim for a post-service injury as a result of a negligent or wrongful act which occurred while the soldier was on active duty, for example, failure to warn or to provide follow-up care. However, if an independent negligent act occurred after the soldier retired, then the "incident to service" doctrine will not bar the claim.

(7) The "incident to service" doctrine has been extended to bar derivative claims where the directly injured party is a soldier, FTCA Handbook, section I, paragraph E9c. The doctrine has also been held to bar suits by soldiers' dependents if the claim has its "genesis" in a service-related injury, for example, injuries caused by Agent Orange and World War II radiation exposure, because the soldier's service-related injury is the basis for the claimant's injury. A soldier may bring a derivative claim for injuries to a spouse or family member as long as those injuries were not incurred incident to the spouse's or family member's own service.

(8) Feres does not bar a claim by or on behalf of a fetus (miscarriage or stillbirth) or an infant (live birth) based on negligent prenatal care or provided to the soldier-mother or negligence at the time of delivery. Feres does bar a claim by the soldier-mother for her own injury resulting from such care, including pre-natal care. Care provided to the mother alone must be distinguished from care provided to both the mother and the fetus. For example, the administration of Antiemetic Bendectin to prevent nausea constitutes care of only the mother. Discuss claims involving prenatal or perinatal injuries to fetuses or infants of active duty mothers with the AAO.

(9) The courts have carved out an exception where independent post-discharge negligence (such as failure to monitor, warn or report a diagnosis) or a direct injury to a military dependent violates a continuing duty owed to the soldier, FTCA Handbook, section I, paragraph E10p. *United States v. Brown*, 348 US 110 (1954); *Laswell v. Brown*, 683 F.2d 261 (8th Cir. 1982), cert. denied, 459 US 1210 (1983); and *Molsbergen v. United States*, 757 F.2d 1016 (9th Cir. 1985), cert. dismissed, 473 US 934 (1985). The courts have reached dissimilar results in similar cases when the facts differ. Feres may also bar third party indemnity claims and soldiers' claims against United States contractors where the "Government contractor" defense is viable, *Stencel Aero Engineering Corp. v. United States*, 431 US 666 (1977).

c. Claims by civilian employees of the United States.

(1) All Federal civilian employees, except for NAF employees, are entitled to receive workers' compensation coverage under the FECA, 5 USC 8101 et seq. The FECA defines who is considered a Federal employee (5 USC 8101). In addition, special legislation has extended FECA coverage to Peace Corps and Vista volunteers, Federal petit or grand jurors, volunteer members of the Civil Air Patrol, Reserve Officers Training Corps Cadets (Senior ROTC) (5 USC 8140), Job Corps and Youth Conservation Corps enrollees, certain nurses, interns or other health care personnel, such as student nurses (5 USC 5351, 8144), and State or local law enforcement officers engaged in apprehending persons charged with committing crimes against the United States (5 USC 8191). FECA coverage applies to temporary Federal employees covered on the same basis as permanent employees; contract employees; volunteers and loaned employees may be covered under certain circumstances. Federal employment is a question of Federal law. See FTCA Handbook, section I, paragraph E9c.

(2) The FECA provides compensation if the Federal employee, located either in the United States or overseas, is killed or injured "while in the performance of . . . duty." As in many workers' compensation schemes, the employee may recover damages whether or not there is government negligence, and the employee's own (contributory) negligence does not bar recovery. In cases where it applies, FECA is the employee's exclusive remedy against the United States and bars any claim under the FTCA or MCA, *Johansen v. United States*, 343 US 427 (1952); *United States v. Demko*, 385 US 149 (1966). 5 USC 8116(c); AR 27-20, paragraph 2-39*c*; 10 USC 2733(b)(3); FTCA Handbook, section I, paragraph E9, including both the civilian employee's direct claim and all other parties' derivative claims. See FTCA Handbook, section I, paragraph E9d. The FECA bar does not extend to third party claims for indemnity or contribution, *Lockheed Aircraft Corp. v. United States*, 460 US 190 (1983). Subsequent cases have limited Lockheed's application, however. See FTCA Handbook, section I, paragraph E9h. The FECA bars only Federal civilian employees' personal injury and wrongful death claims, not their property damage claims. Therefore, consider their meritorious property damage claims first under AR 27-20, Chapter 11, and then under AR 27-20, Chapters 3 or 4.

(3) Claims for personal injury or wrongful death under the FECA are considered by regional offices of the Office of Workers' Compensation Programs (OWCP), Department of Labor (figure 2-34). Its New York regional office considers most claims arising outside the United States. Initial determinations may be appealed administratively but DOLs provision or denial of benefits is final and its determination that a FECA claim is barred is not judicially reviewable. Federal case law is determinative. See FTCA Handbook, section I, paragraph E9f. If there is a substantial question whether or not the FECA covers a claimed injury, and if the civilian employee or legal representative did not file a claim under FECA before filing a FTCA or MCA claim, advise the claimant immediately to file a FECA claim. If the claimant insists on pursuing a FTCA or MCA claim, then consult the AAO, who will coordinate with the Office of

the Solicitor, DOL. If a FECA claim is pending, final action on the FTCA or MCA claim should be held in abeyance pending a determination by the OWCP regarding the claimant's entitlement to benefits under FECA.

(4) Civilian employees of nonappropriated fund (NAF) activities of the United States receive workers' compensation coverage under the LSHWCA, 5 USC 8171; 33 USC 901-950. The LSHWCA contains compensation and exclusivity provisions similar to those of the FECA. The same regional offices that consider FECA claims consider LSHWCA claims. See AR 27-20, paragraph 2-39c and FTCA Handbook, section I, paragraph E9e.

(5) Federal civilian employees who are not citizens or residents of the United States or Canada, such as foreign nationals hired in a foreign country, may be covered by FECA and LSHWCA, subject to certain provisions governing their pay rates. Compensation payments are calculated under international agreements and command directives that provide compensation benefits when such employees are injured as a result of the performance of their duties. If neither FECA nor LSHWCA applies or if the benefits permitted under international agreements and command directives are not an exclusive remedy, such persons' claims may be considered under the FCA or the MCA. The CJA or claims attorney or officer should make appropriate deductions, however, for payments from any other sources.

(6) Coverage under the FECA and LSHWCA is contingent upon a determination whether or not the personal injury or wrongful death occurred while the Federal employee was in the performance of duty or acting within the scope of employment.

(a) The DOL makes this determination under the FECA in accordance with Federal case law. However, the law of the place of the occurrence is applied to claims arising under LSHWCA. Generally, if the employee is injured on agency premises during working hours, the FECA and the LSHWCA will apply, unless the employee was engaged in an activity that is obviously outside the scope of employment.

(b) "Agency premises" include areas immediately outside a building or place of employment, such as steps or sidewalks, if these areas are Federally owned and maintained, and any parking facilities that the agency owns, controls or manages. Coverage applies also to workers who perform services away from the agency's premises, such as drivers or messengers. It extends to workers sent on errands or special missions or who perform services at home. Employees who are present on the premises for a reasonable time before or after working hours are covered; the coverage does not extend, however, to employees who visit the premises for non-work-related reasons. Additionally, employees who are killed or injured en route between work or home are not covered, except when still on the premises (or military installation) or when the agency has furnished them transportation to and from work.

(c) Coverage extends to injuries that occur while the employee was performing assigned duties or engaging in an activity reasonably associated with the employment, including using facilities for one's comfort, health and convenience as well as eating meals and snacks provided or available on the premises.

(d) Injuries occurring off the agency premises or installation during a lunch period are not ordinarily covered unless the employee is in a travel status or is performing regular duties off premises. Employees in travel status are covered 24 hours a day for all activities reasonably incident to their TDY; an employee injured while on a sight seeing trip during TDY may not be covered.

(e) Employees are covered while engaged in officially organized recreation authorized as part of their training or assigned duties.

(f) An employee's intentional or willful misconduct or intoxication with alcohol or drugs may be grounds for denying FECA or LSHWCA coverage. If the factual and medical evidence indicates, however, that the employee was not in full possession of his or her faculties at the time of the act, the injury may be compensable. Suicide may thus be covered under FECA or LSHWCA if it results from a mental disturbance or physical condition arising from the performance of duty that produces a compulsion to commit suicide and prevents the employee from exercising sound discretion or judgment sufficient to control the compulsion. See FTCA Handbook, section I, paragraph E9c.

(7) FECA and LSHWCA coverage extends not only to the original duty-related injury but also to any subsequent injury which results from medical care or treatment received for the original injury. Therefore, FECA and LSHWCA may bar medical malpractice claims when the medical care or treatment was provided for a duty-related injury. See FTCA Handbook, section I, paragraph E9g.

(8) FECA limits coverage for the harmful effects of agency-provided medical care to care provided under the following four classes of medical service programs authorized by 5 USC 7901(c):

- Treatment of on-the-job illness or injury and dental conditions requiring medical attention.
- Pre-employment, annual and other examinations.
- Referral of employees to private physicians and dentists.
- Preventive programs relating to employee health.

Additionally, OWCP may extend coverage when any of the following applies:

- The OWCP has given specific authorization for the treatment.
- The medical treatment is rendered at a point in time when the employment's causal relationship to the injury is in question.
- The employer furnishes emergency medical treatment to an employee for a nonwork-related condition while the employee is at work (the "human instincts doctrine").
- The employee does not have the "freedom and opportunity" to receive treatment at alternative medical facilities. This issue takes on even greater importance when the United States renders medical care or treatment to a civilian employee who is entitled to receive all care in an overseas MTF as a benefit of employment. See *In the Matter of Beverly Sweeny and Department of Defense Overseas Schools*; Employees' Compensation Appeals Board Docket No. 85-1199, 25 June 1986; and "Workman's Compensation and the Overseas Civilian Employee—A New Development," *The Army Lawyer*, November 1986, at 71-72.

(9) FECA covers the claims of Federal civilian employees who allege violation of an employment right as well as any claim involving an injury for which the rules governing Federal civilian employment provide a comprehensive remedy, *Bush v. Lucas*, 462 US 367 (1983). Such claimants often seek compensation for emotional distress or psychological injury as a result of alleged misconduct. For these claims, the administrative remedies provided under the civil service regulations are the employee's exclusive remedy. See FTCA Handbook, section I, paragraph E9i. Additionally, constitutional ("Bivens"-type) claims do not lie against co-employees absent special factors (for example, where there is no comprehensive Congressionally mandated remedy available, *Bush, supra; Schweiker v. Chilicky*, 487 US 412 (1988). The exclusive remedy for a Federal civil servant's discrimination claim is Title VII of The Civil Rights Act of 1964, *Brown v. General Services Administration*, 425 US 820 (1976). Additionally, the Civil Service Reform Act of 1978, 5 USC 2301 et seq., provides the exclusive civil remedy for Federal employees claiming financial injury resulting from personnel actions, *Johansen v. United States*, 343 US 427 (1952); *Coyle v. Adelman*, 705 F. Supp. 48 (D.D.C. 1989); *United States v. Fausto*, 484 US 439 (1988).

d. Statutory exclusions. By statute, the following exclusions apply to FTCA claims, 28 USC 2680. Except for exclusion 14, they apply also to the MCA and NGCA. Additional exclusions are listed in individual chapters of AR 27-20. The FTCA expressly bars the following claims:

(1) Arising out of an act or omission of an employee of the Federal Government, exercising due care in the execution of a statute or regulation, even if such statute or regulation is invalid, 28

USC 2680(a). This is generally referred to as the "due care" exclusion. Typically, claims involving this exclusion grow out of authorized Government activities such as flood control or irrigation projects, where there is no evidence of negligence. The only basis for the claim is the contention that the same conduct by a private person would be deemed tortious under State law or that the enabling statute or regulation was invalid. In such claims, the only issue to be resolved is the statute or regulation's existence, not its validity.

(2) Arising from an act or omission classed as a discretionary function and excluded by 28 USC 2680(a), which preserves sovereign immunity for the Government's formulation and execution of policy decisions as well as its failure to make policy decisions. This exclusion derives from the constitutional separation of powers between the executive and judicial branches of the Federal government; it prevents the judiciary from "second guessing" public policy decisions and avoids basing potential tort liability on an executive agency's judgment. The U.S. Supreme Court has expressed its current reasoning in *Dalehite v. United States*, 346 US 15 (1953); *United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines)*, 467 US 797 (1984), *Barnson v. United States*, 816 F.2d 549 (10th Cir. 1987), cert. denied, 484 US 896 (1987), *Berkovitz v. United State*s, 486 US 531 (1988), and *United States v. Gauber*, 499 US 315 (1991). See also FTCA Handbook, section II, paragraph B-4c. Negligence is not relevant to the discretionary function analysis—the key issues are the nature and quality of the conduct, what social, political, economic or military factors influenced the policy decisions, whether discretion, choice or judgment were used or involved, and whether a specific mandatory policy rule, regulation, or directive was violated. However, claims arising out of the negligent non-discretionary implementation of the discretionary plan or design of such projects (ministerial acts), the negligent operation of such projects, or an agency's failure to act in accord and with a specific mandatory directive are not barred. Figure 2-35 lists discretionary function exception cases.

(3) Arising out of the transmission of postal matter, 28 USC 2680(b). This exclusion applies to the loss, miscarriage or negligent transmission of letters or postal matter, *Marine Insurance Co. v. United States*, 378 F.2d 812 (2d Cir. 1967), cert. denied, 389 US 953 (1967). FTCA Handbook, section II, paragraph B4d, and has been applied to personal injuries caused by the delivery of postal matter. However, the exclusion may not always bar claims in which State law recognizes a cause of action for invasion of privacy, postal regulations are violated, or letters or postal matter are in the possession of military personnel, even though the loss may be caused by a criminal act. Such losses may be payable by the uniformed services to the U.S. Postal Service under 39 USC 411, or to third parties under the MCA as set forth in paragraph 2-25.

(4) Arising out of the collection of taxes, duties or detention of goods, 28 USC 2680(c); *Kosak v. United States*, 465 US 848 (1984), *United States v. 2,116 Boxes of Boned Beef*, 726 F.2d 1481 (10th Cir. 1984), cert. denied, 469 US 825 (1985). See also FTCA Handbook, section II, paragraph B-4*e*. Other adequate remedies are available to anyone aggrieved by the application of U.S. tax or customs laws, see 26 USC 6213. Alternatively, the claimant may pay the tax and sue in the Court of Federal Claims or the appropriate U.S. District Court for a refund (28 USC 1491 and 1346(a)(1)). Still other remedies are available for the loss or detention of goods or merchandise. The bailment provisions of the MCA may apply, or where State law permits a bailment for a constitutional taking, the FTCA may apply, *Hatzlachh Supply Co., Inc. v. United States*, 444 US 460 (1980). See also, AR 190-22, concerning destruction of scientific evidence. The detention of goods exclusion may apply to seizures government employees make in connection with an arrest. See paragraph 2-32*d*(11).

(5) Arising under the Suits in Admiralty Act (46 USC 741-752) or under the Public Vessels Act (46 USC 781-790, 28 USC 2680(d)). See Chapter 8. To be cognizable under these statutes, the tort must have both a maritime situs and a maritime nexus; otherwise the claim is cognizable under the FTCA. *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 US 249 (1972), reversing *Weinstein v. Eastern Airlines, Inc*., 316 F.2d 758 (3rd Cir. 1963), cert. denied, 375 US 940 (1963); *Kaiser Aetna v. United States*, 444 US 164 (1979). Generally, these Acts subject the United States to the same liability that admiralty law imposes on a private ship owner, apart from liability for seizure or arrest of a United States vessel. They permit suits on all types of claims cognizable in admiralty, including those for damage or injury done or consummated on land by a public vessel, inadequate supervision by Government employees of cargo loading aboard private vessels and injuries arising out of pleasure boating on navigable U.S. waters. See FTCA Handbook, section II, paragraph B-4f. Maritime claims may be considered under the Army Maritime Claims Settlement Act (10 USC 4801 et seq.) and AR 27-20, chapter 8.

(6) Arising out of the administration of the Trading with the Enemy Act, 28 USC 2680(e). This Act provides the sole remedy for any person claiming money or other property held by an alien property custodian. This exclusion should be construed broadly.

(7) Seeks compensation for damages caused by imposing a quarantine, 28 USC 2680(f). Claims for failure to impose a quarantine or for delay in enforcing a quarantine fall within the discretionary function exclusion, however, and claims for negligently testing persons allegedly exposed to a risk factor may involve the misrepresentation exclusion, 28 USC 2680(h). See FTCA Handbook, section II, paragraph B-4h.

(8) Arising out of an assault or battery, 28 USC 2680(h); FTCA Handbook, section II, paragraph B4i(1). Claims are not barred for actions committed on or after 16 March 1974 by U.S. investigative or law enforcement officers empowered by law to execute searches, seize evidence, or arrest persons for violations of Federal law. Nor does section 2680(h) bar claims arising out of the performance of medical, dental, or related health care functions, The Gonzalez Act, 10 USC 1089(e). Case law consistently supports this exclusion's application to all other Federal employees. Claims based on the acts or omissions of investigative or law enforcement officers most often arise from the alleged use of excessive force. See FTCA Handbook, section II, paragraph B2j for a list of Federal law enforcement officers. It is important to investigate thoroughly any claims alleging the use of threatening or deadly force, especially by a law enforcement officer, to determine whether the circumstances justified the nature, amount and use of such force.

(a) Often, a claimant's attorney employs artful pleading to create a cause of action that sounds in negligence or negligent supervision. However, the Supreme Court has interpreted the exclusion to encompass any claim "arising out of" an assault or battery, thereby precluding claims sounding in negligence, *United States v. Shearer*, 473 U.S. 52 (1985), unless a special relationship is created, *Sheridan v. United States*, 487 U.S. 392 (1988).

(b) Certain types of conduct such as intentional or negligent infliction of emotional distress may be actionable where recognized by State law. Claims for sexual harassment or negligence, such as accidental discharge of a weapon, negligent supervision when the actor is not a Government employee, or harmful physical contact that grows out of a special, fiduciary relationship (as in medical treatment or child care) may also be cognizable.

(9) Arising out of false imprisonment, false arrest, malicious prosecution or abuse of process, 28 USC 2680(h), FTCA Handbook, section II, paragraph B4i(2). This exclusion applies generally when a Federal employee acts within the scope of employment. It bars claims even though the acts alleged may constitute a separate cause of action under State law, such as negligent infliction of emotional distress as a result of negligent recordkeeping that leads to an arrest. It does not apply to investigative and law enforcement officers of the United States. See FTCA Handbook, section II, paragraph B4i(2). For false imprisonment and false arrest claims, the United States is entitled to all defenses the individual officer may raise, such as good faith, reasonable belief and probable cause; the arrest, however, must be otherwise lawful under State law. This exclusion

should be broadly interpreted—it will bar claims for negligent conduct that aggravates or results from the Government's antecedent negligence, causing mental anguish, humiliation, fear and loss of earnings. This exclusion also bars claims for malicious prosecution, groundless institution of criminal proceedings and abuse of process—that is, the use of legal process for a purpose for which it was not designed. Certain claims for unjust convictions are cognizable under 28 USC 1495 and 28 USC 2513. See paragraph 2-32*c*(2)(*c*).

(10) Acts of libel, slander, misrepresentation or deceit, 28 USC 2680(h). This exclusion has been construed broadly to bar claims for negligent as well as intentional misrepresentation, *United States v. Neustadt*, 366 US 696 (1961). It applies equally to affirmative or implied misstatements and negligent omissions, *Preston v. United States*, 596 F.2d 232 (7th Cir. 1979), cert. denied, 444 US 915 (1979). The courts have applied it to bar invasion of privacy claims and claims against wrongdoers who furnish defamatory information to a prospective employer. It bars claims for the negligent failure to perform an operational task such as failing to convey vital public safety information, independent of any secondary misstatement resulting in personal injury or property damage. The exclusion does not bar claims against a physician who misdiagnoses a patient, since resulting damage sounds in medical malpractice, the gravamen of the action, and the misrepresentation (the stating of misinformation) is merely incidental. The misrepresentation exclusion did not apply when the Federal government sold bomb casings to a scrap dealer, expressly warranting their safety and fitness for scrap metal processing, and one bomb casing later exploded. Before applying this exception to an administrative tort claim, consider the nature of the Government's acts or omissions as well as any information upon which the claimant may have detrimentally relied. See FTCA Handbook, section II, paragraph B4i(4).

(11) Arising out of interference with contractual rights, 28 USC 2680(h). This exclusion bars claims for loss or infringement of future or prospective rights or economic advantage as well as existing rights. It also covers interference with employment rights *Dupree v. United States*, 264 F.2d 140 (3d Cir. 1959), cert. denied, 361 US 823 (1959); *Chafin v. Pratt*, 358 F.2d 349 (5th Cir. 1966), cert. denied, 385 US 878 (1966). See FTCA Handbook, section II, paragraph B4i(5).

(12) Arising from the Department of the Treasury's fiscal operations or from the regulation of the monetary system, 28 USC 2680(i), FTCA Handbook, section II, paragraph B4j. This exclusion encompasses all Government financial disbursing operations. Most claims barred by this section arise out of improper wage and salary payments made to Federal employees or payments on Government contracts. Forward these claims either to DFAS or through contract channels to the contracting officer for consideration.

(13) Arising out of combat activities of the military or naval forces, including the Coast Guard during wartime, 28 USC 2680(j). See paragraphs 2-32*b*(1) and (2). War need not be formally declared for this exclusion to apply. Although the "combat activities" exclusion has been held to bar claims arising from troop movements in anticipation of imminent attack, neither wartime combat training nor peacetime medical malpractice on veterans injured in combat are barred. See FTCA Handbook, section II, paragraph B4k.

(14) Arising in a foreign country, 28 USC 2680(k). There is as yet no clear, firm definition of a "foreign country," but the courts have held that U.S. embassies, leased military bases, territory occupied by the military services, trusteeships under the mandate of the United Nations, and the high seas fall within the "foreign country" category, *United States v. Spelar*, 338 US 217 (1949); *Callas v. United States*, 152 F; Supp. 17 (E.D. N.Y. 1957), aff'd, 253 F.2d 838 (2d Cir. 1958), cert. denied, 357 US 936 (1958); *Smith v. United States*, 507 US 197 (1993). Claims arising in certain foreign countries still may be cognizable under the single-service responsibility delegated to a particular military service under other statutes. Note, however, that under the "headquarters tort" theory, the foreign country exclusion does not bar a claim if actionable negligence takes place in the United States but its consequences occur in a foreign country. See FTCA Handbook, section II, paragraph B1c(15) and IIB4l. See AR 27-20, chapters 3, 7, and 10, for additional guidance on claims arising in a foreign country.

(15) Arising from the activities of the Tennessee Valley Authority (TVA), 28 USC 2680(l) (payable by the TVA under 16 USC 831, et. seq.). See FTCA Handbook, section II, paragraph B4m.

(16) Arising from the activities of the Panama Canal Commission, 28 USC 2680(m) and 22 USC 3761. Canal Zone claims are no longer cognizable under the FTCA since the Zone ceased to exist on 1 October 1979, the date the Panama Canal Treaty was executed. See FTCA Handbook, section II, paragraph B4m.

(17) Arising from the activities of a Federal land bank, intermediate credit bank or bank for cooperatives, 28 USC 2680(n).

e. Other exclusions. By the provisions of AR 27-20 or where indicated by statute, these exclusions apply to all chapters except where expressly noted in a particular chapter:

(1) Claims for personal injury or death of any employee for whom benefits are provided under any workers' compensation law if the premiums for the workers' compensation insurance are retrospectively rated and charged as an allowable, allocable expense to a cost-type contract. If an approval or settlement authority considers the claim payable (for example, the injuries did not result from a normal risk of employment or adequate compensation is not payable under workers' compensation laws), forward the file with recommendations through claims channels to the Commander, USARCS, who may authorize payment of an appropriate settlement.

(2) Claims for damages from or by flood or flood waters at any place (see figure 2-36, extract from 33 USC 702c). This exception has been broadly construed and covers damage from flood control and multipurpose projects and all phases of construction and operation. It has not been extended to, and does not bar, claims for damage caused by manmade floods. In many flood control projects, the enabling legislation requires the non-Federal beneficiary (such as the flood control or levee district) to hold and save harmless the United States from damages caused by the project's construction, operation, and maintenance. Look for such clauses when investigating flood claims. Claims arising out of recreational activities at USACE reservoirs are discussed in paragraph 2-45 and FTCA Handbook, section II, paragraph B4o.

(3) Claims for damage to property of a State, commonwealth, territory, or the District of Columbia caused by ARNG personnel engaged in training or duty under 32 USC 316, 502, 503, 504, or 505, who are assigned to a unit maintained by that State, commonwealth, territory, or the District of Columbia. These claims will not be paid. However, if a State demands to be informed of the rationale on which the denial is based, the matter will be referred to the Commander, USARCS. See AR 27-20, chapter 6.

(4) Claims for damage to property or for death or personal injury arising out of the activities of any Federal agency or employee carrying out the provisions of the Federal Disaster Relief Act of 1974 (see figure 2-18, extract from 42 USC 5173). See FTCA Handbook, section II, paragraph B5v, and paragraph 2-30*e* of this publication. This Act requires the local beneficiary (State or local government) to hold the Government harmless and to assume the defense of all claims arising from the removal of debris and wreckage from public or private property. Agreements setting forth such procedures are made on each such emergency occasion.

(5) Claims that invoke the non-justiciability or political question doctrine, *Baker v. Carr*, 369 US 186 (1962). Federal Courts apply a six-prong test to determine these cases, any one of which, if found, may be grounds for dismissal. These are the six factors:

(a) A commitment of the issue to a coordinate branch of Government by the text of the Constitution.

(b) A lack of judicially discoverable and manageable standards for resolving the matter.

(c) The impossibility of deciding without a policy determination that calls for nonjudicial discretion.

(d) The impossibility of undertaking independent resolution without expressing lack of respect for coordinate branches of Government.

(e) An unusual need for unquestioning adherence to a political decision already made.

(f) The potential for embarrassment from multiple pronouncements by various Federal departments on one question. This exclusion comprehends questions of judicial restraint and separation of powers. For examples of its application, see FTCA Handbook, section II, paragraph B4r.

2–67. Threshold issues

a. Statute of Limitations. Each statute enumerated in AR 27-20 for the administrative settlement of claims specifies the time period during which the right to file a claim must be exercised, FTCA Handbook, section I, paragraph D. State or local statutes of limitations do not apply to the United States. Additionally, State or local requirements to exhaust alternate administrative remedies before filing suit do not delay the start of the SOL on a claim against the United States (local law requiring an employee to exhaust the worker's compensation remedy before filing suit will not delay start of the FTCA SOL window). Instead, the SOL starts to run on the date the claim accrues. However, follow State or local law in determining whether a cause of action has been created. For example, in the context of an FTCA wrongful death claim, State law creates the cause of action. Even when a wrongful death claim is filed within two years of death, State law may determine whether or not the claim is barred for the decedent's failure to timely pursue a personal injury claim. It is the policy of USARCS to interpret all SOLs in accordance with Federal decisions.

(1) *Accrual.* Federal law determines the accrual date. A claim accrues on the date on which the injured party knows of an injury or loss and its cause. In claims for indemnity or contribution against the United States, the accrual date is the date payment is made by the parties seeking indemnity or contribution.

(2) *Discovery Exception to Accrual Date.*

(a) When the claimant does not know of the injury or damage or does not know of its cause, the claim does not accrue until the injured party, or someone acting on the party's behalf, knows or should know about the existence of both the injury and its cause.

(b) This so-called "discovery rule" was articulated in the Supreme Court case of *United States v. Kubrick*, 444 US 111 (1979). This means that, in many medical malpractice cases, accrual may be deferred until the date the claimant is aware or, in the exercise of due diligence, should be aware of both the injury and its cause. Accrual is not delayed pending a determination by the claimant that the injury was negligently inflicted. In Kubrick, the plaintiff instituted suit based upon the Department of Veterans' Affair's allegedly negligent administration of an antibiotic for a leg infection in April 1968. Six weeks later, the plaintiff suffered a hearing loss. In January 1969, a private physician informed Mr. Kubrick that it was possible his hearing loss resulted from the antibiotic administration. In June, another civilian doctor informed Mr. Kubrick that the antibiotic had indeed caused the hearing loss and that it should never have been administered. The claim was filed in September 1972. The Supreme Court held that the claim accrued in January 1969, when Mr. Kubrick was aware of his injury and its cause; the SOL was not tolled until June 1971, when he received actual notice that the administration of the antibiotic was substandard treatment. The Supreme Court stressed that accrual is to be judged by an objective standard of whether the plaintiff knew, or in the exercise of reasonable diligence should have known, of the injury and its cause.

(c) The "discovery rule" is not limited to medical malpractice claims but has been applied to diverse situations, including chemical and atomic testing, erosion, and hazardous work environments.

(3) *Other exceptions to accrual date rule.*

(a) Continuous treatment doctrine. In medical malpractice actions, accrual may be delayed until the treatment is completed when a course of continuous treatment is provided for the same injury or illness over a period of time. The rationale for this doctrine seeks to protect a plaintiff from having to challenge or question a physician while receiving necessary medical care. Courts are divided over whether the doctrine should apply to treatment by successive Government physicians.

(b) Delayed accrual due to reasonable reliance on assurances. Accrual may be delayed for the period of time during which the claimant reasonably relied on his or her physician's assurances that the condition was temporary, that it was a normal side effect or that it was not caused by substandard treatment. See, *Burgess v. United States*, 744 F.2d 771 (11th Cir. 1984); *Rosales v. United States*, 824 F.2d 799 (9th Cir. 1987); and *Chamness by and through Chamness v. United States*, 835 F.2d 1350 (11th Cir. 1988).

(c) Blameless ignorance or credible explanation. If the claimant was provided a credible explanation for the injury by the tortfeasor, such as a HCP, some courts have held that the claimant is not under any duty to seek another explanation.

(d) Fraudulent concealment. Although there is no affirmative duty to reveal negligence, if anyone affirmatively attempted to conceal the facts or involvement of the United States or its employees in a negligent or wrongful act or omission, a court may find that the cause of action did not accrue until the claimant discovered the true facts.

(e) Suppressed recollection. Claimants may argue that the SOL is extended in cases where the emotional injury was such that all memory of the negligent act or acts was suppressed, and that the claim does not accrue until the memory of the incident is recovered. Most courts addressing the issue have rejected this theory.

(4) *Tolling.* See paragraph 2-12.

(a) As a general rule, the claimant's disability does not toll the SOL for tort actions during the period of disability. Therefore, the SOL is not tolled during periods of infancy or minority (unlike State SOLs which may be tolled until the claimant reaches the age of majority), or during periods of incompetency, FTCA Handbook, section I, paragraph D3a and b. When the claimant is both an infant and an orphan, however, the SOL may be tolled until a guardian is appointed. See *Mann v. United States*, 399 F.2d 672 (9th Cir. 1968); *contra: Zavala by and through Ruiz v. United States*, 876 F.2d 780 (9th Cir. 1989). Additionally, some courts have held that where the claimant's incompetence is a direct result of the negligence of the United States, the SOL may be tolled either until the period of incompetency ends or until a legal guardian is appointed. Some of the cases addressing this issue draw a distinction between incompetency, which does not toll the SOL, and brain damage so severe that the plaintiff is unable to know the nature or cause of the injury, which does. Compare *Barren by Barren v. United States*, 839 F.2d 987 (3rd Cir. 1988), cert. denied, 488 US 827 (1988) with *Clifford by Clifford v. United States*, 738 F.2d 977 (8th Cir. 1984).

(b) The SOL is not tolled by filing a lawsuit based upon the same incident in a Federal, State, or local court against the United States or other parties. However, if a party's FTCA suit against the United States, filed within the original SOL, is dismissed without prejudice for failure to exhaust administrative remedies, the dismissal order will typically state a time period within which a subsequent administrative claim may still be timely filed. Additionally, the Federal Employees Liability Reform and Tort Compensation Act (28 USC 2679(b)) expressly provides for the tolling of the SOL under Section 2401(b) if a suit is timely filed against a Federal employee for a common law tort committed within the scope of employment, 28 USC 2679(d)(5). Lack of knowledge of U.S. involvement does not toll the SOL.

(c) The Soldiers and Sailors Civil Relief Act of 1940 (SSCRA), 54 Stat. 1178, as amended, 50 USC app 501 et seq., suspends various civil liabilities of persons during their continuous active military service. Section 525 of the SSCRA states that "the period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government . . ." This language has been held to toll the FTCA's two-year SOL even though the soldier was otherwise under no disability to prevent filing of suit, such as physical limitations or being outside CONUS. The SSCRA applies to only the soldier's claim (assuming it is not Feres barred) and may operate to save the soldier's derivative claim

even when the principal claim (such as a military dependent's claim) is time barred, *Romero by Romero v. United States*, 806 F. Supp. 569 (E.D. Va. 1992), aff'd, 2 F.3d 1149 (4th Cir. 1993) (held: SSCRA applied to soldier-father of brain-damaged baby even though child's and mother's claims were barred by SOL); *Kerstetter v. United States*, 57 F.3d 362 (4th Cir. 1995). The court did not require showing that military service prejudiced a soldier's ability to pursue an action to recover his property sold in a tax sale more than 20 years ago, *Conroy v. Aniskoff*, 507 US 511 (1993).

(d) Equitable tolling. The doctrine of equitable tolling applies generally to a claim or suit that has not been timely filed due to the defendant's action or inaction, for example, misleading a potential claimant as to the appropriate time limits and the procedure for filing a claim or misinforming a patient about the cause of an injury. Formerly, the FTCA's two-year SOL was held to be jurisdictional, subject neither to waiver nor to equitable tolling. The Supreme Court held, in *Irwin v. Dep't of Veterans Affairs*, 498 US 89 (1990), however, that the doctrine of equitable tolling applied to a requirement to file suit within ninety days of receiving notice of denial of an Equal Employment Opportunity complaint under 42 USC 2000e-16(c). The Court stated that SOLs in actions against the United States are subject to the same rebuttable presumption of equitable tolling as are suits against private individuals. In the wake of *Irwin*, the Eighth Circuit Court of Appeals held that the FTCA's six-month requirement to file suit contained in 28 USC 2401(b) was not jurisdictional but rather an affirmative defense to be established by the United States, *Schmidt v. United States*, 901 F.2d 680 (8th Cir. 1990), vacated and remanded, 498 US 1077 (1991), on remand, 933 F.2d 639 (8th Cir. 1991). Since *Schmidt*, the Federal circuit courts have widely acknowledged that equitable tolling applies to the FTCA, see, *Diltz v. United States*, 771 F. Supp. 95 (D. Del. 1991) (in which equitable tolling was applied to negligent eye surgery case); and *Glarner v. United States Department of Veterans Admin.*, 30 F.3d 697 (6th Cir. 1994) (equitable tolling applied in VA case in which patient who expressed a desire to file a negligence claim was given a benefits form rather than a claim form). See also, *McKewin v. United States*, Civ. No. V 91-131-CIV-5-7 (E.D.N.C. 1992); *Mutch v. United States*, 804 F. Supp. 838 (S.D. W. Va. 1992); *Justice v. United States*, 6 F.3d 1474 (11th Cir. 1993); *First Alabama Bank v. United States*, 981 F.2d 1226 (11th Cir. 1993) (decisions in which courts acknowledge general application of equitable tolling to FTCA cases even though held that it did not act to toll SOL under facts of individual cases). Any FTCA claim involving a settlement greater than $200,000 on which an issue of equitable tolling is involved requires preliminary discussion with the DOJ before negotiation of any settlement. Because USARCS policy has been to interpret the SOL in light of FTCA decisions, equitable tolling principles may be applied to all AR 27-20 claims. The doctrine places the burden on the United States to prove untimely filing. Procedures to inform potential claimants of their rights are essential, including full and forthright discussions of the undesired results of medical care. See paragraph 2-6.

(5) *Compromising SOL cases.* Whether or not a claim has been timely filed is a question of fact that should be answered only after a thorough investigation, including questioning the claimant, treating physicians and anyone else who cared for the claimant during the relevant time period. See paragraph 2-34*n*. If a thorough investigation does not reveal a definitive answer, then consider compromise and consult the USARCS AAO, who will coordinate with the DOJ as needed. The claim settlement value should reflect the unresolved SOL issue and the fact that the claimant might not recover damages if the case was successfully defended at trial on the basis that it was not timely filed. Claims personnel frequently compromise large claims involving serious injuries, such as brain damage and quadriplegia, with structured settlements that address the claimant's lifelong medical and personal care expenses through the use of a reversionary medical trust, which provides an immediate payment award sufficient to cover past expenses and attorneys' fees, taking the SOL issue into account.

b. U.S. employee requirement.

(1) Because individuals conduct the activities of the United States, the Government's tort liability is always derivative. Federal liability exists only when the responsible individual is an "employee of the Government," 28 USC 2672; 10 USC 2733(a). That phrase, as the FTCA defines it, includes: "officers or employees of any Federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under sections 316, 502, 503, 504 or 506 of title 32, and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation," 28 USC 2671. "Employee of the Government" includes, but is not limited to, those categories of individuals listed at AR 27-20, paragraph 2-2, and Federal law determines whether one is an employee of the United States, *Logue v. United States*, 412 US 521 (1973).

(2) The FTCA defines a "Federal agency" as "the executive departments and independent establishments of the United States, and corporations primarily acting as, instrumentalities or agencies of the United States," 28 USC 2671. However, the FTCA specifically excludes "any contractor with the United States" from its "Federal agency" definition. Contractors are not Federal agencies and their employees may not be considered "employees of the Government" such that the United States is liable for their tortious acts or omissions under the FTCA (FTCA Handbook, section II, paragraph B2d). In practice, courts have limited the "contractor" language in 28 USC 2671 to track the "independent contractor" test derived from the law of agency. See Restatement (2d), Agency 220 (factors to be considered include the degree of control exercised by the employer; whether or not the person hired is engaged in a distinct occupation or business; the kind of occupation; whether the work is usually done under the direction of the employer or by a specialist without supervision; the skill required in the particular occupation; whether the employer or the workman supplies the instrumentalities, tools, and the place of work; and the method of compensation—whether by time unit or by the job).

c. Independent contractor. See paragraphs 2-22, 2-23 and 2-82.

(1) *Injury to employees of an independent contractor.* When confronted with such a claim, conduct a thorough investigation to determine whether there was any direct negligence on the part of the United States or its employees. Next, scrutinize the terms of the Government contract at issue for any language obligating the contractor to indemnify the United States for claims arising from contract operations. Then research State law to determine whether a specific duty has been created by either statute or case law. See also whether State or local law makes any defenses to the claim, such as statutory employer, available to the United States. See, *Hyman v. United States*, 796 F. Supp. 905 (E.D. Va. 1992), which held that the United States is a "statutory employer" under Virginia law such that the State law defense of employer immunity was available to bar a contractor employee's FTCA suit stemming from injuries incurred in an automobile accident on the Norfolk Naval Base. Also, consultation with the USARCS AAO is essential in cases alleging failure to inspect the worksite or to enforce safety provisions set forth in the contract because of the potential to invoke the discretionary function defense, FTCA Handbook, section II, paragraphs B2d and B4c. See paragraph 2-22.

(2) *Injury to third parties.* Obviously, if the injury to the third party was caused in whole or in part by a Government employee's negligent act, the United States may be directly liable to the claimant under the FTCA.

(a) A more difficult question involves whether or not, and under what circumstances, an independent contractor or its employee may be considered an "employee of the Government" such that the United States bears FTCA liability for the contractor's tortious acts or omissions, as well as its own.

(b) The Supreme Court examined this question in *Logue v. United States*, 412 US 521 (1973) citing "absence of authority in the principal to control the physical conduct of the contractor in performance of the contract" as determinative. In *Logue*, a Federal prisoner was placed in a county jail pursuant to contractual arrangement. Due to the county jailers' alleged negligence, the prisoner

committed suicide. The Supreme Court refused to hold the United States liable for the jailers' negligence because an examination of the relationship showed that Federal employees did not run the jail's day-to-day activities of the jail; instead, county employees conducted and supervised such activities in accordance with the terms of the Government contract.

(c) The cases following in the wake of *Logue* have applied the "strict control test," for example, whether the United States exerts day-to-day supervision and control over the "detailed physical performance of contractor," *United States v. Orleans*, 425 US 807, 814 (1976). Reserving the right to specify conditions and to inspect work product is usually not sufficient to establish an "employee" relationship between the independent contractor's employee and the United States.

(d) Detailed Federal safety regulations and evaluations are similarly insufficient to demonstrate strict control, because the real test is whether or not the United States maintains detailed control over the primary activity for which it has contracted, not the peripheral, administrative acts relating to such activity, FTCA Handbook, section II, paragraph B2d. In the same vein, the Government's reservation of a contractual right to ensure that contractor personnel are qualified has been held insufficient to demonstrate Government control of the day-to-day operation.

(e) Under agency law, a principal who hires an independent contractor is not immune from liability for the contractor's torts if performance of the contract is the principal's "nondelegable duty," or if the State has adopted the Restatement (2d) of Agency, 214. The degree of control the principal exercises is irrelevant. In the body of case law dealing with Government contracts, nondelegable duties typically arise from the performance of inherently dangerous activities or from the manner in which buildings and grounds are maintained ("safe place to work" statutes), FTCA Handbook, section II, paragraph B4*a*(1)(*c*). Liability may attach under the "nondelegable duty" theory when the Government requires a contractor to engage in harmful conduct which foreseeably would cause injury absent proper instruction to avoid such injury. Absolute liability is not the issue—there must be negligence or a wrongful act, such as failure to issue warnings.

d. Health Care Providers. See paragraphs 2-57 and 2-82.

(1) Many HCPs within the military medical system provide services to DOD health care beneficiaries through a variety of programs and contracts established or authorized by Congress.

(a) Personal and nonpersonal services contracts. As amended, 10 USC 1091 authorizes the DOD to contract for the provision of direct health services, including HCPs. All contracts under this statute are subject to the Federal Acquisition Regulations (FAR), the DOD FAR Supplement, and the Army FARs. A "services contract" is one in which the Government directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A "nonpersonal services contract" is one in which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees. A "personal services contract" is one which, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees, 48 CFR, Chapter 1, subpart 37.1. On 18 November 1997, President Clinton signed the Defense Department FY 98-99 Authorization Bill, which became Public Law No. 105-85. Section 736 of that law amended the Gonzalez Act, 10 USC 1089, to add personal services contract physicians described in 10 USC 1091. The effect of this amendment is to make personal services contract physicians "employees of the United States" for FTCA purposes. By analogy, personal services contract physicians also become U.S. employees under the MCA and the FCA. The effect of this amendment is not retroactive. Accordingly, for incidents dating after 18 November 1997, any claims involving personal services contract physicians will be investigated as if those physicians were, in fact, U.S. employees and not independent contractors. If a personal services contract physician is the sole "culprit," the claim will be disposed of under the provisions of the MCA and AR 27-20, chapter 3. If both personal services contract physicians and U.S. Government employees (such as active duty military members or civilian employees) are involved, a determination will be made by USARCS, on a case-by-case basis, with respect to whether the claim will be handled under the FTCA or the MCA.

(b) Military-Civilian Health Services Partnership Program. The Partnership Program is a creation of DOD Instruction No. 6010.12, 22 October 1987. It is not a contract and need not meet all the requirements set forth in the FAR. The most commonly used "internal" partnership agreement allows MTF commanders to enter into formal agreements whereby civilian HCPs use Government facilities to treat beneficiaries eligible under CHAMPUS. The Program's basic purpose is to encourage CHAMPUS-eligible beneficiaries to seek care in a MTF by offering them increased access to care and a waiver of the CHAMPUS cost share or deductible. Partnership providers are paid for only treatment of CHAMPUS-eligible beneficiaries receiving CHAMPUS-authorized care, and they are paid through the CHAMPUS fiscal intermediary. Subject to credentialling and hospital peer review procedures, these partnership providers are neither Government employees nor, technically speaking, "contractors," because the FAR does not permit nonpersonal contracting. However, the relationship created between a MTF and a partnership provider is similar to that existing between the United States and an independent contractor. As with independent contractors, partnership providers are nongovernment, civilian care providers whose negligent acts should not create vicarious Federal liability. Inherent in their relationship with the United States is the critical fact that Government employees do not exercise day-to-day duty supervision and control over the contractor or partnership provider in the partnership program.

(c) PRIMUS HCPs. Primary Care for the Uniformed Services (PRIMUS) clinics are private, freestanding medical facilities that provide health care to DA beneficiaries under contractual agreements. The HCPs who work at PRIMUS clinics are considered employees of an independent contractor, not Government employees.

(d) Residents in training. Frequently, civilian medical institutions will send their interns, residents and other medical trainees to Government MTFs for training purposes. Similarly, the United States sends its medical trainees to civilian medical institutions for training. (See paragraph 3-8 for a discussion of this issue.) Whether the borrowing MTF is liable depends on how the State interprets the borrowed or loaned servant doctrine, which purports to shift vicarious liability from the employing or lending master of a negligent servant to the borrowing master. Thus, the United States may bear responsibility for the tortious acts of a civilian medical institution employee who is training in a MTF. Thoroughly investigate all cases involving health care trainees in MTFs to determine the nature and extent of the day-to-day supervision and control that Government employees exercised over them. Additionally, research State agency law to ascertain the elements required to assert or refute a borrowed or loaned servant defense.

(2) The FTCA exclusion of contractors from the definition of a Federal agency applies to contractors who provide medical services. Tests similar to the "strict control" test have been applied to physician groups and individual physicians providing medical services to MTFs. There are two basic tests which have been developed for doctors who contract with the Government:

(a) The "strict control" test, stemming from the *Logue* and *Orleans* line of cases, and a variation on it, the "strict control aside from professional judgment" test, discussed in *Lurch v. United States*, 719 F.2d 333 (10th Cir. 1983), cert. denied, 466 US 927 (1984).

(b) The *Lurch* court stated in dicta that the strict control test for determining employee or contractor status for FTCA purposes is inappropriate for cases involving doctors because, due to their training and ethical obligations, doctors can never be "controlled." The Court believed that a doctor must always be free to exercise independent professional judgment as to what is best for each patient. However, the *Lurch* Court did not analyze the facts in light of the

modified test because the contract specified that the doctor would not be considered an employee of the Government for any purposes.

(c) In *Wood v. Standard Products Co., Inc.*, 671 F.2d 825 (4th Cir. 1982), a progeny of *Logue* and *Orleans*, a private physician who contracted with the U.S. Public Health Service to provide medical services to seamen in a remote, little-used port was held to be an independent contractor because there was no evidence that the Government supervised or controlled his day-to-day practice or treatment of patients. Among the significant facts the *Wood* court cited in reaching its holding were—

- The contract referred to the physician as a "contract physician."
- The contract specified that the physician was to provide outpatient medical care in the same manner and of the same high quality as he provided for his private patients.
- The contract did not specify the physician's hours.
- The physician had the right to refuse to treat patients.
- The USPHS did not provide office space, support, services, supplies, or equipment to the physician.
- The physician billed the USPHS under a predetermined fee schedule.
- USPHS site visits were meant only to check the adequacy of the physician's facilities and not to "oversee" his practice.

(3) Unlike contract physicians, a contract nurse may be directly supervised by, and under the control of, a Government employee sufficient to consider the nurse a Government employee, even if the nurse is individually credentialed, for example, as a nurse-midwife or certified registered nurse anesthetist (CRNA). In the case of *Bird v. United States*, 949 F.2d 1079 (10th Cir. 1991), for example, the 10th Circuit Court of Appeals found that a CRNA was an employee of the United States because the CRNA was under the control and supervision of Government physicians; the CRNA was required to work with patients assigned by others; the CRNA had no separate office, used hospital equipment exclusively, and was under the same degree of control and supervision by the Government surgeon as any Government nurse in the hospital.

(4) In every case involving nongovernment HCPs, it is imperative to investigate the facts to determine the nature and extent of Government control over the HCPs as well as to rule out additional direct tortious activity on the part of a Government employee, such as a negligent act or omission by a Government nurse, technician, or other support person in the emergency department, operating room, intensive care unit, or laboratory. Additionally, conduct a factual investigation and research State law to determine whether there is potential Federal liability for the acts of the nongovernment HCP under the theories of "ostensible agency," "apparent authority," or "agency by estoppel." See Restatement (2d) of Agency 26 and 27, FTCA Handbook, section II, paragraph B2c. Also, be alert for potential Governmental liability under the theories of negligent hiring or credentialling, particularly if the independent contractor or partnership provider has a "track record" of complaints or adverse events. These liability theories have been applied with equal force to independent contract physicians as well as to CHAMPUS partnership providers practicing in MTFs. Finally, research State law to determine the availability of the "Captain of the Ship" defense, commonly arising in claims against a nongovernment surgeon who could be held liable for the tortious acts of Government operating room personnel (the retained sponge case).

e. Volunteers. See AR 27-20, paragraph 2-2.

(1) The general rule on volunteers is set forth in 31 USC 1342, which provides that no officer or employee of the United States shall accept voluntary service for the United States or employ personal services in excess of that authorized by law, except in case of emergency involving the safety of human life or the protection of property.

(2) The Congress has carved statutory exceptions to this general rule for student volunteers employed pursuant to 5 USC 3111(b), who are to be considered Federal employees for purposes of the FTCA and MCA. Red Cross volunteers meeting the criteria set forth in AR 40-3, paragraph 2-42, are also considered employees of the United States for claims purposes, FTCA Handbook, section II, paragraph B2g.

(3) In 1983, Congress authorized the U.S. Armed Forces to accept voluntary services in military museums, natural resources and family support programs, Public Law 98-94, 97 Stat. 614, 10 USC 1588. In 1995, Congress expanded the categories for which volunteers may be accepted by medical, dental, nursing and other health care services; Congress also expanded the types of family support programs authorized to accept volunteer services to include child development and youth services, library and education programs, religious programs, housing referral programs, spousal employment assistance programs, and other morale, welfare and recreation programs, Title X, Subtitle G, Defense Authorization Act, PL 103-337, 108 Stat. 2663 at 2845, (10 USC 1588).

(4) Both the 1983 Act and the 1995 expansion thereof provided that a volunteer providing services under the aforementioned categories shall be considered a Federal employee for purposes of the FTCA and the MCA, 28 USC, Chapter 171; 10 USC 2733. Persons undergoing training are similarly included. The Acts also provided for workers' compensation benefits under FECA or LSHWCA, 5 USC, Subchapter I, Chapter 81, and Subchapter II, Chapter 81.

(5) Any claim for injury or death to a volunteer is excluded under the FTCA or MCA if it arose incident to service or performance of duty. The FECA and LSHWCA are the volunteer's exclusive remedy. To be deemed a Federal employee, the volunteer must be properly accepted by the Federal agency and be performing within the scope of the accepted voluntary services at the time of the incident.

(6) The 1983 Act and its 1995 expansion are both specific about the Federal agencies' need to publish implementing regulations permitting them lawfully to accept voluntary services. The portion of the 1983 Act pertaining to family support programs has been implemented by regulations, AR 215-1, chapter 14, and AR 608-1, chapter 4; that portion of the 1995 Act pertaining to family support is in the process of being formally implemented. Any tort claim arising from the acts or omissions of a volunteer should be investigated and processed under the provisions of AR 27-20, following consultation with the AAO, just as though the volunteer were a soldier or a civilian employee.

(7) Employees who are permitted to serve another employer may be considered "loaned servants," provided the borrowing employer has the power to discharge, control, and direct the employee and decide how he or she will perform the tasks. Whoever has retained those powers is liable for the employee's torts under the principle of respondeat superior. When those elements of direction and control have been found, the United States has been liable; for example for the torts of Government employees loaned for medical training and emergency assistance and county and State employees discharging Federal programs.

(8) For NAFI employees, see Chapter 12. Employees of NAFIs are considered employees of the United States if the NAF is an instrumentality of the United States and thus a "Federal agency" as the FTCA defines it, 28 USC 2671. In determining whether or not a particular NAFI is a "Federal agency," consider whether the NAFI is an integral part of the Army charged with an essential DA operational function in addition to the degree of control and supervision exercised by DA personnel over the NAF employee, FTCA Handbook, section II, paragraph B2i.

f. Scope requirement. See chapter 5. Under most chapters of AR 27-20, the Government's tort responsibility for employees' acts or omissions arises only when they are acting within the scope of their employment, 28 USC 2672; 10 USC 2733(a)(3). Under the FTCA, the question of whether a Federal employee is acting within the scope of employment at the time of an accident so as to make the United States liable in tort is one to be decided by applying the law of the place where the incident occurred, 28 USC 1346(b), 2671 et seq.; *Richards v. United States*, 369 US 1 (1962), *Tucker v. United States*, 385 F. Supp. 717 (D.S.C. 1974). FTCA Handbook, section II, paragraph B3. Scope of employment under other chapters is

determined by Federal law, following FTCA case law. See AR 27-20, paragraph 3-5a(3)(b).

(1) *Exceptions.* Both the Non-Scope Claims Act, 10 USC 2737, and the Foreign Claims Act, 10 USC 2734, provide an exception to the requirement that a Government employee must be acting within the scope of employment at the time of the incident. For further discussion, see chapters 5 and 10.

(2) *Exclusive remedy.* If a Government employee commits a tortious act or omission while acting within the scope of his or her employment, then a claimant's exclusive remedy is a cause of action against the United States rather than against the employee individually. The Federal Employees Liability Reform and Tort Compensation Act of 1988 (FELRTCA), PL No. 100-694 (1988) (codified at and amending 28 USC 2671, 2674, 2679). The DOJ is responsible for determining whether or not an employee was acting within the scope of employment sufficient to entitle that person to immunity from personal liability and representation by the United States in any personal action. Certification of scope by the Attorney General is conclusive for removal purposes but reviewable for purposes of substituting the United States as the defendant in place of the individual employee, *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417 (1995).

(3) *Line of duty.* "Line of duty" as it appears in 28 USC 2671, means the scope of employment as determined by the law of the jurisdiction in which the tort occurred, *Williams v. United States*, 350 US 857 (1955). An "in line of duty" determination for military benefits purposes does not necessarily equal a determination that the soldier was acting within the scope of employment at the time of the incident, FTCA Handbook, section II, paragraph B3. Because it is one factor to be considered in determining whether or not a Federal employee acted within the scope of employment, however, obtain a copy of the line-of-duty investigation when investigating the claim.

(4) *Recurrent issues.* While State laws vary, the scope of employment issue usually turns on the amount of control exercised by the employer over the employee and the degree to which the employer's purposes are served at the time of the incident. Recurring litigated issues include—

- Whether an employee can place his or her own conduct within the scope of employment by a unilateral decision to perform an act benefiting the master.
- Whether an employee's personal frolic so deviates from the employer's service as to remove the employee from the scope of employment.
- Whether the performance of a special errand for the employer on the way to or from work will place the employee in the scope of employment.
- Whether the existence of some continuing duty will keep an employee in scope even when nominally off duty, FTCA Handbook, section II, paragraph B3a and b.

Always keep in mind that two persons may have been negligent: one, a supervisory employee acting within scope in addition to an employee-tortfeasor acting outside scope. The issues of negligent hiring and training or supervising of the out-of-scope employee may coincide with issues such as whether the employee negligently maintained or provided the Government property involved in the tortious act. Never limit the factual investigation to the claim's specific allegations.

(5) *Special cases.*

(a) Travel to and from work. Most State court decisions hold that an employee traveling between home and workplace is not acting within the scope of employment unless—

- The accident site is on the employer's premises, such as on the Government installation.
- The employee is specifically authorized to use a government owned vehicle (GOV) or POV.
- The official travel is to be reimbursed.
- The employee's use of GOV or POV is authorized by customary use even though not expressly authorized, FTCA Handbook, section II, paragraph B3g, AR 58-1.

Military Reservists or members of the National Guard commuting by POV from home (or from hotel accommodations arranged for their own convenience rather than that of the Government) to their weekend drill site are usually not considered to be acting within the scope of their Federal duties while commuting, but are considered in scope when traveling on orders authorizing POV use to and from inactive duty training or annual training. Prospective military recruits may be provided transportation in connection with interviews, processing and orientation, AR 58-1, paragraph 2-5*g*, DOD 4500.36.

(b) Frolic and detour. Scope is presumed when the Government employee is in an official vehicle; this presumption may be rebutted by showing that the employee was engaged in activities clearly unrelated to work. Factors to be considered include the purpose of the detour, whether it had a single or dual purpose; the relationship of the Government employee's activities during the frolic or detour to the official duties; how much time elapsed during the frolic or detour; and whether the Government employee was returning to the authorized route at the time of the incident, FTCA Handbook, section II, paragraph B3b.

(c) Temporary duty travel. TDY travel by Government employees has been consistently held as within the scope of employment. Use of POV for TDY travel should be specifically authorized by express verbal or written authorization by the approving official to avoid a scope issue, FTCA Handbook, section II, paragraph B3f. To be considered within scope, activities the employee performs should be reasonably related to the trip's official purpose. For example, going to and from a hotel to TDY workplace or from that workplace to a nearby restaurant is probably within scope; however, returning from bar to hotel in the wee hours is probably not within scope, FTCA Handbook, section II, paragraph B3c.

(d) Permanent change of station (PCS) travel. Given the large number of military employees and the frequency of their transfer, accidents occur while they are changing duty stations, pursuant to what is known as a PCS move. The injured parties invariably sue the United States on the theory that the military employees were acting within the scope of their employment while changing duty stations pursuant to official Government orders. Differences in local law and differing judicial attitudes toward the military command relationship make it difficult to reconcile these cases, FTCA Handbook, section II, paragraph B3d. Some factors the courts consider are—

- Evidence of Federal control over travel.
- Provisions for reimbursing military members on a mileage basis.
- Whether the military member had a choice between using official Government transportation or a POV.
- Whether leave was granted and used in connection with the PCS move.
- Whether the transfer was for the benefit of the Government or personal convenience.
- Whether an en route delay was just beginning or was ending at the time of the accident.
- Whether the accident occurred on a reasonably direct route between the old and new duty stations.

(e) Negligent or unauthorized entrustment. The United States may be held liable for the out-of-scope activities of its employees if a Government employee negligently entrusted the Government equipment, vehicle or other property causing the claimant's personal injury or property damage to the tortfeasor. For example, Federal liability may be found where a Government employee dispatches a vehicle to a visibly intoxicated soldier. However, if the Government employee who entrusted the Government property to the tortfeasor also exceeded or otherwise acted outside the bounds or scope of his or her own authority, then the United States may escape liability, FTCA Handbook, section II, paragraph B3e.

(f) Hitchhiker and unauthorized passenger liability. Some courts have held the United States liable for injury to hitchhikers and other unauthorized passengers caused by negligent Government drivers even when the passenger's presence was a clear violation of an agency rule. Other courts have held that the Government employee acted outside the scope of employment by permitting an unauthorized passenger to ride in a Government vehicle and, therefore, the United States is not liable for the passenger's injury, FTCA Handbook, section II, paragraph B3h. Refer to State law precedent. Also, investigate the facts thoroughly to determine whether any specific rules or SOPs addressed the issue; whether the agency enforced its own rules; and whether the agency or any of its employees were on notice that a prohibited practice was occurring or had occurred in the past and failed to take corrective measures.

(g) Sexual assault by HCPs. While, historically, intentional torts were excluded from FTCA coverage, the Gonzalez Act carved out an important exception: if a HCP commits an assault or battery while acting within the scope of employment, Federal liability attaches. The usual claim involves sexual assault and battery of a mental health patient by a therapist or sexual assault and battery of an unconscious patient by anyone. In some cases, the Government will argue that the HCP was not acting within the scope of employment at the time the patient was assaulted, FTCA Handbook, section II, paragraph B4i(1)(e). Governmental liability may be based, however, on the theories of negligent hiring or credentialling, or failure to supervise the HCP properly, provided there is a special relationship created between the Government and the injured party. Several cases have held the United States directly liable on the theory that it owes unconscious or otherwise mentally impaired patients a special or higher duty of care to prevent them from falling victim to unscrupulous HCPs acting outside the scope of their employment, FTCA Handbook, section II, paragraph B4i(1)(c). Courts have applied similar reasoning to hold the United States liable for sexual abuse by others, such as child care providers. See, *Doe v. United States*, 838 F.2d 220 (7th Cir. 1988).

2–68. Negligence

See FTCA Handbook, section II, paragraph B4.

a. Basis for liability. In any tort action brought against the United States, apply the basic principles of duty, breach, causation and damages, each of which should be thoroughly investigated before final action on a claim is taken.

b. Exclusions of claims based on absolute or strict liability. Principles of absolute or strict liability generally do not apply to tort claims under AR 27-20. The FTCA imposes liability for either negligent or wrongful acts. Some type of malfeasance or nonfeasance is required, *Dalehite v. United States*, 346 US 15 (1953); *Free v. Bland*, 369 US 663 (1962); *Laird v. Nelms*, 406 US 797 (1972). Thus, liability does not arise merely from Federal ownership of an inherently dangerous commodity or Federal engagement in ultrahazardous activity. However, some courts have decided against absolute liability in these cases:

(1) Air crashes where State law imposes absolute liability on the aircraft owner, *United States v. Praylou*, 208 F.2d 291 (4th Cir. 1953), cert. denied, 347 US 934 (1954) (note that the withdrawal of the Uniform Aviation Act by the Commissioners on Uniform State Laws and the adoption of other legislation by many States reduces *Praylou's* significance).

(2) Conduct amounting to negligence per se under State law because of its egregiousness or it violates a statute: such as approval of a substandard drug, *Griffin v. United States*, 500 F.2d 1059 (3d Cir. 1974); using no warning flares at night, *Cronenberg v. United States*, et al., 123 F. Supp. 693 (E.D. N.C. 1954); use of a spring-loaded gun, *Worley v. United States*, 119 F. Supp. 719 (D. Or. 1952); hitting a bystander when shooting a trespasser, *Cerri v. United States*, 80 F. Supp. 831 (N.D. Cal. 1948); and failing to warn of submerged tree stumps, *Stephens v. United States*, 472 F. Supp. 998 (C.D. Ill. 1979).

(3) Breaches of a landowner's or employer's nondelegable duty, such as the U.S. Government's duty to provide contract employees with a safe place to work, whether pursuant to statute (such as the Illinois Scaffolding Act) or the State's adoption of the Restatement (2d) of Torts, which imposes upon employers a non-delegable duty to contract employees when they are engaged in an inherently dangerous activity, *McCall v. United States Department of Energy, through Bonneville Power Admin.*, 914 F.2d 191 (9th Cir. 1990), or self-imposed safety inspections if the inspection is viewed as a duty, not a right, *Dickerson, Inc. v. Holloway*, 685 F. Supp. 1555 (M.D. Fla. 1987).

(4) Situations in which circumstantial evidence supports the conclusion of res ipsa loquitur, in which no tort would have occurred in the absence of negligence, and there is no evidence of claimant's contributory negligence (aircraft accidents, *United States v. Johnson*, 288 F.2d 40 (5th Cir. 1961) and explosions, *Simpson v. United States*, 454 F.2d 691 (6th Cir. 1972)).

(5) Certain other situations where statutes or regulations impose a higher standard of care than does the common law (for example, State Good Samaritan doctrine or statutes; State Safe Place statutes and State Industrial Commission rules and orders regarding stairway handrails, *American Exchange Bank of Madison, Wisconsin v. United States*, 257 F.2d 938 (7th Cir. 1958); and installation regulations with the force of law which create a mandatory duty, *Doggett v. United States*, 875 F.2d 684 (9th Cir. 1988).

(6) Claims arising from non-combat activities are discussed in chapter 3. Neither negligence nor duty is required to be proven but a claimant must show proximate cause.

2–69. Duty

a. General. Since the United States is liable under circumstances in which a private person would be held liable in accordance with the law of the place where the act or omission occurred, there must first exist a duty on the part of the United States to the injured party.

(1) Generally, there is no strict or absolute liability under the FTCA, *Dalehite v. United States*, 346 US 15 (1953). The Supreme Court has interpreted the statutory language "under circumstances" to mean something other than "under the same circumstances," *Indian Towing Co. v. United States*, 350 US 61 (1955). Therefore, to recover from the United States, a claimant need not point to identical activity by a private individual. See, *Rayonier Inc. v. United States*, 352 US 315 (1957) (Governmental liability for negligent firefighting), and *Indian Towing, supra* (Governmental liability for improperly operating a channel light).

(2) The Supreme Court has interpreted the "law of the place" as referring to the whole law, including the jurisdiction's choice of law principles, *Erie R. Co. v. Tompkins*, 304 US 64 (1938); *Richards v. United States*, 369 US 1 (1962). In *Richards*, the negligence of FAA employees located in Oklahoma caused an airplane crash in Missouri. Since Missouri and Oklahoma laws differed on the damages recoverable in wrongful death actions, the Supreme Court applied a two-step analysis to determine which State's substantive law on damages should be applied: First, the Court referred to the whole law of Oklahoma, the place of the negligent act, and applied Oklahoma's choice of law rules to the facts of the case. Since Oklahoma treated the place of the injury as the significant factor for choice of law purposes, the Court then examined the Missouri wrongful death statute to determine awardable damages.

b. Establishing duty. Duty must exist by virtue of State law under the private person analogy. It may be imposed by either a State statute or case precedent. Since the FTCA waives sovereign immunity only for violations of State law, the United States cannot be held liable under the FTCA for violation of a Federal statute or regulation or for failure to perform a duty imposed by Federal law. See, *Chen v. United States*, 854 F.2d 622 (2d Cir. 1988) (no liability for violation of Federal manual); *Wyler v. Korean Air Lines Co., Ltd.*, 928 F.2d 1167 (D.C. Cir. 1991) (internal government directives that may benefit the public do not necessarily create duties to third persons); FTCA Handbook, section II, paragraph B4a(1). However, claimants may use the United States' failure to follow its own regulations or SOPs as evidence of a breach of a duty created by State law (failure to follow internal hospital SOPs may be used as

evidence of breach of the applicable State standard of care). Since the liability of the United States is equivalent to that of a private person under State law, common law duties may be greater or broader than those set forth in Government manuals. See, *In Re Greenwood Air Crash*, 873 F. Supp. 1257 (S.D. Ind. 1995) (common law duty to control aircraft is broader than that set forth in FAA manual), FTCA Handbook, section II, paragraph B4a(1).

c. Public duty doctrine. The extent of the United States' duty of care is a question whose answer is determined under State law.

(1) When the United States is sued for torts committed in the course of performing uniquely Governmental functions, recovery normally is not allowed even if a State or local government would be liable under like circumstances, unless the action amounts to a State tort. The United States may not take advantage of immunities granted to State, county and municipal government officials, however. See, *Anderson v. United States*, 55 F.3d 1379 (9th Cir. 1995).

(2) Under the "public duty doctrine," as set forth in either State statutory or case law, Government officers and agents are under the duty to protect citizens against various activities such as crimes, contagious diseases, destruction of property by fire or manmade floods. This duty is owed to the public at large, not to individual citizens. Therefore, a breach of this duty to a specific citizen gives rise to neither a State nor a FTCA cause of action absent some special relationship or the breach of a specific duty owed to a specific individual.

(3) To create liability on the part of the United States for an action by one of its officers, the claimant must show either that the officer directly caused an injury to the claimant in particular or that the officer made a specific promise or representation to the claimant under circumstances creating justifiable reliance by the claimant.

(4) Decisions construing the FTCA have rarely held the United States liable for breach of a public duty because it is difficult to establish the requisite "special relationship" between claimant and a public official, which usually requires a finding of direct contact or privity between them, setting the claimant apart from the general public, FTCA Handbook, section II, paragraph B4a(1)(j). See *Sheridan v. United States*, 823 F.2d 820 (4th Cir. 1987), rev'd, 487 US 392 (1988), summary judgment granted, 773 F. Supp. 786 (D. Md. 1991); aff'd, 969 F.2d 72 (4th Cir. 1992). Held: Maryland law imposed no duty on the Federal government to protect motorists from the intentional criminal acts of a soldier who shot randomly at passing cars. Yet in a claim for child abuse based on a HCP's alleged failure to diagnose and preclude further injury, the physician-patient relationship may rise to the level of "special relationship," thereby creating a duty.

d. Fireman's rule. Under this State statutory or common law rule, State or local fire and police officers are barred from filing suit for injuries or death sustained in the performance of duty against those whose negligence or lack of care caused the fire. The fireman's rule is based on the premise that risk of such harm to firemen and policemen is inherent in their jobs, that they have assumed that risk, and that they are adequately compensated through a legislatively established compensation scheme. The rule may be, and has been, applied in FTCA actions to bar claims against the United States by local fire and police personnel who have been harmed by Government personnel's tortious acts, FTCA Handbook, section II, paragraph B4a(1)(m). The courts have carved out exceptions to the fireman's rule where the fire is intentionally set or when the injury is caused by an "independent actor," that is, one independent of the misconduct to which the fireman or policeman has responded. For example, a traffic officer who stops to issue a parking ticket is struck by a passing Government driver; the traffic officer is not barred from filing suit against the passing motorist.

e. Examples of duties imposed by State law.

(1) *Dram shop and social host liability.* See paragraph 2-56. When claimants allege that intoxicated Government employees have caused personal injury or property damage, they may assert liability on the part of the United States based on either a State Dram Shop statute or common law negligence principles.

(a) At common law, it is not a tort to either sell or give alcoholic beverages to ordinary, able-bodied men (or women). Accordingly, in the absence of statute, those injured by an intoxicated person have no cause of action against the party who furnished the intoxicating beverage to the wrongdoer. The usual rationale for this rule is that the drinking—not the serving—of liquor is the proximate cause of the injury. Many states have enacted Dram Shop statutes which impose such liability and provide a remedy for someone injured by the intoxicated person who was served the liquor. In these states, liability under the Dram Shop statutes is directed at State-licensed commercial vendors of alcohol. Because Army clubs and Class-Six stores are not licensed by the State as vendors of alcohol, the majority of courts have held that State Dram Shop statutes do not create Federal liability under the FTCA. See FTCA Handbook, section II, paragraph 4a(1)(d). Additionally, as the FTCA does not impose absolute liability, and because most Dram Shop statutes are generally based on absolute liability, courts follow the Supreme Court's holding in *Dalehite, supra*, and do not apply the statutes to the United States.

(b) Some cases qualify the common law rule against imposing liability for furnishing alcohol to the extent of providing a right of action against someone who gives or sells alcohol to a person who is in such condition as to be deprived of willpower or responsibility for his or her behavior or to a habitual drunkard. A few Federal courts have held Army clubs liable on this common law negligence principle. However, most States do not recognize "social host" liability. See FTCA Handbook, section II, paragraph B4a(1)(d). Nevertheless, claims officers should be aware that social host liability may extend not only to the Army club system, but also to organization and office parties. It is essential, therefore, to investigate the facts thoroughly in each case and to research applicable State law.

(c) In cases arising outside the United States, the implementing regulations provide that claims will be evaluated under general principles of law applicable to a private individual in the majority of American jurisdictions. As Dram Shop liability is based on State statutes that have no extra-territoriality, it does not apply to claims arising overseas. Additionally, because social host liability is the exception rather than the rule in most American jurisdictions, it may not apply to these claims, whether they involve the Army club system or an office or an organization party.

(2) *"Good Samaritan" doctrine and related statutes.*

(a) The United States may be held liable for its agents' negligent failure to act as well as for affirmative conduct, but only if the applicable State law would impose a duty to act upon a private person similarly situated. A duty may arise under State law requiring that aid or assistance be rendered to one in need. There are statutory and judicially created classes of people to whom special protection is owed (persons under arrest, witnesses, school children requiring immunization), FTCA Handbook, section II, paragraph B4a(1)(b). The discretionary function defense may be available in such cases (for example, if it is within the employee's discretion whether or not to render as well as the manner of rendering aid or assistance). However, if State law does not impose an affirmative duty to act, such as in rescue cases, the United States will not be held liable for a failure to act even if the Federal agency involved has a statutory responsibility to do so. See *Bunting v. United States*, 884 F.2d 1143 (9th Cir. 1989) (Held: no duty on part of Coast Guard to go to the aid of downed pilot), FTCA Handbook, section II, paragraph B4a(1)(b)(ii).

(b) Once the Government assumes a function or service, it is under a duty to carry out that function or service in a non-negligent fashion. FTCA Handbook, section II, paragraph B4a(1)(b). See *Huber v. United States*, 838 F.2d 398 (9th Cir. 1988). For example, once the Coast Guard participates in a rescue, it must complete it properly. The "Good Samaritan" doctrine, based on common law and explained in the Restatement (2d), Torts 323, states that one who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or property, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform the undertaking if, by his actions, he increased the risk of harm or caused the other to detrimentally rely on him.

(c) Liability under the "Good Samaritan" doctrine has been limited in most states by the passage of Good Samaritan statutes, which shield those who stop to render aid and assistance from liability for their simple negligence, but not for gross negligence. The qualified immunity granted by these Good Samaritan statutes may be applied to the United States under the private person analogy, shielding it from FTCA liability.

(3) *Trespassers; the 'Attractive Nuisance' doctrine.* See paragraphs 2-43, 2-45.

(a) At common law, the nature and extent of the duty owed by a landowner to an individual depends on the individual's status as an invitee, a licensee, a guest or a trespasser. Research State law before initiating a claims investigation to ascertain whether or not these common law distinctions are still valid. In appropriate cases, learn whether the state in which the incident occurred has a "recreational use" statute applicable to the United States under the private person analogy. As a general rule, such recreational use statutes provide landowners who make their land available without a fee to the general public immunity from liability for simple negligence.

(b) At common law, a landowner usually owed a higher duty of care to an individual who is invited onto the land or premises, particularly for business purposes, than to one who enters without invitation or permission. In general, landowners are not insurers of the safety of those who enter their land or premises with permission; instead, landowners are under the duty of reasonable care to protect them from dangerous conditions. Landowner liability turns on whether the landowner had actual or merely constructive knowledge of the dangerous condition; this issue is determined by reference to State law. Landowners may raise the defense that the condition causing the harm was "open and obvious" to the claimant, who remains under the common law duty to act reasonably and look out for personal safety. If the facts so indicate, the United States may invoke this defense by using the private person analogy.

(c) Trespassers are the third category of persons who may be injured on land. Generally, a landowner owes the trespasser only the duty not to act in a reckless or grossly negligent manner and to avoid creating "hidden traps" for the unwary. There are exceptions to this general rule. Liability attaches if an unposted dangerous condition exists on the land or if the landowner is aware of frequent trespassing but fails to warn known trespassers (examples: the duty to properly mark dud area or warn of an unmarked wire across a trail used by motorcyclists to discourage trespassers). Additionally, if the trespasser is a child of "tender years" as determined by State law, then some States may hold the landowner liable for failing to take steps to prevent child trespassers from entering the premises, particularly if there is an "attractive nuisance," such as a swimming pool, on the property, FTCA Handbook, section II, paragraph B4a(1)(g). In addition to visiting the scene and interviewing the allegedly responsible parties and the claimants, it is essential to talk to friends, neighbors and others in the community, such as local school boards and students, to determine not only the notoriety of the hazardous condition (how well known was it?) but also how often trespassing had occurred in the past and what steps, if any, the landowner had taken to prevent subsequent trespasses.

f. Duty to occupants of Government quarters. The Government's duty is similar to that of a landlord under State law: to provide safe habitation, FTCA Handbook, section II, paragraph B4a(1)(h). Frequently, the Federal government contracts out its responsibility for construction, maintenance, and repair of Government quarters; in such cases, the independent contractor exception applies to shield the United States from FTCA liability. If the injured occupant was a soldier, usually, Feres bars the claim.

g. Responsibility for the actions of third parties. The general rule is that, absent special circumstances, the United States is under no duty to anticipate and prevent the intentional or criminal acts of a third party. See *Henry v. Merck and Co., Inc.*, 877 F.2d 1489 (10th Cir. 1989). Exceptions to the general rule include cases in which the third party's tortious act was a reasonably foreseeable consequence of a Government employee's negligent act, FTCA Handbook, section II, paragraph B4a(1)(j). Additionally, the United States may be held liable if it had a special third party relationship creating a duty to the victim, such as a psychiatrist's duty to warn a patient's intended victim of the foreseeable risk of harm that patient posed—usually, a specific threat to a specific victim must be made before liability attaches; see *Brady v. Hopper*, 570 F. Supp. 1333 (D. Colo. 1983), aff'd, 751 F.2d 329 (10th Cir. 1984).

h. Duty to report under State statute. State law may impose a duty on a Government employee to report a criminal act such as child abuse. While failure to report is a criminal violation, it does not create civil liability for subsequent foreseeable injury to or death of the victim. Liability may exist, however, where a HCP does not meet the standard of care by failing to diagnose child abuse and protect the patient.

i. Professional standards of care. See paragraph 2-60. With respect to the "learned professions" (law, medicine and religion), the only duty a practitioner had at common law was a general one—to do no harm. To establish the nature and extent of the duty the United States owes in professional negligence cases, refer to the standards of the respective profession rather than to State statute or common law. As most State court decisions hold generally, the applicable standard of care is that practiced by a reasonably prudent practitioner with the same or similar qualifications under the same or similar circumstances. Refer to legal texts, journal articles, State and National standards or the testimony of legal professionals to determine the applicable standard in legal malpractice cases. Similarly, refer to medical texts, journal articles, and published medical specialty standards to determine the specific standard in medical malpractice cases; it may also be determined through the testimony of professionals in the same general medical practice (or in the same specialty or subspecialty, as appropriate). Additionally, courts have held that internal hospital regulations are relevant to the scope of the duty of care that a hospital owes to a patient—although the regulations do not create the duty, they may define it. See *Keir v. United States*, 853 F.2d 398 (6th Cir. 1988).

2–70. Breach of duty

The United States may not be held liable in tort unless there has been a breach of duty under applicable law. See FTCA Handbook, section II, paragraph B4a(2).

a. Burden of proof. At trial, claimants have the burden of proof to establish that the United States breached a duty of care owed to them under State law. During the administrative claim phase, however, a claimant need only put the United States on sufficient notice to permit inquiry into the underlying facts. Therefore the United States, and thus an ACO or CPO, bears the burden to investigate thoroughly the facts of each claim and to determine whether liability exists.

b. Exceptions. Claimant is not under the burden of proof at trial in cases involving negligence per se, or the presence of negligence as a matter of law, which may arise from a State statutory violation or extreme wrongdoing, FTCA Handbook, section II, paragraph B4a(2)(b).

c. Res ipsa loquitur. Another exception arises in cases involving the doctrine of res ipsa loquitur, wherein "the thing speaks for itself." This is a rebuttable presumption by which, using circumstantial evidence, the claimant shifts the burden onto the defendant. The following elements must exist: the defendant had exclusive control of the instrumentality which caused the injury; the incident would not have occurred in the absence of negligence; and the victim committed no contributory negligence. Notable examples of res ipsa loquitur include aircraft accidents, explosions and certain medical malpractice (the retained sponge cases). Res ipsa liability may not be imposed on multiple tortfeasors in the absence of joint responsibility, FTCA Handbook, section II, paragraph B4a(2)(c).

d. Medical malpractice cases.

(1) Under common law, medical malpractice liability arose only within the context of the physician/patient relationship. State statutes routinely broaden the scope of potential liability to include nonphysician HCPs such as opticians, pharmacists, midwives and paramedics. Additionally, State case law has expanded liability to

settings outside the traditional HCP/patient relationship. For example, while not the general rule, liability has been found on the part of a radiologist who found an abnormality on an X-ray film taken as part of a pre-employment physical but who failed to warn the plaintiff about the abnormality, *Daly v. United States*, 946 F.2d 1467 (9th Cir. 1991) (applying Washington law).

(2) A HCP is not a guarantor of good results. A HCP who exercises reasonable medical judgment under the circumstances is not liable for a breach of the duty of care in the event that subsequent events indicate an erroneous diagnosis or other mistake. It is important that a physician's care be judged upon only the facts known at the time of the incident (diagnosis or treatment), not what is learned later.

(3) To establish breach of a medical standard of care, most cases require a written opinion or oral testimony by a qualified medical professional in the same general practice or specialty as the defendant HCP. Exceptions are cases involving "common knowledge" (such as basic hygiene measures) and res ipsa loquitur. A bad result or adverse outcome alone is not sufficient evidence of a breach of the standard of care. A bad result in conjunction with poor or missing documentation of appropriate care, or the fact that a HCP's credentials have been stripped, however, could indicate the advisability of a settlement rather than the risk of an adverse judgment. See *Welsh v. United States*, 844 F.2d 1239 (6th Cir. 1988), finding an adverse presumption against Government for destruction of critical evidence; *Sweet v. Sisters of Providence in Washington*, 895 P.2d 484 (Alaska 1995), negligence per se for hospital and HCPs to fail to maintain or retain nursing records.

(4) A difference of medical opinion or practice is not sufficient evidence to establish a breach of the standard of care. Claimant's expert's opinion should be based on appropriate references to medical literature, not merely on what that expert's own practice is in a particular case.

(5) During the requisite interview in each case, attempt to obtain not only the claimant's version of the facts but also the claimant's theory of liability and the specific instances believed to evidence a breach of duty. During the administrative stage, it is not prudent to request the claimant to submit an expert opinion supporting the allegations before conducting an initial inquiry into whether the Government is exposed to potential liability. If an initial claims office investigation indicates that a breach of duty occurred, it is wiser to refrain from requesting such an opinion and spare the claimant the unnecessary expense. There is no duty to instruct the claimant and attorney about their case, and no benefit derived from doing so. It may be easier to negotiate a reasonable settlement when the claimant alleges minor injuries based on one theory of liability but, in fact, the United States is liable for major injuries for the same incident under another theory. As a general matter, however, before taking final denial action on a claim, send the claimant by certified mail a formal request for an expert opinion in support of the allegations. See paragraphs 2-94 and 2-95.

2–71. Causation

See FTCA Handbook, section II, paragraph B4a(3). Liability exists only where the negligent or wrongful act or omission causes the damage or injury sustained. The mere existence of a negligent act does not establish liability.

a. Traditional test. The traditional test required plaintiff to prove injury by a preponderance of the evidence, showing that it was "more likely than not" that the injury was caused by a breach of a duty the defendant owed to the plaintiff. There can be no recovery of damages otherwise, FTCA Handbook, section II, paragraph B4a.

b. Loss of chance. Some jurisdictions have relaxed the traditional test of proximate causation in medical malpractice cases in which the plaintiff must show that there was a "reasonable medical probability," or greater than 50 percent chance, that the HCP's negligence caused the patient's injury or death. In those jurisdictions, courts have allowed a plaintiff to prevail upon a showing that there was "some chance of survival" or a "substantial possibility of survival" or improvement in the patient's condition but for the defendant's breach of the duty of care. Figure 2-37 shows case law concerning loss of chance, FTCA Handbook, section II, paragraph B4a(3)(b)(i). Many States have not adopted this loss of chance theory of causation. It is crucial to research State cases thoroughly to determine whether or not loss of chance applies to the facts of the claim. Additionally, States differ in the weight and effect they give to the finding that plaintiff experienced a loss of chance of survival as a result of defendant's negligent act. In some States, the plaintiff is entitled to recover the full measure of damages suffered; in others, the plaintiff may recover only those damages corresponding to the percentage of the lost chance, for example, a 30 percent loss of chance results in a recovery of 30 percent of the total awardable damages.

Boston, MA 02114: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

New York, NY 10014: New Jersey, New York, Puerto Rico, and the Virgin Islands.

Philadelphia, PA 19104: Delaware, Pennsylvania and West Virginia.

Jacksonville, FL 32202: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Cleveland, OH 44199: Indiana, Michigan, and Ohio.

Chicago, IL 60604: Illinois, Minnesota, and Wisconsin.

Kansas City, MO 64105: Iowa, Kansas, Missouri, and Nebraska.

Denver, CO 80202: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Dallas, TX 75202: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

San Francisco, CA 94105: Arizona, California, Nevada, Hawaii, and U.S. territories and Trust Territories and possessions in the Pacific.

Seattle, WA 98101: Alaska, Idaho, Oregon, and Washington.

Washington, DC 20211: District of Columbia, Maryland, and Virginia; claims arising overseas; and certain specialized cases.

Figure 2-34. Workers' compensation program—regional offices

Department of U.S. Air Force

Kirchmann v. United States, 8 F.3d 1273 (8th Cir.1993)
Duff v. United States, 999 F.2d 1280 (8th Cir. 1993)
Rothenberger v. United States, 931 F.2d 900 (10th Cir. 1991) (table case—not be be cited)
Ayer v. United States, 902 F.2d 1038 (1st Cir. 1990)
Del Valle v. United States, 856 F.2d 406 (1st Cir. 1988)
Totten v. United States, 806 F.2d 698 (6th Cir. 1986)
Ellis v. United States, 780 F. Supp. 783 (D. Utah 1991)
Musick v. United States, 768 F. Supp. 183 (W.D. Va. 1991)
Markes v. United States, 704 F. Supp. 337 (N.D.N.Y. 1988)
Garrison v. United States, 688 F. Supp. 1469 (D. Nev. 1988)
Simmons v. United States, 754 F. Supp. 274 (N.D.N.Y. 1991)
*Chernock v. United State*s, 718 F. Supp. 900 (N.D. Fla. 1989)
Fairchild Republic Co. v. United States, 712 F. Supp. 711 (S.D. Ill. 1988)
Foster v. United States, —F.3d—, 1995 WL 316948 (9th Cir. (Alaska)) (not for publication), aff'g. No. A86-515 Civil (Consolidated) (D. Alaska, Mar. 4, 1994)
Gill v. United States, No. CV 87-1167-PAR(Kx) (C.D. Cal. Aug. 24, 1989)
*Amyot v. United State*s, No. A84-442 (D. Alaska Aug. 4, 1987)
Western Greenhouses v. United States, 878 F. Supp. 917 (N.D. Tex. 1995)
Jones v. United States, 698 F. Supp. 826 (D. Hawaii 1988)
Marking v. United States, No. 92-CV-0209 (N.D.N.Y. June 22, 1994)

Department of U.S. Army

C.R.S. by D.B.S. v. United States, 11 F.3d 791 (8th Cir. 1994), aff'g 820 F. Supp. 449 (D. Minn. 1993)
Pearson v. United States, 9 F.3d 1553 (table case—not to be cited), 1993 WL 438760 (9th Cir. 1993)
Daigle v. Shell Oil Co., 972 F.2d 1427 (10th Cir. 1992)
Hobdy v. United States, 968 F.2d 20 (10th Cir. 1992) (table case—not to be cited)
Industria Panificadora, S.A. v. United States, 957 F.2d 886 (D.C. Cir.), cert. denied, —U.S.—113 S.Ct. 304 (1992)
Hart v. United States, 894 F.2d 1539 (11th Cir.), cert. denied, 111 S.Ct. 509 (1990)
Keir v. United States, 853 F.2d 398 (6th Cir. 1988)
Feyers v. United States, 749 F.2d 1222 (6th Cir. 1984), cert. denied, 471 U.S. 1125 (1985)
Arvanis v. Noslo Engineering Consultants, Inc., 739 F.2d 1287 (7th Cir. 1984), cert. Denied, 469 U.S. 1191 (1985)
Redland Soccer Club, Inc. v. Department of the Army, 835 F. Supp. 803 (M.D. Pa. 1993)
Robinson v. Overseas Military Sales Corp., 827 F. Supp. 915 (E.D.N.Y. 1993)
Knisley v. United States, 817 F. Supp. 680 (S.D. Ohio 1993)
Sexton v. United States v. Ellis-Walker Builders, Inc., 797 F. Supp. 1292 (E.D.N.C. 1991)
Sumner v. United States, 794 F. Supp. 1358 (M.D. Tenn. 1992)
Breland v. United States, 791 F. Supp. 1128 (S.D. Miss. 1990)
*Zocco v. United State*s, 791 F. Supp. 595 (E.D.N.C. 1992)
Fitzpatrick v. United States, 754 F. Supp. 1023 (D. Del. 1991)
Fitzpatrick v. United States, 726 F. Supp. 975 (D. Del. 1989)
Matthews v. United States, 720 F. Supp. 1535 (D. Kan. 1989)
*Barrett v. United State*s, 660 F. Supp. 1291 (S.D.N.Y. 1987), aff'd in part on other grounds, 853 F.2d 124 (2d Cir. 1988), cert. Denied, *New York v. United States*, 488 U.S. 1041 (1989)
Fortney v. United States, 659 F. Supp. 127 (W.D. Va. 1987), aff'd w/o op., 841 F.2d 1122 (4th Cir. 1988), *vacated in light of Berkovitz*, 488 U.S. 882 (1988), on remand, 714 F. Supp. 267 (W.D. Va. 1989), affirmed, 912 F.2d 722 (4th Cir. 1990), reh'g. denied en banc, No. 89-3277, 1990 U.S. App. LEXIS 22949 (4th Cir. Oct. 15, 1990)
Cole v. United States, 651 F. Supp. 221 (N.D. Ala. 1986), aff'd on other grounds, 846 F.2d 1290 (11th Cir.), cert. Denied, 488 U.S. 966 (1988)
Encarnacion v. United States, No. IP 92-617-C (S.D. Ind. Mar. 28, 1994)
Black Hills Aviation, Inc. v. United States, 34 F.3d 968 (10th Cir. 1994)
Skirka and Skirka v. United States, No. 91-C-1324, 1992 U.S. Dist. LEXIS 2279 (D. Colo. Feb. 18, 1992)

Figure 2-35. Discretionary function exception cases—Continued

Rowell v. United States, No. 89 CIV 8418 (KMW), 1991 U.S. dist. LEXIS 8497 (S.D.N.Y. JUNE 19, 1991)
Long v. Aviation Contractor Employees, Inc., No. 87-D-0931-S (M.D. Ala. Oct. 10, 1989)
Barratt v. United States, No. 87-L-343 (D. Neb. Aug. 24, 1989)
Silvey v. United States, No. 1-87-142 (E.D. Tenn. Mar. 9, 1988)
Millar v. United States, No. C85-415T (W.D. Wash. 1986)
*Wilhoite v. United State*s, No. 84-C-5894-NE (N.D. Ala. 1986)
Custodio v. United States, 866 F. Supp. 479 (D. Colo. 1994)
Golden v. United States, No. CV-93-N-2660-NE (N.D. Ala. July 28, 1994)

Army Corps of Engineers
Phillips v. United States, 956 F.2d 1071 (11th Cir. 1992).
Hurst v. United States, 882 F.2d 306 (8th Cir. 1989), remanded, 739 F. Supp. 1377 (1990)
Boyd v. United States, 881 F.2d 895 (10th Cir. 1989) (table case—not to be cited), on appeal, 19 F. 3d 33 (10th Cir. 1994)
E. Ritter & Co. v. United States, 874 F.2d 1236 (8th Cir. 1989)
Graves v. United States, 872 F.2d 133 (6th Cir. 1989)
In re *Ohio River Disaster Litigation*, 862 F.2d 1237 (6th Cir. 1988), reh'g denied, cert. denied, *Walker Towing Corp. v. United States*, 439 U.S. 812 (1989)
Gleason v. United States, 857 F.2d 1208 (8th Cir. 1988)
Denham v. United States, 834 F.2d 518 (5th Cir. 1987), aff'g, 646 F. Supp. 1021 (Tex. 1986)
Chotin Transp., Inc. v. United States, 819 F.2d 1342 (6th Cir.) (en banc), cert. denied, 484 U.S. 953 (1987)
Andrews v. United States, 801 F.2d 644 (3rd Cir. 1986)
Wiggins v. United States, 799 F.2d 962 (5th Cir. 1986)
Chrisley v. United States, 791 F.2d 165 (4th Cir. 1986), aff'g. 620 F. Supp. 285 (D.S.C. 1985)
Alabama Elec. Coop, v. United States, 769 F.2d 1523 (11th Cir. 1985)
Buffington v. United States, 820 F. Supp. 333 (W.D. Mich. 1992)
Clark v. United States, 805 F. Supp. 84 (D.N.H. 1992)
Doud v. United States, 797 F. Supp. 138 (N.D.N.Y. 1992)
Arkansas River Co. v. CSX Transp., 780 F. Supp. 1138 (W.D. Ky. 1991)
Coats v. Luedtke Engineering Co., 744 F. Supp. 884 (E.D. Wis. 1990)
Pershing v. United States, 736 F. Supp. 132 (W.D. Tex. 1990)
Ross v. United States, 697 F. Supp. 974 (N.D. Ill. 1988)
Mocklin v. Orleans Levee Dist., 690 F. Supp. 527 (E.D. La. 1988), aff'd. on other grounds, 877 F.2d 427 (5th Cir. 1989)
Pelham v. United States, 661 F. Supp. 1063 (D.N.J. 1987)
Bosco v. United States Army Corps of Engineers, 611 F. Supp. 449 (N.D. Tex. 1985)
Alberici v. United States, No. 4:93CV1613 (D. Mo. Sept. 30, 1994)
Koenig v. U.S. Department of the Army, U.S. Dist. LEXIS 12565 (W.D. Mich. 1993)
American States Insurance Co. v. United States, No. 2:93-0056-18 (D.S.C. 1993) (unpublished)
Trammel v. United States, No. DC88-4104-B-0 (N.D. Miss. May 19, 1992)
Pittman v. United States, Civil Action No. 90-21-COL, 1991 U.S. Dist. LEXIS 16987 (M.D. Ga. April 5, 1991)
Hughes v. United States, No. H-87-0180 (S.D. Tex. Jan. 26, 1989)
Jensen v. Mason, No. 87-1575 (10th Cir. Jan. 12, 1989)
Adams v. United States, No. 86-98, 1988 U.S. Dist. LEXIS 15646 (E.D. Ky. Aug. 25, 1988)
Warrior & Gulf Navig. Co. v. United States, Nos. 84-0632-T, et al. (S.D. Ala. 1987)
American National Bank & Trust Co. v. United States, No. 86-C-7245, 1987 U.S. Dist. LEXIS 4294 (N.D. Ill. 1987)
Jensen v. U.S. Corps of Engineers, No. 86-1686-K (D. Kan. 1987)

Department of the Navy
Blakey v. U.S.S. Iowa, 991 F.2d 148 (4th Cir. 1993)
Earles v. United States, 935 F.2d 1028 (9th Cir. 1991), on appeal, *Sutton v. Earles*, 26 F.3d 903 (9th Cir. 1994)
Dube v. Pittsburgh Corning, 870 F.2d 790 (1st Cir. 1989)
Starrett v. United States, 847 F.2d 539 (9th Cir. 1988)
Henderson v. United States, 846 F.2d 1233 (9th Cir. 1988)
Gordon v. Lykes Bros. S.S. Co., 835 F.2d 96, reh'q. Denied, 841 F.2d 396 (5th Cir.), cert. Denied, 488 U.S. 825 (1988)
Shuman v. United States, 765 F.2d 283 (1st Cir. 1985)

Figure 2-35. Discretionary function exception cases—Continued

Woodman v. United States, 764 F. Supp. 1455 (M.D. Fla. 1991)
Ramey v. Martin-Baker Aircraft Co., 656 F. Supp. 984 (D.Md. 1987), aff'd on other grounds, 874 F.2d 946 (4th Cir. 1989)
In re *All Maine Asbestos Litig.*, 651 F. Supp. 913 (D. Me. 1986) and 655 F. Supp. 1169 (D. Me. 1987)
Cole v. United States, 635 F. Supp. 1185 (N.D. Ala. 1986), aff'd on other grounds, 846 F.2d 1290 (11th Cir.), cert. Denied, 488 U.S. 966 (1988)
Bell v. United States, 635 F. Supp. 638 (E.D. Va. 1986)
Marbley v. United States, 620 F. Supp. 811 (D.D.C. 1985)
*Bowman v. United State*s, 848 F, Supp. 979 (M.D. Fla. 1994)
Kandarge v. United States Dept of the Navy, 849 F. Supp. 304 (D.N.J. 1994)
Laurence v. United States, 851 F. Supp. 1445 (N.D. Cal. 1994), aff'd. on other grounds, 59 F.3d 112, 1995 (9th Cir. 1995)
Sabow v. United States, No. SA CV 93-991 AHS (RWRX) (C.D. Cal. June 1, 1994)
Eames v. United States, No. C-92-1822 MHP (N.D. Cal. Dec. 1993)
Kitowski v. United States, No. 90-30023-RV (N.D. Fla. 1992) (unpublished)
Southern Pacific Transp. Co. v. United States, No. CV-88-1170 RSWL (C.D. Cal. May 29, 1990)
Geiger v. United States, No. 89-CIV-6487 (CSH), 1990 U.S. Dist. LEXIS 4979 (S.D.N.Y. May 1, 1990)
Trapnell v. United States, No. C-86-316 (S.D. Tex. Sept. 14, 1990)
Golden v. United States, No. 88-60-CIV-2-BO (E.D.N.C. Dec. 19, 1989)
*Armstrong v. United State*s, No. C84-1158Z (W.D. wash. Feb. 24, 1989)
Zielinski v. United States, No. 87-0379 (E.D. Va. Sept. 28, 1988)
Rainwater v. United States, No. 87-2033-1 (D.S.C. Jan. 14, 1988)
Maynard v. United States, No. 81-304-MAC (M.D. Ga. 1986)
Lewis v. United States, 865 F. Supp. 294 (D. S.C. 1994)
Goewey v. United States, 886 F. Supp. 1268 (D.S.C. May 11, 1995)
Zielinski v. United States, No. L-92-90 (D. Md. Apr. 20, 1995)

Notes:
This list was complied in June 1996 and should be shepardized

Figure 2-35. Discretionary function exception cases

Title 33 U.S.C. 702c. Expenditures for construction work; conditions precedent; liability for damage from flood waters; condemnation proceedings; floodgate rights

Except when authorized by the Secretary of the Army upon the recommendation of the Chief of Engineers, no money appropriated under authority of sections 702a and 702g of this title shall be expended on the construction of any item of the project until the States or levee districts have given assurances satisfactory to the Secretary of the Army that they will (a) maintain all flood-control works after their completion, except controlling and regulating spillway structures, including special relief levees (normally maintenance includes such matters as cutting grass, removal of weeds, local drainage, and minor repairs of main river levees); (b) agree to accept land turned over to them under the provisions of section 702d of this title; (c) provide without cost to the United States, all rights of way for levee foundations and levees on the main stem of the Mississippi River between Cape Girardeau, Missouri, and the Head of Passes.

No liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place: Provided, however, that if in carrying out the purposes of sections 702a, 702b to 702d, 702e to 702g, 702h, 702I, 702k, 702l, 702m, and 704 of this title it shall be found that upon any stretch of the banks of the Mississippi River it is impracticable to construct levees, either because such construction is not economically justified or because such construction would unreasonably restrict the flood channel, and lands in such stretch of the river are subjected to overflow and damage which are not now overflowed or damaged by reason of the construction of levees on the opposite banks of the river it shall be the duty of the Secretary of the Army and the Chief of Engineers to institute proceedings on behalf of the United States Government to acquire either the absolute ownership of the lands so subjected to overflow and damage or floodgate rights over such lands.

Figure 2-36. Flood, Floodwaters and Exclusion Act

A. Cases adopting "loss of chance."

AK: *Jeanes v. Milner*, 428 F.2d 598 (8th Cir. 1970)
Carr v. St. Paul Fire and Marine Ins. Co., 384 F.Supp 821 (W.D. Ark. 1974)
AZ: *Thompson v. Sun City Community Hosp*, 688 P.2d 605 (Ariz. 1984)
CO: *Mays v. United States*, 608 F.Supp 1476 (D. Colo. 1985)
DC: *Daniels v. Hadley Memorial Hosp*. 566 F.2d 749 (D.C. Cir. 1977)
HI: *McBride v. United States*, 462 F.2d 72 (9th Cir. 1972)
IA: *O'Brien v. Stover*, 443 F.2d 1013 (8th Cir. 1971)
Sanders v. Ghrist 421 N.W.2d 520 (Iowa 1988)
DeBurkarte v. Louvar 393 N.W.2d 131 (Iowa 1986)
KA: *Delaney v. Cade* 873 P.2d 175 (Kan. 1994)
OK: *McKellips v. Saint Francis Hosp*. 741 P.2d 467 (Okl. 1987)
MI: *Falcon v. Memorial Hosp*, 462 N.W.2d 44 (Mich 1990)
NJ: *Scafidi v. Seiler*, 574 A.2d 398 (N.J. 1990)
NV: *Perez v. Las Vegas Medical Center*, 805 P.2d 589 (Nev. 1991)
MO: *Wollen v. DePaul Health Center*, 828 S.W.2d 681 (Mo. 1992) (en banc)
NY: *Kallenberg v. Beth Israel Hosp*. 45 A.D.2d 177, 357 N.Y.S.2d 508, aff'd 37 N.Y.2d 719, 374 N.Y.S.2d 615 (N.Y. 1975)
PA: *Hamil v. Bashline*, 481 Pa. 256, 392 A.2d 1280 (Pa. 1978)
PA: *Schuler v. Berger*, 275 F.Supp. 120 (E.D. Pa. 1967)
SD: *Voegeli v. Lewis*, 568 F.2d 89 (8th Cir. 1977)
VA: *Hicks v. United States* 368 F.2d 626 (4th Cir. 1966)
WA: *Herskovits v. Group Health Coop of Puget Sound*, 99 Wash.2d 609, 664 P.2d 474 (Wash. 1983) (en banc)

B. Cases rejecting "loss of chance."

AK: *Hurley v. United States*, 923 F.2d 1091 (4th Cir. 1991)
CA: *Morgenroth v. Pacific Medical Center*, 54 Cal. App. 3d 521, 126 Cal. Rptr. 681 (Cal. Ct. App. 1976)
CA: *Dumas v. Cooney*, 235 S. Cal. App. 3d Rptr, 1 Cal. Rptr. 2d. 584 (Cal. Ct. App. 1991)
Bromme v. Pavitt, 5 Cal. App. 4th 1987, 7 Cal. Ct. Rptr. 2d 608 Cal. Ct. App. (1992)
FL: *Gooding v. University Hosp*. Bldg. Inc., 445 So.2d 1015 (Fla. 1984)
ID: *Manning v. Twin Falls Clinic & Hosp*, 830, P.2d 1185 (Idaho 1992)
MD: *Fennell v. Southern Maryland Hosp. Ctr.*, 580 A.2d 206 (Md. 1990)
MN: *Cornfeldt v. Tongen*, 295 N.W.2d 638 (Minn. 1980)
NE: *Steineke v. Share Health Plan of Nebraska, Inc.*, 518 N.W.2d 904 (Neb. 1994)
OH: *Cooper v. Sisters of Charity of Cincinnati*, 272 N.E.2d 97 (Ohio. 1971)
SC: *Hanselman v. McCardle*, 267 S.E.2d 531 (S.C. 1980)
SC: *Jones v. Owings*, 456 S.E.2d 371 (S.C. 1995)
TX: *Kramer v. Lewisville Memorial Hosp*. 858 S.W.2d 397 (Tex. 1993)
TN: *Volz v. Ledes*, 895 S.W.2d 677 (Tenn. 1995)

Notes:
This list was complied in October 1996 and should be shepardized.

Figure 2-37. Loss of chance cases

Section VI
Determination of Damages

2–72. Applicable law

Claims personnel should investigate damages and liability at the same time. The following statutes prohibit compensation for punitive damages, attorneys' fees, and costs associated with filing the claim:

a. Federal Tort Claims Act.

(1) In claims filed pursuant to 28 USC 1346(b), the United States may be held liable for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his or her office or employment, under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Thus, the whole law of the State of occurrence, including its conflicts of laws provisions, applies. See *Erie R. Co. v. Tompkins*, 304 US 64 (1938); *Richards v. United States*, 369 US 1 (1962). When the injured person is a resident of a State other than that in which the injury occurred, research both States' impact or comparative impairment rule. The law of the State of residence may apply to damages. FTCA Handbook, section II, paragraph C1(a). See also paragraph 2-65.

(2) Elements of compensable damage vary among the different States. It is imperative that each ACO or CPO research applicable State law on damages when handling FTCA claims. Each ACO and CPO should create a State law deskbook containing legal research on damage issues in its geographic area of responsibility and update it regularly. Research the elements of damage in wrongful death and survival schemes, tort reform and no-fault statutes, and in reported or published case decisions issued by the courts of each jurisdiction. Also, NATO SOFA claims that arise in the United States are adjudicated as FTCA claims; in other words, State law determines compensable damages.

b. Military Claims Act Claims. AR 27-20, Chapter 3 sets forth the applicable law on damages in claims under the MCA accruing on or after 1 September 1995. For claims accruing before 1 September 1995, compensable damages will be determined in accordance with the principles of general maritime law.

c. Foreign Claims Act claims. See paragraph 10-11. Allowable elements of damage vary in foreign countries. Refer to AR 27-20, Chapter 3, as a guide for determining FCA damages.

d. Army Maritime Claims Settlement Act claims. Follow maritime law in determining damages. Applicable case law can be found in the Suits in Admiralty Act (46 USC app 741-752) and the Public Vessels Act (46 USC app 781-790).

e. Other costs. The following costs are not payable under any chapter of AR 27-20.

(1) *Costs of preparing, filing and pursuing a claim, including expert fees.* Payment of costs is a matter between the claimant and attorney. The settlement or approval authority will make no effort to determine the value or the fairness of such costs. Settlement agreements will not include the value of costs even when the claimant and attorney agree on the amount.

(2) *Bail, interest, prejudgment or otherwise, or court costs.* See FTCA Handbook, section II, paragraph C5 and 6 and 28 USC 2411.

(3) *Attorney fees, 28 USC 2412, 2678.* Under the American rule, attorney fees are deducted from the settlement amount; they are never considered payable as an addition to the settlement principal. The 20 percent attorney's fee limit established for all tort claims under AR 27-20 will be specifically set forth in any separate settlement agreement when neither FMS 197 nor a payment report is used as a settlement agreement. See paragraph 2-9 and FTCA Handbook, section II, paragraph C4.

(4) *Punitive damages, 28 USC 2674.*

(a) Punitive or exemplary damages are those damages not payable if they are in addition to special and general damages allowed under State or local law, maritime law, or under the MCA. Under the FTCA, compensation for unconscious pain and suffering or loss of enjoyment of life are not considered punitive where authorized by State law, *Molzof v. United States*, 502 US 301 (1992). Similarly, under the FTCA, payment of damages already paid by a collateral source is not considered punitive. See FTCA Handbook, section II, paragraph C3.

(b) In a wrongful death claim, the FTCA limits damages to actual compensatory losses measured by pecuniary injuries to the persons for whose benefit the action was brought. (See Figure 4-1, extract from 28 USC 2674.) Certain State wrongful death statutes have been held to be punitive, FTCA Handbook, section II, paragraph C3a.

2–73. Mitigation of damages

Always investigate this issue. Do not assume that the claimants will mitigate damages automatically. Advise, in writing, the claimant, if unrepresented, or the claimant's attorney that damages must be mitigated. If you know that the claimant is not mitigating damages, be sure to inform the claimant explicitly and in writing that failure to do so will result in a deduction from any award. This practice prevents the claimant from asserting that the United States acquiesced in the claimant's actions.

a. In personal property damage claims, see paragraph 2-77*b* and cases cited in the FTCA Handbook, section II, paragraph C13.

b. In a claim involving a commercial loss, see paragraph 2-77*e*, and the cases cited in the FTCA Handbook, section II, paragraph C22 and 27.

c. In a claim involving physical injuries, mitigation may mean undergoing medical treatment. A claimant may not be forced to undergo medical treatment or required to have a surgical procedure to mitigate damages. If a claimant refuses to undergo recommended medical or surgical treatment, undertake a risk-versus-benefit analysis. If the claimant will not submit to a medical procedure, then the damages that the procedure would alleviate are not compensable, *Verrett v. McDonough Marine Service*, 705 F.2d 1437 (5th Cir. 1983). Compare the known risks of the recommended surgical procedure (for example, is it routine and low-risk or complex and high-risk?) to the benefits expected from it (alleviation of pain and increase of function). If it appears upon analysis that a reasonably prudent person would submit to the surgical procedure, then the claimant may not recover for pain and suffering from the date a physician recommended the surgical procedure. See the cases cited in FTCA Handbook, section II, paragraph C11.

d. In a claim involving physical injuries, examine the claimant's failure to follow medical orders as a possible failure to mitigate damages. In certain situations, it may rise to the level of contributory negligence. The claimant must fully understand the nature and reason for the medical order and should be questioned about his or her understanding of its meaning and necessity. See the cases cited in FTCA Handbook, section II, paragraph C12.

2–74. General damages

Carefully research which elements of general damage the applicable State law allows. Compensable general damage elements may include: pain and suffering, both past and future, physical disfigurement, mental or physical disability, loss of enjoyment of life, emotional distress, loss of consortium and survivors' mental anguish in wrongful death cases. A thorough claimant interview is necessary to assess each possible element of damage. As AR 27-20, Chapter 3, states, the total award for noneconomic damages under the MCA will not exceed $500,000. In light of the various State statutes establishing damage "caps" or ceilings and the DOJ's position supporting such caps, assess noneconomic damages under all chapters of AR 27-20 with the $500,000 ceiling in mind. See the cases cited in the FTCA Handbook, section II, paragraph C1b.

a. Pain and suffering. These elements are difficult to quantify because of their highly subjective nature. Reviewing the claimant's medical records and thoroughly interviewing the claimant, family members, and HCPs may provide insight into these concepts. See the cases cited in FTCA Handbook, section II, paragraph C16.

(1) To ascertain the extent of past pain and suffering, request

copies of all medical and pharmacy records, chronologize each doctor's visit and prescription and note all record entries about improvement since the last visit. Study how the claimant described the pain's nature and extent to the HCP. Review these individual visits during the claimant interview. Note any references to prognoses made by the treating physicians or therapists and ask the claimant about any related discussions.

(2) Ask the claimant for a copy of a written report from the treating physician(s) before the claimant interview. It is important to obtain the written report of the physician or physicians who actually provided medical treatment to the injured person. Do not confuse this with a report written by a specialist, who has merely examined the claimant or injured person at the request of the claimant's attorney. In preparing a chronology of the claimant's medical treatment, be alert to the fact that in many instances, a treating physician may discharge the claimant from further treatment but the claimant may continue to seek treatment from a chiropractor, physical therapist, or other similar professional when the attorney suggests doing so.

(3) In assessing the severity of pain and suffering, claims personnel may seek assistance from DA physicians practicing the appropriate specialty at the local MTF. Review the medical records, in detail, with the physician to elicit a professional opinion regarding the nature of the injury, the reasonableness of the treatment provided to the claimant, such treatment's usual success rate and normal recovery time, any reasonably expected disability after recovery, and the reasonableness of claimant's complaints of pain and suffering. Figure 2-38 provides a chart of recovery times for various surgeries. Consult a medical specialist about concomitant effects of other surgeries or injuries. If necessary, arrange for the DA physician to examine the claimant or injured person at the local MTF. AR 40-3, chapter 4, authorizes such examination if the claimant or injured person is not otherwise entitled to care at a MTF.

(4) In some circumstances, and after discussion with the AAO, consider an IME by an independent medical examiner to assess future pain and suffering. (See AR 27-20, Chapter 2 and paragraph 2-36 of this publication.) In arranging an IME, choose an examiner or team of examiners who are experienced in the particular area of medicine involved in the claim's specific allegations. If possible, the IME should be scheduled in the same geographic area or region as the claimant's place of residence. Prepare specific questions designed to elicit the information necessary to determine the full nature and extent of the specific injury or injuries. See figure 2-39 for samples of questions specific to injury. Ascertain whether, in the IME examiner's or team's opinion, remedial care or treatment is indicated, its current costs, and usual success rate.

(5) Never use a factoring method to quantify pain and suffering. Following the steps suggested here should result in a fair evaluation and proper dollar amounts.

b. Loss of enjoyment of life. Also known as hedonic damages, loss of enjoyment of life may include impairment of mental health, loss or impairment of one of the senses, inability to participate in daily, family, or recreational activities, interference with sexual relations or childbearing, and shortening of life expectancy. Figure 2-40 provides a list of states permitting this element. The FTCA permits compensation for loss of enjoyment of life as an element of damage if the applicable State law recognizes it as such. It is also allowable under the MCA; see AR 27-20, Chapter 3. In certain jurisdictions, pain and suffering may include loss of enjoyment of life. In others, however, pain and suffering and loss of enjoyment of life may be separately compensable. Research whether the State has codified life expectancy tables. In their absence, calculate life expectancy by reference to Bureau of Labor Statistics mortality tables as published annually in the Lawyers and Judges Publishing Company calculator for determining life expectancy and work-life expectancy (set forth at figure 2-41). The amount of damages allowed is tied directly to life expectancy; therefore, be aware that the life expectancy tables or charts provide normal life expectancy. An individual claimant may have a less than normal life expectancy (a "rated age") due to a congenital or medical condition. The loss of enjoyment of life is assessed over the individual claimant's life expectancy. See FTCA Handbook, section II, paragraph C17. Hedonic damages may overlap other elements of damage, so avoid granting double recovery when calculating this element of damage.

c. Emotional distress. This element of damage usually covers mental suffering resulting from grief, anxiety, fright, and despair.

(1) For claims brought pursuant to the FTCA, research applicable State law to learn the elements claimants must prove to receive compensation for emotional distress in the absence of any physical impact to each claimant. See FTCA Handbook, section II, paragraph B1c(4) and IIC8 and 28.

(2) Under the MCA, claims for emotional distress in the absence of physical impact will be entertained only from the injured person's immediate family members, provided that such claimants were physically within the "zone of danger" and exhibited some physical manifestation of their emotional distress. See AR 27-20, paragraph 3-5*a*(3)(*g*) and *Consolidated Rail Corp. v. Gottshall*, 512 US 532 (1994).

(3) Moral damages.

(a) Local law applies to emotional distress claims brought under the FCA. However, the element of damages set forth in AR 27-20, paragraphs 3-5*b* through *d*, usually will provide adequate guidance. Additionally, moral damages are permitted if the law of the country of occurrence permits them. Moral damages are those affecting the health, welfare, and happiness of the injured or deceased person's immediate family members, such as spouse, children (including children born out of wedlock), parents or grandparents. Countries that follow the Civil Code permit moral damages. The value of these moral damages is based in part on the nature of the claimant's relationship to the person injured, not on the relationship alone. For example, a child who has left home and severed ties with an injured parent would be entitled to a nominal award at best.

(b) There is no requirement that the claimant witness the injury or death or that the injury or death cause a physical impact. If either or both of these factors are actually present, the value could increase.

(c) The nature and severity of the harm form a basis for assessing the amount. Moral damages were allowed when an airline failed to inform its passengers that they needed a visa to enter Spain and one of them, a cancer patient, died one year after he was denied a chance to visit his homeland, *Compagnie Nationale Air France v. Castano*, 358 F.3d 203 (1st Cir. 1966). A court also awarded moral damages to a wife who, for four weeks, cared for her 265-pound husband whose twisted knee prevented him from walking. The court concluded that Puerto Rican law did not consider basic conjugal duties part of compensable moral damages, *Ganapolsky v. Park Gardens Development Corp.*, 439 F.2d 844 (1st Cir. 1971). Moral damages were awarded to a wife who tried to have her husband, who had suffered a heart attack, admitted to a Federal government hospital. That hospital discharged him to a psychiatric hospital, which in turn transferred him to yet a third hospital where he died shortly after arrival. The court found that the thought of their three children left fatherless intensified the wife's anguish, *Santa v. United States*, 252 F. Supp 615 (D.P.R. 1966).

(d) Exercise care to distinguish moral damages from loss of consortium in a personal injury case. Moral damage in a wrongful death case is akin to compensation for survivors' mental anguish. Some American jurisdictions permit it, but AR 27-20, Chapter 3, does not.

d. Physical disfigurement. Some States do not permit physical disfigurement as a separate element. To establish this element of damage, conduct a complete review of the medical records and interview the claimant, claimant's family members, and HCPs. In addition, a plastic surgeon may need to conduct an IME or review recent 8-inch by 10-inch color photographs taken by a medical photographer. If an IME is not required, review the physical disfigurement claim with a plastic surgeon to ascertain the possibility of any reconstructive surgery, its likelihood of success and anticipated cost, and whether there is any chance that the disfiguring condition will improve in time without surgery.

e. Loss of consortium. An injured spouse may recover for the loss of consortium, that is, loss of love, companionship, society,

affection, conjugal fellowship, and sexual relations. Interview the claimant and acquaintances to determine the nature of the relationship both before and after the injury. Some jurisdictions recognize a child's loss of a parent's consortium as an element of damages, FTCA Handbook, section II, paragraph C25.

2–75. Special damages

Because elements of special damages vary among States, it is critical to know which are compensable in the particular State. Some typical special damage elements are past lost wages, loss of future income or earning capacity, past out-of-pocket medical expenses, future medical expenses, loss of household services, and any loss stemming from a permanent disability. When confronted with an economist's report from a claimant or claimant's attorney asserting some or all of these damage elements, consult the AAO to obtain an economist's report for rebuttal, if necessary.

a. Loss of past income. In addition to loss of salary, this element of damage includes both fringe benefits and leave, such as employer's contribution to Social Security, bonuses, sick and annual leave, employer health insurance benefits, free (covered) housing or transportation, and pension benefits, FTCA Handbook, section II, paragraph C10. It may also represent loss of profit from a business. See FTCA Handbook, section II, paragraph C14.

(1) The amount of loss should be established through the claimant's production of past Federal income tax returns (returns for three to five years preceding the injury or death is generally appropriate). Request them as soon as you anticipate a damages award, informing the claimant or claimant's attorney that there is no substitute for these returns. A claimant may submit W-2 forms to substantiate past income; while useable, they may show earnings only as of the date of injury or death. It is necessary to see the entire amount of family income declared to apply the proper income tax offset.

(2) It may be difficult to determine certain types of income, such as tips earned. If the claimant earned this type of income but did not report it on past Federal income tax returns, do not exclude it altogether as an element of damage. If the claimant did earn and report this income on past Federal income tax returns, claims personnel may average the past amounts or, in the alternative, estimate the amount using information obtained from co-workers or similarly employed individuals.

b. Loss of future income or earning capacity. The claimant must establish that this loss is reasonably certain to occur. This element of damage may represent a temporary loss of future earnings due to physical injury or to a total loss of future income or earning capacity in cases of catastrophic injury. To calculate this element of damage for an adult with an established work history, average the claimant's past earnings for a period of five years immediately preceding the accident or injury. For a child without an established work history, refer to the parents' educational level and assume that the child would have graduated high school or college if the parents did.

(1) In situations involving allegations of loss of future earnings due to temporary disability, the claimant must establish the temporary disability with medical evidence from the treating physician. There is often a conflict between the claimant's desire or lack of desire to return to work and the physician's medical opinion of the claimant's ability to return to work. Rely on the physician's statement in determining whether to allow a temporary loss of future earnings. For example, a claimant with a back injury may feel subjective pain and believe that he or she is unable to return to work despite the physician's objective findings that the injury has healed and there is no physical basis for the claimant's complaints. This may represent a situation in which the claimant has developed a psychological condition, such as post-traumatic stress disorder, as a result of the back injury. In this case, the claimant must prove the contention of temporary disability with medical evidence from a neurologist or other physician who has examined the claimant and administered appropriate diagnostic tests to support the diagnosis of a temporary disability.

(2) In situations involving catastrophic injuries and a total loss of future earnings, calculate the loss over the claimant's future work life. Be aware that a future work life is normally shorter than an individual's normal remaining life expectancy because it is assumed that an individual will retire from the work force before the end of normal life expectancy. Be sure to use a future work-life expectancy (based on Bureau of Labor statistics), not a regular life expectancy, for this calculation. The life expectancy and work-life expectancy calculator set forth in figure 2-41 is a useful tool for assisting in the determination of this element.

(3) During the course of the interview, determine the claimant's complete earnings/work history and potential by asking questions about educational experience, actual employment with previous employers, and any plans for future education or career changes. Request copies of all employment and personnel records, school records, and tax returns. The Bureau of Labor Statistics can provide economic information about similar jobs. Remember that the claimant has the duty to mitigate any loss of future earnings or earning capacity. See the cases cited in the FTCA Handbook, section II, paragraph C14(h) and (i).

(4) In personal injury cases, lost future earnings must be reduced to their present value and reduced by the value of income taxes, unless the amount of earned income is low. FTCA Handbook, section II, paragraph C10e. In wrongful death cases, this element should also be reduced for the decedent's personal consumption to determine the actual loss to the survivors. There are various methods for reducing economic damages to present value; applying a discount rate between 1 and 3 percent is a general rule. See AR 27-20, chapter 3; see *Jones & Laughlin Steel Corp. v. Pfeiffer*, 462 US 523 (1983), *Culver v. Slater Boat Co.*, 688 F.2d 324 (5th Cir. 1982), reversed by 722 F.2d 114 (5th Cir. 1983), cert. denied, 469 U.S. 819 (1984). See the cases cited in FTCA Handbook, section II, paragraph C15, p.181. The total offset method of discounting is limited to Alaska and perhaps Pennsylvania, FTCA Handbook, section II, paragraph C14. Georgia has a statutory discount rate. See Figure 2-42 for an example of calculating lost future earnings.

c. Permanent disability or injury. This may be a separate element of damage or it may be the basis for a total loss of future earnings. The permanence of an alleged disability or injury should be ascertained through an IME. See AR 27-20, paragraph 2-36, and paragraph 2-36 of this publication. Additionally, conduct a thorough review of all available medical records that reflect treatment by both military and civilian physicians or therapists. It is important to explore the impact of a permanent disability on future lost earnings or earning capacity with the IME reviewer and treating physicians or therapists.

(1) Request a written statement from the claimant's treating physician(s), setting forth the basis for the contention of permanent disability or impairment. This statement should be prepared by the treating physician(s).

(2) Always try to have an orthopedist or related specialist evaluate orthopedic injuries. Refer to the AMA disability tables 2-7a, b, and c to apply the appropriate percentage of disability to both the injured body part and the whole body. When the specialist is reluctant to state a numerical rating, request an opinion on everyday activity limitations.

(3) Allegations of permanent disability due to emotional or psychological injuries are more difficult to evaluate. Assistance from a neurologist, psychiatrist or associated paraprofessional, such as a psychologist or therapist at the local MTF, is invaluable in assessing these allegations.

d. Loss of household services. This element provides compensation for performing household services that the injured party would normally perform but for the injury. Calculate using the replacement method: what it would have cost to hire a temporary housekeeper, or by referring to Bryant, et al., *Household Work, What's It Worth and Why*? ("The Cornell Study"). Tables 2-8a, b, and c through c provides a guide for valuing household services. Information concerning the specific activities of the claimant's household should be established during the claimant interview.

e. Medical expenses, past and future. Reasonable and necessary medical expenses are compensable.

(1) This element may cover the value of nursing or attendant care furnished by a member of the immediate family to another member, as when a parent stops working outside the home to provide nursing or attendant services to the child. The value of such services is the market value of a similar level of nursing or attendant services, not the family member's wage earned but interrupted because regular employment has stopped.

(2) A claim for past medical expenses, if filed, is paid to the person responsible for furnishing the care, such as to a parent who pays for a child's care. Future medical expenses may be paid to either the guardian or custodial parent until a child reaches adulthood or directly to the child after majority. A medical trust should be used to ensure availability of funds for a child's future medical care.

(3) For past medical expenses, the claimant must submit copies of actual bills and medical records from hospitals, physicians or therapists, rather than the attorney's estimate. Review the medical records to ensure that the bills reflect treatment arising from the claimed injury or death. When the costs appear excessive, have a physician at the local MTF review the records.

(4) The majority rule is that future medical expenses are compensable only when based on a physician's report, not on a medical economist's report. In certain situations, it may be necessary to establish a reversionary medical trust for payment of future medical costs over time. See AR 27-20, paragraph 2-46. In those cases, a life-care plan (a projection of all the injured party's future medical and life-care needs) may be needed to estimate future medical expenses. See Table 2-9. Develop this in consultation with the AAO and a structured settlement broker.

(5) Throughout any interview with the claimant, it is important to learn the nature and extent of necessary future medical care anticipated and all costs associated therewith. This information helps claims personnel determine whether a structured settlement or a cash only settlement offer is appropriate under the particular circumstances.

(6) Normally, future medical expenses are not discounted as the rate of inflation exceeds interest rates. A zero discount rate is usually used. The difference is made up by using a medical trust in which the annuity feeding the trust is increased monthly by a percentage (such as 3 or 4 percent).

2–76. Wrongful death claims

At common law, survivors had no right of recovery for wrongful death. Such recovery is a creature of State statutory law. For FTCA claims, refer to the appropriate State statute(s). For MCA and FCA claims, the elements recoverable are set forth in AR 27-20, paragraph 3-5*c*. Since permissible damages may vary widely under State wrongful death and survival statutes, it is imperative to research the appropriate jurisdiction's law. Generally, the States have enacted one of two types of statutory schemes, either loss to beneficiaries or loss to the estate.

a. Loss to beneficiaries. This method focuses on compensating the decedent's beneficiaries for the loss of the economic benefit they reasonably could have expected to receive from the decedent. This represents a pure wrongful death cause of action. Under the FTCA, elements of damage, depending on applicable State law, may consist of some or all of the following:

(1) Loss of financial contributions and support.

(2) Loss of services.

(3) Loss of nurture, guidance, care, and training of minors.

(4) Loss of society, comfort, love, and affection.

(5) Loss of inheritance or net accumulation.

b. Loss to the estate. This method represents a hybrid approach combining both wrongful death and survival statutes. Because the States that have adopted this statutory method use different formulas to quantify the loss, it is as essential to research the applicable State law in these cases as in cases of pure wrongful death. Elements of damage under this approach, depending on applicable State law, may consist of the following:

(1) *Decedent's net earnings.* This figure is usually calculated by taking a decedent's gross earnings and deducting personal living expenses, then multiplying the remaining numerical figure by the decedent's work-life expectancy.

(2) *Decedent's gross earnings.* Here, no deductions are made for personal living expenses. Some jurisdictions have held that this constitutes a form of punitive damages not payable under the FTCA. See figure 4-1, extract from 28 USC 2674 and FTCA Handbook, section II, paragraph C3a.

(3) *Future accumulation.* This is the estate that would have remained if the decedent had lived to theoretical life expectancy and worked the full work-life expectancy. Under the FTCA, the United States is liable only for actual or compensatory damages measured by the eligible survivors' pecuniary loss (see figure 4-1, extract from 28 USC 2674). Accordingly, compensation for loss of the estate is contingent upon this restriction and may be considered punitive. FTCA Handbook, section II, paragraph C3a. Use the loss to the estate method only if modifying it to calculate loss to survivors, discussed in subparagraph *d* below. In practice, there is normally little accumulation in most estates.

c. Other damages recoverable. Recovery for the deceased person's medical and funeral expenses and pain and suffering from the time of injury to the time of death is usually allowable as a loss to the estate under a survival of actions statute. Mental anguish of the survivors may also be allowable. In any event, research the State law to determine the allowable damages.

d. MCA damages. Under the MCA, the allowable elements of damage in wrongful death claims, as set forth in AR 27-20, paragraph 3-5, are divided into economic and noneconomic loss. Eligible claimants are limited to the decedent's spouse, parent, child or dependent relative. A separate amount must be stated for each claimant where represented by one party.

(1) *Economic loss.* The following elements of economic loss are compensable:

(a) Loss of a family member's financial support from the date of injury causing death until the end of work-life expectancy. Estimates of this future monetary support must be discounted to present value at 1 to 3 percent, after deducting for taxes and personal consumption.

(b) Loss of retirement benefits are compensable and similarly discounted after deductions.

(c) Loss of ascertainable contributions, such as money or gifts to other than family member claimants as substantiated by documentation or statements from those concerned.

(d) Loss of household services from date of injury to end of life expectancy of decedent or of person (spouse) reasonably expected to receive such services, whichever is shorter.

(e) Past expenses, including medical, hospital and related expenses. Nursing and similar services furnished gratuitously by a family member are compensable. In addition, burial expenses are allowable. Itemized bills or other suitable proof must be furnished. Expenses paid by or recoverable from insurance policies or other sources are not recoverable.

(2) *Noneconomic loss.* The following elements of noneconomic loss are compensable.

(a) Pre-death conscious pain and suffering.

(b) Loss of companionship, comfort, society, protection and consortium suffered by a spouse for the death of a spouse; a child for the death of a parent; or a parent for the death of a child.

(c) Loss of training, guidance, education and nurture suffered by a child under the age of 18 for the death of a parent until the child reaches 18 years of age.

(d) Emotional distress, in the absence of physical impact, is compensable only to those members of the immediate family who were present in the zone of danger and exhibited physical manifestation of their emotional distress. Claims for emotional distress, mental anguish, grief, bereavement, and anxiety by the survivors are otherwise not compensable.

e. Interview of survivors. When interviewing survivors in a wrongful death claim, frame questions to ascertain the individual decedent's family relationships, future plans and sources of income, to construct a settlement placing the family members in the same

financial position they would have been in had the decedent lived. See figure 2-23 for sample questions.

(1) This is another situation in which you need to assess the information you obtain to determine whether a structured settlement or an all cash settlement offer is appropriate, based on the claim's particular circumstances. Consider the following cases:

(a) Claimant A is a sole surviving spouse, age 50, who is gainfully employed in his own right. His routine financial needs are already met by his own salary and fringe benefit package and his personal investments. An all cash settlement offer might appear appropriate in this situation. During the interview, however, the claimant reveals that he has two adult children (both of whom are independently wealthy but have demonstrated spendthrift tendencies), but expresses concern over his four grandchildren's future financial condition. Assuming these additional considerations, an offer of a structured settlement with deferred payments may be more appropriate because it may be tailored to the claimant's financial desires or needs.

(b) Claimant B is a surviving spouse, age 29, who is on active duty and has three minor children, all of whom are under age 10. A structured settlement offer is appropriate in this situation because it provides income over a period of time, ensuring that there will be adequate financial resources to permit the widowed active duty soldier to provide a stable home environment during each child's years of minority. In addition, future payments may be scheduled to provide income for all the children after they reach the age of majority.

2–77. Property damage or loss

a. Definition. Such claims are limited to loss of, or damage to, actual or tangible property. Compensation does not include consequential damages, such as loss of a semester of school or a job due to erroneous enlistment, loss due to issuance of improper orders or charges for services furnished by a fire department. Research the remedies set forth in paragraph 2-32. For additional examples of consequential damages, see paragraph 3-4*b*.

b. Property damage. The method of determining damage to property varies depending on the circumstances of the loss and the condition of the property.

(1) *Diminution in value.* Take the property's fair market value immediately before the loss and subtract its residual value. Use this method of determining damage in total or constructive total loss situations and in cases where property is not totally destroyed. See the cases cited in the FTCA Handbook, section II, paragraph C19.

(2) *Cost of repair.* This is the cost necessary to restore real or personal property to its pre-loss condition. Payment for estimates or actual repairs is limited to the expense necessary to restore the damaged personal property substantially to its predamage condition. To determine whether the property is economically repairable, the cost of repairs should not exceed the property's predamage value. Appreciation or an increase in value associated with the repairs is deductible from the cost of repairs. However, an allowance of 10 to 20 percent depreciation in future marketability may be added to the cost of repair where it will not effectively restore the property to its predamage value. This allowance usually applies to recently purchased high-value items.

(3) For lost personal property or for property which is not economically repairable, compensation will comprise the predamage value minus salvage where applicable. Depreciation may be based on guidance set forth in table 11-1, extract from 31 USC 3721.

c. Loss of use of property. This element of damage depends on State law. Normally, it is limited to economically repairable property for the period of time required to repair the property. One's lack of funds to repair does not extend the period of loss. However, loss of use may be allowed even though there is a total loss for the period of time needed to obtain a replacement. For example, in an automobile accident claim, assume that the claimant's car is a total loss. The claimant owns only one car and needs it to perform the essential activities of daily living, such as going to work and to the grocery store. The claimant would be entitled to recover the cost of renting a car that is similar to the totalled car for the length of time it would normally take to buy a replacement car. However, lack of funds to obtain a replacement does not justify failure to replace and does not justify excessive rental charges. It is necessary to substantiate rental of similar property or the expense of substitute capability.

d. Towing and storage charges. These are normally allowable elements of damage, provided the charges are reasonable and necessary. For example, fees for towing a disabled vehicle to a nearby repair facility are allowable but fees for towing a disabled vehicle from New York to Virginia are not because they are not reasonable. Towing charges are allowable, even when the car is a total loss, in the course of determining if the car is economically repairable or simply to get it off the road. Normally, storage charges are allowable only for the length of time it takes to determine if the vehicle is economically repairable, and if it is, to have the car repaired, which includes down-time at the repair facility while waiting for parts. Storage charges for totalled vehicles are authorized only for the length of time necessary to determine that the vehicle is not economically repairable.

e. Loss of business or profits. This element is limited to direct interference by physical damage to a commercial enterprise, such as a retail outlet or commercial vehicle. It must be evidenced by an unavoidable interruption, such as time to repair a building or vehicle. Direct proof that there was an actual loss is required. Damages for loss of opportunity are speculative and not allowable. For example, if the claimant is a commercial trucking firm which has 50 trucks available for use but usually has actual contracts that keep only 40 trucks busy, then damage to one of the claimant's trucks would not cause a loss of profits because other trucks remain in the fleet to fulfill the contracts. In that situation, only the costs of repair of the damaged truck, not lost profits are recoverable. However, if the business regularly kept all 50 of its trucks busy, then damage to one truck might require the business to rent a substitute vehicle in order to fulfill the contractual commitments already in place. If a substitute truck is rented and the rental fee includes the cost of a driver for the rental truck, deduct the salary the claimant normally pays its driver (who cannot drive the rental truck) and the costs associated with the operation of the truck in calculating the damages. See the cases cited in the FTCA Handbook, section II, paragraph C22. Consult the AAO on questions concerning loss of business or commercial profits.

f. Overhead. This is the cost, not of filing a claim but of administering actual repairs, such as those made by a public utility. Generally, overhead beyond 10 percent must be strictly proven as being necessitated by the repair project. Read the following cases on permissible overhead charges:

- *Department of Water and Power of Los Angeles v. United States*, 131 F. Supp. 329 (S.D. Cal. 1955).
- *United States v. Peavey Barge Line*, 748 F.2d 395 (7th Cir. 1984).
- *Shappert Engineering Co. v. Steel City Marine Transport Inc.*, 620 F. Supp. 1377 (E.D. Mo. 1985).
- *United States v. Motor Vessel Gopher State*, 614 F.2d 1186 (8th Cir. 1980).
- *United States v. Denver & Rio Grande Western R.R. Co.*, 547 F.2d 1101 (10th Cir. 1977).
- *Freeport Sulphur Co. v. S.S. Hermosa*, 526 F.2d 300 (5th Cir. 1976).

See FTCA Handbook, section II, paragraph C21.

g. Special situations of property loss or damage.

(1) *Registered or insured mail.* In the case of registered or insured mail, compensation may include postal fees and postage paid.

(2) *Annual crops.* The allowable compensation is based on the number of acres or other unit measure, the average yield per acre in the neighborhood, the degree of crop maturity, and price on the local market at maturity reduced by the anticipated cost of production (cultivation, harvesting, storage, and marketing).

(3) *Perennial crops, including tree plantations or pasture land.*

The allowable compensation is ordinarily the amount of damage to the growing crop plus the diminution in the land's value.

(4) *Timberland, excluding tree plantations.* Generally, the allowable compensation is the difference between the before and after value of the land and the stand. To evaluate the stand, determine the value of the trees by their age at the time of their loss, not at maturity.

(5) *Turf and soil.* The allowable compensation is generally the cost of reconditioning the soil to its former state, provided the cost does not exceed the land's value. If the damage is permanent, the allowable compensation is the difference between the before and after values of the land.

(6) *Domestic animals and fowl.*

(a) The general rule, that the measure of damages for the loss or destruction of property is ordinarily its market value, applies to animals and fowl. In determining the market value, an animal's particular qualities and capabilities may be considered. When an animal has no market value, damages may be based on its actual or extrinsic value or its value to the owner. The measure of damages for animals having special breeding value, or which have been bred, generally is based on market value only. Normally, an allowance for the anticipated progeny is not authorized as it would constitute a double award. Disallowance is based on the presumption that the market value is established and determined by the special value of the injured animals as breeders. Accordingly, the value of the anticipated progeny is included in determining the animal's market value.

(b) Allowable compensation in cases involving damage to agricultural ventures conducted for profit, such as dairy, poultry and fur farms, is usually measured by determining the extent of lost profits and additional expenses resulting from the incident. Property damage such as loss of milk base or Government subsidy payments are also compensable if definitely ascertainable. Although the damages' nature and origin must be clearly ascertained, the liable party may not escape its obligation merely because the damages are difficult to ascertain or impossible of precise measurement. In these cases, the measure of damages usually can be determined by records from previous years if claimant had an established business. Reports from dealers, veterinarians, and agricultural extension agents are similarly relevant in determining or verifying production statistics, normal mortality rates, and other data necessary for an informed computation of claimant's net loss.

(7) *Shade trees.* These are usually defined as trees that shade a dwelling. Use an evaluation chart from the National Arborist Association. See figure 2-43 for criteria used to evaluate shade trees.

h. Use of appraisers. See paragraph 2-36 for guidance on when to use appraisers.

i. Estimate of damage to vehicles.

(1) Settling vehicle claims usually requires the use of damage estimates from body shops, car dealerships and insurance companies. Usually, an estimate is prepared according to a standard sequence:

- 1. Start at the front.
- 2. Examine under the hood.
- 3. Walk around the car beginning at the left front to the rear and up the right side to the front.

This sequence should be reflected on the estimate sheet that the body shop prepares. Suspicion is called for if the repair estimate jumps around and does not seem to follow a sequence.

(2) The body shop must then estimate the cost of the labor and materials to repair the car. Most shops use an estimating guide, which resembles a large telephone directory and is published monthly or quarterly. Motor Publications and Chilton both publish estimating guides as well as separate issues for domestic, foreign and older cars. Each guide contains useful general information about estimating damages as well as specific information about each make and model it covers. The guide also has diagrams providing great detail about how to make specific repairs.

(3) Using an estimating guide allows the repair shop to estimate the cost of repairs fairly and to ensure that it is adequately paid for its work. By using an estimating guide, the shop avoids overcharging. Insurance companies require adjustors to check estimates for overcharges. "Overlap" is an excess labor charge that results from a body shop charging for duplicate repair operations to adjacent components. For example, the place where a quarter panel joins a rear panel is considered overlap. Less time is required to remove both together than separately and the repair estimate should be reduced accordingly. Estimating guides contain detailed discussions and deductions for overlap.

(4) "Included operations" are tasks that can be performed separately but are also part of another operation. For example, replacing a fender panel may include the time to remove and replace the headlight assembly and aim the headlight. Separate labor charges for replacing the fender panel, replacing the headlight and aiming it are unwarranted and may double the repair estimate. Estimating guides list operations separately and allow you to spot included operations.

(5) Estimates may include a charge for hidden damage or damage that the estimator cannot assess until the vehicle is taken apart. Hidden damage may also be listed as an open item on an estimate. Always call the body shop and inquire about open items. Estimating guides, with their detailed "blow apart" diagrams of automobile components, help spot hidden damage. Sometimes simply questioning the estimate will resolve the matter and cause the body shop to remove the charge or estimate the cost of repair satisfactorily.

(6) For claims involving loss of use, see paragraph 2-77*c*. Normally, loss of use is limited to those situations in which the claimant needs a rental car because a car is essential to the claimant's family (as in cases where the claimant's family has only one car for everyday use). It is not allowable for rental of a substitute vehicle for recreational purposes. Normally, loss of use is payable for the length of time it takes to get the car repaired, starting from the time of the accident. If the car is drivable, and the claimant can use the vehicle pending receipt of parts, then loss of use is allowed only for the time needed to actually repair the car or as stated by a repair facility report. Claims officers are encouraged to inspect damaged vehicles themselves; they should arrange with the local garage to expedite repair work on cars involved in claims.

(7) Many body shops estimate repair work according to the factory list price for new parts in the estimating guide, then repair the car with discounted, used or reconditioned parts. In many cases, the claimant is not entitled to replacement of damaged parts with new parts, if used parts will return a used car to substantially the same condition that it was in before the accident. Body shops routinely use rechromed bumpers, used wheel covers, fenders and other nonmoving parts. Always negotiate this point with the body shop and the claimant.

(8) Glass is almost always subject to a substantial discount. Check repair shops that specialize in replacing glass to determine their estimate to repair it. The cost may be substantially less than that charged by a body shop or car dealership.

(9) Always deduct for fair wear and tear on tires and ensure that claimant's tires are replaced with the same type and quality of tire. Either use a tire depth gauge to measure the depth of existing tread or call a store that sells the same tire. Avoid allowing a body shop to list a price for tires when the claimant can purchase them elsewhere at a discount.

(10) A claimant is entitled to recover the cost to repaint an area damaged in a collision. Sometimes a body shop will allege that the entire car must be repainted so the paint will match; make the body shop justify this claim. Automobile identification numbers include codes identifying the paint applied during manufacture. A body shop uses these codes to mix paint to match the existing paint job. If paint cannot be mixed to match, the discrepancy may be because the existing paint has oxidized or weathered. In this case, deduct for appreciation from the estimate because the claimant is in a better position after repair than before the damage to the car.

(11) Claims offices that process a significant number of automobile damage claims should evaluate automobile damage estimates aggressively. Use the local motor pool garage to assist in evaluating

a claimant's estimate. Subscribe to an estimating guide to check damage estimates.

2–78. Collateral source rule

Generally, the collateral source rule allows the victim of a tort to recover for damages caused by the tortfeasor regardless of compensation received from other independent or "collateral" sources. Thus, the collateral source doctrine permits a tort victim to recover more than once for the same injury, provided these recoveries come from different sources. For example, an accident victim may recover medical expenses from a tortfeasor even though the victim's own insurance policy covers such costs. The rationale for the doctrine is that a double recovery may be justified where the claimant supplied the original source for the recovery (claimant's own insurance policy) from resources (claimant paid the costs of the insurance policy) that would otherwise have been available for other purposes (claimant could have used that money to purchase a new car).

a. When the Federal government is the tortfeasor, questions arise as to what, if any, payments under other Federal programs or by other Federal agencies the adjudicator may use to offset the damages otherwise payable to a claimant.

b. The general rule of thumb indicates that whether a setoff is available to the Government depends on the source of the other Federal payment. If the payment is made from unfunded general revenues of the United States, a setoff or deduction is usually permitted because FTCA awards are disbursed from general revenues. See *Feeley v. United States*, 337 F.2d 924 (3d Cir. 1964) (both DVA hospital benefits and FTCA recoveries are funded from general revenues). If the payment comes from a special fund into which the claimant made contributions, then it is considered "collateral" and no setoff or deduction is permitted. See *Smith v. United States*, 587 F.2d 1013 (3d Cir. 1978). Since Social Security benefits are funded almost entirely from employer and employee contributions and not the general reserve, these benefits are collateral. See the cases cited in the FTCA Handbook, section II, paragraph C10.

c. For FTCA claims, research the applicable State law to determine whether the State recognizes the collateral source doctrine.

d. The collateral source doctrine does not apply to MCA or FCA claims.

e. CHAMPUS benefits are not a collateral source. See the cases cited in the FTCA Handbook, section II, paragraph C10(h).

f. Past medical care furnished at government expense, such as at a MTF, is not a collateral source. See the cases cited in the FTCA Handbook, section II, paragraph C10(a) and (g).

g. DVA benefits, either monetary or medical, should be considered in calculating damages. In some cases, past benefits should be credited against the award and future benefits should be deducted from it.

(1) *Settlements for service-connected disabilities.*

(a) When monetary benefits are paid for the injury claimed and the claim is not barred by the incident-to-service doctrine, past benefits should be credited against the award and future benefits should be deducted from it, *Brooks v. United States*, 337 US 49 (1949). These benefits include disability compensation (38 USC 1110, 1131), dependency and indemnity compensation (38 USC 410(a)), specially adapted housing (38 USC 2102), specially adapted automobile (38 USC 1310), vocational rehabilitation benefits (38 USC chap 31), dependents' education benefits (38 USC chap 35) and clothing allowance (38 USC 1162). Disability compensation may include an additional benefit for requiring an attendant, without regard to whether or not the veteran actually employs one, 38 USC 1114. Disability compensation and dependency and indemnity compensation will continue to be paid regardless of any tort settlement or judgment. There is no statutory mechanism for suspending these benefits because of a tort award. Thus, to avoid a double recovery, the amount of a tort settlement or judgment must be reduced by the amount of these past and future DVA benefits.

(b) When the injury on which a claim is based aggravates a service-connected disability, the claimant's benefits may be increased to reflect the increased severity of the disability. In negotiating a settlement in such a case, limit the credit to the increased compensation. When the claimant is a retiree, the proper deduction is the excess of increased benefits over retired pay, *O'Keefe v. United States*, 490 F. Supp. 70 (W.D. Okla. 1980).

(c) When the claim is for injury or death arising from care furnished a veteran or retiree on behalf of the DVA (by designation, agreement or otherwise) for other than a service-connected disability for which compensation will be increased, the individual may qualify for benefits under 38 USC 1151. This permits payment of disability or death benefits as if the injury incurred in medical treatment were service-connected. A DVA award under section 1151 entitles eligible service-connected veterans to medical and home nursing care. In negotiating a settlement when section 1151 benefits are being paid, credit past benefits to reduce the settlement amount. However, since the tort settlement does not credit future section 1151 benefits, notify the DVA about the settlement or judgment. Upon receipt of such notification, the DVA will suspend future section 1151 benefits by statutory mandate until the amount that it would have paid the claimant completely offsets the amount of the tort settlement or judgment, including attorney's fees.

(d) Eligibility for future DVA medical care will be lost during the period monetary benefits are suspended unless the settlement or judgment expressly provides that medical care shall continue, 38 USC 1710(a)(1)(C). By agreement between the Government and the claimant, however, the monetary benefits themselves cannot be similarly continued. To reduce the tort award for medical expenses, ensure that a provision to that effect is included in the settlement or judgment.

(e) A claim may be brought for the death of an individual whom the DVA rated totally disabled for a specific period before death and whose death was not caused or aggravated by the total service-connected disability (such as a traffic accident on a military base). In such a case, death benefits as though the death were service-connected may be paid under 38 USC 1318(b). Past benefits under this section should be credited toward the tort award. DVA will suspend future benefits under 38 USC 1151 until the total amount of the settlement or judgment is offset. Thus, there should be no credit for future benefits in the tort award. Notify the DVA about the settlement or judgment.

(2) *Settlements involving DVA pension for non-service-connected disability or death.* When the subject of a claim results in permanent and total disability or death of a wartime veteran, the veteran or the veteran's survivors may be eligible for DVA disability or death pension under 38 USC chapter 15. The claimant must meet stringent income limitations, however. These benefits are need-based and any tort claim settlement will count as income, resulting in their reduction or termination. Credit past pension benefits paid for the disability or death for which a tort claim is made in the settlement or judgment and consider future pension benefits lost because of the increase in income from the tort settlement in evaluating the case.

(3) *Medical care for non-service-connected disability.* When a claimant needs home nursing care or rehabilitation services for injuries that are not service-connected, the DVA may be able to provide such care on a space-available basis, 38 USC 1710, 1720. By their nature, these services are not available at MTFs. It may be possible to use DVA care to limit medical expenses during protracted settlement negotiations or litigation. Realistically, however, DVA home nursing care often will not be available.

h. Medicare liens. Although Medicare benefits are sometimes considered a collateral source, claimants are not compensated for payments made to them or on their behalf under Medicare. The Health Care Financing Administration (HCFA), U.S. Department of Health and Human Services, considers a lien to exist in the amount of Medicare benefits expended as a consequence of the Army's tortious conduct. Coordinate with the AAO before settling any claim involving Medicare benefits. Financial Management Service (FMS) will pay HCFA directly and USARCS can negotiate the amount to

be paid directly with HCFA. Figure 2-44 sets forth a sample settlement agreement.

i. Medicaid liens. Where there is an outstanding lien in favor of a State agency for past medical or equipment expenses due to the State's implementation of a program using Medicaid funds, the State agency will generally negotiate repayment of a percentage of the total amount expended and may permit the claimant's attorney to deduct an attorney's fee on the amount of the lien. Usually, the claimant's attorney is responsible for notifying the appropriate State agency that a settlement with the United States is going to take place. Therefore, in drafting a settlement involving a Medicaid lien, negotiate a reduced lien amount. Usually, it is possible to reduce the attorney's fee by agreement. If there are other possible defenses, demand a further reduction. If the attorney is unwilling to waive the fee on the amount of the lien, then consider attributing a fixed amount (less than the lien's full amount since you know that the claimant's attorney will negotiate to repay the State less than the full amount of the lien) to the lien and include that fixed amount in the up front cash payment during negotiations.

2–79. Subrogation

Subrogation arises from the substitution of one person in the place of another with regard to a claim, demand or right. Insurance companies generally have a right of subrogation for the benefits paid to their insured. In the absence of a right to subrogation, the claimant is entitled to the amount of loss paid by a third party, subject to the collateral source rule. The difference between a subrogee and a lienholder is a matter of State law. A lienholder may not file a separate claim. Figure 2-45 sets forth a sample settlement agreement.

a. Subrogated claims are payable under AR 27-20, Chapters 4, 7, and 8.

b. Subrogated claims are not payable under AR 27-20, Chapters 3, 5, 6, and 10.

Table 2–7A
Example of AMA rating guides: Guide to the Evaluation of Permanent Impairment

a. Grading Scheme

Description	Grade
1. No loss of sensation or no spontaneous abnormal sensations.	0%
2. Decreased sensation with or without pain, which is forgotten during activity.	1-25%
3. Decreased sensation with or without pain, which interferes with activity.	26-60%
4. Decreased sensation with or without pain, which may prevent activity (minor causalgia)	61-80%
5. Decreased sensation with severe pain, which may cause outcries as well as prevent activity (major causalgia)	81-95%
6. Decreased sensation with pain, which may prevent all activity.	96-100%

Notes:

[1] Grading Scheme and Procedure for Determining Impairment of the Upper Extremity Due to Pain or Loss of Sensation Resulting from Peripheral Nervous System Disorders.

Table 2–7B
Example of AMA rating guides: Guide to the Evaluation of Permanent Impairment

a. Grading Scheme

Description	Grade
1. Complete range of motion against gravity and full resistance.	0%
2. Complete range of motion against gravity and some resistance, or reduced fine movements and motor control.	1-25%
3. Complete range of motion against gravity, and only with resistance.	26-50%
4. Complete range of motion with gravity eliminated.	51-75%
5. Slight contractibility, but no joint motion.	76-99%
6. No contractibility.	100%

Notes:

[1] Grading Scheme and Procedure for Determining Impairment of the Upper Extremity Due to Loss of Power and Motor Deficits Resulting from Peripheral Nervous System Disorders.

Table 2–7C
Example of AMA Rating Guides: Guide to the Evaluation of Permanent Impairment

Nerve Root Impaired	Maximum % Loss of Function Due to Sensory Deficit or Pain	Maximum % Loss of Function Due to Motor Deficit or Loss of Power	% Impairment of Upper Extremity[1]
C-5	5	30	0-34
C-6	8	35	0-40
C-7	5	35	0-38
C-8	5	45	0-48
T-1	5	20	0-24

Notes:

[1] Source: Guides to the Evaluation of Permanent Impairment, Third Edition (Revised) American Medical Association.

[2] See Tables 10 and 11 for grading schemes to derive the percentage impairment of the upper extremity to sensory or motor deficits.

[3] Unilateral Spinal Nerve Root Impairment Affecting the Upper Extremity.

[4] Consult with a qualified medicial specialist for a particular disability

Table 2–8A
Median hours per week spent in household work by married men and women

Sex	Black	Nonblack
Males	9.64	12.75
Females	30.30	34.85

Notes:

[1] shows the median hours per week that black and nonblack married men and women spent in household work in 1981. Overall, married males in intact families spent 12.5 hours and married females spent 34.5 hours per week in household work.

Table 2–8B
1988 median annual values of the time spent in household work by married men and women in the 1981 sample

	After-tax offered wage rate	After-tax asked wage rate	Private household worker's wage rate
Married Men			
Black	$ 3,142	$ 2,306	$ 2,422
Nonblack	$ 7,077	$ 5,911	$ 3,202
Married Women			
Black	$ 6,695	$ 7,025	$ 7,610
Nonblack	$10,391	$10,833	$ 8,753

Notes:

Source: Information Bulletin 322 IB228. Household Work: What's It Worth and Why?
A Cornell Cooperative Extension Publication, 1992 Cornell University.

Table 2–8C
Average annual dollar value of housework done by wives and husbands

# Children	Age	Employed Wife		Nonemployed Wife	
	Wife	Wife	Husband	Wife	Husband
0	under 24	$ 4, 700	$1,800	$ 7,000	$1,100
	25-39	5,000	1,900	8,000	1,600
	40-54	5,900	1,100	8,400	2,100
	55 and over	6,000	1,500	7,400	2,700
	Youngest Child	Wife	Husband	Wife	Husband
1	12-17	$ 6,700	$2,400	$ 9,600	$2,700
	6-11	8,000	1,500	9,400	2,000
	2-5	6,200	2,000	9,100	2,400
	1	8,300	600	9,900	2,300
	under 1	(Information unavailable)		10,900	2,100
2	12-17	$ 6,300	$2,100	$10,000	$2,200
	6-11	7,200	2,000	9,900	2,100
	2-5	8,300	2,400	11,000	2,200
	1	8,400	5,000	11,700	2,200
	under 1	10,200	2,100	12,600	2,000
3	12-17	$ 5,000	$5,000	$ 2,100	$1,400
	6-11	8,600	2,000	9,900	2,200
	2-5	10,200	2,800	10,700	1,900
	1	11,500	3,200	11,600	2,200
	under 1	8,700	2,800	13,300	2,000

Notes:

These figures are from Good Housekeeping January 1981.

Table 2–9
Example of estimated cost of future care (Present Dollars)

Date:
Name: Jane Doe
DoB: 1 June 1991

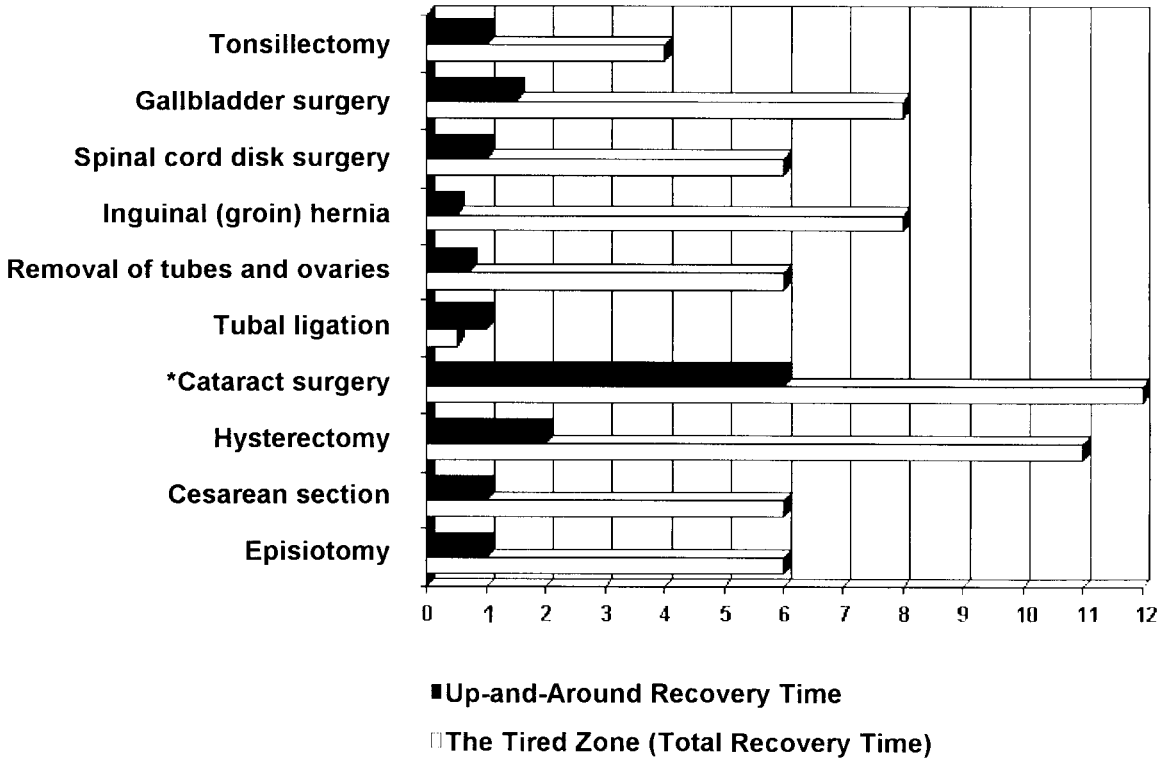
Source: Children's Hospital

		First Year (Age 5)		Next 5 Years (Age 6-11)		Next 10 Years (Age: 12-22)		Thereafter (Age 22+)	
	Rate	Freq	Cost	Freq	Cost	Freq	Cost	Freq	Cost
Therapies									
Physical Therapy	$80	104	$8320	52	$4160	40	$3200	24	$1920
Occupational Therapy									
Speech Therapy									
Recreational Therapy									
Vocational Counseling									
Periodic Visits/Evaluations									
Pediatric	$60	3	$ 180	2	$120	2	$120	2	$120
Neurological									
Lab Tests									
Orthopedic									
Nutritional									
Pulmonary									
Internist									
Ophthalmology									
Dental									
Gastroenterologist									
Future Surgeries/Hospitalization									
Scoliosis	$14,250								
Hospitalization	$25,000								
Special Services									
Electric Wheelchair (every 5 years)	$2,000			$400 (year)		$400 (year)		$400 (year)	
Custodial Care ($750 per month)	$750	12		$9,000	12		$9,000	12	$9,000
Grand Total:				$		$		$	

Notes:
Life Care Plan must reflect actual cost of future medical and care needs designed for the needs of each individual claimant.

The Tired Zone

There is a big difference between the time it takes to completely get back on your feet after an operation and the time it takes for the normal body to heal thoroughly. The following chart shows approximations that dramatize this difference.



*Consult with the appropriate medical specialist on recovery time.

Figure 2-38. The tired zone

Ms. Intake Consultant
Children's Rehabilitation Unit
California University Medical Center
Fresno, California 99999-9999

Dear Ms. Consultant:

Reference your conversation with Mr. Wilson of this Service, in which you discussed the establishment of a time and date when the staff and consultants of your facility could conduct an independent medical evaluation of Jane Doe, DOB: 1/30/91, under the direction of Dr. Wright, Director, Developmental Pediatrics. I understand that this can be conducted on an outpatient basis.

The **purpose** of this requested independent medical evaluation is to address the present and future medical and care needs and prognosis of Jane Doe.

As indicated in a neuropsychological evaluation conducted on January 27, 1994 (Encl. 1), Jane Doe has been diagnosed as having attention deficit disorder (ADD) with mild hyperactivity. A factual summary of prior events and medical care extracted from medical records is attached (Encl. 2).

I have enclosed for review and consideration by the evaluating staff, a copy of medical opinions, evaluations, school records and medical records obtained (Encl. 3).

Prior to the commencement of the evaluation, it is necessary that I be provided a listing of what evaluations and testing your staff feels is necessary based on this request. Additionally, please provide an estimate of the total cost for all services, including costs for counseling the parents as to Jane Doe's future medical and care needs. This should include allowance for a team consultation with your staff, members of this Service, and the claimant's attorney at your activity; at a time following our review of your evaluation report. The above is required for submission of a personal service contract. Additionally, please provide dates when the evaluation can be conducted.

This Service, jointly with Jane Doe's parents and their attorney, are requesting that Jane Doe be evaluated now that Jane Doe is five years of age. The purpose of this requested independent medical evaluation is twofold:

First, to establish what Jane Doe's physical, psychological, social, physiological, functional, and educational status is presently; what can be done either through private or public programs to assist Jane Doe in working with or overcoming any problems she may have; and what the future will hold for Jane Doe; what condition or problem may impact on her future daily living, such as wage earning ability and other economic needs, particularly in her adolescent and adult years. (The data obtained will also be used to assist a trustee in the management of a medical trust should one need to be established, based on your report)

Secondly, to obtain your staff's opinions as to the etiology of Jane Doe's condition. The attached reports appear to opine that there may be more than one etiology for Jane Doe's problems, for example:

(1) Consistent with right hemisphere atrophy and subsequent attention deficit

disorder and hyperactivity. (_____, Ph.D. Neuropsychologist)

(2) Perinatal head trauma and the resulting right hemisphere lesion seen on CT Scan at 18 months of age. (Dr._____, certified pediatric neurologist).

To this end, it is requested that an opinion be made as to what the etiology of Jane Doe's deficits may be with, if possible, a percentage of probability as to each etiology possibility.

Figure 2-39. Sample—independent medical examination—Continued

It is anticipated that Jane Doe's parents will participate in the examination as historians. At the completion of your evaluation, it is requested that the parents be given guidance by your staff regarding Jane Doe's needs and management now, and in the future.

I am enclosing a copy of the following records for your review and consideration:

TAB:
(A) Neuropsychological evaluation dated June 30, 1994.
(B) Opinion of pediatric neurologist, dated April 19, 1994.
(C) Opinion of clinical specialist in Psychiatric Mental Health Nursing, on Jane Doe's employment future.
(D) Opinion of family practice provider, dated January 15, 1994.
(E) Results of prior genetic testing
(F) School records and interviews of Jane Doe's school teachers for grades one and two.
(G) Outpatient medical records of Jane Doe from birth to present.

After Dr. Wright and the consulting staff have had the opportunity to examine, test and evaluate Jane Doe, please prepare one comprehensive narrative report tying all of the specialties reports together. Again, it is requested that responses to all questions and opinions be incorporated into this report.

It is requested that your evaluations and reports address those issues addressed above, and the following:

(1) Does Jane Doe exhibit any difficulty with right hemispheric functioning?
If so, what is the cause of this difficulty?
Does this affect her left-sided motor skills?
If so, how and to what extent?
Does it affect her in any other way(s)?
If so, how and to what extent?

(2) Does Jane Doe exhibit characteristics of attention deficit disorder?
If so, what are they?
Under what circumstances do these characteristics manifest themselves?
To what extent does Jane Doe experience these characteristics?

(3) What are the recognized causes of attention deficit disorder?
What is the cause of Jane Doe's attention deficit disorder?

(4) Should Jane Doe undergo therapy, rehabilitation, and/or special education to address her attention deficit disorder?
If so, specifically what type?
Over what period of time?
What will be the cost of these therapies and rehabilitation programs?
To what extent will Jane Doe improve?
What is your opinion of her future prognosis and what private or state programs are available to deal with this disorder?

(5) What affect will the attention deficit disorder have on Jane Doe as she matures if the disorder is not presently addressed?
Will this deficit affect her education options?
What will be her academic strengths and weaknesses?
What is the highest level of education Jane Doe may expect to achieve?
Will ADD affect her employment as an adult, and if so, in what manner?

Based on your evaluations, what type of employment will Jane Doe be able to pursue?

Ultimately, your opinions, findings and recommendations will assist us in our

Figure 2-39. Sample—independent medical examination—Continued

evaluation of Jane Doe's claim and in our attempts to resolve her claim against the Department of Army.

Please submit the original report and specialized reports, laboratory and genetic testing, etc., to my attention with a copy provided to the Does' attorney. **It is requested that a copy of the report not be directly provided to the family, that this option be left to their attorney.**

Their attorney is—
Mr. Albert Jones
Attorney at Law
Parmer, Ohio, USA
Telephone Number: (416) 222-0111

As we have previously discussed after our review of the estimated cost of care you previously submitted, I will request that a government contract be issued in your name for an amount not to exceed Seven Thousand Dollars ($7,000). **Only the contracting office has the authority to enter into a binding service contract.** The contracting office will send you written confirmation of the service contract. **Do not commence performance on this evaluation until you have received written confirmation from the contracting office.** You cannot furnish additional services and be paid in excess of the contracted amount unless the additional services and payment are expressly authorized in advance by the contracting office.

Please submit only one comprehensive bill for the cost of all services under the name of the person or agency so described in the contract.

Your assistance in this matter is very much appreciated, and I look forward to hearing from you in the very near future. I (claims judge advocate) or (investigator) may be reached at (999) 999-9999. Our FAX number is (999) 999-9999.

Sincerely,

John Irgens
CPT, U.S. Army
Claims Judge Advocate

List Enclosures

Copy Furnished:
Mr. Albert Jones,
Attorney at Law

Figure 2-39. Sample—independent medical examination

The following states recognize loss of enjoyment of life as a separate element of damages.

I. SEPARATE ELEMENT

Arizona	*Arizona Eastern R. Co. v. Bryan*, 18 Ariz. 106, 157, P. 376 (Ariz. 1916) aff'd 242 U.S. 621, (1917)
Florida	*Powell v. Hegney*, 239 So.2d 599 (Fla. Dist. Ct. App. 1970)
Hawaii	Haw. Rev. Stat. § 663-8.5
Louisiana	*Wright v. United States*, 507 F. Supp. 147 (E.D. La. 1981); *Stewart v. Select Ins. Co*. 631 So.2d 599 (La. Ct. App. 1994); In re *Medical Review Panel*, 657 So.2d 713 (La. Ct. App. 1995)
Maryland	*McAlister v. Carl*, 197 A.2d 140 (Md. 1964)
Michigan	*Pierce v. New York Cent. R.R. Co.*, 409 F.2d 1392 (6th Cir. 1969)
Minnesota	*Burho v. Minneapolis & St. L. Ry. Co.*, 141 N.W. 300 (Minn. 1913)
Montana	*Walls v. Rue*, 759 P.2d 169 (Mont. 1988)
New York	*Lebrecht v. Bethlehem Steel Corp.*, 402 F.2d 585 (2d Cir. 1968)
Ohio	*Fantozzi v. Sandusky Cement Products Co*. 597 N.E.2d 474 (Ohio 1992), but see clarification in *Ramos v. Kuzas*, 600 N.E.2d 241 (Ohio 1992)
Tennessee	*Thompson v. National R.R. Passenger Corp.* 621 F.2d 814 (6th Cir. 1980) but see *Spencer v. A-1 Crane Service, Inc.*, 880 S.W. 2d 938 (Tenn. 1994)
West Virginia	*Flannery v. United States*, 297 S.E.2d 433 (W. Va. 1982)
Wyoming	*Mariner v. Marsden*, 610 P.2d 6 (Wyo. 1980)

The following states recognize loss of enjoyment of life as an item to be considered in awarding damages, though not necessarily as a separate element.

II. RECOVERY PERMITTED, NOT NECESSARILY AS A SEPARATE ELEMENT

Alaska	*Morrison v. State*, 516 P.2d 402 (Alaska 1973)
California	*Huff v. Tracy*, 57 Cal.App. 3d 939, 129 Cal.Rptr. 551 (Cal. Dist. Ct. App. 1976)
Connecticut	*Katsetos v. Nolan*, 368 A.2d 172 (Conn. 1976)
Colorado	*Wells v. Colorado College*, 478 F.2d 158 (10th Cir. 1973); *Hildyard v. Western Fasteners*, Inc., 522 P.2d 596 (Colo. Ct. App. 1974)
Deleware	*Hanson v. Reiss S.S. Co*, 184 F. Supp. 545 (D. De l.1960)
Georgia	*Aretz v. United States*, 456 F. Supp. 397 (S.D. Ga. 1978)
Illinois	*Knight v. Lord*, 648 N.E.2d 617 (Ill. Ct. App. 1995)
Indiana	*Marks v. Gaskill*, 563 N.E.2d 1284 (Ind. 1990)
Kansas	*Leiker by and through Leiker v. Gafford*, 778 P.2d 823 (Kan. 1989) *Gregory v. Carey*, 791 P.2d 1329 (Kan. 1990)
Iowa	*Poyzer v. McGraw*, 360 N.W.2d 748 (Iowa 1985)
Maine	*Packard v. Whitten*, 274 A.2d 169 (Me 1971)
Mississippi	*Thomas v. Hilburn*, 654 So.2d 898 (Miss. 1995)
Nebraska	*Talle v. Nebraska Dept. of Social Serv*, 541 N.W.2d 30 (Neb. 1995) *Anderson by and through Anderson/Couvillon v. Neb. Dept, of Social Serv*,

Figure 2-40. Loss of enjoyment of life cases—Continued

	538 N.W.2d 732 (Neb. 1995)
New Jersey	*Tyminski v. United States*, 481 F.2d 257 (3rd Cir. 1973); *Eyoma v. Falco*, 589 A.2d 653 (N.J. Super. Ct. App. Div. 1991)
New Mexico	*Sena v. New Mexico State Police*, 892 P.2d 604 (N.M. Ct. App. 1995)
North Carolina	*Cronenberg v. United States*, 123 F. Supp. 693 (E.D.N.C. 1954)
North Dakota	*First Trust Co. v. Scheels Hardware*, 429 N.W.2d 5 (N.D. 1988)
Pennsylvania	*Wagner by Wagner v. York Hosp*, 608 A.2d 496 (Pa. Super. Ct. 1992) *Willinger v. Mercy Catholic Med. Ctr. of Southeastern Pa.*, *Fitzgerald Mercy Div*, 393 A.2d 1188 (Pa. 1978), but see *Frankel v. Heym*, 466 F.2d 1226 (3d. Cir. 1972)
South Dakota	*Degen v. Bayman*, 241 N.W.2d 703 (S.D. 1976)
South Carolina	*Stroud v. Stroud*, 385 S.E.2d 205 (S.C. Ct. App. 1989), but see McNeill v. United States, 519 F. Supp. 283 (D.S.C. 1981)
Texas	*Missouri Pacific R. Co. v. Lane*, 720 S.W.2d 830 (Tex. Ct. App. 1986)
Utah	*Judd v. Rowley's Cherry Hill Orchards, Inc.*, 611 P.2d 1216 (Utah. 1980)
Virginia	*Bulala v. Boyd*, 389 S.E.2d 670 (Va. 1990)
Washington	*Reed v. Jamieson Inv. Co.*, 168 Wash. 111, 10 P.2d 977, aff'd 168 Wash. 119, 15 P.2d 1119 (1932) (en banc)
Wisconsin	*Green v. United States*, 530 F. Supp. 633 (E.D. Wis. 1982); *Benson v. Superior Mfg. Co*, 147 Wis. 20, 132 N.W. 633 (Wis. 1911)

Notes:
This list was compiled in October 1996 and should be shepardized.

Figure 2-40. Loss of enjoyment of life cases

Life Expectancy			Work Life Expectancy	
	(Avg. number of remaining years of labor force participation)			
Age	Male/Female (white)		Male/ Female (white)	
17	57.2	63.5	40.0	29.8
	49.8	58.5 (black)	33.9	28.4 (all others)
52.3		60.1 (all others)		

(avg. number of years remaining until final retirement)	
Male	Female
44.2	43.4 (white)
42.8	43.6 (all others)

Notes:
Such a calculator chart would also reflect "present value tables" which may be used to calculate total present value of future lost earnings.

Figure 2-41. Life and work life expectancy chart extract

Economic Loss Data and Assumptions Information

Name: Jane Doe
Date of Birth: 5 May 91
Age: 3
Sex: Female
Date of Injury: 5 May 91
Worklife expectancy 29.2 years

Workforce entry at age: 18
Educational Level: HS
Salary at Entry: *$19,602
Tax Basis: 12.08%
Fringe Benefit Basis: 7.00%

Net Present Value of Loss (Discounted at 2.00%) $311,650
(_____3.00%) $236,595

Year	Annual Net Loss	Cumulative Net Loss	Gross Income	Taxes	Fringe Benefits
1	0	0	0	0	0
14	0	0	0	0	0
15	$18,606	$18,606	$19,602	($2,368)	$1,372
16	$18,606	$37,212	$19,602	($2,368)	$1,372
44	$18,606	$558,187	$19,602	($2,368)	$1,372

Same facts as above with changed assumptions of:
Worklife expectancy. 26.7 years; Education level: College; Salary at Entry:* $31,274
Workforce entry @ age: 22; Tax Basis: $18.90%; Fringe Benefit Basis: 7.00%

Net Present Value of Loss (Discounted at 2.00%) $397,644
(_____3.00%) $295,437

1	0	0	0	0	0
19	$27,552	$27,552	$31,274	($5,911)	$2,189
20	$27,552	$55,105	$31,274	($5,911)	$2,189
21	$27,552	$82,657	$31,274	($5,911)	$2,189
45	$27,552	$739,496	$31,274	($5,911)	$2,189

*Salary data from U.S. Dept. of Labor, Bureau of Economic Indicators, January 1993

Figure 2-42. Example—Calculating lost future earnings

The value of a tree is generally best understood when a dollar value is placed on it. For this reason a committee of tree specialists, under the auspices of the National Arborist Association and the International Shade Tree Conference, met and devised a mathematical means of determining the value of a shade or ornamental tree. The following formula and description is based on their work.

In determining the monetary value of shade and ornamental trees, three basic factors must be considered. These are **tree size, kind** and **condition.** The shade tree evaluation committee decided that the cross-section area of the trunk at a point 4 feet above the ground is the best means of expressing shade tree size. This is calculated by taking 0.7854 times the square of the diameter. Thus, a 10-inch tree has a cross-section area of 78.54 inches. The value of a perfect specimen shade tree, in the committee's opinion is $9 per square inch of trunk cross-section (1970).

However, not all species and varieties of trees are of equal value. A list of trees growing in a specified area, such as Texas, must be segregated into classes based on relative value. Trees in Class I are valued at 100 percent, Class II at 80 percent, Class III at 60 percent, Class IV at 40 percent and Class V at 20 percent. A 10-inch perfect specimen in Class I is, therefore, worth $706. In Class V, it would be worth only $141.

Very few shade trees are perfect specimens. As trees become large and old, they often become defective through decay, broken limbs, man-caused damage or poorly proportioned growth. The person making an appraisal must consider the tree's condition and judge it on a percentage basis. For example, the 10-inch tree in Class I might be poorly proportioned or crowding a house, and instead of being worth $706, might be worth 60 percent or $424. A qualified Arborist should be consulted in tree appraisal work, if practicable.

Reference: Shade Tree Evaluation—Texas (Texas A&M University, San Antonio.)

Figure 2-43. Shade tree evaluations

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS PURSUANT TO 28 USC § 2672

It is hereby stipulated by and between the undersigned claimant Roger Honomichl and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claim upon the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay an award in final settlement in the cash amount of **One Thousand Two Hundred Fifty Dollars ($1,250)**, which will be paid as follows:

(a) The cash sum of **Eight Hundred Dollars ($800)** will be paid jointly to Roger Honomichl and James Wilson, attorney at law;

(b) The cash sum of **Two Hundred Dollars ($200)** will be paid to claimant's attorney, James Wilson, on behalf of the claimant, in full satisfaction of attorney fees under the Federal Tort Claims Act; and

(c) The cash sum of **Two Hundred Fifty Dollars ($250)** will be paid to Health Care Finance Administration, U.S. Department of Health and Human Services, RE: Medicare Claim for Roger Honomichl, HIC 000 00 0000, ATTN: Betty Noble, 7500 Security Boulevard, Mail Stop S3-06-24, Baltimore, Maryland 21244, representing its interest in Medicare payments made on behalf of Roger Honomichl.

Said sums shall be in full settlement and satisfaction of any and all claims, demands, rights, liens (including that of the Health Care Finance Administration, U.S. Department of Health and Human Services), and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the death of Roger Honomichl, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which claimant or his guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Claimant and his guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in paragraphs 2(a) through 2(c) of this Stipulation of Compromise Settlement in full settlement and satisfaction of any and all claims, demands, rights, liens (including that of the Health Care Finance Administration, U.S. Department of Health and Human Services), and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the death of Roger Honomichl, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the above claim, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Claimant and his guardian, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens (including that of the Health Care Finance Administration, U.S. Department of Health and Human Services), rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by claimants or plaintiffs or their guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the claimants. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the claimants will be paid out of the settlement amount and not in addition thereto.

Figure 2-44. Sample—settlement agreement (health care finance administration lien)—Continued

6. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorney's fees for services rendered (less that amount of payment being made to the Health Care Finance Administration, U.S. Department of Health and Human Services, upon which no fees are to be taken) in connection with this action shall not exceed 20 percent of the amount of the compromise settlement.

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

8. Payment of the settlement amount will be made by checks drawn on the Treasury of the UNITED STATES and made payable as set forth in paragraphs 2(a) through 2(c) above. The checks will be mailed as follows:

a. Those cash sums set forth in paragraphs 2(a) and 2(b) will be mailed to the claimant's attorney at the following address: James Wilson, Attorney at Law, 100 Main Street, Fort George G. Meade, Maryland 10755-5360.

b. The cash sum set forth in paragraph 2(c) above will be mailed to the Health Care Finance Administration, ATTN: Betty Noble, 7500 Security Boulevard, Mail Stop S3-06-24, Baltimore, Maryland 21244.

(OR, if payment by government wire to claimant)

8. Payment of the settlement amount to the claimant as set forth in paragraphs 2(a) and (b) above will be made by government wire transfer as per the following:

A. Name of Bank:
B. Street Address of Bank:
C. City, State and Zip Code of Bank:
D. Federal Reserve Number:
E. Routing Number:
F. Name of Account:
G. Account Number:

Claimants' attorney agrees to distribute the settlement proceeds with the claimant.

9. This Stipulation For Compromise Settlement and Release contains the entire agreement between the claimant and the United States with regard to matters set forth in it; and shall be binding upon and inure to the benefits of all parties hereto, jointly and severally, and the personal representatives, heirs, successors (including without limitation, any successor guardians of the person or the estate of the claimant) and the assigns of each.

WHEREFORE, the parties accept the terms of this Stipulation For Compromise Settlement and Release as set forth herein as of the dates set forth below.

ROGER HONOMICHL Claimant	U.S. Army Claims Service Office of the Judge Advocate General By its attorney herein authorized
Date	Date
ACKNOWLEDGED:	
James Wilson Attorney for Claimant	Date

Notes:

This is a sample Stipulation for Compromise Settlement and Release that allows for payment of a Health Care Finance Administration, U.S. Department of Health and Services Medicare Lien.

Figure 2-44. Sample—settlement agreement (health care finance administration lien)

Section VII
Evaluation

2–80. General rules and guidelines

The claim evaluation is linked to the liability and damages determinations and, in fact, constitutes a bridge between them. Taking this step involves weighing factors common to all negligence claims but unique to each, such as the factual circumstances surrounding the injury or loss, witnesses' credibility, the existence or absence of physical or documentary evidence and its probative value.

a. Rules. Settlement and approval authorities evaluate claims on the extent of Government liability and the injuries resulting therefrom. Apply the following rules to gauge a claim's strengths or weaknesses and to determine whether to settle it or deny it with a view toward litigation or appeal.

(1) *Claims with a jurisdictional or procedural bar normally should not be settled.* Claims arising from combat operations or barred by the incident-to-service exclusion or FECA are not paid. This rule applies when the law precludes recovery and there is no set of facts allowing the claimant to overcome the defense. Claims that may be barred by the SOL may be compromised in certain circumstances.

(2) *Completely frivolous claims should not be settled.* When there are no facts supporting the claim or no State law tort exists, the claim should be denied. A claimant does not become entitled to recover damages merely by filing a claim. Promptly investigate and deny such claims instead of executing a "nuisance settlement." Often, suit may be avoided by informing the claimant what facts the investigation disclosed.

(3) *Cases in which liability is not in doubt should be settled.* If investigation reveals that the United States cannot defend on liability, attempt to settle the claim. Never concede liability but do not persist in asserting that the United States is not liable. Open settlement negotiations by asking the claimant to provide damage information and then fully investigate each recoverable element. Seek the claimant's attorney's cooperation in establishing damages. Consult the AAO on claims in which liability is doubtful.

b. Guidelines.

(1) *Local law.* A knowledge of applicable law is essential. Know which elements of damages the jurisdiction recognizes. See section VI.

(2) *Alternative sources of compensation.* The Federal government funds a number of social insurance programs, such as Medicare, Medicaid and DVA benefits. If the claimant is entitled to them, help the claimant tap these alternative means of compensation in the following ways:

(a) Contact the offices responsible for processing and approving the claim for benefits. Find a responsible official who can help determine if benefits are available. If the claimant is entitled to benefits, personally contact the individual employee who will assist the claimant in applying for them.

(b) Learn whether the benefits available to the claimant are a collateral source. Even if you determine that they are, take the position that any settlement entered should reflect the benefits the claimant receives. See paragraph 2-78.

(c) Approach the claimant's attorney with a settlement package that includes the benefits. This reduces the likelihood that the claimant will try to assert the collateral source doctrine. If you are seen as trying to help the claimant, settlement will be easier.

(3) *Coordination with the local Office of the U.S. Attorney.* Knowing the local U.S. Attorney's policies on litigating or settling tort claims will help determine the value of cases in which liability is in doubt. Discuss the claim, and various ideas about and approaches to settlement, with an Assistant U.S. Attorney. Keep memoranda of these conversations.

(4) *Factoring methods.* Never resort to factoring methods or valuation handbooks to determine a claim's settlement value. Not all "whiplash" cases in which the claimant incurred $1,000 of medical expenses are alike. The specific facts in each case will dictate the damages. A claimant's attorney who tries to use a factoring approach is usually doing so because the facts have not been fully developed or they weigh against the claimant's favor. Take a look at the facts and the law; then make an offer.

(5) *Reported cases.* Study reported cases on excessive and inadequate damages awarded for the same or similar injuries, paying particular attention to how their facts differ from those in the claimant's case. See FTCA Handbook, section II, paragraph C16 and 28.

(6) *Past and future damages.* Evaluate past and future damages separately when determining a claim's settlement value. See Section VI for a detailed discussion about payable damages.

2–81. Joint tortfeasors

When Federal and non-Federal joint tortfeasors are involved, either concurrently or successively, in a tort in which a claim against the United States has been filed, several issues arise. It is crucial to know the applicable law because the presence of additional tortfeasors, or other parties from whom recovery may be obtained separately or through indemnity or contribution, complicates the evaluation process. To evaluate all actual or potential claims in such a case, it is necessary to weigh the relative strengths and weaknesses of each tortfeasor's defense.

a. FTCA. The common and statutory law of the State where the claim arose, including its conflicts of law rules, controls how joint tortfeasors will share legal liability. Each claims office should maintain and periodically review and update its State law deskbook on this topic.

b. MCA. The doctrine of joint and several liability does not apply to claims occurring on or after 1 September 1995. The United States will be liable only for its own negligence on a proportional basis.

c. FCA. The law of the place where the claim arose determines Federal liability under the FCA. In most instances, the United States will be liable only for its own negligence on a proportionate basis. However, claims personnel will deduct for any insurance recovery or any amount reasonably expected to be recovered, which has been or will be paid to the claimant. Claims personnel will take appropriate steps, such as obtaining an assignment, when an insurance settlement is not reasonably available. Deductions will also be made for any other amounts recovered or reasonably expected to be recovered from a tortfeasor or the third party as a result of the injuries or loss giving rise to the claim.

d. National Guard Claims Act (NGCA). The United States may have a remedy for contribution from the State that employed the tortious National Guard soldier or employee. Such a remedy may arise from any of three actions: the State has waived its sovereign immunity and is a self-insurer, has purchased liability insurance coverage, or has executed an agreement with the Army to share the cost of administrative claims settlements to which both the Army and the State are parties.

e. Army Maritime Claims Settlement Act. This statute provides for the administrative settlement and compromise of admiralty and maritime claims both in favor of and against the United States. General maritime law has long recognized the concept of proportional fault, which applies to claims against the Government. In addition, the Army is authorized by statute to demand compensation for damage to property it owns or property under its jurisdiction or for which the DA has assumed third party liability, 10 USC 4803. The DA is further authorized to seek compensation for any salvage services performed by it or its authorized contractors, 10 USC 4804.

f. General concepts.

(1) At common law, there is no right of contribution among joint tortfeasors. *In re General Dynamics Asbestos Cases*, 602 F. Supp. 497 (D. Conn. 1984). Many State courts adopted the doctrine of joint and several liability, in which one tortfeasor may be held liable for all damages regardless of its share of liability.

(2) Other States enacted some form of the Uniform Contribution Among Joint Tortfeasors Act, which permits an equitable apportionment of damages. Some states (such as Kansas and Louisiana) adhere to the doctrine of proportional fault, while others (Texas) permit non-settling defendants a credit for amounts paid by settling

or adjudged defendants. Where another tortfeasor has been adjudged liable or has already settled with the claimant, it is important to review the pre-judgment stipulation or settlement documents to determine whether the United States has been released from all claims, *Barrett v. United States*, 668 F. Supp. 339 (S.D. N.Y. 1987) aff'd 853 F.2d 124 (2d Cir 1988), cert. denied, 488 U.S. 1041 (1988). AR 27-20 implements other statutes that impose or allow proportional fault.

g. Identifying the joint tortfeasor.

(1) This step is critical to the analysis. Who are joint tortfeasors? Either the parties must act together in committing the wrong or their acts, if independent of each other, must unite in causing a single injury. As an example, if Driver X and Driver Y collide and injure Claimant C after and as a result of negligent traffic directions that a public safety or construction employee gave Driver Y, all parties are joint tortfeasors. In some factual situations, the damages may be apportioned among two or more causes where there are distinct harms or where a reasonable basis exists for determining the contribution of each cause to a single harm.

(2) Some States permit division of both liability and damages; the parties are then considered successive, not joint, tortfeasors. This fact-driven conclusion depends greatly on the extent to which the injuries or damages may be allocated or severed between the separate or competing causes and tortfeasors. Apportioning damages according to a fair share of liability allows direct, independent compensation by a third party tortfeasor.

(3) In other States, the harm is severable into distinct parts, as when a person receives subsequent negligent medical treatment. As a matter of public policy, the original tortfeasor often will be held responsible for all subsequent harm, unless the preponderance of the evidence proves that later harm resulted from an intervening force caused by a superseding tortfeasor. See Restatement (2d), Torts 433A, 439, 441-453.

(4) Regardless of the facts, some tortfeasors, such as State or local Governments or the injured party's employer, remain immune from suit by the injured party so that indemnity or contribution from them may not be available, *Hill v. United States*, 453 F.2d 839 (6th Cir. 1972). The United States may bring an action against a State but doing so is difficult and requires the Attorney General's permission. See FTCA Handbook, section II, paragraph D5b.

2–82. Indemnity or contribution

a. Sought by the United States from a non-Federal third party. The claims investigation and analysis of the tortfeasors' respective liabilities may lead claims personnel to conclude that the United States is entitled to contribution or indemnity, under either a contract theory or the applicable local law governing joint tortfeasors. If so, pursue it. Table 2-10 provides a list of State indemnity and contribution laws.

(1) May the injured claimant plead equitable tolling of the SOL if the United States did not provide timely notice of the existence of another tortfeasor, such as a contractor or its employee? Avoid this problem by providing prompt written notice to the other tortfeasor and to the claimant. It is the policy of both the DOJ and USARCS that the Government notify the other tortfeasor of the claim and ask it to honor its contractual obligation to the United States or accept its share of joint liability.

(2) Provide the other tortfeasor a copy of the claim, setting forth the factual and legal bases for the Government's request for indemnity or contribution as well as notice that 28 USC 2415 provides the United States a lengthy period in which to enforce its request. That law grants the United States six years in which to file a complaint and to pursue a right of action in contract, or three years in tort, from the date the Government's right to indemnity or contribution accrues. Citing this provision in a notice to another tortfeasor may seem premature because, as a practical matter, these rights do not accrue until either judgment is entered against the United States or the Government pays a settlement. A party has no right to seek indemnity or contribution until its liability is fixed. The intent of providing the notice, however, is to impress upon the tortfeasor that 28 USC 2415, not State law, imposes the applicable SOL for any third party action, which will not even begin while the administrative claim process is pending. Thus, the tortfeasor's delay will not hinder prosecution of the Government's right of action. The tortfeasor should also be encouraged to forward the notice and request to its counsel or insurer so they may contact the claims office.

(3) Notify the claimant at the same time as the tortfeasor, providing information about the tortfeasor's identity and insurer (if known) and copies of all information and notice provided to the tortfeasor. If the claimant's right of action against the tortfeasor under local law seems clear, strongly encourage the claimant to file suit against the tortfeasor. This way, the government gains maximum leverage over a party otherwise reluctant to participate in settlement discussions.

(4) The key to obtaining the other tortfeasor's participation and contribution is a dialogue between the parties.

(a) The result will be enhanced by cooperating with the other tortfeasor in the claim investigation and by sharing information already developed, much as one shares with a claimant. The two parties' interests are not compatible, however. The claimant seeks compensation now; the tortfeasor seeks to delay paying compensation as long as possible. Thus, sharing discoverable information may accommodate those intrinsically opposed interests. Establishing common ground for agreement, much as a mediator would, goes a long way toward obtaining the other tortfeasor's participation in the settlement.

(b) Usually, the claimant and the other tortfeasor are content to negotiate through the ACO or CPO rather than directly with each other. At times, the other tortfeasor will permit the ACO or CPO to negotiate its interest as well. This situation is best as long as all liable parties maintain close communication and agree on their respective shares and offers, and the negotiating tortfeasor keeps the other tortfeasor abreast of the negotiations. This allows the ACO or CPO to control the dialogue through the information that flows between or among the other parties and to maximize the amount or share the third party is willing to contribute to a settlement.

(c) Full payment may be made in either of two ways. The United States may pay the entire claim and then accept proportionate contribution from the other tortfeasor or each liable party may pay its agreed share directly to the claimant. Be aware that either the liability insurance policy limits or a State statutory damage cap may limit the other tortfeasor's contribution. Depending on the extent of the claimant's injuries and its own insured's liability, the other tortfeasor's insurer may be willing to tender its policy limits rather than risk an allegation of negotiating in bad faith. When a legal and factual analysis leads to the conclusion that the other tortfeasor bears greater liability (for example, with custodial and maintenance contractors at commissaries and hospitals), tender the defense of the claim to that tortfeasor.

(5) If the issue of indemnity or contribution is not adjusted satisfactorily, the claim will be compromised or settled only after consulting with the AAO. In these situations, pay particular attention to the scope of the language in the settlement agreement. It should specify that the settlement covers only those injuries and damage caused by the negligence of the United States and does not release the other tortfeasor. Otherwise, in many states, a settlement will release the other tortfeasor, thus jeopardizing any right of action the claimant, and perhaps the United States, may have against it.

(6) When the claimant refuses to accept an offer of an amount the appropriate settlement authority has determined to be the United States' fair share, it is better to deny the claim than to pay the entire amount and then to seek contribution or indemnification from the other tortfeasor. This avoids the necessity of convincing the U.S. Attorney to file an affirmative claim and permits joinder of the other tortfeasor as a third party defendant.

b. Sought from a Federal contractor. See paragraphs 2-22 and 2-67*c* and *d*.

(1) Often, the United States will share liability with a Federal contractor in injury or wrongful death claims arising at worksites or

MTFs. In a worksite case, in addition to reviewing State law, scrutinize the Federal contract carefully to ascertain whether it contains language identical or similar to that employed in *United States v. Seckinger*, 397 US 203 (1970) to the effect that the Contractor "shall be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work." Such language creates a contractual cause of action for indemnity or contribution, regardless of how State law treats joint tortfeasors, even if the contractor is immune under the State workers' compensation statute (as when the claimant is a contractor employee). Some courts have held that a Seckinger clause is implied despite the fact that the contract does not contain such a clause. Courts have interpreted the Seckinger clause as permitting a form of proportional fault in which the United States is liable only for its own negligence. See FTCA Handbook, section II, paragraph D6.

(2) It is imperative, therefore, that claims personnel obtain and review the contract promptly in any claim arising from a worksite injury or death and assess whether contractor employees met the applicable standards of performance. With HCPs, such as CHAMPUS partnership providers, civilian contract HCPs, or scarce medical specialists hired at a fixed annual sum, the ACO or CPO should ascertain whether the contract provides personal or non-personal services.

(3) The ACO and CPO will continue to focus their investigations on the factual issues necessary to resolve whether the principal lacked authority to control the contractor's physical conduct in its performance or whether it maintained supervision and control of its day-to-day operations. They will look at, for example, the type of medical services rendered, whether a written contract exists, whether they used off-base offices or military office space or maintenance of regular office hours. See—

- *Broussard v. United States*, 989 F.2d 171 (5th Cir. 1993).
- *Lurch v. United States*, 719 F.2d 333 (10th Cir. 1983); cert. denied, 466 U.S. 927 (1984).
- *Lilly v. Fieldstone*, 876 F.2d 857 (10th Cir. 1989).
- *Bird v. United States*, 949 F.2d 1079 (10th Cir. 1991).

Cases warranting demands for indemnity or contribution from such individuals will continue to occur.

c. Sought by the United States from a State as the result of ARNG activities. See paragraph 2-21 and chapter 6.

(1) If a State provides a remedy because it has either waived its sovereign immunity or purchased liability insurance coverage, the responsible area claims authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer.

(2) If the State is insured, it is preferable for the ACO to pursue direct contact with the State ARNG point of contact (Table 2-11) rather than with its insurer. Establish and follow regular procedures designed to ensure that Federal and local authorities do not issue conflicting instructions for processing claims and that, when possible, they arrange for the disposition of such claims in accordance with local and Federal law. The appropriate claims and local authorities should agree on such procedures, subject to concurrence of the Commander, USARCS.

(3) A settlement or approval authority will deduct from the amount otherwise payable amounts recovered or recoverable by the claimant from any insurer, other than the claimant's insurer, which has obtained a subrogated interest against the United States.

(4) A settlement or approval authority may seek contribution from an involved State that has waived sovereign immunity or maintains private insurance to cover the incident giving rise to the claim. If the State denies the request for contribution, forward the file to the Commander, USARCS, who is authorized to enter into an agreement with a State, territory, or commonwealth to share the settlement costs of claims generated by the ARNG personnel or activities of that political entity.

(5) Advise the claimant about any remedy available against the State or its insurer. If the payment by the State or its insurer does not fully compensate the claimant, the settlement or approval authority may pay an additional amount. If liability is clear and the claimant settles with the State or its insurer for less than the maximum amount recoverable, the settlement or approval authority will deduct the difference between the maximum amount recoverable and the settlement amount from its payment.

(6) If the State or its insurer seeks to pay less than their maximum jurisdiction or policy limit, but agrees to pay 50 percent or more of the entire claim's actual value, any Federal payment must be made directly to the claimant. The settlement or approval authority may accomplish this by either paying the entire amount to the claimant and seeking reimbursement from the State or its insurer for their portions, or having each party pay its agreed share directly to the claimant.

(7) If the State or its insurer seeks to pay less than 50 percent of the claim's actual value and the claimant has filed an administrative claim against the United States, forward the file with the tort claims memorandum to the Commander, USARCS. Include information on the status of any judicial or administrative action the claimant has taken against the State or its insurer. The Commander, USARCS, will determine whether the claimant will be required to exhaust all remedies against the State or its insurer or whether the settlement or approval authority may settle the claim against the United States without requiring the claimant to pursue those remedies. If the Commander, USARCS, approves the second course of action, the settlement or approval authority will also determine whether to seek an assignment of the claim against the State or its insurer, notifying the State or its insurer in accordance with State law that either party may seek contribution or indemnification.

d. Sought from vehicle insurers of Federal employees. If the United States is potentially liable for the operation of a Federal employee's POV or rented car, the contractual language may hold that the United States is an additional named insured under the policy covering the POV, *Government Employees Insurance Co. v. United States*, 349 F.2d 83 (10th Cir. 1965), cert. denied, 382 U.S. 1026 (1966). This may be true even if the policy contains a clause excluding coverage, *Government Employees Insurance Co. v. United States*, 400 F.2d 172 (10th Cir. 1968). Additionally, the law of the State where the insurance contract was executed may invalidate the exclusionary clause. When interviewing the Federal employee, ascertain whether the rental agency reduced the premium in any way because of the FTCA exclusion. Where the insurer settles with the injured party, the general rule is that the United States is not released but is entitled to an offset should the injured party file a claim against it. If no settlement has occurred, the ACO or CPO should obtain and review a copy of the insurance policy and request contribution from the insurance company. See FTCA Handbook, section II, paragraph D8.

e. Sought from rental car companies or their insurers. See paragraph 2-32*e*(3).

(1) The Army has been successful in tendering to a rental company or its insurer the defense of claims arising from the authorized use of a rental vehicle by an employee acting within the scope of employment.

(a) The United States Government Car Rental Agreement applies to the Army; almost all car rental companies in the United States are signatories to it. The agreement mandates that the signatories must provide to the United States and its employees minimum insurance coverage of $100,000 for injury to each individual in an accident, $300,000 for all individuals in an accident, and $25,000 for property damage from any one accident.

(b) The agreement intends this coverage to be the primary mode of recovery against the United States, serving the equivalent of an excess limits policy. The coverage is to be maintained solely at the cost of the car rental companies and its conditions, restrictions and exclusions shall not be less favorable to the United States and its employees than afforded under standard automobile liability policies.

(c) The exceptions to recovery under this agreement include willful and wanton misconduct by the Army driver, obtaining the vehicle through fraud or misrepresentation, operation of the vehicle under the influence of alcohol or any prohibited drugs, and operation by a person other than the authorized Army driver.

(d) When a claim is filed against the United States, the ACO or CPO should obtain the employee's travel orders and vehicle rental agreement. Attempt to obtain a written acknowledgment of insurance coverage from the rental car company. Inform the claimant about the rental car company's responsibility. Contact should be maintained with the company or its insurer to monitor the status of any claim filed against either entity.

(e) If the Army employee is personally sued, the ACO or CPO should notify the rental car company or its insurer immediately since failure to do so may result in a denial of coverage under applicable local law. Some jurisdictions permit the injured party to sue the rental car company directly, which then will attempt to sue the United States or its employee for indemnification. In either situation, notify the Litigation Division. See AR 27- 40, chapter 4.

(2) A claims office should expect to see claims falling outside the scope of the rental car agreement, especially those caused by excepted conduct such as intoxication or willful or wanton negligence. Upon completing the claims investigation, the ACO or CPO should determine whether the rental company's refusal to consider the matter due to excepted conduct is correct. If not, notify the AAO and discuss the matter with the Contracting Office MTMC. Otherwise, process any third party damage claims under the appropriate tort claims statute and process claims for damage to the rental car under the JFTR. Where the driver was acting outside the scope of employment, individual liability may attach to the driver's actions; such liability may be covered under the Government driver's POV liability insurance policy. If so, inform the third party or rental car company claimant.

(3) If the driver rented the vehicle from a non-signatory rental car company, ask what third party liability coverage is provided to the ordinary renter. If coverage is part of the rental contract, follow the procedures set forth above.

f. Sought from the United States by other tortfeasors. Claims for indemnity or contribution from the United States will be compromised or settled if liability exists under applicable law, provided that the incident giving rise to such claim is otherwise cognizable under one of the tort claims statutes. Such claims are valid under the FTCA if permitted by State law under the private person analogy, 28 USC 2674, *United States v. Yellow Cab Co.*, 340 U.S. 543 (1951); *Rayonier Inc. v. United States*, 352 U.S. 315 (1957).

(1) An exception may exist when a soldier sues a Federal contractor and the contractor files a claim for indemnity. The Feres defense may bar both the soldier's suit against the contractor and the latter's claim for indemnity, particularly where the "Government contractor" defense is viable under State law (such as when the contractor followed Federal specifications or the Government had final approval of the item manufactured), FTCA Handbook, section I, paragraph E10c. *Stencel Aero Engineering Corp. v. United States*, 431 U.S. 666 (1977). When the "Government contractor" defense is not available, the Feres defense may still shield the United States, but it would not protect the contractor.

(2) Immunity extends to individual suits against all Federal employees acting within the scope of employment, including Federal vehicle drivers and health care personnel, 10 USC 1089, 28 USC 2679. If an employee is sued individually, the suit may be removed to Federal court upon the defendant's request, 28 USC 1441-1451, 28 CFR Part 15. Simple removal does not vest jurisdiction in a Federal court; the DOJ must certify the employee as acting within the scope of employment. See AR 27-40, chapter 4.

(3) Regardless of an employee's or soldier's personal immunity, there may be times when an individual will not be protected by the FTCA, as when a claimant alleges deprivation of Constitutional rights or the employee is a borrowed servant of a civilian entity. Even though it may appear that the actor was outside the scope of employment, it may still be in the United States' best interest to certify and represent the employee or soldier, 28 USC 517. However, DOJ scope certifications are not conclusive and are reviewable for substitution, or scope, purposes, *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417 (1995). Therefore, a Federal court may hold that an employee was not acting in the scope of Federal employment or find that the actor was employed by an entity other than the United States (for example, a medical resident in training at a civilian hospital). In those situations, the employee may eventually request indemnification. It may be in the best interests of a Federal program or policy to indemnify such individuals. Specific Federal legislation permits indemnification of military health care personnel (10 USC 1089(f)) and military legal personnel held liable (10 USC 1054(f)). Consider all requests for indemnification by following the guidance provided in these statutes and in AR 27-20, chapter 3.

2–83. Structured settlements

See paragraph 2-75*e*.

a. The FTCA and other Federal tort statutes contain no provisions authorizing structured settlements. State statutes mandating structured settlements do not apply to the United States. Nevertheless, the United States is permitted to use structured settlements that, when appropriate, may include a grantor trust owned by the United States to provide future medical and attendant care to the injured party, FTCA Handbook, section II, paragraph F7, *Reilly v. United States*, 863 F.2d 149 (1st Cir. 1988); *Hull v. United States*, 971 F.2d 1499 (10th Cir. 1992), cert. denied, 507 U.S. 1030 (1993). Accordingly, the United States may voluntarily negotiate and enter structured settlements. Approval and settlement authorities are strongly encouraged to use the structured settlement device in all appropriate cases.

b. Under other statutes implemented by AR 27-20, the Commander, USARCS, may require or recommend to a higher authority that an award incorporate an acceptable structured settlement as a condition precedent for paying such award, notwithstanding objection by the claimant or representative, when—

(1) It is necessary to ensure adequate and secure care and compensation to a minor or other incompetent claimant over a period of years.

(2) A medical trust is necessary to ensure the long-term availability of funds for anticipated future medical care, the cost of which is difficult to predict.

(3) The injured party's life expectancy cannot be reasonably determined or is likely to be shortened by the injury giving rise to the claim.

c. Structured settlements are used primarily in claims involving catastrophic injuries, severe diminution or elimination of one's ability to earn a living, wrongful death of a spouse or parent, or injuries to a minor child. They are helpful in cases with large verdict potential, where the United States can mitigate its settlement costs by satisfying the claimant's long-term needs. Any properly structured settlement should be designed to meet those needs. The claim amount does not need to be high to merit a structured settlement, however. These arrangements are effective on amounts within the settlement authority of area claims authorities. A structured settlement may compensate for pain and suffering, medical, custodial and rehabilitative costs, and it may provide financial support for dependent family members. Offering the distinct advantage of avoiding premature dissipation of funds through mismanagement, a structured settlement insures that an injured party, not the party's parents, guardians or caretakers, receives the award's full benefit. Periodic payments received under a structured settlement are currently excluded from Federal taxation (Internal Revenue Code 104(a)(2)). In accordance with current DOJ policy, however, do not disclose or discuss this fact during negotiations.

d. During the claim investigation, especially the claimant interview, make every effort to identify and substantiate the claimant's needs. They will likely involve readily identifiable damages such as medical bills, future medical and rehabilitation expenses and lost income. The claimant's needs do not always mirror the traditional damage elements, however. Taken together, they often represent what it would take to make the claimant "whole" or as close to it as

possible. Identifiable needs include a child's higher education, purchase of a business or home or, if the injured party's life expectancy is severely shortened, the adult survivors' long-term plans. Therefore, gather information about these contingencies as well as the parties' health, age, educational status, job history and stability, and personal income. Check the availability of private and Government medical care plans.

e. Coordinate the use of a structured settlement with the AAO, who provides guidance about whether its use is appropriate in a specific case, offer brokers' names and the documentation necessary to obtain premium quotations, and help design the structure.

f. When negotiating a structured settlement, coordinate the settlement and trust agreements (if used) through the AAO at USARCS before presenting them to the claimant or representative. This coordination ensures consistent language throughout the settlement documents. Such consistency is important because the DOJ, which is responsible for monitoring all FTCA structured settlements after payment, and USARCS, which is responsible under other Federal statutes, will likely review the documents.

Table 2–10
State laws on indemnity and contribution

State	Contribution	Source
Alabama	No	Crigler v. Salac, 438 So.2d 1375 (Ala. 1983)
Alaska	Yes P.L.	Alaska Stat. §§ 09.17.010 to 09.17.100; Carriere v. Comino Alaska, Inc., 823 F. Supp. 680 (D. Alaska 1993)
Arizona	Yes	Ariz. Rev. Stat. Ann. §§ 12-2501 to 12-2509
Arkansas	Yes	Ark. Code Ann. §§ 16-61-201 to 16-61-212
California	Yes	Cal Civ. Proc. Code §§ 875-880, but see for noneconomic damages Cal. Civ. Code §§ 1431-1431.5
Colorado	Yes P.L.	Colo. Rev. Stat. §§ 13.50.5-101 to 13. 50.5-106, but see Col. Rev. Stat. § 13-21-111.5; Watters v. Pelican Int'l Inc., 706 F. Supp. 1452 (Colo. 1989); and Graber v. Westaway, 809 P.2d 1126 (Colo. Ct. App. 1991)
Connecticut	Generally	Gomeau v. Forrest, 409 A.2d 1006 (Conn. 1979)
Delaware	Yes	Del. Code. Conn. Ann. tit. 10, §§ 6301-6308
District of Columbia	Yes	Martello v. Hawley, 300 F.2d 721 (D.C. Cir. 1962), Hall v. George A. Fuller Co., 621 A.2d 848 (D.C. 1993)
Florida	Yes	Fla. Stat. Ann. § 768.31
Georgia	Yes	Ga. Code. Ann. § 51-12-32, but see Ga. Code Ann § 51-12-33
Hawaii	Yes	Hawaii Rev. Stat. §§ 663-11 to 663-17
Idaho	Yes	Idaho Code §§ 6-803 to 6-806
Illinois	Unclear	Ill. Comp. Stat. Ann. ch. 740, §§ 100/0.01 to 100/5, but see Ill. Comp. Stat. Ann. ch. 735, § 5/2-1117.
Indiana	No	Ind. Code Ann. § 34-4-33-7
Iowa	Yes	Iowa Code Ann. §§ 668.5 to 668.10
Kansas	No P.L.	Kan. Stat. Ann. § 60-2413(b); but see Kan. Stat. Ann. § 60-258a, Chavez v. Markham, 889 P.2d 122 (Kan. 1995)
Kentucky	Yes	Ky. Rev. Stat. Ann. § 412.030
Louisiana	Yes	La. Civ. Code Ann. Art. 1804
Maine	Yes	Hobbs v. Hurley, 104 A. 815 (Me. 1918)
Maryland	Yes	Md. Ann. Code Art. 50, §§ 16 to 24
Massachusetts	Yes	Mass. Gen. Laws Ann. ch. 231B, §§ 1-14
Michigan	Yes	Mich. Comp. Laws Ann. § 600.2925a et seq.
Minnesota	Yes P.L.	Minn. Stat. Ann. § 604.02; Tolbert v. Gerber Industries, Inc., 255 N.W. 2d 362 (Minn. 1977)
Mississippi	Yes P.L.	Miss. Code Ann. § 85-5-7
Missouri	Yes	Mo. Ann. Stat. § 537.060
Montana	Yes	Mont. Code Ann. § 27-1-703
Nebraska	Yes P.L. for Non-economic Damages	Neb. Rev. Stat. § 25-21,185.10 Royal Indem Co. v. Aetna Casualty & Sur. Co., 229 N.W. 2d 183 (Neb. 1975)
Nevada	Yes	Nev. Rev. Stat. § 17.225 to 17.305
New Hampshire	Yes	N.H. Rev. Stat. Ann. § 507:7e—507:7-i; Consolidated Utility Equipment Services, Inc., v. Emhart Mfg. Corp., 459 A.2d 287 (N.H. 1993)
New Jersey	Yes	N.J. Stat. Ann. 2A:15-5.1 to 5-3. Lee's Hawaiian Islanders, Inc., v. Safety First Products, Inc., 480 A.2d 927. (N.J. Super. Ct. App. Div. 1984)
New Mexico	Generally No P.L.	N.M. Stat. Ann §§ 41-3-1 to 41-3-8, but see N.M. Stat. Ann. § 41-3A-1.
New York	Yes	N.Y. Civ. Prac. L & R. §§ 1401 to 1404, but see N.Y. Civ. Prac. L & R, §§ 1600-1603. Also see N.Y. Gen. Oblig. Law § 1508, and In re Eastern and Southern Districts Asbestos Litigation, 772 F. Supp. 1380 (E.D.N.Y. 1991), aff'd in part, rev'd in part by In re Brooklyn Navy Yard Asbsestos Litigation, 971 F.2d 831 (2d Cir. 1992)
North Carolina	Yes	N.C. Gen. Stat. § 1B-1 to 1B-6
North Dakota	Generally no P.L.	N.D. Cent. Code, §§ 32-38-01 to 32-38-04 but see § 32-03.2-02, and Target Stores v. Automated Maintenance Services, Inc., 492 N.W.2d. 899 (N.D. 1992)
Ohio	Yes P. L. for Non-economic Damages	Ohio Rev. Code Ann. §§ 2307.31-2307.33, but see Ohio Rev. Code Ann. § 2315.19

Table 2–10
State laws on indemnity and contribution—Continued

State	Contribution	Source
Oklahoma	Yes	Okla. Stat. Ann. tit. 12, § 832, but see Okla. Stat. Ann. tit. 23, § 13, and see Boyles v. Okla. Natural Gas Co., 619 P.2d. 613 (Okla. 1980); Berry v. Empire Indemnity Ins. Co., 634 P.2d 718 (Okla. 1981)
Oregon	Yes P.L.	Or. Rev. Stat. §§ 18.440–18.460, but see Or. Rev. Stat. §18.485 for Noneconomic Damages and Economic Damages where the defendant is less than 15% at fault
Pennsylvania	Yes	42 Pa. Cons. Stat. Ann. § 7102
Rhode Island	Yes	R.I. Gen. Laws §§10-6-1 to 10-6-11
South Carolina	Yes	S.C. Code Ann. §§ 15-38-10 to 15-38-70
South Dakota	Yes	S.D. Codified Laws Ann. §§ 15-8-11 to 15-8-22
Tennessee	No P.L.	McIntyre v. Balentine, 833 S.W.2d 52 (Tenn. 1992)
Texas	Yes	Tex. Civil Prac. and Rem. Code, §§ 33.011 to 33.017
Utah	No P.L.	Utah Code Ann. § 78-27-40
Vermont	No P.L.	Eagle Star Ins. Co. of America v. Metromedia, Inc., 578 F. Supp. 184 (D. Vt. 1984)
Virginia	Yes	Va. Code Ann. §§ 8.01-34 to 8.01-35.1
Washington	Generally P.L.	Wash. Rev. Code Ann. § 4.22.070
West Virginia	Yes	W. Va. Code § 55-7-13
Wisconsin	Yes	Bielski v. Schulze, 114 N.W.2d 105 (Wis. 1962)
Wyoming	No P.L.	Wyo. Stat. § 1-1-109 at (e)

Notes:

For a more detailed analysis, consult Comparative Fault (Lawyers Cooperative Publishing Co., 1987; supplemented annually).
This List is current as of October 1996 and should be shepardized.
This is a list of state laws that permit contribution. States that have adopted proportionate liability are referenced by “P.L.”)

Table 2–11
State claims offices for Army National Guard

STATE	ADDRESS	Telephone
AL	PO 3711, Montgomery, AL 36109-0711	(334) 271-7471
AK	PO 5800, Ft. Richardson, AK 99505-5800	(907) 428-6020
AR	Camp Robinson, N. Little Rock, AR 72199-9600	(501) 791-5030
AZ	5636 E. McDowell Road, Phoenix, AZ 85008-3495	(602) 267-2669
CA	9800 S. Goethe, Sacramento, CA 95826-9101	(916) 854-3505
CO	6848 S. Revere Parkway, Englewood, CO 80112-6703	(303) 397-3015
CT	360 Broad Street, Hartford, CT 06105-3795	(860) 548-3208
DC	2001 E. Capitol Street, Washington, DC 20003-1719	(202) 433-0924
DE	First Regiment Road, Wilmington, DE 19808-2191	(302) 326-7011
FL	PO Box 1008, St. Augustine, FL 32085-1008	(904) 823-7131
GA	PO Box 17965, Atlanta, GA 30316-0965	(404) 624-6021
GU	622 E. Harmon Ind Pk Rd, Tamuning, GU 96911-4421	9-011-671-647-2887
HI	3949 Diamond Head Road, Honolulu, HI 96816-4495	(808) 734-8245
ID	4040 W. Guard Street, Boise, ID 83705-5004	(208) 389-5474
IL	1301 N. MacArthur Blvd., Springfield, IL 62702-2399	(214) 785-3740
IN	2202 S. Holt Rd., Indianapolis, IN 46241-4839	(800) 237-2850 x491
IO	7700 NW. Beaver Drive, Johnston, IA 50131-1902	(515) 252-4259
KS	2800 SW. Topeka Blvd., Topeka, KS 66611-1287	(913) 274-1024
KY	100 Minuteman Pkway, Frankfort, KY 40601-6168	(502) 564-8456
LA	HQ Bldg, Jackson Bks, New Orleans, LA 70146-0330	(504) 278-6228
MA	25 Haverhill Street, Reading, MA 01867-1999	(617) 944-0500
MD	5th Regiment Armory, Baltimore, MD 21201-2288	(410) 576-6085
ME	Camp Keyes, Augusta, ME 04333-0033	(207) 626-4328
MI	2500 S. Washington Ave., Lansing, MI 48913-5101	(517) 483-5682
MN	20 West 12th St., St. Paul, MN 55155	(612) 282-4683
MO	2302 Militia Dr., Jefferson City, MO 65101-1203	(573) 526-9601
MS	PO Box 5027, Jackson, MS 39296-5027	(601) 973-6361
MT	PO Box 4789, Helena, MT 59604-4789	(406) 444-6969
NC	4105 Reedy Creek Rd., Raleigh, NC 27607-6410	(919) 664-6208
ND	Fraine Bks., PO Box 5511, Bismarck, ND 58502-5511	(701) 224-5194
NE	1300 Military Road, Lincoln, NE 68508-1090	(402) 471-7173
NH	#1 Airport Rd., Concord, NH 03301-5353	(603) 225-1338
NJ	Eggert Crossing Rd, CN 340, Trenton, NJ 08625-0340	(609) 530-7005
NM	47 Bataan Blvd., Santa Fe, NM 87505	(505) 474-1322
NV	2525 S. Carson Street, Carson City, NV 89701-5502	(702) 887-7256
NY	330 Old Niskayuna Rd., Latham, NY 12100-2224	(518) 786-4541
OH	2825 W. Dublin Granville Rd., Columbus, OH 43235-2789	(614) 889-7022
OK	3501 Military Circle, NE, Oklahoma City, OK 73111-4398	(405) 425-8147
OR	PO Box 14350, Salem, OR 97309-5047	(503) 965-3571
PA	Dept of Military Affairs, Annville, PA 17003-5002	(717) 861-8635
PR	PO Box 3786, San Juan, PR 00904-3786	(809) 724-8166/3131
RI	1051 N. Main Street, Providence, RI 02904-5717	(401) 457-4148
SC	1 National Guard Road, Columbia, SC 29201-4766	(803) 806-4318
SD	2823 W. Main Street, Rapid City, SD 57702-8186	(605) 399-6769

Table 2–11
State claims offices for Army National Guard—Continued

STATE	ADDRESS	Telephone
TN	PO Box 41502, Nashville, TN 37204-1501	(615) 532-5080
TX	PO Box 5218, Austin, TX 78763-5218	(512) 465-5057
UT	12953 S. Minuteman Dr., Draper, UT 84020-1776	(801) 576-3682
VA	600 E. Broad Street, Richmond, VA 23219-1832	(804) 775-9285
VI	RR #2, Box 9925, St. Croix, VI 00851-9769	(809) 772-7708
VT	Green Mountain Armory, Colchester, VT 05446-3004	(802) 654-0214
WA	Camp Murray, Tacoma, WA 98430-5000	(206) 512-8262
WI	PO Box 8111, Madison, WI 53708-8111	(608) 242-3077
WV	1703 Coonskin Drive, Charleston, WV 25311-1085	(304) 341-6430
WY	5500 Bishop Blvd., Cheyenne, WY 82009-3320	(307) 772-5254

Notes:
Correspondence should be addressed to the Adjutant General, ATTN: State Claims Officer

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS PURSUANT TO 28 USC § 2672

It is hereby stipulated by and between the undersigned claimant, Beulah Rowley and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claim upon the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay an award in final settlement in the cash amount of **Ten Thousand Dollars ($10,000)**, which will be paid as follows:

(a) The cash sum of **Eight Thousand Dollars ($8000)** will be paid jointly to Beulah Rowley and Douglas A. Dribben, attorney at law;

(b) The cash sum of **Two Thousand Dollars ($2,000)** will be paid to claimant's attorney, Douglas A. Dribben, on behalf of the claimant, in full satisfaction of attorney fees under the Federal Tort Claims Act.

Which sums shall be in full settlement and satisfaction of any and all claims, demands, rights, liens (including those of the Blue Corporation), and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the death of Beulah Rowley, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which claimant or her guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Claimant and her guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and satisfaction of any and all claims, demands, rights, and liens (including those of the Blue Corporation), causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the death of Beulah Rowley, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the claim, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Claimant and her guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, (including those of the Blue Corporation), rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by claimants or plaintiffs or their guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the claimant. This settlement is entered into by all parties for the purpose of compromising a disputed claim under the Federal Tort Claims Act.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the claimant will be paid out of the settlement amount and not in addition thereto.

6. It is also understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorney's fees for services rendered in connection with this action shall not exceed 20 per centum of the amount of the compromise settlement.

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

8. Payment of the settlement amount will be made by a checks drawn on the Treasury of the

Figure 2-45. Sample—lienholder settlement agreement—Continued

UNITED STATES and made payable as set forth in paragraphs 2(a) and 2(b) above. The checks will be mailed as follows:

a. Those cash sums set forth in paragraphs 2(a) and 2(b) will be mailed to the claimant's attorney at the following address: Douglas A. Dribben, 100 Main Street, Fort George G. Meade, Maryland 20755-5360. **(OR, if payment to be made by government electronic transfer, to the appropriate financial institution)**

8. Payment of the settlement amount to the claimant will be by government wire transfer as per the following:

A. Name of Bank: National Savings Bank
B. Street Address of Bank: 100 Main Street
C. City, State and Zip Code of Bank: Fort Meade, Maryland 20755
D. Federal Reserve Number: ABA 000000000
E. Routing Number: 00000000
F. Name of Account: Beulah Rowley
G. Account Number: 000000000

Claimants' attorney agrees to distribute the settlement proceeds with the claimant.

9. This Stipulation For Compromise Settlement And Release contains the entire agreement between the claimant and the United States with regard to matters set forth in it; and shall be binding upon and inure to the benefits of all parties hereto, jointly and severally, and the personal representatives, heirs, successors (including without limitation, any successor guardian o the person or the estate of the claimant) and the assigns of each.

WHEREUPON, the parties accept the terms of this Stipulation for Compromise Settlement And release as of the dates written below.

Beulah Rowley CLAIMANT	U.S. Army Claims Service Office of The Judge Advocate General By its attorney herein authorized
Date	Date
ACKNOWLEDGED:	
Douglas A. Dribben	Attorney or Authorized Agent of the Blue Corporation
Date	Date

Figure 2-45. Sample—lienholder settlement agreement

SUBJECT: Personal Services Contracts (PSCs) for Health Care Providers (HCPs)

References: (a) Instruction 6025.6 "Personal Services Contracting Authority for Direct Health Care Providers," February 27, 1985 (hereby canceled)
(b) Federal Acquisition Regulation, Part 37, title 48, current edition
(c) Defense FAR Supplement, Part 237, title 48, current edition
(d) Sections 1091 and 1096 of title 10, United States Code
(e) Section 102 of Title 3, United States Code
(f) Section 2671, et seq., of title 28, United States Code

1. REISSUANCE AND PURPOSE

This instruction reissues reference (a) to update the policy, responsibilities, and procedures for implementing the authority for PSCs for HCPs.

2. APPLICABILITY AND SCOPE

This instruction applies to:

2.1. The Office of the Secretary of Defense and the Military Departments.

2.2. PSCs for HCPs awarded under references (b) and (c), and Section 1091 of reference (d). Services provided under the Military-Civilian Health Services Partnership Program (reference (d) are not provided under PSCs and are not covered by this instruction.

3. DEFINITIONS

3.1. **Health Care Providers (HCPs)**. Health service personnel who participate in clinical patient care. That does not include personnel whose duties are primarily administrative or clerical, nor personnel who provide maintenance or security services.

3.2. **Personal Services Contract (PSC)**. A contract that, by its expressed terms or as administered, makes the contractor personnel appear, in affect, to be Government employees.

4. POLICY

It is DoD policy that:

4.1. When in-house sources are insufficient to support the medical mission of the Military departments or in using sound business judgment it is more efficient to do so, PSCs may be executed for physicians and other HCPs.

4.2. PSCs help mission accomplishment, maximize beneficiary access to medical treatment facilities (MTFs), maintain readiness capability, reduce the use of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), and enhance the patient and provider relationship.

4.3. PSCs shall be subject to the same quality assurance, risk management, credentials review, and clinical privileging standards, including licensure, as those required of military and civil service HCPs.

4.4. All PSCs must be cost effective when compared to any other method (e.g., military and civil service, etc.) available to the MTF commander in providing the required healthcare. If the MTF commander is unable to obtain the required services through other more cost-effective means, the cost to the Government to provide the services through a PSC must be less than, or equal to, the projected Government cost under CHAMPUS for the same services.

4.5. PSC is the preferred type of contract when: the descriptive elements of the services to be provided, as stated in FAR Subpart 37.104 (reference (b)), have essentially the same attributes as are present for services performed by military or civil service HCPs of the same type (e.g., physicians and nurses, etc.) at the same facility; and the services of the military, civil service, and PSC HCPs of the same type are to be integrated in predominant respects.

Figure 2-46. DOD Instruction 6025.5 extract, Personal Services Contracting—Continued

4.6. The rights, benefits, and compensation of PSC contractors providing services under PSCs shall be determined solely in accordance with the PSC.

4.7. In no case shall the total amount of compensation paid to an individual in any year under a PSC exceed the full time equivalent rate of 200,000 dollars each year, except that this cap may be adjusted to equal any change in the amount of annual compensation (excluding the allowances for expenses) specified in Section 103 of 3 USC (reference e)).

4.8. The existence of an employer-employee relationship created by a PSC shall result generally in the treatment of a PSC HCP similar to a DOD employee for many purposes. Included in this similar treatment is that Federal Tort Claims Act (reference f) claims alleging negligence by a PSC HCP shall be processed by the Department of Defense as claims alleging negligence by DOD military or civil service employee. As a result, the PSC HCP is not required to maintain medical malpractice liability insurance.

5. RESPONSIBILITY

5.1. The Assistant Secretary of Defense for Health Affairs shall:

5.1.1. Be responsible for monitoring the PSC program.

5.1.2. Review the procedures established by the Military Departments to ensure the cost effectiveness and/neutrality of PSCs.

5.1.3. Modify or supplement this instruction, as needed.

5.2. The Secretaries of the Military Departments shall—

5.2.1. Be responsible for the management, consistent with this instruction, of the PSC program.

5.2.2. Establish a methodology, including audit procedures, to ensure that all PSCs entered into are cost effective and/or neutral, when compared to other means of delivering the needed healthcare.

6. PROCEDURES

6.1. The procedures established in DFARS, Subpart 237.104 (reference (c)) are applicable to selections of PSCs over the small purchase threshold that are set aside solely for competition between, and award to, individuals who will be directly providing the personal services. Those procedures are not applicable to all other PSCs (e.g., those awarded to corporations), which are subject to the full and open competition requirements of the FAR (reference (b)), reference (c) and other DOD and service specific regulations.

6.2. Prorated compensation based on hourly, daily, or weekly rates may be awarded when a contractor's services are not required on a full-time basis.

6.3. Each PSC must contain language specifically stating:

6.3.1. That the contract is a personal services contract and that the contract is intended to create an employer-employee relationship between the Government and the individual HCPs.

6.3.2. That the performance of the individual HCP(s) under the PSC is subject to day-to-day supervision and control by healthcare facility personnel comparable to that exercised over military and civil service HCPs engaged in comparable work; and

6.3.3. That any personal injury claims alleging negligence by the individual HCPs within the scope of the HCP's performance of the PSC shall be processed by DOD as claims alleging negligence by DOD military or civil service HCPs; and

6.3.4. The PSC does not create an employer-employee relationship between the Government and any corporation, partnership, business association or other party or legal entity with which the individual HCP(s) may be associated.

7. EFFECTIVE DATE

This instruction is effective immediately.

Figure 2-46. DOD Instruction 6025.5 extract, Personal Services Contracting

Section VIII
Negotiations

2–84. Purpose and extent

See FTCA Handbook, section II, paragraph G for discussion of methods of negotiation.

a. Undertaking negotiations.

(1) The purpose of negotiating is to reach a prompt agreement to settle a claim at an amount that is fair to both the claimant and the United States. If the parties cannot agree on an amount, they should clearly define the liability and damages issues in the event suit is filed under the FTCA or AMCSA or an administrative appeal is brought. Because claims statutes represent a partial waiver of sovereign immunity, the legislative intent behind them clearly authorizes the Government to pay meritorious claims in a fair amount.

(2) From the outset of a claim, claims personnel should fully inform the claimant or the claimant's representative about the applicable procedures and, when indicated, the nature and extent of the Government's investigation. A meaningful negotiation is usually enhanced by the mutual exchange of information derived from both sides' investigations. See AR 27-20, chapter 1, and paragraph 2-5 of this publication. Where a claim is barred or excluded from jurisdiction, as by the incident-to-service doctrine or the SOL, claims personnel should inform the claimant that an investigation of the merits either is not necessary or, if undertaken, may be limited in extent.

b. Admissions of liability. Government representatives should not make admissions of liability, either written or oral, during negotiations. This is standard procedure whether or not a judicial remedy exists. Such statements constitute admissions against interest which are admissible in evidence.

(1) It is not necessary to admit liability to settle a claim. Admitting liability may even make settlement more difficult to achieve. Many claims settlements represent a compromise, reflecting all the strengths and weaknesses of claimant's case on liability and damages. Admitting liability, however, removes any incentive to compromise that a strong Government case might present. It creates the impression that the case should be settled for full value, regardless of factual or legal strengths or weaknesses. For example, if the Government is able to raise a meritorious contributory negligence defense, it may justifiably reduce the settlement offer. Admitting liability eliminates any chance to do this.

(2) During negotiation of FTCA claims, withholding an admission of liability forces the claimant's attorney to assess the risks of litigation. This represents a real incentive to settle, considering the time and expense involved in litigation as well as its uncertain results. Withholding an admission of liability also serves to encourage the claimant's attorney to cooperate in investigating the claim.

(3) There are several ways to settle claims without admitting liability. The simplest and most effective way is to shift the focus of discussion from liability to damages. For example, telling a claimant's attorney that the parties need to discuss damages rather than liability usually suffices to turn most attorneys' attention to settlement.

(4) When the Government's own investigation establishes liability, it is counterproductive to require the claimant's attorney to prove liability, through either written opinions from hired experts or letters or memoranda citing legal authorities. Insisting on a full-scale showing, not only increases the claimant's legal costs, but also indicates to the claimant's attorney how strong the claim is and, hence, its higher value.

c. Claimant interview. See paragraph 2-34*i*. Informal claimant interviews are indispensable to a fair evaluation. Such interviews are not often sought or permitted outside the Government and, in fact, are not part of most Federal agencies' typical administrative claim process. If the claimant's representative objects to an interview, offer to exchange information as an inducement. When this fails, request written interrogatories, even though they are not as satisfactory as a personal interview. Inform the claimant that refusal to submit to an interview or answer interrogatories will result in an evaluation based on only the information contained in the file. Alternatively, schedule an IME to obtain necessary information either as an adjunct or a substitute to claimant's case in chief. The claimant's representative should actively participate in the IME.

d. Knowledge of facts. Settlement is not possible without a full understanding of the facts. To this end, obtain as much firsthand knowledge as possible. Visit the scene of the incident and interview the claimant and all key witnesses, in person if possible. It is always easier to resolve disagreements if the CJA or claims attorney has personal knowledge of the facts. When a factual disagreement develops, try to resolve it. If the disagreement arises because the claimant's attorney does not understand the case, try to disclose the facts through IMEs, interviews, or site visits. For example, if the parties disagree about whether an intersection is blind, offer to visit the scene and show the attorney the intersection. Never allow the disagreement to escalate into a dispute. Simply state, for example, what you saw when you visited the scene. The claimant's attorney should realize that your position is stronger because it is based on direct investigation.

2–85. Who should negotiate

a. Obtaining advance authority. Settlement and approval limits are set forth in each Chapter of AR 27-20 and paragraph 2-89 of this publication. An AAO or, upon delegation, an ACO or CPO may settle a claim in any amount subject to approval by higher authority, depending on the settlement amount. The AAO need not obtain advance authority from the DOJ or DA when the settlement amount will not exceed USARCS' authority: $200,000 for FTCA claims and $25,000 for MCA claims. A USARCS representative will conduct advance discussion with the DOJ when implementing regulations require it (see figure 4-2, extract from 28 CFR 14.6). If the settlement amount is subject to approval at a higher authority, let the claimant know this at the outset. If the claimant states a preference for direct negotiation with the DOJ or the Army General Counsel, tell the claimant that the FTCA does not confer upon the DOJ authority to settle any agency claim during its administrative stage. Under other statutes, only the Commander, USARCS, represents the Army.

b. Authorized settlement limits. An ACO, a CPO, or Claims Service may settle any claim in a stated amount within his or her authority: under the FTCA, $25,000 per claim and $50,000 per incident; under the MCA $25,000 per each claim. Where a claim's stated amount exceeds the settlement authority, the ACO or CPO and the AAO will determine who should settle. Because they can and do settle many claims for higher amounts, it is not proper for the ACO or CPO to inform a claimant that only USARCS exercises jurisdiction on claims seeking amounts over the ACO's or CPO's delegated authority. Moreover, USARCS has made it a case-by-case practice to delegate greater authority to ACOs or CPOs with the ability and experience.

c. Responsibility of negotiator.

(1) When delegated as the necessary authority, the ACO or CPO should try to negotiate a tentative settlement. Non-attorney claims personnel may conduct negotiations only with a claimant or a non-attorney. Only an attorney should negotiate with a claimant's attorney. All persons who negotiate for the Government should always disclose that they are seeking a tentative settlement.

(2) After reaching the tentative settlement, the attorney who settled the claim will prepare a settlement memorandum. The ACO or CPO who conducted negotiations will prepare the settlement memorandum with the AAO's help.

(3) Forward the settlement memorandum to the appropriate settlement or approval authority for approval of the tentative settlement. Once the settlement is approved, forward it for payment as outlined in Section X.

d. Disclosure of settlement authority. For claims in which the settlement amount exceeds the negotiator's settlement authority, disclose appropriately, following these guidelines:

(1) Always explain the settlement procedure to a claimant's attorney before negotiations begin, summarizing the limits of settlement authority existing within both the Army and the DOJ. Otherwise, the claimant's attorney will assume that authority exists for any offer

the negotiator makes. Explain that the DOJ must approve any FTCA settlement over $200,000, and that a delegee of TJAG or the Secretary of the Army, as appropriate, must approve settlements over $25,000 for the MCA, and $100,000 for the AMCSA or FCA.

(2) A settlement made by one who lacks authority is void. It is a source of potential embarrassment both to the Army and to the individual who negotiates it. Any such settlement is certain to create difficulties in managing the case.

(3) Avoid disclosing specific instructions included in a grant of negotiating authority for a specific claim, except in the most unusual case after consulting the AAO.

2–86. What should be compromised

a. Special damages

(1) Practically any claim, regardless of amount, may be compromised through direct negotiation. Scrutinize small property damage claims for Governmental liability and compromise accordingly. Damage estimates should be reviewed by either well-trained claims personnel or an expert to determine if the repair costs and the parts to be repaired are justified. Similarly, have a Government physician scrutinize medical bills and records to determine whether the care furnished was reasonable and necessary. The fact that an insurer paid a certain amount to its insured does not govern the extent of the Army's liability. The insurer, as subrogee, stands in the shoes of its insured, as subrogor, and so is entitled to only that amount to which the subrogor is entitled.

(2) In cases of companion claims, where an insurer demands immediate payment on behalf of its insured, the negotiator should offer less than full value at first because the AAO must authorize all split payments. Once the offer is made, the ACO or CPO should consult the AAO. Review Section VI and ensure that all special damages are justified before approval. The claimant should support past lost wages with income tax forms, and future medical costs with a competent medical opinion. Where the proof is questionable, negotiate a lesser amount.

b. General damages. These are not only difficult to estimate but they are also the award component most subject to fluctuation in amount. The difficulty may be alleviated by studying past medical records and conducting interviews with the claimant, family and friends or acquaintances. Obviously, special damages are easier to quantify and negotiate than are general damages. While the claimant may agree to accept reductions in special damages, the claimant may cancel out any reduction by demanding higher general damages. The key to negotiating general damages is learning what amount the claimant will accept as settlement. In view of the tort reform legislation pending in Congress at the time of this writing, which seeks to limit general damages on FTCA awards, the DOJ's current position severely limits the acceptable general damages amount in an administrative settlement. This policy has succeeded mostly because in those jurisdictions well known for "runaway" general damage awards granted either by judge or jury, FTCA administrative settlements still occur frequently. Perhaps this approach is succeeding also because of the length of time required to obtain a final judgment—in an all too typical situation, after various appeals, a brain-damaged baby whose claim is filed by age two does not receive compensation for personal injuries until reaching age eight. By regulation, a $500,000 damages cap has been set for MCA, NGCA, and FCA claims. See AR 27-20, paragraph 3-5*a*(2)(*h*), and paragraph 2-74 of this publication. General damages under the FTCA should be scaled accordingly.

2–87. How to negotiate

a. Extent of preliminary instructions. Successful negotiation is a matter of style and temperament. Good practice dictates against instructing the chosen negotiator in too much detail how to reach agreement at the authorized settlement amount. Nevertheless, the DOJ's informal policy is to start low to approach a fair settlement. In fact, the DOJ requires that all settlement memoranda sent to it for approval include a negotiation history. Keep the DOJ's policy in mind. It is usually not too difficult to "start low" since most claimants file for amounts much higher than what they deserve or reasonably expect. Once claimants file suit, it is difficult to obtain an increase in the amount claimed, 28 USC 2675(b).

b. Caution in formulating offer. The ability to conclude a successful negotiation depends in large part upon determining what the claimant will accept. For example, when a claim seeks $1,000,000 and the Government evaluates the claim at $200,000, the Government should not open with an offer of $175,000 unless the negotiator knows that the claimant is willing to enter into meaningful negotiations from that starting point. The Government, by offering $175,000, then enters any pretrial settlement conference with the potential to split the difference between $175,000 and $1,000,000.

c. Preliminary knowledge. Knowing the other attorney's reputation and background, including his or her ability to try cases, assists in determining the negotiation methods. When attorneys are expected to split their fees, the likelihood of executing an administrative settlement is enhanced since the referring attorney's fee will be reduced if there is a trial. Refuse to negotiate with a paralegal or junior attorney; deal only with the attorney empowered to make the decision. When negotiating a disputed claim with an insurance company, deal only with its senior adjudicator or attorney. Make sure that the attorney has obtained authority to settle from the client prior to any negotiations and secure a promise that the attorney will pass your offer to the client in accordance with the legal profession's ethical requirements. Remember that you are dealing with the claimant through an attorney and your aim is to meet the claimant's desires, not the attorney's. Always refer a claimant's direct inquiry (for example, a claimant's complaint to a Member of Congress) to the attorney. In a delegated claim within USARCS' authorized jurisdiction, negotiate in person, at least initially. Subsequently, it is permissible to use the phone and not the mail, except to memorialize telephone conversations. A personal relationship with the claimant's attorney is always best.

d. Initial offer. It is hoped that following these guidelines will assist in formulating and determining the Government's initial offer. If the negotiator is uncertain, ask the claimant's attorney for a demand. If the response is meaningless, do not make an initial offer of $175,000 (when the authorization is $200,000 and demand is $1,000,000.) A better initial offer would be $100,000. If the attorney will not name a figure, ask the attorney to identify the key elements of damages and deal on a point-by-point basis. Successful negotiation is conducted through dialogue. Try to start a dialogue by identifying the disputed points. Do not mention a figure unless you intend it as an offer. To continue with the above example, do not state that the offer is $100,000 but you will go to $150,000 if the attorney will come down. By doing so, you have offered $150,000 without forcing your opponent to drop below the $1,000,000 claimed. Never bid against yourself! Never raise your offer in the absence of a reasonable counteroffer.

e. Final offer. If an impasse is reached, do not immediately make a final offer. Wait until the attorney has had time to reflect. Make certain the attorney knows that once suit is filed, the case is no longer under the Army's jurisdiction. If the attorney demands a written confirmation of your verbal offer, do not provide such an offer. A written offer's only legitimate purpose during negotiations is to provide the opposing attorney the means to convince the client that the latter's expectations are unreasonable. In this situation, write a letter for the claimant's consumption. Include your arguments, not merely a figure. In a FTCA case, a final offer may be in order when there is no reasonable expectation of continued negotiations. When the six-month administrative period for filing suit has expired and meaningful negotiations have never commenced, inform the claimant's attorney that suit may be filed at any time as there is no reasonable expectation of a settlement. When administrative appeal, not suit, is the next step, a notice containing a final offer, detailing the reasons therefor, is in order so that an informed appeal may be made.

2–88. Settlement negotiations with unrepresented claimants

An ACO or CPO deals with unrepresented claimants in four situations:

- When investigating the incident before the claim is filed.
- When the claimant seeks information about filing a claim against the United States.
- When the claims attorney or investigator seeks to interview or obtain information from the claimant after the claim has been filed.
- When attempting to settle the claim. When dealing with unrepresented claimants in these situations, follow the principles outlined below:

a. Making disclosures. Certain disclosures are intended to foster an atmosphere of trust and confidence. They may be made orally or in writing. If making oral disclosures in an interview with an unrepresented claimant, prepare a memorandum for record and place it in the claim file. These disclosures should be made in writing, however, if it appears that these matters may form the basis of a dispute.

(1) Fully explain the administrative claims process to an unrepresented claimant.

(2) CJAs and claims attorneys must disclose their status as attorneys. Claims personnel who are not attorneys will not represent themselves as such nor create nor allow the impression that they are attorneys.

(3) Claims personnel should not indicate, nor create the impression, that they are disinterested in the outcome of the claim. Accordingly, claims personnel should tell the claimant that they represent the United States and not the claimant. This is especially important with unrepresented claimants, who are often confused about the status of claims personnel.

b. Explaining the administrative process. Claims personnel are specifically authorized to communicate with claimants about the filing and processing of claims. When a claimant is represented by an attorney, however, any direct communication with the claimant is unauthorized.

(1) AR 27-20 authorizes claims personnel to explain how to file a claim and to disseminate information about the administrative claims procedures, including how a claim will be investigated, what law will be applied, and how a settlement will be determined. This limited authority does not mean, however, that claims personnel may advise the claimant whether or not to file a claim. The claimant should always be told to file even when personnel believe that the claim is barred by the incident to service doctrine or the SOL.

(2) Avoiding an advisory role means that claims personnel may not tell a claimant what amount or how much to claim. There are three practical effects to this prohibition:

- It almost always forces a claimant to think about hiring an attorney.
- It prevents claims personnel from having to explain valuation of the claim.
- It prevents allegations that the ACO or CPO promised to pay the claimant the amount demanded on the claim form.

The ACO or CPO may, however, discuss with the claimant the elements of damages deemed payable.

c. Answering questions about hiring an attorney. Claimants often ask whether they should hire an attorney to file and settle a claim. Take the following approach in response:

(1) Advise the claimant that the administrative procedure does not require the claimant to hire an attorney. It is up to the claimant whether to hire legal counsel or not.

(2) If the claimant objects to the amount of the attorney's fee, suggest that the claimant consider hiring an attorney on an hourly basis solely to evaluate damages.

(3) If it is obvious that a claimant will need representation as, for example, in a complex claim requiring difficult decisions or a level of knowledge beyond the claimant's capability, it is best to suggest that the claimant hire an attorney. This straightforward approach avoids later charges that the office took unfair advantage of an unrepresented claimant.

(4) When the claim involves a minor or an incompetent and its settlement requires judicial approval, attorney representation is usually required. Inform the claimant that judicial approval of settlement will be required.

(5) When a claimant requests the name of an attorney, do not refer the claimant to a specific attorney or suggest any individual attorney's name. Legal assistance officers are prohibited from assisting clients with potential claims against the United States. Claims personnel may, however, refer persons eligible for legal assistance to the legal assistance office for advice about hiring a lawyer and for a standard referral list. Many legal assistance offices hand out such lists. If the claimant is not eligible for legal assistance, direct the claimant to a lawyer referral service.

(6) It is permissible for an ACO or CPO to give the claimant the following information:

(a) The FTCA expressly limits attorney fees to 20 percent of any administrative settlement. After suit is filed on a FTCA case, fees are limited to 25 percent of the settlement or judgment amount. AR 27-20 limits attorney fees to 20 percent under all other chapters. The claimant pays these fees from the settlement and is also responsible for court costs.

(b) The attorney may not charge a fee that exceeds the percentages mentioned in (a) above, but only the claimant and the attorney negotiate the attorney fee between them.

(c) If the legal assistance office has compiled an informational handout for claimants to use in selecting an attorney, it may give one to the claimant (whether or not entitled to legal assistance). Do not distribute any referral list or other document that contains the names of individual lawyers or law firms.

d. Negotiating. Much of the information on negotiating settlements set forth in paragraph 2-84 applies also to unrepresented claimants. If a meaningful negotiation has occurred, offer the full amount that the settlement authority has authorized. Do not offer this amount, however, unless you have established both rapport as well as an element of trust with the claimant. The Government should not be placed in a position where its offer represents full value, only to have the claimant hire an attorney who in turn demands an increase. If the claimant refuses to enter into meaningful negotiations, insist that the claimant hire an attorney. If the claimant refuses to enter into meaningful negotiations or to hire an attorney in a FTCA case in which the six-month period has expired, inform the claimant that suit may be brought as settlement is not possible. In an appealable case, make a final offer as described in paragraph 2-94.

e. Preparing memoranda for record. Claims personnel should prepare MFRs of the discussions held with the claimant about claims procedures and about the claimant's need to hire an attorney, providing a copy to the claimant. They should prepare a separate memorandum of their personal observations of the claimant for the file.

f. Interviewing claimants. Persons often visit the claims office to ask about filing forms. Interview these persons immediately to extract as much information as possible about the claim, especially the damages sustained. Developing a good relationship with the claimant at the outset facilitates both further investigation and ultimate settlement. Nothing stated in subparagraphs *b* through *d* above prohibits claims personnel from interviewing a claimant at the time of filing. Before conducting the interview, always ask if the potential claimant is represented by an attorney.

Section IX
Settlement Procedures

2–89. Settlement authority

a. General. "Settlement authority" is that authority required to

approve or deny a claim or make a final offer subject to any limitations imposed by AR 27-20 (see figure 2-47, extract from 10 USC 2731). Determining the proper authority empowered to take final action (denial or final offer) depends on the claims statute involved.

b. MCA or NGCA.

(1) *Approval authority.* The settlement authority is that person who exercises monetary jurisdiction over the claim that is the greatest in amount. When all actual or potential claims for $25,000 or less arising out of one incident may be settled by approval either in full or in part, that ACO or CPO has approval authority over all the claims. If only one actual or potential claim for an amount greater than $25,000 is anticipated, it must be coordinated with the appropriate AAO, based on the mirror file sent to USARCS. If each claim cannot be settled for $25,000 or less, forward them to USARCS for final action. The Commander, USARCS, may make a final offer for $100,000 or less, subject to approval by TAJAG, or for more than $100,000, subject to the Army General Counsel's approval. In the event of refusing USARCS' final offer, the claimant has the right to appeal.

(2) *Final action authority.* When all actual or potential claims arising out of one incident are, or will be, filed for $25,000 or less, an ACO (not a CPO) has the authority to deny (or make a final offer) on any claim, in a stated amount of $25,000 or less, subject to appeal to the next higher authority. Within the United States, that authority is USARCS. Outside the United States, that authority is held by a command claims service, if any. If there is no command claims service, it is USARCS. Otherwise, the Commander, USARCS, is the final action authority subject to appeal to higher authority.

c. The Federal Tort Claims Act.

(1) *Approval authority.* The settlement authority is that person who exercises monetary jurisdiction over the estimated settlement value of all actual or potential claims arising out of one incident. When each actual or potential claim arising out of one incident may be settled either in full or in part for no more than $25,000, and the value of all settled claims arising out of the incident does not exceed $50,000, that ACO or CPO has approval authority over all the claims. If the claims cannot be settled for those amounts, forward them to USARCS for final action.

(2) *Final action authority.* An ACO, but not a CPO, has authority to deny one or more claims in the stated amount of $25,000 or less, if the total amount of all actual or potential claims does not exceed, or is not anticipated to exceed, $50,000. All denials are subject to reconsideration by USARCS, which also exercises denial or final offer authority on claims for more than $25,000.

d. Non-Scope Claims Act (See AR 27-20, Chapter 5). There is no limit to the number of claims arising out of a single incident that may be paid. While a subrogee may not be paid, it must agree that the settlement is final and not subject to filing of suit under the FTCA or appeal under the MCA; that is, a subrogee must agree that the Army pays only the insurance deductible.

e. Army Maritime Claims Settlement Act.

(1) *Approval authority pertaining to both claims against and in favor of the United States.* An ACO may approve a claim in an amount of $25,000 or less. Chief Counsel, Division Counsel and District Counsel, USACE, may approve each claim in an amount of $100,000 or less. The Commander, USARCS, has identical authority. The Army General Counsel may approve a claim in any amount, provided that claims approved in excess of $500,000 are sent to Congress for a deficiency appropriation.

(2) *Final action authority.* If a claim is denied as non-meritorious or if the claimant refuses to accept a final offer, inform the claimant of the two-year filing requirement for both the Suits in Admiralty Act (SIA) and the Public Vessels Act (PVA). An ACO has authority to deny or make a final offer on claims in a stated amount up to $25,000; USACE authorities may deny or make a final offer on claims up to $100,000. If denial is recommended or a final offer is indicated, forward claims seeking more than those amounts to the Commander, USARCS, who has final action authority.

f. Foreign Claims Act.

(1) *Approval authority.* A one-member FCC, if a JA or claims attorney, may settle all claims arising out of one incident for not more than $15,000 each, regardless of the amounts claimed. If the one-member FCC is neither a JA nor a claims attorney, the settlement limit is $2,500. A three-member FCC may approve all claims arising out of a single incident in amounts up to $50,000 each, regardless of the amounts claimed, if the total amount of all claims settled does not exceed $100,000. If it does, the Commander's, USARCS, approval is required. If the amount of any individual settlement exceeds $100,000, it is subject to approval by the Army General Counsel.

(2) *Disapproval authority.* A one-member FCC, if a JA or a claims attorney, may disapprove all claims arising out of a single incident, if the stated amount of any one claim does not exceed $15, 000. A one-member FCC who is not a JA or claims attorney has no disapproval authority. When disapproval is recommended, the claim will be forwarded to the appointing authority. A three-member FCC may disapprove a claim in any amount subject to reconsideration by the Commander, USARCS, if the claim's stated amount exceeds $50,000.

g. How to identify the settlement authority.

(1) As emphasized in Sections I and III of this chapter, an ACO or a CPO must investigate all claims incidents fully and account for all claimants, actual and potential, as well as estimate an incident's total settlement value. Otherwise, it is not possible to identify the proper settlement authority. In any incident in which the amounts claimed or to be claimed exceed the ACO's or CPO's monetary jurisdiction, it is essential to notify the appropriate AAO and to establish a mirror file.

(2) Through such coordination and discussion with the AAO, the ACO or CPO may estimate settlement value. If the ACO or CPO wishes to begin settling, in properly delegated amounts, claims arising from one FTCA incident, the total value of which does not exceed $200,000, USARCS may grant permission to do so.

(3) If the total value of a FTCA incident exceeds $200,000, the ACO or CPO may obtain permission to settle from the DOJ through USARCS by submitting a claims memorandum of opinion. Figure 2-48 provides a sample memorandum, which must contain the name of all claimants, actual and potential, as well as each claim's estimated settlement value and the entire incident's settlement value.

(4) USARCS may settle MCA or NGCA claims in any amount subject to approval by higher authority, even though its authorized monetary limit is $25,000, the same as that of an ACO or a CPO. Close coordination with the appropriate AAO may result in a delegation similar to that made in certain FTCA claims.

(5) For individual claims, a higher authority, located either within or without USARCS, may approve an increase in an ACO or a CPO settlement authority beyond that granted by AR 27-20, based on the officer's experience, willingness, and ability. Any increase in the monetary settlement authority is subject to the same limitations and procedures that apply to a USARCS AAO.

2–90. Splitting property damage and personal injury claims

a. As a general rule, a claimant may be paid only once. For example, if a property damage claim is paid either in full or in part pursuant to a settlement, the claimant may not be paid later for hidden damages discovered after settlement or for loss of use. The claimant is bound by the statutory text of 28 USC 2672, the language appearing on both the signed FMS Form 197 and on the Payment Report. An exception to this rule is that a claim may be paid for property damage at one time and paid for personal injury subsequently. If the claimant files both claims at the same time, only one claim number will be assigned. If the claimant files them at different times, two claim numbers will be assigned. The later personal injury claim, however, must be filed within the two-year SOL.

b. Follow these criteria—

(1) Mark either the Payment Report or the FMS Form 197 with the language: "For Property Damage Only."

(2) On a claim in which the Government is clearly liable, the amount stated on the low estimate may be paid if it is determined to be correct. When liability or damages are in doubt, pay only that amount which reflects the Government's liability or the degree of comparative negligence.

(3) When the predicted value of all claims, actual and potential, arising from one incident exceeds $25,000, based on the ACO or CPO estimate, no claim may be paid absent discussion with and assent by the AAO. If the total value of a FTCA claim exceeds $200,000, USARCS must obtain the DOJ's written approval to proceed with a settlement.

(4) When the claimant is an active duty soldier whose personal injury claim is barred by the incident to service doctrine, the claimant must agree that any settlement is final and conclusive for both property damage and personal injury. Do not mark the file, "For Property Damage Only."

(5) Strictly define property damage and ensure that it does not include medical bills and lost wages, whether or not subrogated.

c. It is anticipated that claims personnel will apply the following procedure mostly in minor vehicle accidents. Furthermore, it is improper practice among some ACOs or CPOs to require a claimant or passengers in the claimant's vehicle (potential claimants) to waive any personal injury claim before receiving payment for property damage. Claims personnel should not solicit unnecessary waivers. The following are examples of property damage claims that should be paid promptly:

(1) A GOV rear-ends a privately-owned vehicle (POV) because the GOV operator was not paying attention (was negligent). Minor property damage results to the POV. Both drivers drive away and do not report any injuries at the scene. The ACO may proceed to pay without contacting the AAO.

(2) A GOV loses its brake power and hits the rear of a POV that is slowing down for heavy traffic on a highway. This action in turn causes a five-POV chain collision, involving ten persons in all. One person is taken to the hospital. All POVs remain driveable. The ACO should contact all ten persons for statements on the extent of their injuries to determine whether the incident's total predicted value will exceed $200,000. Personnel may use other means to make this determination, such as interviewing witnesses or police officers. The ACO must forward a mirror file to USARCS and then telephone the USARCS AAO about the matter.

(3) A GOV driver runs through a red light on a military installation and collides with a soldier's POV. The soldier files a claim for property damage and for his personal injuries and loss of consortium of the spouse passenger. Both injuries are minor and valued within the ACO's monetary authority. The soldier should be paid under the MCA for property damage but under the FTCA for loss of consortium only, provided that he agrees to relinquish his own personal injury claim. Any claim that the soldier brings under the FTCA for either personal injury or property damage is barred by the Feres doctrine; however, the MCA's statutory incident to service exclusion bars only a claim for personal injury, not for property damage. The spouse's personal injury claim should be paid under the FTCA, or outside the United States under the MCA, as there is no bar on the face of the claim. If the incident's total predicted value exceeds $25,000, the ACO should discuss it with the USARCS AAO.

(4) A GOV and a POV collide and all persons involved are seriously injured. The incident's total predicted value will exceed the ACO's monetary authority. The first claim is filed by the POV insurer, seeking compensation for property damage to the POV as well as lost earnings and medical bills of the injured driver and her passengers. Discussion between the ACO and AAO indicates that Government liability is greater than fifty percent and that the incident's total value is less than $200,000. The insurer, properly subrogated under State law for all three elements claimed, demands immediate payment. The ACO or CPO may pay the claim only for repair to the POV in an amount reflecting the Government's diminished liability. This policy's major purpose is to permit claimants to receive expeditious payment for POV damage before looking to their own collision coverage; however, these payments must compensate claimants for property damage, including hidden damages and loss of use.

2–91. Advance payments

Advance payments are permitted on meritorious claims brought pursuant to the MCA, NGCA, and FCA. An ACO, a CPO, or a FCC may pay an amount not to exceed $10,000 (see figure 2-49, extract from 10 USC 2736). They must request authority for amounts over $10,000 from USARCS. If already using the mirror file system, submit a written request for increased authority, outlining the immediate need—this should suffice. See AR 27-20, paragraph 2-32, for additional guidance. Otherwise, enclose a mirror file with the request. USARCS may approve $25,000 or less and TAJAG, $100, 000 or less. Figure 2-50 is a sample advance settlement agreement.

2–92. Action

An action is required on all settlements, whether approved, denied or the subject of a final offer, including those paid electronically. A sample memorandum for a settlement action is found at figure 2-51. A small claims certificate (DA Form 1668) constitutes an action when that procedure is used. Figure 2-52 shows a properly executed DA Form 1668.

2–93. Settlement agreements

a. A settlement agreement is required on all claims before payment may be made. Inform claimants seeking compensation for property damage that they may not file later personal injury claims and that signing the settlement agreement precludes further claims. This restriction does not apply to split payments. Use the Payment Report (figure 2-53) for all non-FTCA claims paid from Army funds and FMS Form 197 (figure 2-54a, b, c, and d) for all FTCA claims. A structured settlement also requires a special agreement (figure 2-55).

b. FMS Form 197 normally will serve as a settlement agreement. However, if multiple claimants or joint tortfeasors are involved, a special settlement agreement should be used (figure 2-56a, b, and c). A settlement agreement, which represents a meeting of the minds, must be unconditional. If ambiguous language indicates that the settlement is, or may be, conditional or contingent upon some event, inform the claimant that the settlement agreement is unacceptable and must be re-executed. If the claimant signs the agreement but indicates, orally or in writing, a belief that the settlement is improper or inadequate, contact the appropriate AAO to determine whether the settlement is valid.

c. Consider using a structured settlement in the case of a minor's claim. This instrument is a means of insuring that the minor, not the minor's parents or guardian, benefits over time. Merely establishing a trust account for the minor's benefit does not accomplish this goal, unless the United States is the owner of the account. Preserving the benefits so that they may be paid upon majority protects the minor's interests. Claims personnel must use a structured settlement broker to formulate this delayed or deferred payment plan and USARCS policy is to use only brokers representing at least five top-rated life insurance companies, in accordance with the Uniform Periodic Payment Act (UPPA). Consult the appropriate AAO for guidance and assistance before entering into any structured settlement negotiations, including those involving a minor. Figure 2-57 provides a sample settlement agreement for a minor's claim.

d. Court approval.

(1) The law of the State where the minor or incompetent resides or is located and, often, the amount of the settlement, determine whether judicial appointment of a guardian is needed to obtain a binding settlement. Where court approval is not needed for settlement below a certain amount, attach a copy of the applicable State law to the settlement agreement and have the parent or guardian sign the agreement.

(2) If a local court refuses to accept the case because the incident giving rise to the claim occurred in another State, seek judicial

approval from the State of the minor's or incompetent's domicile or permanent residence or the State where the incident occurred.

(3) If the incident occurred in a foreign country and, at settlement, the minor or incompetent is still located in that country, obtain settlement approval from a local foreign court.

(4) In many cases, the approving court will lack personal jurisdiction over the minor or incompetent. For example, many parties to settlement are military families who transfer stations frequently. A structured settlement minimizes the need for close court supervision over benefits to be paid upon reaching majority or future medical expenses administered by trustee.

(5) If guardianship is required, state this fact well in advance of settlement negotiations so that the claimant will be able to factor the cost of establishing guardianship into the evaluation of all damages. Do not require a guardian appointment until the claim is determined to be meritorious in an amount that requires it. A guardian is not required if local law authorizes or requires an administrator to present a minor's claim for death of a parent on behalf of that parent's estate. In such cases, a settlement agreement signed by the administrator will suffice if such action binds the minor under local law.

2–94. Notice of a final offer

a. Do not make a final offer until you have exhausted every effort to reach a settlement including, where practical, earnest face-to-face discussions with a claimant or legal representative. The administrative claims process is designed to avoid litigation or appeals and their attendant costs. A compromise usually obtains better results than a lawsuit or a protracted appeal. Do not rely on an AUSA to do a better job than claims personnel can do. If a true compromise cannot be reached, however, claims personnel should try to have claimant define and limit the issues to be decided at suit or in an administrative appeal.

b. If the claimant refuses to be interviewed, submit to an IME or furnish essential documents such as medical records or wage and tax information, mail the claimant a request listing what actions are necessary and why. If this fails and the claimant still refuses to cooperate, make a final offer based on what the file already contains. The offer notice should refer to all earlier requests for information and explain why it is limited.

c. Sample formats for final offer notices are shown at figures 2-58 and 2-59. Note that a FTCA notice must inform claimant of the rights both to file suit and to request reconsideration. On the other hand, notices for MCA, NGCA or maritime claims must contain an appeal paragraph.

2–95. Denial notice

a. The guidance set forth at subparagraphs 2-94*a* and *b* also applies to a denial. Before denying a claim solely on the basis of failure to prove liability or damages, inform claimant in writing of these preliminary findings, providing additional opportunity to strengthen the showing. Sample denial notices are shown at figures 2-60 and 2-61a and b. These notices must describe the claimant's further remedies and they should state the factual grounds for denying the claim, particularly if the claimant has the right to appeal. These procedures will be used as well for abandoned and withdrawn claims. For detailed instructions see paragraph 13-3*f*(2).

b. A lawsuit for professional negligence may be filed only if supported by an expert opinion, except in the narrow circumstances where the doctrine of res ipsa loquitur applies. If the Army's expert review indicates there was no negligence, request the claimant in writing to furnish an expert opinion. Provide claimant a brief summary of the Army's position, without identifying the Army's expert. For example, "Our review indicates as follows..." The claimant's refusal to furnish an expert opinion in a FTCA claim is grounds for denial, in accordance with Federal Rule of Civil Procedure 11, or by regulation in a MCA or FCA claim. AR 27-20, paragraph 44*a*, states that failure to provide an expert opinion is a basis for denial. The same rationale applies to a claimant's refusal to submit to an interview or an IME. Include this information in the denial notice.

c. A denial letter should never contain any statements to the effect that the Army was negligent but the claimant's negligence was greater. This constitutes an admission against interest which is admissible in court. It is better to state that the claimant caused the injury.

2–96. The "Parker" denial

a. If a claimant files suit under the FTCA before the agency takes final administrative action, DOJ policy requires the issuance of what is known as a "Parker" denial. See *Parker v. United States*, 935 F.2d 176 (9th Cir. 1991). Its purpose is to prevent refiling of an administrative claim if the lawsuit is dismissed without prejudice. Figure 2-62 shows the format used. An ACO or USARCS issues such a denial notice only at the request of the trial attorney (usually an AUSA assigned to the case). The denial notice does not contain the usual language affording opportunity to request reconsideration.

b. If a lawsuit is filed on only one claim while its companion claims are pending in the administrative phase, issue a "Parker" denial on all the claims, thereby forcing them all into suit. However, if actual negotiations are ongoing in a companion claim, consult the trial attorney about whether to proceed to administrative settlement, for example, on a claim in which the Army's liability is obvious.

c. Where a claimant files suit prematurely, that is, before the requisite six-month period expires, discuss the matter with the claimant, with a view toward persuading the claimant to withdraw the suit. If the claimant refuses to withdraw suit, a "Parker" denial is not in order. Inform the trial attorney, furnishing copies of necessary documents so that the attorney can obtain a dismissal. Retain the original file for further processing.

d. Sometimes claimants file suit because they mistakenly interpret the FTCA to require doing so no later than two years from the date the claim accrues. If the claim is meritorious, request the claimant to withdraw suit either immediately or as a condition of any subsequent settlement. If the claimant refuses, issue a "Parker" denial.

e. When suit is filed, route all communications with the trial attorney through a representative of the Army Litigation Center.

2–97. Mailing procedure

a. Mail a final offer or denial notice by certified mail, return receipt requested. By memorandum 1 June 1987, TJAG now permits use of special mail services.

b. Place the signed USPS return card in the claim file as proof of the date of mailing and of receipt. On a FTCA claim, the date the notice was mailed constitutes the date that the six-month period for filing suit begins. On a MCA claim, the date of receipt constitutes the date the appeal period begins. When mailing to a foreign mail service, claims personnel may attach a statement for the claimant to enter the date of receipt along with a return envelope. If the receipt is lost or not returned, retain a copy of the mail log.

c. Keep all correspondence returned as undeliverable and make every effort to determine the claimant's new address. If these efforts fail, attempt a second mailing to the address entered on the SF Form 95. If this is returned, prepare a memorandum detailing the efforts to notify the claimant of the denial or final offer. In a MCA claim, the appeal period expires 60 days after the date the second letter is sent, unless there is evidence that the claimant received one of the letters. If the claimant receives the second letter, the appeal period is computed from the date of its receipt. In a FTCA claim, the six-month period begins on the date the second letter is mailed.

2–98. Appeal or reconsideration

a. Upon receipt, claims personnel should acknowledge an appeal or request for reconsideration. Under the FTCA, a request for reconsideration reinvokes the six-month administrative period during which suit may not be filed, 28 CFR 14.9(b). The acknowledgment letter, shown at figure 2-63, should notify the claimant about this restriction.

b. The "appeal or reconsideration" paragraph in all final offers or denial letters directs the claimant to send the appeal or reconsideration through the settlement authority who took action. This ensures that all matters set forth in the appeal or request for reconsideration

are fully investigated. If the investigation indicates that there should be a different outcome on the claim, such as approval or a higher offer, the settlement authority may take such action subject to any statutory or regulatory limitations. If a different action is not warranted, the settlement authority will prepare a supplemental action stating the reason and forward the claim with the appropriate recommendation to the higher settlement authority.

c. The non-FTCA claims statutes provide only an administrative remedy. The original settlement authority may, even in the absence of an appeal or request for reconsideration, correct and modify the original action even if a claim has been approved for payment. A successor settlement authority is limited to taking corrective action on the basis of fraud, substantial new evidence, errors in calculation or mistake of law (misinterpretation).

d. The FTCA settlement authority's limits upon considering an appeal or request for reconsideration are set forth in AR 27-20, paragraph 4-7. However, the provisions of the FTCA limit the original or successor settlement authority in that an award, compromise, or settlement is final and conclusive and constitutes a complete release.

2–99. Retaining the file

a. When a claim is denied, the ACO or CPO should retain the claim file until at least one month after the six month period for filing suit, or the 60-day appeal period, has expired.

b. When a claim is paid, the file should be retained until a comeback copy of the payment report or other proof of payment is received.

c. Because a file cannot be retired until the reason for its disposition is entered into the database, proper entries are required prior to forwarding the file for retirement.

d. A closed file should be retained until final action is taken on any companion claim arising out of the same incident.

e. When a file is forwarded to the USARCS as a matter beyond the local monetary jurisdiction, consider retaining a duplicate file. If the mirror file system is used, only the originals or essential documents, such as SF Form 95, proof of authority to file, (and attachments) need to be forwarded upon transfer. Thereby, a complete file is available at the ACO or CPO if suit or appeal is filed.

Title 10 Section 2731. Definition

In this Chapter "settle" means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

Figure 2-47. Act Concerning Definition of Word "settle" under chapter 163 of Title 10 USC

U.S. ARMY CLAIMS SERVICE MEMORANDUM

TO: Mr. Jeffery Axelrad, Director
Torts Branch, Civil Division
Department of Justice

ATTN: Mr. Lawrence A. Klinger
Room 8098 North, National Place
1331 Pennsylvania Avenue, NW
Washington, DC 20004

FROM: U.S. Army Claims Service

SUBJECT: Administrative Claims of John Doe, Jane Claimant, Sam Smith, and Paul Rider, 96-C01-T001, T002, T003, and T004.

1. PURPOSE: To obtain approval of the proposed compromise settlement in the total amount of $12,000 for the claim of Jane Claimant under the Federal Tort Claims Act (FTCA), as the total value of claims arising from the same incident will exceed $200,000, 28 USC Section 2672 and 28 C.F.R. Section 14.6(a).

2. CLAIMANTS, POTENTIAL CLAIMANTS, AND COUNSEL:

a. Mr. John Doe, school bus driver, (DOB: April 30, 1963), of Fort Polk, Louisiana. He is represented by Mr. Tom Sharp, Attorney at Law, of New Orleans, Louisiana.

b. Ms. Jane Claimant, school bus passenger (DOB: September 30, 1916), of New York, New York. She is represented by William B. Samuel, Attorney at Law, Washington, D.C.

c. Mr. Sam Smith, a passenger on the school bus (DOB: June 1, 1982), of New Orleans, Louisiana. He is also represented by William B. Samuel.

d. Mr. Paul Rider, a passenger on the school bus (DOB: October 13, 1984), of New Orleans, Louisiana, He is also represented by William B. Samuel.

e. Mary Turtle has not yet presented a valid written claim. The incomplete claim form received on March 16, 1996, is attached at Tab E.

3. CLAIMS:

a. On March 17, 1996, John Doe presented an administrative claim on behalf of his minor son, Jimmy Doe, in the amount of $150,000 for personal injuries allegedly sustained by Jimmy Doe in a bus accident involving Specialist (SPC) Joe Airborne of the Louisiana National Guard, near New Orleans, Louisiana, on December 25, 1995. Tab A.

b. On February 19, 1996, Sam Smith presented an administrative claim in the amount of $400,000 for personal injuries allegedly sustained in the same bus accident. Tab B.

c. On March 1, 1996, Jane Claimant presented an administrative claim in the amount of $75,000 for personal injuries allegedly sustained in the same bus accident. Tab C.

d. On February 2, 1996, Paul Rider presented an administrative claim in the amount of $400,000 for personal injuries allegedly sustained in the same bus accident. Tab D.

4. JURISDICTION: All claims to date have been presented timely, and any deficiencies, such as lack of attorney representation agreements, have been corrected. All claims fall under the FTCA, because at the time of the accident, SPC Airborne was acting within the scope of

Figure 2-48. Sample—claims memorandum of opinion for the Department of Justice—Continued

employment as a soldier in the Louisiana National Guard on active duty for special work, thereby in Federal status pursuant to 32 USC 505. Tab F.

5. FACTS:

(Here set forth the facts surrounding the incident giving rise to the claims)

6. LIABILITY:

a. Applicable Law.

(1) General. Pursuant to 28 USC Sections 1346(b) and 2672, the Government's liability is determined in accordance with the law where the act or omission occurred. Section 2674 of 28 USC provides that the Government is liable for its torts and the torts of its agents to the same extent as a private person under the identical circumstances. Therefore, plaintiffs burden of proof is defined by Laclede Steel co. v. Silas Mason Co., 67 F. Supp. 751 (W.D. La. 1946) in that plaintiff must prove that he was injured as a result of the negligence of a Government employee, that the act of the employee was within the scope of employment, and that the Government employee's act or omission is the proximate cause of plaintiff's damages.

(2) State Law. Louisiana Revised Statutes, Section 32-58 (Tab K), provides in pertinent part that, "It shall be unlawful for the driver of any vehicle to negligently fail to maintain reasonable and proper control of said vehicle while operating the vehicle on the public roads of this state."

b. Discussion. Specialist Airborne was a Government employee, apparently acting within the course and scope of his duties at the time of the accident. By driving while he was tired enough to fall asleep, SPC Airborne failed to maintain reasonable and proper control of his vehicle. It was his negligence that was the direct and proximate cause of the accident, and that negligence was the proximate cause of the claimants' injuries.

c. Conclusion. The facts of the case do not allow a defense, and there is no indication of comparative negligence on the part of any of the claimants. Liability on the part of SPC Airborne, and thereby the Government, is clear.

7. DAMAGES:

a. Applicable law

b. Jane Claimant:

(1) Condition Prior to the Accident.

(2) Nature of the Injuries.

(3) Present Condition.

(4) Special Damages.

(a) Past Medical Expenses. Jane Claimant has as of the date of this memorandum, submitted medical bills totaling $2,500.00

(b) Future Medical Expenses. None alleged or supported.

(e;) Property Damage. None.

(d) Lost Earnings. None. As a student, Jane had only held a part-time summer job the summer of 1993. She was not working at the time of the accident.

(5) General Damages.

(a) Pain and Suffering.

Figure 2-48. Sample—claims memorandum of opinion for the Department of Justice—Continued

(b) Loss of Enjoyment of Life. None alleged or supported.

(6) Summary.

Past and Future Medical Expenses	$ 2,500.00
Property Loss	0
Lost Earnings	0
Pain and Suffering (alleged)	$ 12,500.00
Total	$ 15,000.00

c. John Doe. Mr. John Doe has verbally stated that he wants $40,000 for his 1973 school bus (worth approximately $1,500), as well as compensation for his personal injuries; medical expenses as of February 15, 1996, were $34,606.

d. Sam Smith. Mr. Sam Smith has presented a claim for $400,000 in personal injuries, but his attorney plans to amend the claim "back into the realm of reality." His total medical expenses as of January 28, 1996, were $24,542.90.

e. Paul Rider. Mr. Paul Rider has presented a claim for $400,000 in personal injuries, but his attorney plans to amend the claim "back into the realm of reality." His total medical expenses as of January 6, 1996, were $9,262.75.

f. Mary Turtle. Ms. Mary Turtle has not yet presented a proper claim form, although she did send a form claiming personal injuries of an unknown amount. No medical information has been submitted yet. However, she claimed to have hit her head and pulled a hip muscle and has had at least two visits to the emergency room.

8. PROPOSED SETTLEMENT: Jane Claimant and her attorney have agreed to settle her claim for $12,000, subject to Department of Justice approval. Tab L. John Doe's attorney has also expressed a willingness to settle. The attorney for the Smith family is also being very reasonable in this case, and he is working to facilitate what is expected to be a fair settlement. No understanding has been reached with the attorneys and claimants other than Jane Claimant, but it is anticipated that they would all settle at or near the Army's authority. All parties appear to know each other, and are following each other's claims with interest.

9, NEGOTIATION HISTORY: Claim originally sought $75,000 in damages. After a series of discussions on general damages and related issues, an offer of $10,000 was made on June 17, 1996. By letter dated June 28, 1996, this offer was rejected and a counter offer of $35,000 was made. On July 9, 1996, claimant agreed to the compromise settlement.

10. RECOMMENDATION: I recommend that the U.S. Army Claims Service (USARCS) be allowed to settle the claim of Jane Claimant for $12,000, and that permission be granted to settle the remaining claims and any future claims arising from this incident for less than $200,000 each. If settlements cannot be negotiated within those parameters, then further approval of the Department of Justice will be requested. Further recommend that a letter authorizing such settlements be forwarded to USARCS.

Joseph H. Rouse
Deputy Chief, Tort Claims Division

P. A. Sharp
Captain, U.S. Army
Claims Attorney

JACS-Z

I have carefully reviewed the claims of John Doe, Jane Claimant, Sam Smith, and Paul Rider, as well as the potential claim of Mary Turtle, and the memorandum by Mr. Joseph H. Rouse and Captain P. A. Sharp, recommending settlement of the claims in an amount not to exceed $200,000 each. Inasmuch as the decision to approve the claims is a reasonable one under the

Figure 2-48. Sample—claims memorandum of opinion for the Department of Justice—Continued

circumstances, I adopt the recommendation as my own and urge its acceptance as being in the best interest of the United States Government.

Francis R. Moulin
Colonel, U.S. Army
Acting Commanding Officer

Figure 2-48. Sample—claims memorandum of opinion for the Department of Justice

10 USC 2736. Property loss; personal injury or death; advance payment

(a) (1) In the case of a person who is injured or killed, or whose property is damaged or lost, under circumstances for which the Secretary of a military department is authorized by law to allow a claim, the Secretary of the military department concerned may make a payment to or for the person, or the legal representatives of the person, in advance of the submission of such a claim or, if such a claim is submitted, in advance of the final settlement of the claim. The amount of such a payment may not exceed $100,000.

(2) Payments under this subsection are limited to payments which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.

(3) The Secretary of a military department may delegate the authority to make payments under this subsection to the Judge Advocate General of an armed force under the jurisdiction of the Secretary. The Secretary may delegate such authority to any other officer or employee under the jurisdiction of the Secretary, but only with respect to the payment of amounts of $25,000 or less.

(4) Payments under this subsection shall be made under regulations prescribed by the Secretary of the military department concerned.

(b) Any amount paid under subsection (a) shall be deducted from any amount that may be allowed under any other provision of law to the person, or his legal representative, for injury, death, damage, or loss attributable to the accident concerned.

(c) So far as practicable, regulations prescribed under this section shall be uniform for the military departments.

(d) Payment of an amount under subsection (a) is not an admission by the United States of liability for the accident concerned.

Figure 2-49. Advance Payment of Claims Act, extract from 10 USC 2736

ADVANCE PAYMENT

ACCEPTANCE AGREEMENT

DATE OF INCIDENT: 20 January 1997

PLACE OF TREATMENT: Fort George G. Meade, Maryland

This Agreement is made between **THE UNITED STATES OF AMERICA** as **Offeror** (hereinafter the "UNITED STATES"), and William Pink, hereinafter the **"CLAIMANT").**

ARTICLE I

STIPULATION

It is hereby stipulated by and between the CLAIMANT and the UNITED STATES, as follows:

1. The UNITED STATES hereby agrees to **advance** the cash sum of **Five Thousand Dollars ($5, 000)** in accordance with the provisions of Title 10, United States Code, Section 2736 as implemented by Chapter 2, Army Regulation 27-20, paragraph 2-34a, and the plan set forth in this document.

2. The CLAIMANT hereby accepts such plan in full knowledge and agreement that this cash sum of **Five Thousand Dollars ($5,000)** is to be deducted from the final settlement of all claims, demands, rights, liens, subrogation interest, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, including the death of William Pink, damage to property and the consequences thereof, resulting, and to result, from the same subject matter that gave rise to the above-captioned claim, including any claims for wrongful death, for which CLAIMANT or his heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the UNITED STATES, its agents, servants, and employees.

ARTICLE II

A cash sum of **Five Thousand Dollars ($5,000)** will be paid as an **advance settlement amount** to CLAIMANT William Pink, to permit the payment of expenses which arise incident to the treatment of the CLAIMANT for the condition on which his claim is based. The CLAIMANT agrees that this **advance payment** is not intended nor will be used for payment of attorney fees and costs.

ARTICLE III

The CLAIMANT agrees that the payment described herein will be deducted from any award made in final settlement of these claims, and that this **advance payment** does not constitute an admission by the UNITED STATES of liability for the incident referred to above.

ARTICLE IV

This **Advance Payment Acceptance Agreement** is subject to approval of the Commander, United States Army Claims Service, Office of The Judge Advocate General, Fort Meade, Maryland, and will be incorporated as an exhibit to the final settlement agreement between the parties described herein.

Figure 2-50. Sample—advance settlement agreement—Continued

WHEREFORE, the parties accept the terms of this **Advance Payment Acceptance Agreement** as of the dates written below.

William Pink CLAIMANT	DATE
Amy Pink Spouse of CLAIMANT	DATE
UNITED STATES OF AMERICA	
/s/ Joseph H. Rouse By its herein duly authorized attorney of the United States Army Claims Service	DATE

Figure 2-50. Sample—advance settlement agreement

(Letterhead)

(Claims Office Symbol) (Date)

MEMORANDUM FOR RECORD

SUBJECT: Settlement Memorandum; Claim of John Doe, 96-C01-T001

1. AUTHORITY: Federal Tort Claims Act (FTCA), 28 USC, Sections 1346(b), 2671-2680, AR 27-20, Chapter 4, para. 4-12(a).

2. FACTS:

a. Claimant and Counsel. John Doe, DOB: (1/28/56), is single, and resides in New York, New York. Claimant is represented by attorney John Law, of New York, New York.

b. Nature of Claim. The claim of John Doe was filed on January 2, 1996, in the amount of $100,000, for personal injuries suffered as a result of having been struck in a crosswalk by a U.S. Army vehicle.

c. Incident. At 6:50 PM, October 20, 1995, Mr. Doe was walking across 5th Avenue, New York, New York, with the "walk" signal in his favor when he was struck by a 5-ton Army vehicle driven by Mr. Raymond Smith, a U.S. Army employee. Mr. Doe suffered apparent contusions and abrasions and was transported by ambulance to the emergency room at Quick Care Medical Hospital where he was treated and released for follow up treatment with his family physician.

3. LIABILITY: The liability of the United States is sufficiently clear. The investigation revealed that at the time of the accident Mr. Smith had reached down onto the truck floor to retrieve his street map instructions and when he looked up he saw the intersection signal light was "red." He did not see Mr. Doe prior to impact in the crosswalk. On 30 November 1995, Mr. Smith was found guilty of failure to yield the right-of-way to Mr. Doe. Mr. Smith’s failure to yield the right-of-way was the proximate cause of Mr. Doe’s injuries. Mr. Smith was acting within scope of employment as a government employee and the United States is responsible under the Federal Tort Claims act.

4. DAMAGES:

a. Subsequent treatment and condition: As a result of having been stuck by the Army vehicle, Mr. John Doe incurred multiple contusions and abrasions, along with lower back sprain. For two months following the accident, Mr. John Doe suffered pain and suffering and was followed with analgesics and intensive physical therapy including ultrasound and massage. Mr. John Doe has apparently recovered completely.

b. Mr. Doe returned to work as a Computer System Administrator, having missed 85 hours of work, at a substantiated net wage loss of $2,250. Substantiated medical cost was $8, 245.00.

5. SETTLEMENT: The claim is approved in the amount of $25,000.

JOHN IRGENS
Captain, U.S. Army
Claims Judge Advocate

List Enclosures

Figure 2-51. Sample—memorandum of settlement action (under $200,000)

SMALL CLAIMS CERTIFICATE

For use of this form, see AR 27-20; the proponent agency is the Office of the Judge Advocate General.

SUBMIT IN TRIPLICATE

ORGANIZATION OF INVESTIGATOR	FILE NUMBER	DATE
Headquarters, Fort Knox, Kentucky	96-201-T999	20 January 1996

NAME OF CLAIMANT	ADDRESS (Include ZIP Code)
John Doe	Quarters No. 27 Fort Knox, Kentucky

SECTION I - ACTION TAKEN BY INVESTIGATOR

I have investigated the incident described in the claim as follows:

ITEM	YES	NO	ITEM	YES	NO
PROPERTY DAMAGE EXAMINED	X		DOCUMENTARY EVIDENCE EXAMINED	X	
SCENE OF INCIDENT VISITED	X		CLAIMANT INTERVIEWED	X	

WITNESSES INTERVIEWED

NAME	METHOD OF INTERVIEW (Personal, telephone, or correspondence)	NAME	METHOD OF INTERVIEW (Personal, telephone, or correspondence)
PFC George Black Driver of Govt Vehicle	Personal	Tom White Ace Garage	Telephone
Mary Doe Driver of POV	Telephone		

COMMENTS OF INVESTIGATOR:

Intersection collision at 2d and Y Streets, Fort Alpha, Ky. Government driver failed to observe stop sign.

I find that the evidence substantiates the claim and that the amount claimed or agreed upon constitutes fair compensation for the damage incurred by claimant. I recommend payment of $ 310.00 under Chapter 3 [ ], 4 [X], 5 [ ], 6 [ ], 7 [ ], 10 [ ], 12 [ ], AR 27-20.

TYPED NAME, GRADE AND CAPACITY OF INVESTIGATOR	SIGNATURE OF INVESTIGATOR
JOHN J. JONES SGT, Claims Investigator	/s/ John J. Jones

SECTION II - ADJUDICATION OF CLAIM

Accident was solely the fault of government driver who was in scope of duty at the time of the accident.

After due consideration, I have determined that this claim is meritorious and is cognizable under Chapter 4 , AR 27-20; the claimant is a proper claimant; and an award of $ 310.00 is reasonably substantiated.

TYPED NAME, GRADE AND CAPACITY OF OFFICER	SIGNATURE OF APPROVING OR SETTLEMENT AUTHORITY
S. SMITH, LTC, JAGC Claims Judge Advocate	/s/ S. Smith

DA FORM 1 JUN 71 1668 REPLACES DA FORM 1668, 1 MAY 68, WHICH IS OBSOLETE.

★ U.S. G.P.O. 1971-769269/144

Figure 2-52. Completed DA Form 1668 (Small Claims certificate)

EXAMPLE OF A PAYMENT REPORT

TO: D&AO, DSSN: 8724 Date: 15 September 1996

Payment Data:

(1) Submitting Agency/Office: U.S. Army Claims Service, Office of The Judge Advocate General

(2) **Office Code:** C01

(3) Agency/Office Mailing Address: Building 4411, Llewellyn Avenue, Fort George G. Meade, Maryland 20755-5360

(4) Date Claim Filed: 17 March 1996

(5) **Claim Number(s)** 96-C01-001

(6) **Amount Claimed:** $7,950

(7) **Fund Cite:** 0203 [FTCA] 0205 [MCA] 0208 [Nonscope Claims] 0204 [Foreign Claims]

(8) **Payee(s):** John Jones

(9) **Address:** 1 Insurance Lane, Annuitant, New Jersey 12345

(10) SSN: 000-00-0000

(11) **Payment Amount:** $2,495.00

(12) Type Payment: PF

B. **ACCEPTANCE BY CLAIMANT** (Note: This form should not be signed by the claimant if another release is signed by the claimant is attached.)

I, the claimant, do hereby accept the within -stated award, compromise, or settlement as final and conclusive on my heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me, my heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising now or in the future from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries (including wrongful death), damages to property, breaches of contract or law, and any other acts or omissions, and the consequences therefore resulting, and to result, from the same subject matter that gave rise to the claim for which I or my heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employee(s) of the Government whose acts or omissions gave rise to the claim by reason of the same subject matter. I further agree to reimburse, indemnify and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim(s) by reason of the same subject matter.

Date: 12 September, 1995 *\/s/ John Jones* (Claimant)

C. Agency Certifying Officer:

Pursuant to authority vested in me, I certify that this Payment Report is correct and proper for payment.

15 September 1995	David Dalition	CPT, Claims Judge Advocate
(Date)	(Authorized Certifying Officer)	Title

Date Payment Recorded in Claim Record: 20 September 1995

A separate payment report must be completed for each claimant

Figure 2-53. Sample payment report

FMS Form 197
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

VOUCHER FOR PAYMENT

WHERE A SETTLEMENT AGREEMENT HAS *NOT* BEEN EXECUTED AND ATTACHED OR WHERE A FINAL JUDGMENT IS *NOT* ATTACHED

Voucher No._____
Schedule No._____
Claim No. 97-C01-T001

A. PAYMENT DATA: *(PLEASE TYPE OR PRINT CLEARLY)*

(1) Submitting Agency/Office: U.S. Army Claims Service

(2) Agency/Office Mailing Address: 4411 Llewellyn Avenue, Fort George G Meade, MD 20755-5360

(3) Agency/Office Contact Person and Telephone No.: Ms. Buelah Rowley, Operations, (301) 677-7009, ext. 215

(4) Payee(s): (a) Mr. John Jones
(b)_____

(5) Taxpayer Identification No., SSN, or EIN of **each Payee**: (a) 000-00-0000
(b)_____

PAID BY
(For use by Treasury only.)

(6) Total Amount: Two Hundred Thousand Dollars $ 200,000.00

(7) Electronic Funds Transfer (EFT) Information:

(a) Payee Account Name:_____
(b) ABA Bank # (9 digits):_____
(c) Payee Account #:_____
(d) Checking:_____ Savings:_____

(d) Bank Name and Address:_____

(8) Briefly Identify Claim:
Personal injury arising from medical care provided at WRAMC, Washington, D.C., on 17 August 1996

B. ACCEPTANCE BY CLAIMANT(S). *(NOTE: For use ONLY where final judgment has NOT been entered or where claimant has NOT signed another agreement. Use FMS Form 197A where final judgment has been entered or another agreement has been signed by the claimant(s).)*

I, (We), the claimant(s) and beneficiaries, do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), on my (our) heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me (us), my (our) heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising now or in the future from, and by reason of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries (including wrongful death), damages to property, breaches of contract or law, and any other acts or omissions, and the consequences thereof resulting, and to result, from the same subject matter that gave rise to the claim for which I (we) or my (our) heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employee(s) of the Government whose acts or omissions gave rise to the claim by reason of the same subject matter. I (We) further agree to reimburse, indemnify and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim by reason of the same subject matter.

(SIGN ORIGINAL ONLY)

Date: 15 August, 1997 /s/ John Jones

(Claimant(s) sign above)

C. AGENCY APPROVING OFFICIAL: This claim has been fully examined in accordance with Statutory Cite 28 USC 2672 and approved in the amount of $ 200,000.00

Signed: /s/ Joseph H. Rouse

Title: Deputy Chief, Tort Claims Division, USARCS

Date: 30 August 1997

D. OTHER ACCOUNTING INFORMATION AND CERTIFICATIONS: (For use by Treasury only.)

FMS Form 197
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-54A. Completed FMS Form 197 (Voucher for payment), settlement agreement not executed

FMS Form 197 and FMS Form 197A: Voucher for Payment

Additional Instructions

1. Item A.(2): Provide the mailing address for the United States agency or office that should receive the check, which will serve as the confirmation of payment from the Judgment Fund, when payment by check is selected instead of payment by Electronic Funds Transfer (EFT).

2. Item A.(4): Provide this required information for all payments, including electronic transfer and checks.

3. Item A.(7): Provide information to enable payment by means of Electronic Funds Transfer (EFT). This information should be provided unless payment is to be made by check. *Note:* 31 C.F.R. 206.4 directs agencies to make payments by EFT whenever cost-effective, practical, and consistent with the law, and adds that the Treasury Department may require agencies to justify the use of non-EFT payment mechanisms.

4. Item A.(7)(a): The name on the payee's bank account must match the name of the payee as designated in the governing order or settlement agreement.

5. Item A.(7)(d): This information must be provided.

6. Item A.(8) seeks only enough information to enable the requested payment to be associated in government records with the specific claim at issue. For example:

   "Personal injury claims only from traffic accident of 12-19-94 at 7th & Independence Avenue, N.W., with Park Service vehicle driven by Paul Jones." or

   "Breach of contract claims under the Contract Disputes Act on DOD contract 95-12456."

7. [FMS Form 197 only]: Item B: This part need not be completed when another separate, legally sufficient settlement agreement has been signed by the claimant and a copy of it is submitted with the payment request.

Privacy Act Statement

This information is required in accordance with 31 U.S.C. 1304 and 5 U.S.C. 552. The data you furnish will be used to effect certification of your claim. The information may be shared with other branches within FMS for the purpose of certifying your claim. Failure to provide this information may result in your claim being returned to you.

Figure 2-54B. Instructions for FMS 197

FMS Form 197A
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

VOUCHER FOR PAYMENT

Voucher No. _____

WHERE A SETTLEMENT AGREEMENT HAS BEEN EXECUTED

Schedule No. _____

AND ATTACHED OR WHERE A FINAL JUDGMENT IS ATTACHED

Claim No. 96-C01-T001

A. PAYMENT DATA: *(PLEASE TYPE OR PRINT CLEARLY)*

(1) Submitting Agency/Office: US Army Claims Service

(2) Agency/Office Mailing Address: 4411 Llewellyn Avenue, Fort Meade, MD 20755-5360

(3) Agency/Office Contact Person and Telephone No.: Ms. Buelah Rowley (301) 677-7009 ext 215

(4) Payee(s): (a) Hammer & Gavel, Inc., fbo Joe Schmoe

(b) _____

(5) Taxpayer Identification No., SSN, or EIN of **each Payee**: (a) 00-0000000

(b) _____

(6) Total Amount: Two Hundred Thousand Dollars $200,000.00

PAID BY
(For use by Treasury only.)

(7) Electronic Funds Transfer (EFT) Information:

(a) Payee Account Name: Hammer & Gavel, Inc.

(b) ABA Bank # (9 digits): 000000000

(c) Payee Account #: 1234567

(d) Checking: X Savings: _____

(d) Bank Name and Address: Crooked Bank
123 Bent Lane
Trenton, New Jersey 01234-5000

(8) Briefly Identify Claim:

Medical malpractice during surgery, resulting in permanent injuries to Joe Schmoe, on 1 May 93, at Faux Pas Army Community Hospital, Fort Wannabe, Maryland.

C. AGENCY APPROVING OFFICIAL: This claim has been fully examined in accordance with Statutory Cite _____ 28 USC 2672 and approved in the amount of $ 200,000.00

Signed: */s/ Joseph H. Rouse*

Title: Deputy Chief, Tort Claims Division

Date: 30 August 1997

D. OTHER ACCOUNTING INFORMATION AND CERTIFICATIONS: (For use by Treasury only.)

FMS Form 197A
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-54C. FMS Form 197a (Voucher for payment), settlement agreement executed and attached

FMS Form 197A
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

VOUCHER FOR PAYMENT

WHERE A SETTLEMENT AGREEMENT HAS BEEN EXECUTED
AND ATTACHED OR WHERE A FINAL JUDGMENT IS ATTACHED

Voucher No. _____
Schedule No. _____
Claim No. 96-C01-T001

A. PAYMENT DATA: *(PLEASE TYPE OR PRINT CLEARLY)*

(1) Submitting Agency/Office: U.S. Army Claims Service

(2) Agency/Office Mailing Address: 4411 Llewellyn Avenue, Fort Meade, MD 20755-5360

(3) Agency/Office Contact Person and Telephone No.: Ms. Buelah Rowley, (301) 677-7009 ext 215

(4) Payee(s): (a) Ms. Susan Tort, Attorney at Law

(b) _____

(5) Taxpayer Identification No., SSN, or EIN of **each Payee**: (a) 00-0000

(b) _____

PAID BY
(For use by Treasury only.)

(6) Total Amount: Two Thousand Dollars $ 2,000.00

(7) Electronic Funds Transfer (EFT) Information:

(a) Payee Account Name: _____ (e) Bank Name and Address: _____

(b) ABA Bank # (9 digits): _____

(c) Payee Account #: _____

(d) Checking: _____ Savings: _____

(8) Briefly Identify Claim:

*** ATTORNEY FEES ONLY**

C. AGENCY APPROVING OFFICIAL: This claim has been fully examined in accordance with Statutory Cite _____

28 USC 2672 and approved in the amount of $ 2,000.00

Signed: */s/ Joseph H. Rouse*

Title: Deputy Chief, Tort Claims Division, USARCS

Date: 30 August 1997

D. OTHER ACCOUNTING INFORMATION AND CERTIFICATIONS: **(For use by Treasury only)**

FMS Form 197A
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-54D. Completed FMS Form 197 (Voucher for payment), settlement agreement executed

FMS Form 197A
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

VOUCHER FOR PAYMENT

WHERE A SETTLEMENT AGREEMENT HAS BEEN EXECUTED
AND ATTACHED OR WHERE A FINAL JUDGMENT IS ATTACHED

Voucher No. _____
Schedule No. _____
Claim No. 96-C01-T001

A. PAYMENT DATA: *(PLEASE TYPE OR PRINT CLEARLY)*

(1) Submitting Agency/Office: U.S. Army Claims Service

(2) Agency/Office Mailing Address: 4411 Llewellyn Avenue, Fort Meade, MD 20755-5360

(3) Agency/Office Contact Person and Telephone No.: Ms. Buelah Rowley, (301) 677-7009 ext 215

(4) Payee(s): (a) Mr. John Jones

(b) Ms. Susan Tort, Attorney at Law

(5) Taxpayer Identification No., SSN, or EIN of **each Payee**: (a) 000-00-0000

(b) _____

PAID BY
(For use by Treasury only.)

(6) Total Amount: Eight Thousand Dollars $ 8,000.00

(7) Electronic Funds Transfer (EFT) Information:

(a) Payee Account Name: _____ (e) Bank Name and Address: _____

(b) ABA Bank # (9 digits): _____

(c) Payee Account #: _____

(d) Checking: _____ Savings: _____

(8) Briefly Identify Claim:

Personal injury arising from medical care provided at WRAMC, Washington D.C., on 17 August 1996.

C. AGENCY APPROVING OFFICIAL: This claim has been fully examined in accordance with Statutory Cite _____

28 USC 2672 and approved in the amount of $ 8,000.00

Signed: /s/ Joseph H. Rouse

Title: Deputy Chief, Tort Claims Division, USARCS

Date: 30 August 1997

D. OTHER ACCOUNTING INFORMATION AND CERTIFICATIONS: **(For use by Treasury only)**

FMS Form 197A
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-54E. Completed FMS Form 197 (Voucher for payment), settlement agreement executed

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF THE CLAIM

OF

CHARLES E. BROWN

arising from injuries and property damage incurred by Charles E. Brown as a result of an automobile accident with a U.S. Government Vehicle on Main Street, Fort Wayne, Indiana, on 10 May 1995.

It is hereby stipulated by and between the undersigned claimant, Charles E. Brown, and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claim upon the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay an award of final settlement in the amount of **Ten Thousand Dollars ($10,000)**, which will be paid as follows:

a. The cash sum of **Eight Thousand Dollars ($8,000)** will be paid jointly to claimant Charles E. Brown and Erika N. Dunn, attorney at law; and

b. The cash sum of **Two Thousand Dollars ($2,000)** will be paid claimant's attorney, Erika N. Dunn, attorney at law, on behalf of the claimant, in full satisfaction of attorney fees allowable under (The Federal Tort Claims Act) (The Military Claims Act).

c. [**In the settlement of a claim settled under the FTCA state**] It is understood by and among the parties that pursuant to Title 28, United States Code, Section 2678, attorney fees for services rendered in connection with this action shall not exceed 20 percent of the amount of the compromise settlement.

OR

[**In the settlement of a claim settled under the MCA state**] It is understood by and among the parties that pursuant to 10 United States Code 2733 and Chapter 3, Army Regulation 27-20, attorney fees for services rendered in connection with this action shall not exceed 20 percent of the amount of the compromise settlement.

Which sums the claimant and his beneficiaries do hereby accept the within-stated award, compromise, or settlement as final and conclusive on them, their heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me, my heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action whatsoever kind and nature, arising now or in the future from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the death of Charles E. Brown, damages to property, breaches of contract or law, and any other acts or omissions, and the consequences thereof, resulting, and to result, from the same subject matter that gave rise to the claim for which I or my heirs, executor, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employees of the Government whose acts or omissions gave rise to the claim by reason of the same subject matter. I further agree to reimburse, indemnify and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim by reason of the same subject matter.

Figure 2-54F. Sample—settlement agreement (claimant represented by attorney)—Continued

WHEREFORE, the parties accept the terms of this Compromise Settlement and Release as of the dates written below:

CHARLES E. BROWN Date
Claimant

ACKNOWLEDGED:

Erika N. Dunn Date
Attorney for Claimant

UNITED STATES OF AMERICA

By its Authorized Attorney Date

Figure 2-54F. Sample—settlement agreement (claimant represented by attorney)

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS PURSUANT TO 28 USC § 2672

The parties to this Stipulation For Compromise Settlement And Release stipulate and agree that the Federal Tort Claims Act claims of the undersigned claimants [**Identify claimants**], be settled and compromised based on the terms and conditions set forth below:

1. This Stipulation For Compromise Settlement And Release shall not constitute an admission of liability or fault on the part of the United States, its agents, servants, or employees, and is entered into by the parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of litigation.

2. The United States agrees to pay the undersigned claimants the cash sums set forth below in paragraph 2(a) and (b), and to purchase the annuity contract described below in paragraph 2(b), and to establish the Irrevocable Reversionary Inter Vivos Medical Trust described below in paragraph 2(c).

a. As soon as it is practicable after the execution of this Stipulation For Compromise Settlement And Release, the United States will transfer to [**name of structured settlement broker**], funds sufficient to fund the settlement plan contained herein (hereinafter "settlement"), out of which the following disbursements will be made by [**name of structured settlement broker**] from said account:

[**Describe in detail the disbursements, see paragraph 2, figure 2-56a**]

The parties agree that any attorney's fees owed by the claimants shall not exceed twenty percent (20%) of the settlement amount (28 U.S.C. § 2678) and must be paid out of the settlement amount and not in addition thereto.

b. The United States will purchase an annuity contract to make the following payments:

[**Set forth in detail the schedule of payments as outlined in structured settlement proposal]**

The annuity contract will be **owned solely and exclusively by the United States** and will be purchased as soon as practicable following the execution of this Stipulation For Compromise Settlement and Release. The parties stipulate and agree that the United States' only obligation with respect to said annuity contract and any annuity payments therefrom is to purchase the annuity contract, and they further agree that the United States does not guarantee or insure any of the annuity payments. The parties further stipulate and agree that the United States is released from any and all obligations with respect to the annuity contract and annuity payments upon the purchase of the annuity contract.

The parties stipulate and agree that the annuity company that issued the annuity contract or its assignee shall at all times have the sole obligation for making all annuity payments. The obligation of the annuity company to make each annuity payment shall be discharged upon the mailing of a valid check in the amount of such payment to the address designated by the party to whom the payment is required to be made under this Stipulation For Compromise Settlement And Release. Checks lost or delayed through no fault of the annuity company shall be promptly replaced by the annuity company, but the annuity company is not liable for interest during the interim.

The parties stipulate and agree that the annuity payments cannot be accelerated, deferred, increased, or decreased by the parties, that no part of any annuity payments called for herein or any assets of the United States or the annuity company are subject to execution or any legal process for any obligation in any manner, and that the claimant(s) shall not have the power to sell, mortgage, encumber, or anticipate said annuity payments, or any part thereof, by assignment or otherwise.

The claimants and the claimants' guardians, heirs, executors, administrators or assigns do hereby agree to maintain with the annuity company and the United States a current mailing address, and to notify the annuity company and the United States of the death of any beneficiary of said annuity contract within ten (10) days of death.

In the event of the death of a beneficiary of an annuity contract during a period of guaranteed payments, all remaining guaranteed payments shall be made payable to the United States Treasury

Figure 2-55. Sample—structured settlement agreement for medical reversionary trust—Continued

and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

c. The United States will establish, as the Grantor, an Irrevocable Reversionary Inter Vivos Medical Trust for the use and benefit of [**name of trust beneficiary**], a copy of which is attached hereto and incorporated by reference.

The claimants and the claimants' successors, assigns, or guardians agree to provide to the trustee of said trust any information, documentation, authorizations, or signatures required by the terms of the trust or by the trustee in administering the terms of the trust. The parties agree that the failure to provide such information, documentation, authorizations, or signatures may result in the denial, in whole or part, of payments from the trust estate, depending on the terms of the trust.

The claimants and the claimants' heirs, executors, administrators or assigns do hereby agree to maintain with the trustee and the United States a current mailing address, and to notify the trustee and the United States of any event upon which the right of payments from the trust estate may depend, including the death of any beneficiary of said trust, within ten (10) days of the date of such event.

Upon the death of the beneficiary of said trust, the trustee shall, to the extent permitted by the terms of said trust, pay allowable charges, expenses, and benefits, and liquidate and distribute the remaining trust estate to the United States by check made payable to the United States Treasury and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

3. Claimants and claimants' heirs, executors, administrators or assigns do hereby accept the cash sums set forth above in paragraphs 2(a) and (b), the purchase of an annuity contract set forth above in paragraph 2(b), and the establishment of the Irrevocable Reversionary Inter Vivos Medical Trust set forth above in paragraph 2(c) in full release, settlement, and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, to include the death of John Doe or Jane Doe, damage to property, and the consequences thereof, which the claimants or claimants' heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants and employees on account of the same subject matter that gave rise to the above claims, including any future claims for wrongful death and any claims for fees, costs and expenses; and do hereby agree to reimburse, indemnify and hold harmless the United States and its agents, servants, and employees from any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to, resulting or arising from the acts or omissions that gave rise to the claims, including claims or causes of action for wrongful death.

4. This compromise settlement is specifically subject to each of the following conditions:

(a) An agreement has been reached by the parties on the terms, conditions, and requirements of this Stipulation For Compromise Settlement And Release, the annuity contracts, and the Irrevocable Reversionary Inter Vivos Medical Trust. The parties stipulate and agree that the Stipulation For Compromise Settlement And Release and the compromise settlement are null and void in the event the parties cannot agree on the terms, conditions and requirements of this Stipulation For Compromise Settlement And Release, the annuity contracts, or the Irrevocable Reversionary Inter Vivos Medical Trust. The terms, conditions and requirements of this Stipulation For Compromise Settlement And Release are not severable and the failure to agree, fulfill, or comply with any term, condition, or requirement renders the entire Stipulation For Compromise Settlement And Release and the compromise settlement null and void. This Stipulation For Compromise Settlement And Release is subject to approval by the Attorney General of the United States or the Attorney General's designee. The Attorney General of the United States or the Attorney General's designee's approval to negotiate and consummate a settlement for the amount agreed upon by the parties does not make the settlement binding upon the United States unless and until the other terms, conditions, and requirements of this Stipulation For Compromise Settlement And Release have been completely agreed upon in writing.

(b) Each beneficiary of the annuity contracts set forth above in paragraph 2(b) and the Irrevocable Reversionary Inter Vivos Medical Trust set forth above in paragraph 2(c) must be alive at the time of both the purchase of said annuity contracts and the funding of said Irrevocable Reversionary Inter Vivos Medical Trust by the actual transfer of the amount set forth above in paragraph 2(c) into a separate account opened by the trustee of said trust for the beneficiary. In the event of the death of any beneficiary prior to both the purchase of said annuity contract and the funding of said Irrevocable Reversionary Inter Vivos Medical Trust, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

Figure 2-55. Sample—structured settlement agreement for medical reversionary trust—Continued

(c) Prior approval of the settlement by a court of competent jurisdiction is required, (if required by law). Such court approval must be obtained prior to both the purchase of the annuity contract and the funding of the Irrevocable Reversionary Inter Vivos Medical Trust set forth above in paragraphs 2(b) and 2(c). The claimants agree to obtain such approval in a timely manner: time being of the essence. The claimants further agrees that the United States may void this settlement at its option in the event the claimants fails to obtain such approval in a timely manner. In the event the claimants fail to obtain such court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

WHEREUPON, the parties accept the terms of this Stipulation for Compromise Settlement And Release as of the dates written below.

JOHN DOE CLAIMANT	Date
JANE DOE CLAIMANT	Date
ACKNOWLEDGED:	
Wayman Jennings Attorney for Claimants	Date
UNITED STATES OF AMERICA	
By its duly authorized attorney of the United States Army Claims Service Office of The Judge Advocate General	Date

Figure 2-55. Sample—structured settlement agreement for medical reversionary trust

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS PURSUANT TO 28 USC § 2672

It is hereby stipulated by and between the undersigned claimants, **George Westerbeke and Joanne Roe**, and **First Insurance Company as Subrogee of George Westerbeke**, and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claims upon the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay an award in final settlement in the cash amount of **One Hundred Ten Thousand Dollars ($110,000)**, which will be paid as follows:

(a) The cash sum of **Four Thousand Dollars ($4,000)** will be paid jointly to George Westerbeke and Joseph H. Rouse, attorney at law;

(b) The cash sum of **Four Thousand Dollars ($4,000)** will be paid jointly to Joanne Roe and Joseph H. Rouse, attorney at law;

(c) The cash sum of **Two Thousand Dollars ($2,000)** will be paid to claimants' attorney, Joseph H. Rouse, on behalf of the claimants, in full satisfaction of attorney fees under the Federal Tort Claims Act; and

(d) The cash sum of **One Hundred Thousand Dollars ($100,000) to First Insurance Company, as Subrogee of George Westerbeke.**

Which sums shall be in full settlement and satisfaction of any and all claims, demands, rights, liens, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the deaths of George Westerbeke and Joanne Roe, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which claimants or their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Claimants and their guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and satisfaction of any and all claims, demands, rights, liens, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the deaths of George Westerbeke and Joanne Roe, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the claims, including any future claims or lawsuits of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Claimants and their guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by claimants or plaintiffs or their guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the claimants. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the claimants will be paid out of the settlement amount and not in addition thereto.

6. It is also understood by and among the parties that pursuant to Title 28, United States Code,

Figure 2-56A. Sample—multiple party settlement agreement—Continued

Section 2678, attorney's fees for services rendered in connection with this action shall not exceed 20 percent of the amount of the compromise settlement.

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement.

8. Payment of the settlement amounts will be made by checks drawn on the Treasury of the United States and made payable as set forth in paragraphs 2(a) through (d) above. The checks will be mailed as follows:

a. Those cash sums set forth in paragraphs 2(a) through (c) will be mailed to the claimants' attorney at the following address: Joseph H. Rouse, 100 Main Street, Fort George G. Meade, Maryland 20755-5360.

b. The cash sum set forth in paragraph 2(c) will be mailed to First Insurance Company, 100 Main Street, Fairfax, Alabama 10000.

(OR, if payment by government wire transfer)

Payment of the settlement amounts will be made by government wire transfer as per the following:

A. Name of Bank:
B. Street Address of Bank:
C. City, State and Zip Code of Bank:
D. Federal Reserve Number:
E. Routing Number:
F. Name of Account:
G. Account Number:

Claimants' attorney agrees to distribute the settlement proceeds among the claimants.

9. This Stipulation For Compromise Settlement And Release contains the entire agreement between the claimant and the United States with regard to matters set forth in it; and shall be binding upon and inure to the benefits of all parties hereto, jointly and severally, and the personal representatives, heirs, successors (including without limitation, any successor guardian o the person or the estate of the claimant) and the assigns of each.

GEORGE WESTERBEKE CLAIMANT	**FIRST INSURANCE COMPANY** As Subrogee for George Westerbeke By its authorized Agent or Attorney
Date	Date
JOANNE ROE CLAIMANT	Date
ACKNOWLEDGED	
Marilyn Byczek Attorney for Claimants George Westerbeke and Joanne Roe	U. S. Army Claims Service Office of The Judge Advocate General By its attorney herein authorized
Date	Date

Figure 2-56A. Sample—multiple party settlement agreement

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS PURSUANT TO 28 USC § 2672

It is hereby stipulated by and between the undersigned claimants, **William Bryson** and **Sandra Bryson**, and **ABC Company**, and the UNITED STATES OF AMERICA, as Offerors, by and through their respective attorneys, as follows:

1. **(Same paragraph 1 of 2-56a)**

2. The United States of America agrees to pay an award in final settlement in the cash amount of **Ten Thousand Dollars ($10,000)**, which will be paid as follows:

(a) The cash sum of **Four Thousand Dollars ($4,000)** will be paid jointly to William Bryson and Karen G. Schulman, attorney at law;

(b) The cash sum of **Four Thousand Dollars ($4,000)** will be paid jointly to Sandra Bryson and Karen G. Schulman, attorney at law; and

(c) The cash sum of **Two Thousand Dollars ($2,000)** will be paid to claimants' attorney, Karen G. Schulman, on behalf of the claimants, in full satisfaction of attorney fees under the Federal Tort Claims Act.

3. ABC Company agrees to pay as soon as practicable after approval of this Agreement, to William Bryson the cash sum of **Seven Thousand Five Hundred Dollars ($7,500)** and to Sandra Bryson the cash sum of **Seven Thousand Five Hundred Dollars ($7,500).**

Which sums shall be in full settlement and satisfaction of any and all claims, demands, rights, liens, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the death of William Bryson or Sandra Bryson, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which claimants or their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees, and ABC Company, its agents, servants, and employees.

4. Claimants and their guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and satisfaction of any and all claims, demands, rights, liens, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, to include the death of William Bryson or Sandra Bryson, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees, ABC Company, its agents, servants, and employees, on account of the same subject matter that gave rise to the claim, including any future claims or lawsuits of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Claimants and their guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees, and ABC Company, its agents, servants, and employees, from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by claimants or plaintiffs or their guardians, heirs, executors, administrators or assigns against the United States and ABC Company, or any third party, including claims for wrongful death.

5. **(Same as paragraph 4 of figure 2-56a)**

6. **(Same as paragraph 5 of figure 2-56a)**

7. **(Same as paragraph 6 of figure 2-56a)**

8. **(Same as paragraph 7 of figure 2-56a)**

9. **(Same as paragraph 8 of figure 2-56a)**

Figure 2-56B. Sample—settlement agreement with joint tortfeasor—Continued

10. **(Same as paragraph 9 of figure 2-56a)**

WILLIAM BRYSON CLAIMANT	**SANDRA BRYSON** CLAIMANT
Date	Date
ABC Company By its authorized agent or attorney	Date
ACKNOWLEDGED	
Karen G. Schulman Attorney for Claimants	U.S. Army Claims Service Office of The Judge Advocate General By its attorney herein authorized
Date	Date

Figure 2-56B. Sample—settlement agreement with joint tortfeasor

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS PURSUANT TO 28 USC 2672

It is hereby stipulated by and between the undersigned claimant William Bryson and the UNITED STATES OF AMERICA, by and through their respective attorneys, as follows:

1. **(Same as paragraph 1 of Figure 2-56A).**

2. The United States of America agrees to pay the sum of **Ten Thousand Dollars ($10,000)**. (Remainder same as paragraph 2 of 2-56A).

3. **(Same as paragraph 3 of Figure 2-56A).**

4. **(Same as paragraph 4 of Figure 2-56A).**

5. **IT IS UNDERSTOOD AND AGREED THAT THE CLAIMANT** is not releasing any claims, demands, actions, or causes of action which have accrued or which may hereafter accrue to the claimant against ABC Company. This **Settlement and Joint Tortfeasor Release** does not release any claims or causes of action which have been, or might be, asserted by the claimant, his heirs, personal representatives, successors or assigns, against ABC Company, or any and all other claims, actual or potential, arising directly or indirectly from the acts or omissions that gave rise to the administrative claim upon which the terms and condition of this Settlement Agreement are based.

6. The claimant agrees that one of the expressed purposes of this **Settlement Agreement and Joint Tortfeasor Release** is to limit forever the amount of money to be paid by or on behalf of the UNITED STATES OF AMERICA, its agents, servants and employees, in connection with the aforesaid claim. The claimant agrees on behalf of himself, his heirs and assigns to indemnify and hold harmless the UNITED STATES OF AMERICA, its agents, servants, and employees, from payment of any monies to ABC Company, or any other persons, corporations, firms or entities or their agents, servants or employees, in the event that the UNITED STATES OF AMERICA, its agents servants, or employees, shall be required to indemnify or contribute in the form of payment or otherwise to ABC Company, or any other persons, corporations, firms or entities, pursuant to the finding of any arbitration panel or Court of Law.

7. **(Same as paragraph 5 of Figure 2-56A)**

8. **(Same as paragraph 6 of Figure 2-56A)**

9. **(Same as paragraph 7 of Figure 2-56A)**

10. **(Same as paragraph 8 of Figure 2-56A)**

11. **(Same as paragraph 9 of Figure 2-56A)**

WILLIAM BRYSON CLAIMANT	U.S. Army Claims Service Office of The Judge Advocate General By its attorney herein duly authorized
Date	Date

Figure 2-56C. Sample—Settlement agreement without joint tortfeasor—Continued

ACKNOWLEDGED:

Quinton Bowman 27 January 1998
Attorney for Claimant

Notes:
Settlement Agreement language same as basic language set forth in attachment 2-56a, with modifications as reflected.

Figure 2-56C. Sample—Settlement agreement without joint tortfeasor

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS PURSUANT TO 28 USC § 2672

It is hereby stipulated by and between the undersigned claimant, **Jean Hill**, a Minor, (hereinafter the **Claimant**) by and through her Parent and Court Appointed Guardian. Hillary Hill, and the UNITED STATES OF AMERICA, by and through their respective attorneys as follows:

1. **(Same as Paragraph 1 of figure 2-45)**
2. **(Same as Paragraph 2 of figure 2-45)**
3. **(Same as Paragraph 3 of figure 2-45)**
4. **(Same as Paragraph 4 of figure 2-45)**
5. **(Same as Paragraph 5 of figure 2-45)**
6. **(Same as Paragraph 6 of figure 2-45)**
7. **(Same as Paragraph 7 of figure 2-45)**
8. **(Same as Paragraph 8 of figure 2-45)**

9. Prior approval of the settlement by a court of competent jurisdiction is required. Such court approval must be obtained prior to payment of the cash sum set forth in paragraph 2 above. The claimant agrees to obtain such approval in a timely manner: time being of the essence. The claimant further agrees that the United States may void this settlement at its option in the event the claimant fails to obtain such court approval in a timely manner. In the event the claimant fails to obtain such court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

10. **(Same as Paragraph 9 of figure 2-45)**

WHEREUPON, the parties accept the terms of this Stipulation For Compromise Settlement And Release as of the dates written below:

Hillary Hill As Parent and Court Appointed Guardian of Jean Hill, a minor. — Date

Thomas Hill As Parent and Natural Guardian of Jean Hill, a minor — Date

ACKNOWLEDGED:

Raymond J. Jennings, Jr. Attorney for Claimant — Date

UNITED STATES OF AMERICA

U.S. Army Claims Service By its authorized attorney of the United States Army Claims Service, Office of The Judge Advocate General — Date

Notes:

Settlement Agreement language same as basic language set forth in figure 2-45, with modifications as reflected.

Figure 2-57. Sample—structured settlement agreement with minor

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

(Claims Office Symbol)

SUBJECT: Claim of James Smithe, Claim Number 95-C01-0000

Mr. John Doe
Attorney at Law
11 Winner Circle
Brightday, Alaska 99999

Dear Mr. Doe:

This notice constitutes final administrative action on your client's claim in the amount of $1,000,000 against the United States for the alleged substandard medical care provided at U.S. Army Medical Center, Frankfurt, Germany, during the period 1 January 1992 to 15 January 1995.

The claim has been considered under the Military Claims Act, Title 10, United States Code, Section 2733, as implemented by Chapter 3, Army Regulation (AR) 27–20.

The Government's final offer to your client to settle this case is $10,000. Our investigation revealed that your client's clinical course was determined at the time of the injury. Even with earlier treatment, the surgical procedure would have been the same, and the recovery time would not have been altered. Any residual visual impairment that your client may have sustained was due to the accident, not the delay in medical treatment at the military clinic. The offer includes compensation for your client's pain and suffering associated with the delay in treatment.

(Adequate reason for final offer must be stated in order that claimant can make an informed appeal, if desired).

If this final offer of settlement is acceptable, please have your client sign and date all four copies of the attached settlement agreement, with an original signature on each copy, and return three copies to this Service. Upon receipt of the signed settlement, we will send a voucher to the Financial Management Service, Department of the Treasury, requesting that a settlement check be issued.

Army Regulation 27-20 provides your client the right to appeal this action. To appeal you must send a letter stating that your client's appeal from the decision in this notice of final action. The appeal letter must be sent to the Commander, U.S. Army Claims Service (USARCS), Office of The Judge Advocate General, Building 4411, Llewellyn Avenue, Fort George G. Meade, Maryland 20755-5360. Should your client desire to appeal, the appeal must reach this office not later than 60 days from the date of this letter.

While there is no format prescribed for the appeal letter, it, or supporting documents, should set forth the factual or legal grounds upon which their appeal is based. In the alternative, your client may elect not to submit additional matters and state they appeal

Figure 2-58. Sample—Final offer letter on claim—Military Claims Act—Continued

on the basis of the record as it existed at the time of this letter. If the latter is the case, the appeal letter should so state.

Upon receipt of all evidence and arguments, the file will be submitted to the appropriate designee of the Secretary of the Army, for review and final action. However, nothing in the above should be constructed to imply than an appeal, if made, would be successful.

Sincerely,

Francis R. Moulin
Colonel, U.S. Army
Chief, Tort Claims Division

Figure 2-58. Sample—Final offer letter on claim—Military Claims Act

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

(Claims Office Symbol)

SUBJECT: Claim of Mr. Frederick Samuel, Claim Number 94-C01-T001

Mr. John Doe
Attorney at Law
10 Rawhide Avenue
Dothan, AL 99999

Dear Mr. Doe:

This notice constitutes final administrative action on the claim of your client, Mr. Frederick Samuel, on his claim against the United States, in the amount of $90,000, for alleged personal injury due to a delay in medical treatment at Army Community Hospital, Fort Rucker, Alabama, on March 3, 1993.

The Government's final offer to your client to settle this case is $5,789. Our investigation revealed that your client's clinical course was determined at the time of injury. Even with earlier treatment, the surgical procedure would have been the same, and the recovery time would not have been altered. Any residual visual impairment that your client may have sustained was due to the accident, not the delay in medical treatment at the military clinic. The offer includes compensation for your client's pain and suffering associated with the delay in treatment.

If the offer is acceptable, please have Mr. Samuel sign and date all four copies of the enclosed settlement agreement, with an original signature on each copy, and return three copies to this Service. Upon receipt off the signed agreements, we will send a voucher to the General Accounting Office requesting that a settlement check be issued.

I am required by regulation to inform you that if your client is dissatisfied with the action taken on his claim, he may file suit in the appropriate United States District Court no later than six months from the date of mailing of this letter, or her remedy will be forever barred. This is not intended to imply that any such suit, if filed, would be successful.

Sincerely,

Francis R. Moulin
Colonel, U.S. Army
Chief, Tort Claims DivisionEnclosure

Figure 2-59. Sample—Final offer letter—FTCA

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

JACS-TCD

SUBJECT: Claim of Helen Jones, Claim Number 96-C01-T001

Mr. John Doe
Attorney at Law
Street Address
City, State, and Zip Code

Dear Mr. Doe:

This notice constitutes final administrative action on your client's claim against the United States in the amount of $100,000 for personal injuries allegedly sustained from medical care received while an inpatient at 97th General Hospital, Frankfurt, Germany, on 1 September 1993.

The claim has been considered under the Military Claims Act, Title 10, United States Code, Section 2733, as implemented by AR 27-20, Chapter 3.

(If the claimant was represented by an attorney and is no longer represented, the notice is sent to the claimant with the following additional paragraph:

[We have been informed that Mr. John Doe no longer represents you. Accordingly this notice is sent directly to you.]

The claim is denied. Our investigation indicates that there were no negligent acts or omissions by the United States or its employees. On September 1, 1993, Ms. James Jones was seen by Dr. Military, a military dermatologist. Dr. Military performed two biopsies of a lesion (macular depigmented area) on Ms. Jones' chin. The diagnosis of the DACH pathologist was actinic keratosis and benign lentigo simplex. The benign nature of this diagnosis was confirmed by the Armed Forces Institute of Pathology (AFIP).

There is no indication that the benign nature of the 1 September 1993 diagnosis or subsequent AFIP confirmation were incorrect or that either procedure was negligently performed. There is no indication that the follow-up care and screening provided to Ms. Jones after the 1 September 1993 procedure was in any way a breach of the appropriate standard of care.

(Adequate reason for denial of the claim must be stated so claimant can make an informed appeal, if desired).

Army Regulation 27-20 provides you the right to appeal this action. To appeal your client must send a letter stating that you appeal from the decision in this notice of final action. The appeal letter must be sent to the Commander, U.S. Army Claims Service (USARCS), Office of The Judge Advocate General, 4411 Llewellyn Avenue, Fort George G. Meade, Maryland 20755-5360, and be postmarked not later than 60 days after you receive this letter. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. Generally, any evidence or argument in support of the appeal must be submitted with your letter. However, for good cause shown, the Commander, USARCS, or his designee, may extend the time within which to submit such evidence or argument to complete the appeal. Any extension will be at the discretion of the Commander, USARCS, or his designee, and normally will not exceed 90 days. Any request for an extension of time to submit appellate materials must be included in the appeal letter or be postmarked not later than 60 days after receipt of this latter, as discussed above.

While there is no format prescribed for the appeal letter, it, or supporting documents, should set forth the factual or legal grounds relied upon and should be responsive to the

Figure 2-60. Sample—Denial letter—MCA—Continued

issues raised in this letter. In the alternative, you may elect not to submit additional matters and state your appeal on the basis of the record as it existed at the time of this letter. If the latter is the case, the appeal letter should so state.

Upon receipt of all evidence and arguments, the file will be submitted to the appropriate designee of the Secretary of the Army, for review and final action. However, nothing in the above should be construed to imply that an appeal, if made, would be successful.

Sincerely,

James P. Gerstenlauer
Lieutenant Colonel, U.S. Army
Chief, Tort Claims Division

Figure 2-60. Sample—Denial letter—MCA

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

JACS-TCD

JACS-TCD

SUBJECT: Claim of Helen Jones, Claim Number 96-C01-T001

Mr. John Doe
Attorney at Law
Street Address
City, State, and Zip Code

Dear Mr. Doe:

This constitutes final administrative action on Ms. Helen Jones' claim under the Federal Tort Claims Act (FTCA) against the United States in the amount of $100,000 based upon alleged negligence in the medical treatment provided Ms. Helen Jones at Walter Reed Army Medical Center, Washington, D.C., during the period 1 September 1993 through 1 October 1993.

If the claimant was represented by an attorney and is no longer represented, the notice is sent to the claimant with the following additional paragraph:

[We have been informed that Mr. John Doe no longer represents you. Accordingly this notice is sent directly to you.]

The claim is denied. Your allegation that Dr. Military on September 1, 1993, after your monogram exam, erroneously told you that you needed a biopsy, does not constitute a negligent act or omission on the part of an employee of the United States which caused a compensable injury. Your 1 September 1993 monogram was normal with no evidence of malignancy. Even assuming that Dr. Military erroneously told you that you needed a biopsy on 1 September 1993, when you returned to Dr. Military on 20 September 1993, she reviewed the monogram and told you that a biopsy was not necessary. In fact, no biopsy procedure was performed as a result of the allegedly erroneous conversation between yourself and Dr. Military of 1 September 1993. Our investigation and review has determined that there is no evidence of any negligence by an employee of the federal government.

If your client is dissatisfied with the action taken on her FTCA claim, she must file suit in the appropriate U.S. District Court within six months of the date of this letter. This is not to imply that any such suit would be successful.

Sincerely,

James P. Gerstenlauer
Lieutenant Colonel, U.S. Army
Chief, Tort Claims Division

Figure 2-61A. Sample—Denial letter—FTCA

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

(Claims Office Symbol)

SUBJECT: Claim of Mr. Frederick Samuel, Claim Number 94-C01-T001

Mr. Frederick Samuel
111 Ranch Street
Tucson, Arizona 99999

Dear Mr. Samuel:

This notice constitutes final administrative action on your claim against the United States in the amount of $1,157 for damage to your residence allegedly resulting form an explosion of a bomb by the 137th Ordnance Detachment (EOD), Fort Sam Houston, Texas, near Freeport, Texas, on September 3, 1996.

Your claim is denied. Our investigation has determined that the Army could not have been responsible for the damage. There were four detonations of 500 pound bombs. The charge weight of the bombs was 192 pounds, the weight of the C-4 charge was 3.5 pounds and the distance from the explosion site to your home was at least 3.65 miles. The maximum air overpressure your home could have been subject to was 252 Pascals (Pa). The structural damage threshold for the type of damage you claim requires an overpressure pulse level of least 500 Pa or more.

In absence of expert opinion to the contrary, there is no basis for favorable consideration of the claim.

To the extent that the claim is cognizable under the Military Claims Act (MCA), Army Regulation 27-20 provides you with the right to appeal this action. To appeal you must send a letter stating that you appeal from the decision in this notice of final action. The appeal letter must be sent to the Commander, U.S. Army Claims Service (USARCS), Office of The Judge Advocate General, Bldg. 4411, Llewellyn Avenue, Fort George G. Meade, Maryland 20755-5360, and be postmarked not later than 60 days after you receive this letter. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. Generally, any evidence or argument in support of the appeal must be submitted with your letter. However, for good cause shown, the Commander, USARCS, or his designee, may extend the time within which to submit such evidence or argument to complete the appeal. Any extension will be at the discretion of the Commander, USARCS, or his designee, and normally will not exceed 90 days. Any request for an extension of time to submit appellate materials must be included in the appeal letter or be postmarked not later than 60 days after receipt of this letter, as discussed above.

While there is no format prescribed for the appeal letter, it, or supporting documents, should set forth the factual or legal grounds relied upon and should be responsive to the issues raised in this letter. In the alternative, you may elect not to submit additional matters and state that you appeal on the basis of the record as it existed at the time of this letter. If the latter is the case, the appeal letter should so state.

Upon receipt of all evidence and arguments, the file will be submitted to the appropriate designee of the Secretary of the Army, for review and final action. However, nothing in the above should be construed to imply that an appeal, if made, would be successful.

To the extent the claim is cognizable under the Federal Tort Claims Act (FTCA), I am required by regulation to inform you that if you are dissatisfied with the action taken on this claim, you may file suit in an appropriate United States District Court no later than six months from the date of mailing of this letter, or your remedy will be forever barred. This is not intended to imply that any such suit, if filed, would be successful.

Figure 2-61B. Sample—Denial letter, combination of FTCA and MCA—Continued

If you appeal under the MCA and file suit under the FTCA, we will hold action on the MCA appeal in abeyance pending the outcome of the FTCA suit.

Sincerely,

James P. Gerstenlauer
Lieutenant Colonel, U.S. Army
Chief, Tort Claims Division

Enclosure

Figure 2-61B. Sample—Denial letter, combination of FTCA and MCA

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

SUBJECT: Claim of Helen Jones, Claim Number 96-C01-T001

Mr. John Doe
Attorney at Law
113 St. Joe Road
Fort Wayne, IN 46815

Dear Mr. Doe:

This notice constitutes final administrative action on Ms. Helen Jones' claim under the Federal Tort Claims Act (FTCA) against the United States for personal injury allegedly due to a traffic accident at the intersection of West and East Streets, Grandsville, Tennessee, on 1 November 1995.

The claim is denied. On 5 March 1996, your client filed a complaint in the United States District Court for the (state court). As your client's claim is currently in litigation, it is no longer amenable to administrative settlement.

Although I am aware that you have filed suit, I am required by regulation to inform you that if your client is dissatisfied with the action taken on her claim, she may file suit in an appropriate United states District Court no later than six months from the date of mailing of this letter, or her remedy will be forever barred. This is not intended to imply that any such suit, if filed, would be successful.

Sincerely,

James P. Gerstenlauer
Lieutenant Colonel, U.S. Army
Chief, Tort Claims Division

Figure 2-62. Sample—"Parker" denial letter

JACS-TCD

SUBJECT: Claim of Helen Jones, Claim Number 96-C01-T001

Mr. John Doe
Street Address
City, State, and Zip Code

Dear Mr. Doe:

This responds to your request for reconsideration of the (denial) (final offer of settlement in the amount of) by (Name of SJA).

Your request for reconsideration is granted. We will review the claim file again as well as any further matters which you have submitted. The decision made after reconsideration will constitute final administrative action upon the claim and you will be notified of the action either by this office or by the Commander, U.S. Army Claims Service.

The requirement that [you] [your client] file suit in a United States District Court within six months of the mailing of our (date) letter denying [of final offer of settlement] is rescinded. The requirement to file suit within six months will not become effective until we mail you notice of the decision made after reconsideration. In addition, [your] [your client's] option to file suit under [Title 28, United States Code, Section 2675(a)] or [28 USC § 2675(a)] will not accrue until six months after the date upon which we received your request for reconsideration.

Sincerely,

James P. Gerstenlauer
Lieutenant Colonel, U.S. Army
Chief, Tort Claims Division

Figure 2-63. Sample—Acknowledgment letter, request for reconsideration

Section X
Payment Procedures

2–100. Fund sources

a. Military Claims Act. Amounts less than $100,000 are paid from Army funds and amounts over $100,000 are paid by the Department of the Treasury Financial Management Service from the Judgment Fund (see figure 2-64, extract from 31 USC 1304). This monetary limit applies to each claim, not to each claims incident. For example, one incident may give rise to a claim for personal injury and a claim by the injured party's spouse for loss of consortium. These are considered two separate claims even though they arise from one incident. The limit applies also to claims filed jointly. Thus, settlement of a joint claim must specify the settlement amount for each claimant.

b. Federal Tort Claims Act. FTCA settlements of $2,500 or less are paid from Army funds on all claims except civil works claims, which are paid from civil works funds at the USACE District level. FMS pays all settlements above $2,500 on all FTCA claims, including civil works claims, from the Judgment Fund. This monetary limit applies to each claim, not each claims incident. For example, a subrogee's claim for $3,000, which includes the subrogor's paid and fully subrogated $500 deductible, constitutes one claim and is payable by the FMS. If the insurer is merely acting as its insured's collection agent, however, and has not paid the deductible, both claims are payable from Army funds.

c. Non-Scope Claims Act. Claims brought pursuant to this statute are payable from Army funds, even though the aggregate payment for all claims resulting from one incident exceeds $2,500.

d. NATO Status of Forces Agreement. NATO Status of Forces Agreement (SOFA) claims arising in the United States are paid in the same manner as FTCA or MCA claims, 10 USC 2734b. After paying these claims, USARCS seeks reimbursement from the sending State for its 75 percent share in accordance with the treaty's terms.

e. Army Maritime Claims Settlement Act.

(1) Claims against the United States brought pursuant to this statute are paid from Army funds except where the claim arises out of civil works activities, in which case the claim is paid from civil works funds for amounts not to exceed $500,000. The Secretary of the Army certifies settlements greater than $500,000 in their entirety to Congress for payment.

(2) An AMCSA claim in favor of the United States is paid into the U.S. Treasury upon settlement but a claim arising from a civil works activity is paid into USACE operating funds at the USACE district level.

f. Foreign Claims Act. FCA claims payments are funded from the same source as are MCA claims. The methods for issuing these payments differ, however, as discussed in subparagraph *o* below.

g. United States Postal Service. Claims by the USPS are settled by USARCS and are paid from Army funds.

h. AAFES or NAFI claims. AAFES or NAFI claims are paid from nonappropriated funds. Depending on the settlement amount, send the claim to the appropriate office listed below:

(1) All payable claims generated by CONUS AAFES activities will be transmitted to Headquarters, AAFES, ATTN: FA-T, P.O. Box 660202, Dallas, Texas, 75266-0202.

(2) Claims payable for under $2,500 generated by Korea AAFES activities will be transmitted to the Korea Sales District, ATTN: FA, Unit 15555, APO AP 96205-0003. Send claims payable for $2,500 or more to Headquarters, AAFES, ATTN: FA-T, P.O. Box 660202, Dallas, Texas 75266-0202.

(3) Claims payable for under $2,500 generated by Japan AAFES activities will be transmitted to AAFES-Yokata, ATTN: PACRIM-FA-JAPAN, Unit 5203, APO AP 96328-5203. Send claims payable for $2,500 or more to Headquarters, AAFES, ATTN: FA-T, P.O. Box 660202, Dallas, Texas 75266-0202.

(4) Claims payable for under $2,500 generated by AAFES activities in Okinawa, Guam, Thailand, and other Pacific areas not specifically listed above will be transmitted to AAFES-PACRIM-ASC, ATTN: FA, Unit 35163, APO AP 97378-5163. Send claims payable for $2,500 or more to Headquarters, AAFES, ATTN: FA-T, P.O. Box 660202, Dallas, Texas 75266-0202.

(5) Send all claims payable in any amount generated by European Regional AAFES activities to Headquarters, AAFES, ATTN: FA-T, P.O. Box 660202, Dallas, Texas 75266-0202.

(6) Claims over $100 generated by other NAF activities will be transmitted to the Army Central Insurance Fund ATTN: CFSC-RM-I, Room 1256, 2461 Eisenhower Avenue, Alexandria, VA 22331-0508. When transmitting household goods or hold baggage shipment claims for payment, forward the entire claims file so Army Central Insurance Fund can pursue carrier recovery. Use the "NF" claims database transaction code.

(7) Claims of $100 or less generated by other NAF activities will be transmitted to the NAF activity responsible for payment from its funds (see AR 215-1, para 14-19).

i. AAFES or NAFI claims—proportionate liability.

(1) Such claims may be paid proportionally by both appropriated and nonappropriated funds if both are liable. The following are examples:

(a) AAFES or a NAFI is responsible for maintaining a building and its surrounding area (such as a parking lot). If the claimant was injured by a hazard known to the NAFI occupant, that agency's failure to place a work order with the local Directorate of Public Works (DPW) or similar agency should result in payment from the NAFI. A different outcome may result, however, if the NAFI submitted a work order and DPW unreasonably failed to correct the hazard.

(b) A claim for a child's hot water physical injury arises from the family child care (FCC) provider program. In this case, DPW was required by regulation to adjust the water temperature to a maximum of 110 degrees Fahrenheit. Its failure to do so results in a claim payable from appropriated funds, in the absence of negligence by the FCC provider.

(c) A claim for damage from a struck golf ball is not payable from nonappropriated funds unless actions under the control of the golf course manager, such as placing a practice tee too close to a fairway, caused the damage. In contrast, if the damage results from placing public roads in or around the golf course, the claim should be paid from appropriated funds. Damage resulting from a golfer's act is that golfer's responsibility.

(d) A personal injury may occur at a NAFI facility or program in which the negligent employees' salaries or wages are paid from both appropriated and nonappropriated funds. Liability must be apportioned after an investigation, as the injury may have been caused by both lack of supervision (a NAFI tort) and faulty architectural design (an appropriated fund responsibility).

(2) The goal of an apportionment is to reach a resolution that is satisfactory to both the NAFI or AAFES on one hand and FMS on the other. The Judgment Fund cannot be used if a claim is payable from other Government funds or programs, including nonappropriated funds. Record this aspect of the claims investigation, making sure to justify the percentage of apportionment assessed.

j. Jointly payable claims. Claims payable by both the United States and a joint or successor tortfeasor require the same type of investigation and analysis used in single payor claims.

k. Rental vehicles. Claims involving rented vehicles that fall within the MTMC rental car contract are payable by the rental company or its insurer up to policy limits. The Government pays any excess above policy limits under FTCA, MCA, or FCA procedures.

l. Flying club claims. The Central Insurance Fund maintains full insurance coverage on NAFI flying clubs. If, however, the settlement reaches or exceeds the policy limits, FTCA liability may attach, in which case the excess is paid under FTCA procedures. An example is a midair collision between a flying club plane and a civilian plane caused by both pilot error and faulty weather information supplied by an Army controller.

m. Effect of subrogation. A subrogee may be paid as a claimant but not as a lienholder. Subrogation results from a preexisting agreement or contract or by operation of State law. A claimant's vehicle

and health insurance carriers are obliged under contract to pay medical bills up to the policy limits. State law determines whether either carrier is a subrogee or a lienholder. If the insurer is not a subrogee, payment must be made to the injured party who assumes the duty to pay the lien by executing the settlement agreement. Figure 2-45 is a sample agreement to be used in such a settlement. As an exception, the HCFA may be paid directly for a Medicare lien. Figure 2-65 shows a sample letter for use in such a situation. A State Medicaid lien is paid through the claimant to the State medical or similar agency. CHAMPUS is not a subrogee or lienholder and is not paid at all, either by payment made through the claimant or direct payment.

n. Structured settlement. Make the check payable to the broker who will distribute the funds in the manner set forth in the settlement agreement.

o. Claims under Foreign Claims Act. The check will be drawn on the currency of the country in which payment is to be made in accordance with AR 27-20, paragraph 10-9, at the Foreign Currency Fluctuation Account exchange rate in effect on the date of approval action. If a payee requests payment in U.S. currency, or the currency of a country other than that of the payee's country of residence, obtain permission from the Commander, USARCS. Where payment must be approved at USARCS or a higher authority, USARCS will complete and sign the voucher and forward it to the original commission for local payment.

2–101. Payment documents

a. General. For tort claims paid from Army funds, submit the following documents to the appropriate DFAS:

(1) For all claims, a payment report signed by a properly designated settlement or approval authority certifying payment. Figure 2-53 provides a suggested format for such a payment report. The payment report may be obtained electronically from the LAAWSBBS Claims Related Information File Library. The payment report has been submitted for inclusion into the Delrina Form Flow Program for addition to their forms database. The payment report serves as a settlement agreement and will be signed by the claimant unless a separate agreement is needed. A separate payment report will be completed for each claimant, except in a structured settlement where the payee is the broker on behalf of all claimants. The proper accounting classification must be entered on the payment report except for claims paid by NAF, AAFES, or USACE.

(2) Two copies of a settlement agreement when a separate settlement agreement is used in lieu of the payment report. If a separate agreement is used, the claimant's attorney's signature may appear as acknowledgment of the settlement; the claimant's attorney may not sign as a party to the settlement.

(3) Two copies of the claim, usually a SF Form 95 (figures 2-6a and b), and proof of authority to sign (guardianship decree, attorney's representation agreement, documents authorizing a corporate officer or a representative of the estate to sign, as appropriate).

(4) Two copies of an action (figure 2-51) or a Small Claims Certificate (DA Form 1668), as appropriate.

(5) When the claim will be paid electronically to the DFAS via STANFINS, transmit the information listed in subparagraph (*b*) below. Then mail the payment report to DFAS and retain the documents listed above in the claim file. It is suggested that claims officers meet with their DFAS point of contact and review the payment report to ensure acceptance by DFAS.

b. Payment Report (figure 2-53).

(1) Payment data: DFAS DSSN: Reflect identification number of your servicing DFAS office.

(a) Submitting Agency/Office: Name of claims office approving payment.

(b) Office Code: Number assigned to a claims office with payment authority by USARCS.

(c) Agency/Office Mailing Address: Mailing address of claims office approving payment of claim.

(d) Date Claim Filed: Self-explanatory.

(e) Claim Number(s): Self-explanatory.

(d) Amount Claimed: Total amount claimed by claimant.

(e) Fund Cite: Insert appropriate accounting classification.

(f) Payee: Name of claimant receiving payment (not to exceed 27 spaces).

(g) Address: Address of recipient of claims settlement check.

(h) SSN: Enter Social Security number of each payee or employer identification number if payee is an attorney, broker, or business other than an individual claimant.

(i) Payment Amount: Amount approved for award payment to claimant.

(j) Type Payment: (For a MCA claim, enter either "advance payment" or "final payment." Enter "final payment" for a FTCA claim.)

(2) Date: date document forwarded to DFAS for payment.

(3) Comments.

- Accounting citation. Charging an approved claim against a particular accounting citation creates an obligation against the claims appropriation for the current fiscal year. Accordingly, the payment report will bear the correct account code for both the appropriation charged and the current fiscal year, regardless of the date the claim accrued or was filed. Confusion sometimes arises at the end of a fiscal year. For example, an approved claim is certified for payment on 28 September, but it is obvious that the payment will not actually be processed until the next fiscal year, beginning 1 October. At the time the check is issued, the accounting code will not be advanced to the next fiscal year. Only the accounting code for the fiscal year in which the funds were obligated and the claim was certified for payment (the payment report was signed) should be charged.
- Accounting codes. Each fiscal year, the AR 37-100-series publishes separate payment and refund codes for claims payments made pursuant to each chapter of AR 27-20. All elements of the accounting code for each type of claim, except the third digit, remain constant (unless otherwise notified by fiscal authorities)—the third digit represents the second digit of the fiscal year or 6. For example, in the payment of an FY 96 FTCA claim, the FTCA payment code would appear as 2162020 22 0203 P436099.21-4320 FAJA S999.

(4) Acceptance by Claimant: To be dated and signed in original by claimant, except where another settlement acceptance agreement has been executed.

(5) Agency Certifying Officer: To be completed by the CJA or claims attorney authorized to approve payment of settlement award.

(6) Date: Date that payment has been reflected in the claims data base.

c. Payment of AAFES, NAF, and USACE Claims.

(1) For claims to be paid from AAFES funds, submit the following documents to the appropriate AAFES activity. A sample transmittal letter appears at figure 2-66.

(a) Action Memorandum, in duplicate (see figure 2-51).

(b) SF Form 95, Claim form (in duplicate).

(c) DA Form 1666—Claims Settlement Agreement, or other form of settlement agreement, if appropriate (in duplicate).

(2) For claims to be paid in an amount over $100 from NAF funds, submit the following documents to the Army Central Insurance Fund, ATTN: CFSC-RM-I, Room 1256, 2461 Eisenhower Avenue, Alexandria, VA 22331-0508. Claims not over $100 generated by other NAF activities will be transmitted to that NAF activity responsible for payment from its funds (see figure 2-67).

(a) Action Memorandum, in duplicate (see figure 2-51).

(b) SF Form 95, Claims form (in duplicate).

(c) DA Form 1666—Claims Settlement Agreement, or other form of settlement agreement, if appropriate (in duplicate).

(3) USACE claims (except civil works claims) payable for amounts over $2,500 will be paid as set forth under subparagraph *d* below. USACE claims payable for $2,500 or less will be paid from USARCS CEA funds and the following documents will be provided to the appropriate DFAS activity (a sample transmittal letter to USACE is shown at figure 2-68):

(a) Action Memorandum (in duplicate).

(b) SF Form 95 or claim demand letter (in duplicate).

(c) DA Form 1666, or other form of settlement, if appropriate (in duplicate).

(4) Procedures for payments of claims arising from civil works projects differ. FTCA claims are paid from civil works funds if they are settled for $2,500 or less and the documents noted above are forwarded to the appropriate USACE activity for payment. If payment is in the amount of $2,500 or more, then the procedures listed under subparagraph *d* below will be used (see figure 2-68).

d. Judgment fund payments. For all claims to be paid from the Judgment Fund, in whole or in part, submit the following documents to the Department of the Treasury, FMS. These forms may be obtained electronically from a web site maintained by the Department of Treasury under Treasury Financial Manual (www.fms.treas.gov/) Volume 1, Part 6, Chapter 3100 (T/L568) (www.fms.treas.gov/tfm/judforms.pdf). Adobe Acrobat software is required. The forms may also be obtained electronically from the LAAWSBBS Claims Related Information File Library. These FMS forms have been submitted for inclusion into the Delrina Form Flow Program forms database.

(1) Original and one copy of FMS Form 195, Judgment Fund Payment Request (Admin. Award) (figures 2-69a and b).

(2) Original and one copy of the FMS Form 196, Judgment Fund Award Data Sheet, prepared for each claimant receiving a monetary award (figures 2-70a and b).

(3) Original and one copy of the FMS Form 197 (Voucher For Payment) (figures 2-54a and b), where a claimant has not signed another agreement and is not represented by an attorney. The FMS Form 197 serves as a settlement agreement and will be signed by each claimant receiving a monetary award unless a separate agreement is needed (for example in a case where the claimant is represented by an attorney or in a case of a structured settlement, where FMS Form 197A (figure 2-54c) must be prepared); or

(4) Original and one copy of FMS Form 197A (Voucher for Payment), when the claimant has signed another agreement or in the case where the claimant is represented by an attorney. Where the claimant is represented by an attorney, two FMS Forms 197A will be prepared as follows. Using as an example, a claimant who is represented by an attorney and has agreed to a settlement of a tort for an awarded amount of $10,000:

(a) The FMS Form 197A will be prepared for payment to the claimant's attorney in an amount representing 20 percent of the total amount of the settlement award ($10,000), as reflected on FMS Form 196, for payment of attorney fees. The payee in Block A(4) would be the claimant's attorney. In Block A(5), reflect the attorney's Social Security number or, if paid to the law firm, the law firm's tax identification number (TIN), and in Block A(6) reflect the payment amount of $2,000. If the attorney desires payment by electronic transfer, Block A(7) should be completed by payee. In Block A(8) in addition to stating a brief description of the claim, add the remarks "Payment of Attorney Fees Only" (figure 2-54d).

(b) The FMS Form 197A will also be prepared for payment to the claimant for the remainder of the award, or 80 percent of the total amount of the settlement amount reflected on FMS Form 196. In Block A(4) of FMS Form 197A, reflect the name of the claimant and the claimant's attorney. In Block A(5) reflect the TIN of the claimant; if an individual claimant, state his Social Security number. In Block A(6) reflect the remaining balance of the settlement award, as in the example, the amount of $8,000. If the claimant desires electronic transfer into an account held in the claimant's name, Block A(7) should be completed by the payee (figure 2-54e).

(c) In a structured settlement where the total monetary award will be paid to the broker for distribution as outlined in the structured settlement agreement, Block A(5) of FMS Form 197A will reflect the EIN number of the broker to whom payment is made. Separate FMS Forms 197A are not prepared for individual claimants or their attorney, in such instances.

(d) In a non-structured settlement where a claimant is represented by an attorney and the procedures set forth in paragraph (4)(a) and (b) are followed, a separate settlement agreement will be prepared (figure 2-54f).

(5) Original and one copy of the claim, usually SF Form 95, and proof of authority to sign (guardianship decree, attorney's representation agreement, documents authorizing a corporate officer or a representative of the estate to sign, as appropriate).

(6) Original and one copy of the settlement agreement, when a separate settlement agreement is used in lieu of FMS Form 197.

(7) An action (figure 2-51) or, where the settlement has been approved by the Attorney General's designee for a FTCA claim or by TAJAG or Army General Counsel for a MCA, NGCA, or FCA claim, a copy of the approval document.

2–102. Finality of settlement

Payment of a claim pursuant to a duly executed and agreed settlement precludes further payment; the settlement is final, 28 USC 2672 and 10 USC 2735 (see extract at figure 2-71). Since all claims are paid under a limited waiver of sovereign immunity, there is no authority to pay additional amounts later. A paid settlement amount may be corrected only where error results in a payment less than the mutually understood settlement amount. See AR 27-20, paragraph 4-14*a*(2). Claimants are required to be advised of their right to request reconsideration or appeal, as appropriate, before accepting payment as set forth in the pertinent chapter of AR 27-20, under which final action was taken. (See FTCA Handbook, section II, paras B5a(9) and F8 for a discussion of cases on the finality of settlement.)

(a) Necessary amounts are appropriated to pay final judgments, awards, compromise settlements, and interest and costs specified in the judgments or otherwise authorized by law when—

(1) payment is not otherwise provided for;

(2) payment is certified by the Comptroller General; and

(3) the judgment, award, or settlement is payable--

(A) under section 2414, 2517, 2672, or 2677 of title 28;

(B) under section 3723 of this title;

(C) under a decision of a board of contract appeals; or

(D) in excess of an amount payable from the appropriations of an agency for a meritorious claim under section 2733 or 2734 of title 10, section 715 of title 32, or section 203 of The National Aeronautics and Space Act of 1958 (42 U.S.C. 2473).

(b)(1) Interest may be paid from the appropriation made by this section--

(A) on a judgment of a district court, only when the judgment becomes final after review on appeal or petition by the United States Government, and then only from the date of filing of the transcript of the judgment with the Comptroller General through the day before the date of the mandate of affirmance; or

(B) on a judgment of the Court of Appeals for the Federal Circuit or the United States Claims Court under section 2516(b) of title 28, only from the date of filing of the transcript of the judgment with the Comptroller General through the day before the date of the mandate of affirmance.

(2) Interest payable under this subsection in a proceeding reviewed by the Supreme Court is not allowed after the end of the term in which the judgment is affirmed.

(c)(1) A judgment or compromise settlement against the Government shall be paid under this section and sections 2414, 2517, and 2518 of title 28 when the judgment or settlement arises out of an express or implied contract made by—

(A) the Army and Air Force Exchange Service;

(B) the Navy Exchanges;

(C) the Marine Corps Exchanges;

(D) the Coast Guard Exchanges; or

(E) the Exchange Councils of the National Aeronautics and Space Administration.

(2) The Exchange making the contract shall reimburse the Government for the amount paid by the Government.

Figure 2-64. Judgments, Awards, and Compromise Settlement Act, extract from 31 USC 1304,

DEPARTMENT OF HEALTH & HUMAN SERVICES
BUREAU OF PROGRAM OPEATIONS

Health Care Financing Administration
Refer to: BPO-

Mr. Kenneth R. Roberts
Senior Claims Investigator
U.S. Army Claims Service
Office of The Judge Advocate General
Fort George G. Meade, Maryland 20755-5360

Re: (Name of Medicare Recipient and HIC number)

Dear Mr. Roberts:

This will confirm a telephone conversation on (date) with Betty Noble of my staff in which she informed you that the Health Care Financing Administration was willing to accept ($ amount) as payment in full for the medical services received by (name of claimant/Medicare recipient). As you are aware, Medicare under authority of the Federal Claims Collection Act (31 USC 3711) has the ability to accept a compromise settlement when specific criteria are met. We have reviewed these criteria and feel that this negotiated settlement has been agreed to in the best interest of the United States.

Please issue a check payable to Medicare, in the amount of (amount), include the beneficiary's name and health insurance claims number on the front of the check and forward to Betty Noble, 6300 Security Boulevard, Room 367 Meadows East Building, Baltimore, Maryland 21207. If we can be of further assistance in this matter, please do not hesitate to contact Betty Noble on 410-966-7504.

Sincerely,

Beth Giebelhaus
Acting Director
Division of Entitlement and
Benefit Coordination

Figure 2-65. Sample—Authority to compromise lien, Health Care Finance Administration

(Letterhead)

JACS-TCC (27-20g) DATE:

MEMORANDUM FOR COMMANDER, ARMY AND AIR FORCE EXCHANGE SERVICE, ATTN: COMPTROLLER DIVISION, INSURANCE BRANCH, POST OFFICE BOX 660202, DALLAS, TEXAS 75265-0202

SUBJECT: Claim of Beulah Rowley

1. Subject claim has been approved under the provision of Chapter 12, in the amount of $10, 000. The check should be made payable to **Beulah Rowley** and **Karen G. Schulman**, Attorney at Law, and mailed to Karen G. Schulman, 123 Main Street, Baltimore, Maryland 21116.

2. Enclosed are the following documents:

a. Action (dupe)

b. SF Form 95, Claim Form (dupe)

c. DA 1666, Settlement Agreement (dupe)

3. It is requested that a copy of the paid voucher be furnished this Service for completion of our file on this matter.

FOR THE COMMANDER:

3 Encls

QUINTON V. BOWMAN
LTC, JA
Chief, Western U.S. Torts Branch

CF:
Karen Schulman, Attorney at Law

Figure 2-66. Sample—Memorandum to obtain payment from Army and Air Force Exchange Service

(Letterhead)

(Claims Office Symbol)

MEMORANDUM FOR COMMANDER, U.S. ARMY CENTRAL INSURANCE FUND CENTER, ATTN: CFSC-RMB-I
(MS. HARRIS) 2641 EISENHOWER AVENUE, ALEXANDRIA,
VIRGINIA 22331-0508

SUBJECT: Claim of Terry Evans, 96-C01-0123

1. Settlement of the above claim has been approved by the (Department of Justice) (Commander, U.S. Army Claims Service, Office of The Judge Advocate General). Please forward a check in the amount of (state amount) payable to (payees' names and address).

2. Copies of the claim form(s), settlement agreement and court documents are enclosed. The following is a breakdown of the settlement cost:

(here reflect amount of payment to each claimant)

John W. Caldwell
LTC, U.S. Army
Chief, Western U.S. Torts Branch

3 Enclosures
1-Claim(s) form
2-Settlement Agreement
3-Court Documents

Figure 2-67. Sample—Memorandum to obtain payment from Army central insurance fund

(Letterhead)

Claims Symbol

MEMORANDUM FOR COMMANDER, U.S. ARMY CORPS OF ENGINEERS, PITTSBURGH DISTRICT, ATTN: CEORP-OC 1813 WILLIAM S. MOORHEAD FEDERAL BUILDING, 1000 LIBERTY AVENUE, PITTSBURGH, PENNSYLVANIA 15222-4186

SUBJECT: Claim of Charles Brown, 96-N08-T001

1. Subject claim has been approved under the provisions of 28 U.S.C. 2671-2680, in the amount of $1,000. Payment should be made from civil works funds. A check in the amount of $1,000 should be made payable to Charles Brown, 406 Avon Drive, Pittsburgh, Pennsylvania 15228.

2. To accomplish payment the following documents are enclosed:
  a. Claim for Damage or Injury (SF Form 95), in duplicate in the amount of $1,800.
  b. The action form, in duplicate.
  c. Settlement agreement, DA Form 1666, in duplicate, in the amount of $1,000, Charles Brown.

3. It is requested that a copy of the paid voucher be furnished this Service for completion of our file on this matter.

FOR THE COMMANDER:

JAMES P. GERSTENLAUER
Lieutenant Colonel, U. S. Army
Chief, Tort Claims Division

Figure 2-68. Sample—Memorandum to obtain payment from Corps of Engineers

(SAMPLE UNDER FTCA)

FMS FORM 195
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

FMS

Judgment Fund Payment Request (Administrative Award)

FOR FMS USE ONLY: Z-	*General Instruction*: **Use this form to transmit to FMS a request to certify an administrative award against the United States for payment from the Judgment Fund, under 31 U.S.C. 1304.**

Date: _____

Judgment Fund Section
Financial Management Service
Department of the Treasury
Room 6D37
3700 East-West Highway
Hyattsville, Maryland 20782
(Telephone: (202) 874-6664)

Matter of: John Jones

Dear Sir or Madam:

I have been authorized to administratively settle the claim(s) made against the United States in the captioned matter. As described in the enclosed documentation, I certify all pertinent criteria required by law for the approval of the claim(s) has been satisfied. The award has been made against the United States in this matter, and any portions of the award required to be paid from agency funds are being paid from those funds.

I believe that this award qualifies for payment pursuant to 31 U.S.C. 1304. Accordingly, I request that you certify this award for payment from the Judgment Fund established by that law. Enclosed are completed copies of FMS Form 196: Judgment Fund Award Data Sheet; FMS Form 197 or FMS Form 197A: Voucher for Payment; and all other enclosures required by FMS regulations. Unless payment by electronic funds transfer is indicated on FMS Form 196, please have the check sent to the agency contact shown in item 5(c) of FMS Form 196.

Captain David Dalition
Claims Judge Advocate
U.S. Army Claims Service

Enclosures:

Standard Form 95
Judgment Fund Award Data Sheet
FMS-197 or 197A: Voucher for Payment
Action
Settlement Agreement (if separate agreement is used)
Court Approval (if appropriate)
Appointment of Guardian or Administrator (if appropriate)
Request for payment from Defense Finance Accounting Service

Incomplete submissions will be returned to the submitter without action.

FMS Form 195
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-69A. Sample—Judgement fund payment report under the FTCA

(SAMPLE UNDER MCA)

FMS FORM 195
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

FMS

Judgment Fund Payment Request (Administrative Award)

FOR FMS USE ONLY: Z-	*General Instruction*: Use this form to transmit to FMS a request to certify an administrative award against the United States for payment from the Judgment Fund, under 31 U.S.C. 1304.

Date: _____

Judgment Fund Section
Financial Management Service
Department of the Treasury
Room 6D37
3700 East-West Highway
Hyattsville, Maryland 20782
(Telephone: (202) 874-6664)

Matter of: John Jones

Dear Sir or Madam:

I have been authorized to administratively settle the claim(s) made against the United States in the captioned matter. As described in the enclosed documentation, I certify all pertinent criteria required by law for the approval of the claim(s) has been satisfied. The award has been made against the United States in this matter, and any portions of the award required to be paid from agency funds are being paid from those funds.

I believe that this award qualifies for payment pursuant to 31 U.S.C. 1304. Accordingly, I request that you certify this award for payment from the Judgment Fund established by that law. Enclosed are completed copies of FMS Form 196: Judgment Fund Award Data Sheet; FMS Form 197 or FMS Form 197A: Voucher for Payment; and all other enclosures required by FMS regulations. Unless payment by electronic funds transfer is indicated on FMS Form 196, please have the check sent to the agency contact shown in item 5(c) of FMS Form 196. The claim has been approved under the Military Claims Act for payment in the amount of $1,100,000. Funds in the amount of $100,000 have been requested from the Defense Finance Accounting Service

_____
Signature

James P. Gerstenlauer, LTC
Name (printed or typed)

Chief, Tort Claims Div., USARCS
Title and Agency

Enclosures: FMS Form 196, FMS Form 197 or 197A, and FMS Form 198.

Incomplete submissions will be returned to the submitter without action.

FMS Form 195
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-69B. Sample—Judgement fund payment report under the MCA

FMS Form 196
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

Financial Management Service

FMS Judgment Fund Award Data Sheet

FOR FMS USE ONLY: Z-	*Instructions*: Both sides of this form must be completed. Use separate forms or schedules for separate payments to separate persons (for instance, separate awards to co-plaintiffs, or to an insurer and the insured). If extra space is needed (for instance, for class actions and multi-claimant awards), attach additional copies of this form or other papers. Indicate attachments at affected items.

1. Claim/Case
   a. Name of claim/case: John Jones
   b. Claimant/Plaintiff's File No., If Known: _____
   c. If Litigative Award:
      i. Court Name: _____
      ii. Docket No.: _____
      iii. D.O.J. Compromise Settlement? ____ Yes X No
   d. Date Award Made (mo/day/year): 07 / 09 / 1996
   e. Brief Description of Facts Giving Rise to Claim/Case:
      Injury arising from medical care provided at WRAMC, Wash. DC, on 17 August 1995

2. Claimant/Plaintiff
   a. Name and Address:
      John Jones
      1 Insurance Lane
      Annuitant, New Jersey 12345
   b. If Claim is For Back Pay, Give Claimant's:
      i. Social Security Number: ____-____-____
      ii. Birth Date (mo/day/year): ____/____/____

3. Payee Name (If Different From Claimant/Plaintiff Named Above): John Jones and Samuel Adams, attorney at law

4. Claimant/Plaintiff's Counsel, If Any
   a. Name and Address: Samuel Adams
      1 Pennsylvania Avenue
      Washington, DC 12345

5. Agency Information
   a. Submitting Agency: U.S. Army Claims Service
   b. Submitting Agency's File No.: 96-C01-T001
   c. Submitting Agency's Contact: CPT David Dalition
      i. Name and Address:
         U.S. Army Claims Service
         4411 Llewellyn Avenue
         Fort Geo. G. Meade, Maryland 20755-5360
      ii. Phone Number: (301) 677 - 7009, ext. 2
      iii. Fax No.: (301) 677 - 2643
   d. If Agency Subject to Claim/Suit is Not Submitting Agency:
      i. Subject Agency: _____
      ii. Subject Agency's File No.: _____
   e. Statutory Function Claim/Case Arose Under:
      28 USC 2672
   f. If Claim is Within Contract Disputes Act, 41 USC 601, 612:
      i. Name and Address of Agency Reimbursement Contact: _____
      ii. Phone Number: ( ) ____ - ____
      iii. Contract Number: _____
      iv. B.C.A. Number: _____

6. If Payment Will Be Made in a Foreign Currency
   a. Country and Currency: _____

FAILURE TO FULLY COMPLETE THIS FORM WILL RESULT IN ITS RETURN TO THE SUBMITTER.

FMS Form 196
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-70A. Completed FMS Form 196 (Judgement Fund Award Data Sheet), front

FMS Form 196
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

Judgment Fund Award Data Sheet: Instructions for Lines 7-15

ITEMIZATION OF AMOUNTS PAYABLE FROM THE JUDGMENT FUND	AMOUNTS TO BE PAID
	A
7. Principal	$80,000
7a. Citation to Legal Authority	28 USC 2672
8. Attorneys Fees	$20,000
8a. Citation to Legal Authority	
9. Costs	
9a. Citation to Legal Authority	
10. Interest	
10a. Citation to Legal Authority	
10b. Applicable Interest Rate (%) for Award Shown	
10c. Compound Interest Period (Daily, Yearly, etc.), If Any	
10d. Beginning and Ending Dates For Interest Accrual	
11. Total Amounts Payable From The Judgment Fund	$100,000

ALL If payment will be in a foreign currency, specify all monetary data in that currency.

7-10 If amounts for fees, costs, or interest were included in the principal amount (stated on line 7) as part of a "lump sum" award, enter "INCLUDED ABOVE" in the white area of column A for each such item. Enter "NONE" for any of these items (principal, fees, costs, or interest) for which no amount was awarded/included.

7. Enter the principal amount payable (excluding attorney fees, costs, and interest) in the column A white area. Cite the legal authority for that award (for instance, "FICA, 28 EUSC 2672" or "5th Amend. Reg. Taking") in the gray area below the a amount.

8. Enter attorney fee (if any) payable in column A white area. Cite legal authority for that award (for instance, "EAJA, 28 USC 2412(b)") in the gray area below the amount.

9. Enter costs payable (if any) in column A white area. Cite legal authority for that award (for instance, "EAJA, 28 USC 2412(a)") in the gray area below the amount.

10. If interest was payable and is calculable by the submitting agency, enter total amount in column A white area. Cite legal authority for that award (for instance, "Back Pay Act, 5 USC 5596(b)(2)") in the gray area below the amount and, if known, the rate, compounding period (if any), and the dates interest accrual begins and ends.

11. Add and enter the total amounts shown in white areas of lines 7 through 10.

DEDUCTIONS TO BE MADE FROM AMOUNTS PAYABLE FROM THE JUDGMENT FUND	AMOUNTS TO BE DEDUCTED		
	A	B	C
12. Itemized Deductions	NONE		
12a. Reason for the Deduction Shown			
12b. Entity and Program to Receive Deduction			
12c. Appropriation Account to Receive Deduction			
12d. Address of Entity to Receive Deduction			
13. Deductions From Other Pages (Number of Additional Pages = _____)			
14. Total Amount to be Deducted	0		
15. Net Amount Payable to Claimant/Plaintiff From the Judgment Fund	$100,000		

12. Starting in column A white area, enter any deductions specified in the judgment or settlement agreement, or to be set off under 31 USC 3728. Place each deduction in its own column and indicate in the gray areas below it the reason (for instance, "debt setoff, 31 USC 3728" or "FICA withholding") for it and the recipient's name, address, and appropriation account. If more than three deductions, attach additional sheets. If there are no deductions, enter "NONE" in column A white area.

13. Enter the number of extra pages (if any) attached for line 12 deductions in the space provided. Enter total amount from all additional pages used.

14. Enter the total amounts shown in all columns of line 12 (A, B, & C) and line 13(A).

15. Subtract the amount in line 14 from that in line 11. If greater than 0, enter the difference on line 15. If the difference is 0 or less, enter "NONE" on line 15.

PRIVACY ACT STATEMENT

This information is required in accordance with 31 U.S.C. §1304 and 5 U.S.C. §552. The data you furnish will be used to effect certification of your claim. The information may be shared with other branches within FMS for the purpose of certifying your claim. Failure to provide this information may result in your claim being returned to you.

FMS Form 196
7-97 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Figure 2-70B. Completed FMS Form 196 (Judgement Fund Award Data Sheet), reverse

10 U.S.C. Section 2735. Settlement: final and conclusive

Notwithstanding any other provision of law, the settlement of a claim under section 2733, 2734, 2734a, 2734b, or 2737 of this title is final and conclusive.

Figure 2-71. Act concerning Finality of Settlement under chapter 163 of Title 10

Chapter 3
Claims Cognizable Under the Military Claims Act

3–1. Statutory authority

a. The Military Claims Act (MCA), 10 USC 2733 (figure 3–1), was enacted on 3 July 1943. It provided retroactive coverage of claims occurring on or after 27 May 1941; President Roosevelt declared a National emergency on that date. The MCA was intended primarily to establish a new system of compensation for both personal injuries and property losses caused by newly mobilized troops in civilian communities throughout the United States, its territories and possessions and provided a corollary to the Foreign Claims Act (FCA).

b. When enacted, the original MCA repealed earlier statutes authorizing compensation for damage caused by various Army activities, such as firing site activities, maneuvers, or other military operations (Act of 24 August 1912, 37 Stat. 586), as well as for property damage caused by the U.S. Army Corps of Engineers' (USACE) river and harbor work. Act of 23 June 1910, 36 Stat. 630, 676. Congress intended the MCA to replace and expand upon these various authorities.

c. The MCA provides a limited waiver of sovereign immunity. Instead of a judicial remedy, it grants claimants the right to an administrative appeal. The MCA authorizes the Secretaries of the military services to issue regulations governing these claims. Courts have consistently upheld the constitutionality of these administrative regulations; decisions made thereunder are final and conclusive, *Rodrique v. United States*, 968 F.2d 1430 (1st Cir. 1992), *Hata v. United States*, 23 F.3d 230 (9th Cir. 1994), *Schneider v. United States*, 27 F.3d 1327 (8th Cir. 1994) cert. denied, 513 U.S. 1077 (1995).

d. Initially, the MCA limited payment of personal injury or death claims to only costs of medical, hospital, or burial services actually incurred, 57 372, Chapter 189. The MCA initially limited payments to $500 ($1,000 per claim in time of war). Any settlement constituted full and final satisfaction of the claim. Over the years, Congress raised the $500 monetary limitation by increments; presently, there is no maximum. Until the 1970s, USARCS was required to submit annually to Congress the name and amount of each claim settled. Also, it was required to refer any claim settled for more than $100,000 to Congress for a deficiency appropriation for the excess, since only the initial $100,000 was paid from agency funds. This schedule remains in effect except that any amount over $100,000 for each claim is now paid from the Judgment Fund, 31 USC 1304.

3–2. Scope

a. History. From the outset, the MCA has had worldwide application. For many years, however, it was used primarily to process claims arising within the United States. (The FCA was used to process claims brought by persons residing overseas during a time when few dependents accompanied troops abroad.) Until the FTCA's enactment, the MCA was the paramount statute for administering tort claims based on soldiers' negligent or wrongful acts or omissions within the United States. While the FTCA did not repeal the MCA, by its terms it became the preemptive Federal negligence remedy, Act of 2 August 1946 as part of the Legislative Reorganization Act of 1946, chapter 753, sections 401 through 424 (Federal Tort Claims Act), PL 79–601, 60 Stat. 812–844 at 842. However, the FTCA did not attenuate the MCA's other provisions governing claims arising from noncombat activities. See AR 27–20, Glossary. Additionally, the MCA continues to cover claims for loss of or damage to bailed personal property or insured mail in the Army's possession or claims engendered by the military's use and occupancy of real property. The FTCA had no effect on the administration of claims occurring outside the United States or claims by soldiers for property damage or loss incident to service not cognizable under the Personnel Claims Act (PCA). Thus, the Army Claims System continued to process a broad variety of claims under the MCA that neither the FTCA nor the FCA covered.

b. Negligence claims. As a matter of policy and to the extent possible, MCA negligence claims are processed and interpreted through the FTCA's implementing regulations and case law. The MCA applies to claims caused by an act or omission determined to be negligent, wrongful or otherwise involving fault of military personnel or civilian officers or employees acting within the scope of their employment outside the United States. Claimants are usually United States residents who are not proper claimants under the FCA or a Status of Forces Agreement (SOFA). To be payable, a claim must assert a tort under general principles of law applicable to a private individual in the majority of U.S. jurisdictions. See FTCA Handbook, section II, paragraph B1 through B4(a) for guidance.

c. Noncombat activity claims. Throughout the world, the MCA governs claims arising incident to authorized activities essentially military in nature, having little parallel in civilian pursuits, and which historically have been considered a proper basis for payment of claims. See AR 27–20, Glossary. Examples are practice firing of missiles and weapons, training and field exercises, and military maneuvers, including the operation of aircraft and vehicles, use and occupancy of real estate, movement of combat and other vehicles designed for military use and certain civilian activities over which the USACE historically has had exclusive jurisdiction. Activities carried out incident to combat, whether in time of war or not, and the use of military personnel and civilian employees in connection with civil disturbances or disasters are excluded from consideration under the MCA.

3–3. Claims payable

a. A valid MCA claim must be based on the negligent or wrongful act or omission of a DA or DOD soldier or civilian employee, see AR 27–20, paragraph 2–2*c*(4). As an exception, the acts or omissions of members of the Army National Guard (ARNG) while employed in training duty, under sections 316, 502, 503, or 505 of Title 32 USC, are outside the MCA's scope of coverage. These National Guard claims fall under the FTCA within the United States. Outside the United States, National Guard claims fall under the MCA or the FCA. If such claims arise from noncombat Army activities that are not normally activities of a State, they may fall under the NGCA. Similarly, contractors of the United States are not deemed employees under the MCA. See chapter 2, section V.

b. Noncombat activity claims.

(1) Noncombat activity claims are payable based on causation alone, so there is no requirement for a finding of negligence. Advance payments may be made in certain situations such as disasters. Thus, if a military aircraft crashes into a shopping center and causes serious injuries and property damage, the adjudicating authority may make advance payments for medical care and other essential services, including business rehabilitation, almost immediately. These payments should not be made to possible joint tortfeasors, such as contractor employees aboard the aircraft. Consent of the Commander, USARCS, is required for an advance payment of up to $25,000.

(2) Claims arising from noncombat activities should be processed under the MCA, even though subsequent investigation may indicate a negligent or wrongful act or omission by a soldier or employee. If the claimant elects the FTCA and files suit, follow normal FTCA procedures thereafter. Take care, however, to restrict the use of the noncombat activities provision to those activities historically falling within its definition. For example, if a military sedan causes an accident on a paved highway during a maneuver within CONUS, the claim should be processed under the FTCA, but a claim arising from an accident involving a tank on a paved highway during a maneuver within CONUS should be processed under the MCA.

(3) Frequently, claims incident to noncombat activities are processed under the MCA without investigating the issue of negligence. Blast damage claims are payable if the Army caused the damage. A blast damage claim might involve a possibly negligent act such as locating a new impact area near an off-post housing area. Similar damage claims caused by nap-of-the-earth flying are payable under the MCA as noncombat activity claims, even though the act of determining whether such flight constitutes a violation of the FAA's suggested flying limit of 500 feet above ground may fall under the

FTCA's discretionary function exception. See FTCA Handbook, section II, paragraph B4c(1).

(4) Advance payments should not be made if the claimant was wholly or partially negligent and the incident occurred in any place whose courts impose the legal doctrine of either contributory or comparative negligence. The MCA permits payment of such claims only to the extent that the law of the place of occurrence would allow individual recovery in similar circumstances, 10 USC 2733(b)(4), figure 3–1. While the contributory negligence bar probably would not prevent advance payments to persons injured in the shopping mall incident described above, it would likely affect the claims of scavengers injured while removing a dud from an impact area on a military installation.

(5) Similarly, advance payments should not be made when the principal tortfeasor is a contractor engaged in manufacturing, storing or transporting ordnance or demilitarizing chemicals or other toxic materials.

(6) A property damage claim by a landowner who has signed a written permit granting use of the land without cost for a maneuver is more easily settled by a USACE appraiser using operation funds during the maneuver than as a MCA noncombat activity claim, provided that such funds are budgeted during premaneuver planning. If settlement cannot be reached in this manner, advise the claimant to file a claim under the MCA.

(7) Claims personnel may consider claims arising out of some civil works activities under the noncombat activity provision. Historically, the USACE has exercised sole jurisdiction over certain civil works activities. As an example: in constructing a new dam, the USACE will take an easement to the estimated water boundary, failing to anticipate resultant crop damage. The USACE must then take an enhanced easement. However, crop damage sustained before this enhancement is compensable as a noncombat activity claim.

(8) While the MCA's noncombat activity provision should be used to pay such claims within the United States, denial should be processed under both the MCA and the FTCA, as the claim is often allegedly grounded in negligence.

c. Soldier's claims.

(1) A soldier is a proper MCA claimant for an incident-to-service property loss that is not compensable under the PCA. But a soldier may not recover for an incident-to-service personal injury or death under the MCA 10 USC 2733(b)(3), figure 3–1. However, both the MCA and PCA bar all subrogees, including soldiers, from recovering on claims accruing after 1 September 1995. To succeed on an otherwise payable MCA claim, the claimant must show negligence on the part of the United States.

(2) A foreign soldier stationed in the United States under NATO SOFA is entitled to identical recovery. The law provides that a claim arising in the United States under a reciprocal agreement be processed in the same manner as a claim arising from acts of the U.S. Armed Forces, 10 USC 2734b, figure 7–1. One court interpreted this language to mean that a German soldier's personal injury claim brought in the United States under NATO SOFA was barred by the incident to service doctrine, *Daberkow v. United States*, 581 F.2d 785 (9th Cir. 1978). Since the German soldier's claim for property damage would be similarly barred under the FTCA, it would fall under the MCA, if the foreign government had no law equivalent to the PCA.

d. Bailments.

(1) Bailment claims fall under the MCA. Property of a person other than a soldier damaged by a Quartermaster laundry is not covered by the PCA but is compensable under the MCA. Property damaged by a dry cleaning concessionaire is the responsibility of the concessionaire, however, and thus outside the MCA's coverage. Yet, property left in an unattended Army club cloakroom is not covered and claims for its loss are not payable under the MCA. The mere absence of warning signs at the Army club does not provide a basis for payment. Property stored at other activities operated by morale services (such as, stables, marinas and golf courses) is usually not considered bailed property as it is stored either at the owner's risk or outside the NAFI's control.

(2) Seized and abandoned property.

(a) Property seized as evidence by military police and not returned, or returned in a damaged condition, is not compensable if the detention of goods exclusion applies, 28 USC 2680(c). See FTCA Handbook, section II, paragraph B4e. It is possible that a Fifth Amendment taking has occurred; a bailment may have been created that is cognizable under the MCA or the Tucker Act. Seek guidance from USARCS.

(b) A claim for property abandoned on a military reservation and damaged or improperly disposed of may be compensable if the persons responsible fail to follow the disposal procedures set forth in AR 37–103. In any case, the amount for which the property was sold is recoverable from the DRMO. See paragraph 2–32*d*(11).

(c) Whenever personal property is seized, minimum due process includes affording the person from whom it was seized, or its registered owner, the opportunity to regain custody. Conducting an initial inventory of the condition and amount of property seized and another inventory upon the property's return is the best way to determine damage.

3–4. Claims not payable

a. Claims in foreign countries.

(1) Outside the United States, the MCA provides a remedy for United States inhabitants similar to those the FTCA provides within the United States. The MCA may be invoked by family members of soldiers and U.S. civilian employees, U.S. civilians, tourists or citizens not permanently residing in a foreign country, unless a current SOFA governs, in which case the latter provides these claimants a preemptive remedy. In the Federal Republic of Germany (FRG), all such persons, excluding soldiers' family members, unless acting as a member of the civilian component at the time of the incident giving rise to the claim, may be proper claimants under NATO SOFA and must file their claims with the Defense Cost Office (DCO). In the Republic of Korea, soldiers' family members are not deemed proper claimants under the Korean interpretation of the SOFA and must file their claims under the MCA. A retired U.S. soldier residing permanently in a NATO SOFA foreign country would qualify as a third party claimant under the FCA or SOFA unless the retiree is currently employed by DOD and is a member of the civilian component. In certain other countries (such as Belgium, the Netherlands, France and Denmark), members of the armed force or civilian component and their family members may claim under NATO SOFA. These parties may also file claims under the MCA if a consistent and widespread alternative claims process of this nature has been established within the receiving State.

(2) A remedy under the SOFA is preemptive. AR 27–20, paragraph 7–10*a*; FTCA Handbook, section II, paragraph B5h. In FRG, DCO has established a three-month filing requirement from the date the claimant is aware that he or she may have a claim against a member of the NATO Forces. A claimant should file with the DCO in the (German) State where the incident occurred. Family members frequently try to file their claims at an ACO or CPO. They should be directed to the appropriate DCO. The SOL normally starts to run immediately (for example, following a car accident with a military vehicle). It is not tolled until the claimant learns of a specific remedy or how and where to file a claim. Claimants may request a waiver of the SOL for good cause. Waivers will not be granted without such a request, no matter how good the cause. If the three-month period has expired, the claimant should also file SF 95, which the ACO or CPO retains, pending the DCO's decision. Inform the claimant where to file a claim with the DCO, of the three-month filing requirement and the need to establish good cause to obtain a waiver of the three-month filing requirement, if necessary. If DCO denies the claim on the merits, for example, by finding neither liability nor damages, both the MCA and the FCA normally will bar recovery. The claimant's next option is to appeal such decision to a FRG court within 60 days. Forward claims the DCO rejects for jurisdictional reasons (for example, the SOL has run or the party is an improper claimant) to USACSEUR. That Service will determine whether the U.S. Army European Command should discuss the DCO rejection with the appropriate FRG office before

requesting permission from USARCS to consider the claim under the MCA or the FCA. See AR 27–20, paragraph 7–12. If the DCO denies a claim because the three-month period has expired or the claimant is not a proper claimant, the Commander, USARCS, may, in his or her discretion, grant recovery if the claim is otherwise meritorious.

b. Tangible property.

(1) Both the MCA and the FTCA limit compensation for property loss or damage to tangible property. See paragraph 2–69*e*; FTCA Handbook, section II, paragraph C26. Incidental or consequential damages are not compensable. The following are examples of indirect or consequential damages:

- Attorneys' fees associated with defending administrative or criminal charges.
- Loss of schooling or employment due to an erroneous enlistment.
- Bad check charges.
- Loss of rental deposits.
- Medical bills resulting from an adverse decision under CHAMPUS.
- Third party claim paid by a volunteer ("rich uncle").
- Expenses incurred in connection with erroneous PCS orders.

Upon receipt of such a claim, screen the related remedies found at paragraph 2–32 and direct the claimant to the appropriate one. In the absence of another remedy, take delivery of the claim and deny it under the MCA or the FTCA, as applicable. A claimant should never be denied the right to file a claim.

(2) In any given case, if Command interest so dictates and the claim, after investigation, is deemed otherwise meritorious, advise the unit commander to pursue the matter through command channels for consideration of settlement from the Secretary's contingency fund. Ensure that the claimant's consequential loss was unavoidable and resulted solely from the Army's or DOD's actions or omissions.

(3) The claimant may forward claims arising out of the Defense Finance Operations directly to GAO for consideration under the Meritorious Claims Act, 31 USC 3702. It is a prerequisite, however, that the claim is not payable by other means, such as from Agency funds.

(4) Do not advise a claimant to seek a private relief bill as such advice implies that the Executive Branch would consider the claim favorably.

c. Claims for rent arising out of the use and occupancy of real estate are not payable under AR 27–20. Such claims arise most frequently during deployment when forces occupy a building without a lease. See discussion at paragraph 2–28. A claim for damage to the property is payable under the MCA. However, when a USACE real estate office executes a retroactive lease, it should attempt to include the damage in any retroactive rent payment. See AR 405–15 for further information.

3–5. Applicable law

a. Until 1958, the MCA expressly limited payment of personal injury and death claims to out-of-pocket expenses. In enacting the MCA, Congress permitted the military services to conduct their necessary operations while maintaining public cooperation and, in particular, the local community's good will. Payments duplicating those already made by others (such as insurers), would hinder, rather than further, these aims. Collateral source payments fall into this category. For definition, discussion, and current case law on the collateral source rule, see FTCA Handbook, section II, paragraph C10. Similarly, payments to insurance companies as subrogees are barred on claims accruing on or after 1 September 1995. The regulations implementing both the PCA and the FCA have always barred such payments. Since the MCA serves the same general purposes as does the FCA, it provides no new reason to pay subrogees. Note, however, that a soldier may file for property loss or damage pursuant to the MCA without first filing with an insurer as the PCA requires.

b. Similarly, the MCA limits claims for negligent or intentional infliction of emotional distress (absent physical impact) to those brought by family members present in the zone of danger who exhibit physical manifestations of such distress. The formulas used to compensate emotional distress claims for both negligent and intentional torts vary considerably from one State to the next, so it is extremely difficult to determine the majority rule. The recent judicial trend appears to limit these claims severely, despite lenient damage awards by more liberal courts. To become familiar with the limitations imposed in MCA cases, it is necessary to study the wealth of FTCA case law. See FTCA Handbook, section II, paragraph B1c(4). Consultation with the appropriate AAO is advised. See also chapter 2, section VI of this publication.

3–6. Settlement authority

See chapter 2, section IX.

3–7. Action on appeal

Appeals are time-consuming and costly. The higher authority will consider an appeal only if the issues are clearly defined, the Army's position is well supported, and the claimant has been given a meaningful opportunity to support the claim (and has failed to do so) after full disclosure of the legal requirements for considering the claim and the appeal. See paragraphs 2–94 and 2–98.

a. Upon receipt of an appeal, follow these guidelines before forwarding the file to the appellate authority for final action:

(1) The provision of AR 27–20, paragraph 3–7*e*, stating that the burden of proof is on the claimant, means that a claim should not be denied until the claimant has been informed in very specific terms what proof is necessary, particularly if the claimant is unrepresented and has thus far failed to submit the required proof. Tell the claimant exactly what documents or proof is needed and why. Follow up these discussions with written confirmation. The same holds true for claimant interviews. If the claimant asks the reason for the interview, respond that it is being held to determine the basis for the claim (liability) as well as to obtain information concerning damages.

(2) Rather than rely on a police report in an accident case, go to the scene with the claimant, the Army driver and the police, if necessary. During a damages interview, inform the claimant that settlement is being considered, but never concede liability. In a medical malpractice or other professional negligence action, outline the Army's position after the Army's expert review is completed, without naming the source, except, perhaps, where claimants agree to reciprocate by supplying their own expert opinions. In outlining the Army's position, inform the claimant that, under the FTCA, the court would require an expert opinion before filing suit and that, even though the MCA does not offer a judicial remedy, its procedures also require an expert opinion. See chapter 2, sections IV and IX.

b. In a property damage claim, compensation should be limited to documented damages and based on applicable law. Do not add nuisance value solely to settle the claim. This may lead to conflict about whether consequential damages are recoverable. AR 27–20, paragraph 3–5, lists elements of damages that are not payable for claims accruing on or after 1 September 1995. On the other hand, do not impose the restrictions set forth in AR 27–20, chapter 11 (such as the requirement to order parts through AAFES to avoid the imposition of duty in a foreign country) unless general State or Federal law upholds the restriction (for a claim outside the United States).

3–8. Payment of costs, settlements and judgments related to certain medical malpractice claims

a. MCA procedures may be used to process a claim against the United States for the actions of Army medical trainees engaged in training agreements under which Army health care personnel train at civilian MTFs. Most of these agreements provide that the Army, not the civilian institution, will consider claims arising out of Army trainees' related actions. Applicable State law may subsume such claims under the FTCA; however, the DOJ maintains that if the

trainee is a loaned servant under State law, then the claim is not payable thereunder despite the plain language of the training agreement; this position could deter civilian institutions from entering into future training agreements. In such cases, process the claim pursuant to the MCA and base any authorized payments on the law of the State of occurrence, since the medical trainee tort is not cognizable as a noncombat activity claim.

b. The FTCA's procedures may not be advisable for handling certain incidents such as those in which the non-DA attending physician, not the DA trainee, is the primary tortfeasor. Discuss the individual case with the appropriate AAO. Perhaps the injured party has filed a civil suit against the institution, and the latter is requesting indemnification or contribution. On the other hand, the trainee may be the principal tortfeasor, even if the patient has filed against only the institution or attending physician. Forward all such requests for indemnification or contribution to USARCS.

c. Along with their movement orders, DA health care personnel training at civilian MTFs receive detailed information about their responsibilities if they are involved in a potentially compensable event (PCE). They are instructed to report any lawsuit filed against the trainee individually to both USARCS and, under AR 27–40, the Army Litigation Center. Nevertheless, there have been unreported individual lawsuits in which a Government health care provider hired an attorney and prepared a defense. Courts have held that the FTCA's immunity provisions do not preclude such suit, despite the Westfall Act (28 USC 2679); they may be filed under the Gonzales Act, 10 USC 1089, figure 3–2. The Westfall Act, 28 USC 2679, did not repeal the Gonzales Act, which permits suit on willful torts, waiving the FTCA exclusion found at 28 USC 2680(h), so that a plaintiff may file an individual lawsuit against the DA trainee for physician-patient sexual assault despite the statutory bar, 28 USC 2679. See paragraph 2–67*f(5)(g)*. Costs and fees as well as awards may be paid under the MCA. See FTCA Handbook, section II, paragraph D1.

3–9. Payment of costs, settlements and judgments related to certain legal malpractice claims

a. The Westfall Act amended the FTCA to preclude suit against a Federal employee acting within the scope of employment, 28 USC 2679, figure 4–1. Accordingly, within the United States, there should be little reliance on the MCA's procedures. In fact, USARCS has not processed any such claims.

b. The MCA may be used outside the United States to award costs resulting from a suit in a foreign court. See figure 7–1 for a list of statutes implementing Status of Forces Agreements. NATO SOFA, Article VIII, paragraph 5(g), precludes the enforcement of any such judgment against a member of the force or civilian component acting within the performance of official duties. USARCS has not processed any such claims.

10 USC 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the Chief Counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be; or

(3) personal injury or death; either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment or otherwise incident to noncombat activities of that department.

Figure 3-1. Military Claims Act, 10 USC 2733

Section 1089. Defense of certain suits arising out of medical malpractice.

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent of wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physicians, dentist, nurse, pharmacist, or paramedical or other supporting personnel (of the estate of such person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning on subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f) The head of the agency concerned may, to the extent that the head of the agency concerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act of omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term "head of the agency concerned" means—

(1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Transportation, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy; and

(3) the Armed Forces Retirement Home Board, in the case of an employee of the Armed Forces Retirement Home; and.

(4) the Secretary of Defense, in all other cases.

Figure 3-2. The Gonzales Act, Defense of Medical Malpractice Suits, 10 USC 1089

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

(2) to the Attorney General; and

(3) to the head of the agency concerned.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section the term "head of the agency concerned" means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

Effective Date. Section 1054 of title 10, United States Code, as amended by subsection (a), shall apply only to claims accruing on or after the date of the enactment of this Act, regardless of when the alleged negligent or wrongful act or omission occurred.

Figure 3-3. Defense of legal malpractice suits, defense of certain suits arising of legal malpractice, 10 USC 1054

Chapter 4
Claims Cognizable under the Federal Tort Claims Act

4–1. Authority

Culminating years of effort, the Congress enacted the Federal Tort Claims Act (FTCA) in 1946, applying it retroactively to claims accruing on or after 1 January 1945, 60 Statutes At Large 842; figure 4–1. Since the early 1920's, Congress had considered earlier versions of the FTCA in order to staunch the flow of private relief bills besieging it, finally achieving this result by enacting the FTCA. This law waives the Government's sovereign immunity to tort liability. Its waiver is limited by the conditions it imposes on filing and by numerous exclusions to its coverage. These limitations and restrictions must be strictly construed in favor of the United States, *McNeil v. United States*, 508 U.S. 106 (1993).

4–2. Scope

a. Under the FTCA, the United States is liable in the same manner and to the same extent as a private individual under like circumstances, 28 USC 2674, figure 4–1. The whole law of the place of occurrence applies. An act or omission rises to the status of an FTCA tort only if the act or omission is an actionable tort in the state where the cause of action arose. The FTCA does not waive immunity for a tort arising from a violation of the U.S. Constitution unless the violation constitutes a State tort as well. If the applicable State law deems the violation a tort, the action must be brought as a State tort rather than as a constitutional tort. See paragraphs 2–65 and 2–72.

b. Originally, the FTCA permitted persons to sue without first filing an administrative claim, although claims for amounts up to $1, 000 could be brought against the agency concerned. Seeking to lighten the load on the courts and to permit agencies to settle meritorious claims, the Congress amended the FTCA in 1966, requiring an administrative claim as a condition precedent to suit. Under that amendment, effective February 1967, the claimant may file suit six months after the date of filing an administrative claim, for any reason and without regard to the status of any negotiations, 28 USC 2675, figure 4–1. When suit is filed, the Federal agency loses control of the claim and any settlement executed thereafter is controlled by the DOJ or the U.S. Attorney. The Federal agency plays an advisory role and frequently conducts most pre-trial discovery. For Army cases, the Army Litigation Center or its delegee fulfills the DA's role.

c. Whether the tortfeasor is, or is not, a Federal employee is a question of Federal law in any claim arising under the FTCA. The compilation of Federal employees set forth at AR 27–20, paragraph 2–2*b*, is based on USARCS' experience over the years but is not intended to be inclusive. Similarly, whether the FTCA claim involves a Federal agency is a question of Federal law, but the courts have decided most of these issues. For example, the courts have long considered NAFIs and AAFES to be Federal agencies. Questions still exist, however, about military spouses' clubs, thrift shops, and other private organizations operating on post or existing solely to support the military community. Depending primarily on the benefits accruing to the Government, a private association may be a Federal agency for FTCA purposes. Interpretation of the statute of limitations (SOL) is also a Federal question. The DOJ has always considered the SOL requirement contained in 28 USC 2401(b) jurisdictional in nature. The doctrine of equitable tolling discussed in a 1990 Supreme Court decision casts doubt on this position, however, *Irwin v. Department of Veterans Affairs*, 498 US 89 (1990), modified by *Lampf, Pleva, Lipkind, Prupis and Petigrow v. Gilbertson*, 501 U.S. 350 (1991). See FTCA Handbook, section II, paragraph D1c. Scope of employment is a State law question. See paragraph 2–63a and FTCA Handbook, section II, paragraph B3.

d. The Army's administrative claims settlement program has been a success since its inception in 1967. Many Federal agencies have no such program. Others maintain only minimal programs. Only the DVA operates a program comparable to the Army's. A program has a good chance of succeeding when it calls for the ACO or CPO to coordinate from the outset with the appropriate AAO, to investigate as well as select claims for favorable action promptly, and to communicate with the claimant as a means to maintain the latter's interest in pursuing the administrative process instead of suing. The six-month permissive filing requirement is designed to compel attention and quick action. Over the years, the administrative claims program has saved the Federal Government many millions of dollars—it more than justifies Army claims personnel's efforts to settle claims administratively.

e. Figure 4–2 sets forth the U.S. Attorney General's regulations implementing the FTCA. Figure 4–3 provides references to its legislative history and bibliography.

4–3. Claims payable

See chapter 2, sections V and VI, on liability and damages. For discussion on whether to consider a claim under the FTCA or the MCA's noncombat activities provision, see paragraph 3–3.

4–4. Claims not payable

See paragraph 2–66.

4–5. Law applicable

See paragraph 4–2. See also chapter 2, sections V and VI.

4–6. Settlement authority

See chapter 2, section IX.

4–7. Reconsideration

See chapter 2, section IX.

Section 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Section 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:

(1) Any civil action against the United States for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978, or the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(c) The jurisdiction conferred by this section includes jurisdiction of any setoff, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

Section 1402. United States as defendant

(a) Any civil action in a district court against the United States under subsection (a) of section 1346 of this title may be prosecuted only:

(1) Except as provided in paragraph (2), in the judicial district where the plaintiff resides;

(2) In the case of a civil action by a corporation under paragraph (1) of subsection (a) of section 1346, in the judicial district in which is located the principal place of business or principal office or agency of the corporation; or if it has no principal place of business or principal office or agency in any judicial district (A) in the judicial district in which is located the office to which was made the return of the tax in respect of which the claim is made, or (B) if no return was made, in the judicial district in which lies the District of Columbia. Notwithstanding the foregoing provisions of this paragraph a

Figure 4-1. Federal Tort Claims Act, 28 USC—Continued

district court, for the convenience of the parties and witnesses, in the interest of justice, may transfer any such action to any other district or division.

(b) Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

(c) Any civil action against the United States under subsection (e) of section 1346 of this title may be prosecuted only in the judicial district where the property is situated at the time of levy, or if no levy is made, in the judicial district in which the event occurred which gave rise to the cause of action.

(d) Any civil action under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States shall be brought in the district court of the district where the property is located or, if located in different districts, in any of such districts.

Section 2401. Time for commencing action against United States

(a) Except as provided by the Contract Disputes Act of 1978, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

Section 2402. Jury trial in actions against United States

Any action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346(a)(1) shall, at the request of either party to such action, be tried by the court with a jury.

Section 2411. Interest

In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal revenue tax, interest shall be allowed at the overpayment rate established under section 6621 of the Internal Revenue Code of 1986 upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. The Commissioner is authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor.

Section 2412. Costs and fees

(a) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c) (1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a

Figure 4-1. Federal Tort Claims Act, 28 USC—Continued

finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d) (1) (A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expanded and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(2) For the purposes of this subsection—

(A) “fees and other expenses” includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) “party” means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000, 000 at the time the civil action was filed; and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 USC 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 USC 1141j(a)), may be a party regardless of the net worst of such organization or cooperative association;

(C) “United States” includes any agency and any official of the United States acting in his or her official capacity;

(D) “position of the United States” means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) “civil action brought by or against the United States” includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to the Contract Disputes Act of 1978;

(F) “court” includes the United States Claims Court;

(G) “final judgment” means a judgment that is final and not appealable, and includes an order of settlement; and

(H) “prevailing party”, in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to the Contract Disputes Act of 1978,

Figure 4-1. Federal Tort Claims Act, 28 USC—Continued

the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(5) The Director of the Administrative Office of the United States Courts shall include in the annual report prepared pursuant to section 604 of this title, the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this subsection. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards.

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1986 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

Tort Claims Procedures

Section 2671. Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term “Federal agency” includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

“Employee of the government” includes officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

“Acting within the scope of his office or employment”, in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

Section 2672. Administrative adjustment of claims

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred; Provided, That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency’s authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all offices of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to this

Figure 4-1. Federal Tort Claims Act, 28 USC—Continued

section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, compromise, or settlement in an amount in excess of $2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter.

Section 2673. Reports to Congress

The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

Section 2674. Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

Section 2675. Disposition by federal agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time or presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages.

Section 2676. Judgment as bar

The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

Section 2677. Compromise

Figure 4-1. Federal Tort Claims Act, 28 USC—Continued

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

Section 2678. Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

Section 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b) (1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designed by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d) (1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trail by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trail petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the

Figure 4-1. Federal Tort Claims Act, 28 USC—Continued

district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1),(2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.

Amendments

1988–Subsec. (b). Pub. L. No. 100–694, Section 5, amended subsec. (b) generally. Prior to amendment, subsec (b) read as follows: "The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property or personal injury or death, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim."

Subsec. (d). Pub. L. No. 100–694, Section 6, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Upon a certification by the Attorney General that the defendant employee was acting within the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceedings deemed a tort action brought against the United States under the provisions of this title and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trail on the merits that the case so removed is one which a remedy by suit within the meaning of subsection (b) of this section is not available against the United States, the case shall be remanded to the State court."

1966–Subsec. (b). Pub. L. No. 89–506 inserted reference to section 2672 of this title and substituted "remedy" for "remedy by suit."

1961–Pub. L. No. 87–258 designated existing provisions as subsec. (a) and added subsecs. (b) to (e).

Effective Date of 1988 Amendment

Section 8 of Pub. L. No. 100–694 provided that:

(a) General Rule.—This Act and the amendments made by this Act [enacting section 831c–2 of Title 16, Conservation, amending this section and sections 2671 and 2674 of this tile, and enacting provisions set out as notes under this section and section 2671 of this title] shall take effect on the date of the enactment of this Act [Nov. 18, 1988].

(b) Applicability to Proceedings.—The amendments made by this Act [amending this section and sections 2671 and 2674 of this title] shall apply to all claims, civil actions, and proceedings pending on, or filed on or after, the date of the enactment of this Act.

(c) Pending State Proceedings.—With respect to any civil action or proceeding pending in a State court to which the amendments made by this Act apply, and as to which the period for removal under section 2679(d) of title 28, United States Code (as amended by section 6 of this Act), has expired, the Attorney General shall have 60 days after the date of the enactment of this Act during which to seek removal under such section 2679(d).

(d) Claims Accruing Before Enactment.—With respect to any civil action or proceeding to which the amendments made by this Act apply in which the claim accrued before the date of the enactment of this Act, the period during which the claim shall be deemed to be timely presented under section 2679(d)(5) of title 28, United States Code (as amended by section 6 of this Act) shall be that period

Figure 4-1. Federal Tort Claims Act, 28 USC—Continued

within which the claim could have been timely filed under applicable State law, but in no event shall such period exceed two years from the date of the enactment of this Act.

Section 2680. Exceptions

The provisions of this chapter and section 1346(b) to this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741–752, 781–790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1–31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Repealed. Sept. 26, 1950, ch. 1049, Section 13 (5), 64 Stat. 1043.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: Provided, That, with regard to act or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, “investigative or law enforcement officer” means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company.

(n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.(June 25, 1948, ch. 646, 62 Stat. 984; July 16, 1949, ch. 340, 63 Stat. 444; Sept. 26, 1950, ch. 1049 Sections 2(a)(2), 13(5), 64 Stat. 1038, 1043; Aug. 18, 1959, Pub. L. No. 86–168, title II, Section 202(b), 73 Stat. 389; Mar. 16, 1974, Pub. L. No. 93–253, Section 2, 88 Stat. 50.)

Figure 4-1. Federal Tort Claims Act, 28 USC

Authority: 5 USC 301; 28 USC 509, 510, 2672; 38 USC 224(a).

Source: Order No. 371–66, 31 FR 16616, Dec. 29, 1966, unless otherwise noted.

28 Code Federal Regulations

Section 14.1 Scope of regulations.

These regulations shall apply only to claims asserted under the Federal Tort Claims Act. The terms "Federal agency" and "agency", as used in this part, include the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States but do not include any contractor with the United States.

Section 14.2 Administrative claim; when presented.

(a) For purposes of the provisions of 28 USC 2401(b), 2672, and 2675, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident: and the title or legal capacity of the person signing, and is accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

(b) (1) A claim shall be presented to the Federal agency whose activities gave rise to the claim. When a claim is presented to any other Federal agency, that agency shall transfer it forthwith to the appropriate agency, if the proper agency can be identified from the claim, and advise the claimant of the transfer. If transfer is not feasible the claim shall be returned to the claimant. The fact of transfer shall not, in itself, preclude further transfer, return of the claim to the claimant or other appropriate disposition of the claim. A claim shall be presented as required by 28 USC 2401(b) as of the date it is received by the appropriate agency.

(2) When more than one Federal agency is or may be involved in the events giving rise to the claim, an agency with which the claim is filed shall contact all other affected agencies in order to designate the single agency which will thereafter investigate and decide the merits of the claim. In the event that an agreed upon designation cannot be made by the affected agencies, the Department of Justice shall be consulted and will thereafter designate an agency to investigate and decide the merits of the claim. Once a determination has been made, the designated agency shall notify the claimant that all future correspondence concerning the claim shall be directed to that Federal agency. All involved Federal agencies may agree either to conduct their own administrative reviews and to coordinate the results or to have the investigations conducted by the designated Federal agency, but in either event, the designated Federal agency will be responsible for the final determination of the claim.

(3) A claimant presenting a claim arising from an incident to more than one agency should identify each agency to which the claim is submitted at the time each claim is presented. Where a claim arising from an incident is presented to more than one Federal agency without any indication that more than one agency is involved, and any one of the concerned Federal agencies takes final action on that claim, the final action thus taken is conclusive on the claims presented to the other agencies in regard to the time required for filing suit set forth in 28 USC 2401(b). However, if a second involved Federal agency subsequently desires to take further action with a view towards settling the claim the second Federal agency may treat the matter as a request for reconsideration of the final denial under 28 CFR 14.9(b), unless suit has been filed in the interim, and so advise the claimant.

(4) If, after an agency final denial, the claimant files a claim arising out of the same incident with a different Federal agency, the new submission of the claim will not toll the requirement of 28 USC 2401(b) that suit must be filed within six months of the final denial by the first agency, unless the second agency specifically and explicitly treats the second submission as a request for reconsideration under 28 CFR 14.9(b) and so advises the claimant.

(c) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 USC 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duty authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and

Figure 4-2. Attorney General's regulation implementing FTCA—Continued

the claimant's option under 28 USC 2675(a) shall not accrue until six months after the filing of an amendment.

Section 14.3 Administrative claim; who may file

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the descendant's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

Section 14.4 Administrative claims: evidence and information to be submitted

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the descendent.

(2) Descendant's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of this death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury*. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this paragraph and has made or agrees to make available to the agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

Figure 4-2. Attorney General's regulation implementing FTCA—Continued

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) Property damage. In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

Section 14.5 Review by legal officers.

The authority to adjust, determine, compromise, and settle a claim under the provisions of section 2672 of Title 28, United States Code, shall, if the amount of a proposed compromise, settlement, or award exceeds $5,000, be exercised by the head of an agency or his designee only after review by a legal officer of the agency.

Section 14.6 Dispute resolution techniques and limitations on agency authority

(a) Guidance Regarding Dispute Resolution. The administrative process established pursuant to 28 USC 2672 and this part 14 is intended to serve as an efficient effective forum for rapidly resolving tort claims with low costs to all participants. This guidance is provided to agencies to improve their use of this administrative process and to maximize the benefit achieved through application of prompt, fair, and efficient techniques that achieve an informal resolution of administrative tort claims without burdening claimants or the agency. This section provides guidance to agencies only and does not create or establish any right to enforce any provision of this part on behalf of any claimant against the United States, its agencies, its officers, or any other person. This section also does not require any agency to use any dispute resolution technique or process.

(1) Whenever feasible, administrative claims should be resolved through informal discussions, negotiations, and settlements rather than through the use of any formal or structured process. At the same time, agency personnel processing administrative tort claims should be trained in dispute resolution techniques and skills that can contribute to the prompt, fair, and efficient resolution of administrative claims.

(2) An agency may resolve disputed factual questions regarding claims against the United States under the FTCA, including 28 USC 2671–2680, through the use of any alternative dispute resolution technique or process if the agency specifically agrees to employ the technique or process, and reserves to itself the discretion to accept or reject the determinations made through the use of such technique or process.

(3) Alternative dispute resolution techniques or processes should not be adopted arbitrarily but rather should be based upon a determination that use of a particular technique is warranted in the context of a particular claim or claims, and that such use will materially contribute to the prompt, fair, and efficient resolution of the claims. If alternative dispute resolution techniques will not materially contribute to the prompt, fair, and efficient resolution of claims, the dispute resolution processes otherwise used pursuant to these regulations shall be the preferred means of seeking resolution of such claims.

(b) Alternative Dispute Resolution.

(1) Case-by-case. In order to use, and before using any alternative dispute resolution technique or process to facilitate the prompt resolution of disputes that are in excess of the agency's delegated authority, an agency may use the following procedure to obtain written approval from the Attorney General, or his or her designee, to compromise a claim or series of related claims.

(i) A request for settlement authority under paragraph (b)(1) of this section shall be directed to the Director, Torts Branch, Civil Division, Department of Justice ("Director") and shall contain information justifying the request, including:

(A) The basis for concluding that liability exists under the FTCA;

Figure 4-2. Attorney General's regulation implementing FTCA—Continued

(B) A description of the proposed alternative dispute resolution technique or process and a statement regarding why this proposed form of alternative dispute resolution is suitable for the claim or claims;

(C) A statement reflecting the claimant's or claimants' consent to use of the proposed form of alternative dispute resolution, indicating the proportion of any additional cost to the United States from use of the proposed alternative dispute resolution technique or process that shall be borne by the claimant or claimants, and specifying the manner and timing of payment of that proportion to be borne by the claimant or claimants;

(D) A statement of how the requested action would facilitate use of an alternative dispute resolution technique or process;

(E) An explanation of the extent to which the decision rendered in the alternative dispute resolution proceeding would be made binding upon claimants; and,

(F) An estimate of the potential range of possible settlements resulting from use of the proposed alternative dispute resolution technique.

(ii) The Director shall forward a request for expedited settlement action under paragraph (b)(1)(i) of this section, along with the Director's recommendation as to what action should be taken, to the Department of Justice official who has authority to authorize settlement of the claim or related claims. If that official approves the request, a written authorization shall be promptly forwarded to the requesting agency.

(2) Delegation of Authority. Pursuant to, and within the limits of, 28 USC 2672, the head of an agency or his or her designee may request delegations of authority to make any award, compromise, or settlement without the prior written approval of the Attorney General or his or her designee in excess of the agency's authority. In considering whether to delegate authority pursuant to 28 USC 2672 in excess of previous authority conferred upon the agency, consideration shall be given to:

(i) The extent to which the agency has established an office whose responsibilities expressly include the administrative resolution of claims presented pursuant to the Federal Tort Claims Act:

(ii) The agency's experience with the resolution of administrative claims presented pursuant to 28 USC 2672;

(iii) The Department of Justice's experiences with regard to administrative resolution of tort claims arising out of the agency's activities.

(c) Monetary authority. An award, compromise, or settlement of a claim by an agency under 28 USC 2672, in excess of $25,000 or in excess of the authority delegated to the agency the Attorney General pursuant to 28 USC 2672, whichever is greater, shall be effected only with the prior written approval of the Attorney General or his or her designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(d) Limitations on settlement authority.

(1) Policy. An administrative claim may be adjusted, determined, compromised, or settled by an agency under 28 USC 2672 only after consultation with the Department of Justice when, in the opinion of the agency:

(i) A new precedent or a new port of law is involved; or

(ii) A question of policy is or may be involved; or

(iii) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim; or

(iv) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000 or may exceed the authority delegated to the agency by the Attorney General pursuant to 28 USC 2672, whichever is greater.

(2) Litigation arising from the same incident. An administrative claim may be adjusted, determined, compromised, or settled by an agency under 28 USC 2672 only after consultation with the Department of Justice when the agency is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

(e) Procedure. When Department of Justice approval or consultation is required, or the advise of the Department of Justice is otherwise to be requested, under this section, the written referral or request of the Federal agency shall be directed to the Director at any time after presentment of a claim to the Federal agency, and shall contain:

Figure 4-2. Attorney General's regulation implementing FTCA—Continued

(1) A short and concise statement of the facts and the reasons for the referral or request;

(2) Copies of relevant portions of the agency's claim file; and

(3) A statement of the recommendations or views of the agency.

Section 14.7 [Reserved]

3. Section 14.7 is removed and reserved.

Section 14.8 Investigation and examination.

A Federal agency may request any other Federal agency to investigate a claim filed under section 2672, title 28, U.S. Code, or to conduct a physical examination of a claimant and provide a report of the physical examination. Compliance with such requests may be conditioned by a Federal agency upon reimbursement by the requesting agency of the expense of investigation or examination where reimbursement is authorized, as well as where it is required, by statute or regulation.

Section 14.9 Final denial of claims.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 USC 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the agency for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the agency shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 USC 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final agency action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

Section 14.10 Action on approved claims.

(a) Any award, compromise, or settlement in an amount of $2,500 or less made pursuant to 28 USC 2672 shall be paid by the head of the Federal agency concerned out of the appropriations available to that agency. Payment of an award, compromise, or settlement in excess of $2,500 shall be obtained by the agency by forwarding Standard Form 1145 to the Claims Division, General Accounting Office. When an award is in excess of $25,000, or in excess of the authority delegated to the agency by the Attorney General pursuant to 28 USC 2672, whichever is greater, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee. When the use of Standard Form 1145 is required, it shall be executed by the claimant, or it shall be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of any award, compromise or settlement made pursuant to the provisions of section 2672 or 2677 of Title 28, United States Code, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Section 14.11 Supplementing regulations.

Each agency is authorized to issue regulations and establish procedures consistent with the regulations in this part.

Figure 4-2. Attorney General's regulation implementing FTCA

Citations:

28 USC §§1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671–80 (1990) (originally 28 USC §§921–946); enacted August 2, 1946 as title IV of the Legislative Reorganization Act of 1946 by Pub. L. No. 79–601, 60 Stat. 812–44; significantly amended July 18, 1966 by Pub. L. No. 89–506, 80 Stat. 306; March 16, 1974 by Pub. L. No. 93–253, 88 Stat. 50; November 18, 1988 by Pub. L. No. 100–694, 102 Stat. 4563–67; and November 15, 1990 by Pub. L. No. 101–552, 104 Stat. 2736.

Lead Agency:

Department of Justice, Torts Branch, Civil Division, Room 8098 North, National Place, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004 (202) 514–3309.

Overview:

Before 1946, the doctrine of sovereign immunity obliged almost all victims of government wrongdoing to seek relief via congressional enactment of a private bill. The Federal Tort Claims Act waived this defense to permit damage actions against the United States for injury, loss of property or death caused by the negligent or wrongful acts or omissions of federal employees acting within the scope of their employment. The Act provides that the United States shall be liable in the same manner and to the same extent as a private individual under like circumstances in accordance with the law of the place where the negligent or wrongful conduct occurred.

Administrative Claims. As first drafted, the FTCA sought to transfer to the federal courts primary responsibility for determining what redress was warranted, but amendments enacted in 1966 shifted much of that burden to the agencies. Claims must now be presented to the responsible agency as a prerequisite for suit (§2675(a)). The claim must be presented in writing within 2 years after it accrued and the agency has a minimum of 6 months in which to act. If the agency fails to make a final disposition of the claim within that period, the claimant, at anytime thereafter, may treat that as a denial and file suit. Agencies may settle claims under the Act in any amount, subject, however, to prior written approval by the Attorney General or his designee for settlements in excess of a specified level (§2672)1, and must exercise their settlement authority "in accordance with regulations prescribed by the Attorney General." (See Appendix.) These regulations are quite sparse. As a result of the 1966 amendments, many agencies have established relatively elaborate procedures for the presentation, investigation, and administrative adjustment of tort claims. Today thousands of claims are disposed of at the agency level. Considerable litigation has occurred involving the statute of limitations and the sufficiency of claimants' administrative filings, particularly over agencies' authority to demand extensive information substantiating a claim and to regard a claim as invalid for all purposes when such data are not provided. A widely cited case, *Adams v. United States*, 615 F.2d 284, on rehearing, 622 F.2d 197 (5th Cir.1980), holds that section 2675(a)'s mandate that a claim be filed initially with the agency requires only that the claimant place a monetary value on the claim and give sufficient written notice of the claim to enable the agency to conduct an investigation. Several prior decisions (e.g., *Swift v. United States*, 614 F.2d 812 (1st Cir.1980)) had required considerably more of claimants. To make the agency-level process more open and less adversarial, the Conference has recommended a number of changes and has called for some amendments to the FTCA and the Attorney General's rules (Recommendation 84–7). The Administrative Dispute Resolution Act of 1990 implemented some of these changes.

Court Claims. If administrative settlement efforts fail, the claimant may sue either in the federal district court for the district in which the alleged negligent or wrongful act occurred or where he or she resides (§1402(b)), provided that the administrative claims was properly presented within two years after it accrued and suit is brought within six months after the agency's final decision (§2401(b)). Suit may be brought only against the United States, not against the federal agency. The only remedy under the FTCA is money damages; the Act does not authorize equitable remedies. The sum demand in the lawsuit generally cannot exceed the amount of the claim presented to the agency (§2675(b)). Liability and damage standards, in most instances, are based on the law of the place where the negligent or wrongful act occurred, except that the United States is not liable for punitive damages or prejudgment interest (§2674). Jury trials are not authorized under the FTCA, and attorneys' fees are subject to a ceiling of 20 percent of the amount recovered in agency-level settlements and 25 percent of judgments and litigation settlements (§2678).

Coverage. The FTCA contains more than a dozen exceptions (§2680). It does not apply, for example, to the following:

Figure 4-3. Federal Tort Claims Act (extracted from Federal Administrative Procedure Source Book—2d Edition)—Continued

* Claims arising in a foreign country;

* Claims based upon the performance of a discretionary function;

* Claims arising out of the assessment or collection of any tax or customs duty;

* Claims covered by certain other statutes;

* Claims arising out of libel, slander, misrepresentation, deceit or interference with contract; and

* Claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution or abuse of process, except where based upon acts or omissions of federal investigative or law enforcement officers occurring after 1974.

In addition, the FTCA does not apply to claims of members of the armed forces arising out of activity incident to their service (Feres v. United States, 340 U.S. 135 (1950)). Nor does it apply to injury claims of civilian federal employees arising in the performance of duty; (their exclusive remedy against the Government is under the Federal Employees' Compensation Act). Congress considered several bills during the 1980s that would have expanded the Act to cover agency employees' actions that violate constitutional or statutory rights, a reform advocated by the Conference. (Recommendation 82–6). Another subject of considerable commentary and legislative interest has been the scope of the discretionary function exception. None of the bills relating to these matters has received approval; and federal employees remain subject to personal damage suits for so-called constitutional torts.

In 1988, Congress did modify the FTCA to render it the exclusive remedy for common law torts—as opposed to actions that violate constitutional or statutory rights—committed by federal employees within the scope of their employment. This legislation was necessitated by the Supreme Court's decision in *Westfall v. Erwin*, 108 S. Ct. 580 (1988), which dramatically expanded the personal tort liability of federal employees. The 1988 amendments also made explicit that activities of officials of the judicial and legislative branches are covered by the FTCA, and preserved for the United States any defenses based upon judicial or legislative immunity that could have been asserted by the official individually.

Related Statutes. Besides the FTCA, more than 40 "meritorious claims" and other ancillary statutes afford an administrative or judicial remedy for certain additional kinds of losses occasioned by governmental action. These statutes vary considerably as to kinds of claims covered, claimants eligible, remedies available, proof required, and procedures followed. They include the Military and Foreign Claims Act, Coast Guard and National Guard Claims Acts, Small Claims Act, Copyright Infringement Act, Trading with the Enemy Act, Public Vessels Act, Suits in Admiralty Act, and statutes covering some actions of the Departments of State, Agriculture, HHS, and Justice, NASA, the NRC, the Peace Corps, and the Postal Service. They are catalogued and discussed in Lester Jayson's *Handling Federal Tort Claims* and George Bermann's *Administrative Handling of Monetary Claims*.

Legislative History:

Efforts at passage of legislation similar to the FTCA began in the 1920s; a measure with similar purposes was passed by the 70th Congress, but met with a pocket veto by President Coolidge. Twin bills in many respects identical to the present Act, H.R. 7236 and S. 2690, were introduced in the 76th Congress in 1940. H.R. 7236 passed the House, but after hearings the Senate Judiciary Committee did not report S. 2690 and the measure died. In the 77th Congress, the Senate passed S. 2221. The House Committee on the Judiciary, after hearings on similar measures introduced by Representative Celler, H.R. 5373 and H.R. 6463, reported the Senate measure favorably, with amendments, but it was not considered by the full House. (All these bills are reprinted in the reports of the committee hearings.) As thus amended, S. 2221 is a virtual duplicate of the Act finally passed by the 79th Congress in 1946. Because of this similarity, the hearings and reports on the 1940 and 1942 measures are valuable source material in analyzing the FTCA, especially as the hearings and reports on the 1946 Act are relatively sparse. As Lester Jason notes in discussing the more than 30 prior bills introduced in this area, "Since many of the provisions of the Federal Tort Claims Act as it exists today have their genesis in these proposals, and since many of these provisions were the subjects of discussion and explanation at committee hearings and in committee reports, it often may prove to be fruitful, if not crucial, to [the practitioner's] presentation and preparation of a case involving the meaning or interpretation of some part of the existing law to examine its legislative history, and to review these earlier bills and hearings and reports."

Source Note:

The two most comprehensive sources are Jayson's three-volume *Handling Federal Tort Claims*, which treats FTCA litigation exhaustively, and George Bermann's *Administrative Handling of Monetary Claims* (1984), examining at length the operation of agencies' settlement processes and basic legal and procedural questions thereunder. Donald Zillman (1983) gives valuable information on presenting a claim. A useful Yale Law Journal note entitled "The Federal Tort Claims Act" (1947) examines the

Figure 4-3. Federal Tort Claims Act (extracted from Federal Administrative Procedure Source Book—2d Edition)—Continued

tort claims bills introduced between 1925 and 1946 (pages 2–55), along with significant committee reports and hearings relating to them.

The literature on officials' constitutional tort liability is vast, and Thomas Madden and Nicholas Allard's *Advice on Official Liability and Immunity* (1982) contains an extensive annotated bibliography. *Suing Government* (1983) offers an overview of these issues. Several more recent articles on the subject are listed in the Bibliography. Numerous articles, very few of which are listed below, deal with the government's potential liability in a variety of specific situations, including negligent occupational, mine or airplane safety inspections, improper customs seizures, weather forecasts, parole of dangerous criminals, atomic testing, and medical or other cases involving the military.

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Coast Guard (Transportation)	33 CFR §§25.101–.409
Commerce	15 CFR §§2.1–.8
Defense Logistics Agency (Defense)	32 CFR §§1280.1–.5
Education	34 CFR §§35.1–.10
Energy	10 CFR §§1014.1–.11
Environmental Protection Agency	40 CFR §§10.1–.11
Federal Emergency Management Agency	33 CFR §§11.1–.19
Housing and Urban Development	24 CFR §§17.1–.12
Interior	43 CFR §§22.1–.5
Internal Revenue Service (Treasury)	26 CFR §§601.205
International Communication Agency	22 CFR §§511.1–.12
Labor	29 CFR §§15.1–.22
NASA	14 CFR §§1261.300–.317
National Credit Union Administration	12 CFR §§750.1–.10
National Gallery of Art	36 CFR §§503.1–.3
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Peace Corps	22 CFR §§304.1–.12
Postal Service	39 CFR §§912.1–.14
Small Business Administration	13 CFR §§114.100–.111
Smithsonian Institution	36 CFR §§530.1–.23
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U.S. Information Agency	22 CFR §§511.1–.12
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Figure 4-3. Federal Tort Claims Act (extracted from Federal Administrative Procedure Source Book—2d Edition)

Chapter 5
Claims Involving Government Vehicles and Property

5–1. Statutory authority

The Non-Scope Claims Act (10 USC 2737) (see figure 5-1) was enacted in 1962 as a supplement to Article 139, UCMJ, a recovery statute that requires proof of a willful act and limits compensation to property loss or damage. The Non-Scope Claims Act does not require proof of willful act and covers personal injury as well as property damage. Both the Non-Scope Claims Act and Article 139 are designed to provide compensation for damage caused by soldiers who are not acting within the scope of their employment. In this sense, they parallel the Foreign Claims Act, which also has no scope requirement.

5–2. Scope

Payments under the Non-Scope Claims Act are limited to $1,000 of non-indemnifiable (out-of-pocket) expenses arising from property loss, personal injury or death, caused by the non-scope use of a Government-owned vehicle (GOV), whether on or off-post or the non-scope use of other Government property, such as a weapon or golf cart, on post. Because it is the DOJ's policy that a claim may not be settled if other claims, actual or potential, arising out of the same incident might lead to litigation, all parties to the settlement must agree that it is final; this requirement applies to the insurer who has paid for property loss or medical bills, even though the insurer is not a proper claimant under the Act, 28 CFR 14.6 (see figure 4-2). Where the evidence of a Non-Scope Act is clear and convincing, the requirement that all parties agree to the settlement poses no problem. Often, however, the scope determination may not be clear and the agreement of all parties may be difficult to obtain.

5–3. Claims payable

a. Consider applying the Non-Scope Claims Act whenever a decision is reached to deny a FTCA, MCA, or NGCA claim on the basis that the Government driver or user was not within scope.

b. To enable such a determination, the officer or Government employee who supervised the user of the property should furnish a scope certificate; see figure 2-22. The second and third paragraphs of the scope certificate apply solely to the NGCA. Other formats may be used. A checklist for scope of duty analysis is found at figure 2-25. The scope certificate is not definitive and additional investigation should be conducted when circumstances indicate, for example, where time and distance factors appear suspicious (such as a recruiter driving an applicant home in a GOV at 0200, and home is 50 miles away from the recruiter's office). Using a GOV without authority is punishable under the UCMJ but it is not necessarily outside scope if such use is usual and customary, for example, driving a GOV off-post to a fast food establishment. Using a vehicle to drop off one's dry cleaning while on a mission to obtain supplies is not necessarily non scope, if the applicable State law has adopted the dual purpose doctrine, which means that an employee may be acting for himself and his employer simultaneously. Intoxication alone may not remove a driver from the scope of employment. Always examine the applicable State law in light of the factual setting.

c. Practical aspects are usually involved in a scope determination. Scope is presumed whenever an authorized driver is operating an Army or official vehicle. This means that the burden of proving otherwise rests on the United States. Court decisions in FTCA cases indicate a general reluctance to hold a driver outside scope. This is true particularly when the United States is the sole source for paying a claim, as, for example, when the Government driver or employee does not have POV or personal liability insurance or when such coverage is limited, the injuries are serious, and fair compensation would exceed the monetary limits of the personal insurance coverage. See FTCA Handbook, section II, paragraph B3.

d. Experience indicates that a thorough and prompt investigation of a scope issue may result in a court finding that the soldier or employee was not acting within the scope of employment. In doubtful cases, consider compromising the value of FTCA, MCA, or NGCA claims if the claimant rejects a chapter 5 settlement.

5–4. Claims not payable

The following are examples of claims that are not payable:

a. Collision insurance covers the claimant's automobile, with a deductible amount of $250. While the claimant is sitting in the properly parked vehicle, it is struck from the rear by an Army truck driven by a DA civilian, who has misappropriated the truck. The claimant sustains personal injuries requiring hospitalization for six days and incurs, during that time, actual medical and hospital expenses amounting to $1,500. The claimant has no medical or hospitalization insurance. The damage to the vehicle amounts to $1,000. The insurance carrier reimburses the claimant $750 for the vehicle damage and becomes subrogated in that amount under the policy terms. The claimant files a claim in the amount of $1,500 for medical and hospital expenses. The claim is allowable in the total amount of $1,000, consisting of $250, the insurance deductible for property damage, and $750 of the medical and hospital expenses. The amounts claimed for medical and hospital expenses and for property damage constitute separable interests in a single claim that are not allowed in excess of $1,000 under this chapter. The claimant's insurer is not a proper party claimant, and no payment is allowable for the insurer's subrogated interest. The insurer must agree to the settlement.

b. Claimant holds an insurance policy authorizing reimbursement of up to $500 for the reasonable costs of medical and hospital expense incurred for personal injuries. While visiting an Army installation, the claimant is wounded when a soldier who has stolen a Government-issue 9-mm pistol negligently discharges it. The claimant is hospitalized at a civilian hospital and incurs medical and hospital expenses of $750. The claimant may be paid $250, the amount allowable for reasonable medical and hospital expenses actually incurred after deducting $500 legally recoverable under the insurance policy.

5–5. Settlement Authority

The Settlement Authority will usually be the same as the Settlement Authority for the original claim filed under the FTCA, MCA or NGCA as applicable. Any denial based on non scope, however, must first be considered under the Non-Scope Claims Act. The applicable law is found in FTCA Handbook, section II, paragraph B3.

5–6. Reconsideration

Since a claim is not presented first under the Non-Scope Claims Act, consider a request for reconsideration under the procedures that apply to the FTCA or, if it is not cognizable under the FTCA, as an appeal under the MCA or NGCA.

10 USC 2737. Property loss; personal injury or death; incident to use of property of the United States and not cognizable under other law.

(a) Under such regulations as Secretary concerned may prescribe, he or his designee may settle and pay, in an amount not more than $1,000, a claim against the United States, not cognizable under any other provision of law, for-

(1) damage to, or loss of, property; or

(2) personal injury or death caused by a civilian official or employee of a military department or the Coast Guard, or a member of the armed forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(b) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department with respect to a claim, not cognizable under any other provision of law, for—

(1) damage to, or loss of property; or

(2) personal injury or death caused by a civilian official or employee of the Department of Defense not covered by subsection (a), incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(c) A claim may not be allowed under subsection (a) or (b) if the damage to, or loss of, property, or the personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(d) A claim for personal injury or death under this section may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(e) No claim may be allowed under this section unless it is presented in writing within two years after it accrues.

(f) A claim may not be paid under subsection (a) or (b) unless the amount tendered is accepted by the claimant in full satisfaction.

(g) No claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, may be paid under this section. No subrogated claim may be paid under this section.

(h) As far as practicable, regulations prescribed under this section shall be uniform. Regulations prescribed under this section by the Secretaries of the military departments must be approved by the Secretary of Defense.

Figure 5-1. Non-Scope Claims Act

Chapter 6
Claims Arising from Activities of the Army National Guard

6–1. Statutory Authority

a. Following an explosion at a missile site in Middletown, New Jersey, Congress enacted the National Guard Claims Act (NGCA) in 1960, 32 USC 715, figure 6–1. At the time, one half of all Army missile sites were manned by the active Army and the other half by U.S. Army National Guard (ARNG) members employed in civilian technician status. The explosion occurred at an Army site and resulting claims were settled under the Military Claims Act (MCA). Because the MCA was intended not to cover claims arising out of the acts or omissions of State ARNG personnel serving in technician status under State control, Congress enacted a statute with language identical to that of the MCA, intending that it cover the acts of technicians performing Federal missions as well as ARNG members serving in a Federally funded training or duty status, under State control and on State-issued orders.

b. In 1968, all NG technicians were designated Federal employees, 32 USC 709. Because these employees perform both Federal and State duties, the Federal-State dichotomy affecting their status remains alive today. Additionally, a technician undergoing Federally funded training is considered to hold the same status as any ARNG member on Federally funded training or duty. ARNG personnel performing Federally funded training duty under 32 USC 316, 502, 503, 504 and 505 were subsumed into FTCA coverage on 29 December 1981 by amendment to 28 USC 2671, figure 4–1. This amendment sought to ensure that ARNG personnel were protected by the Driver's Act when subjected to individual suits, 28 USC 2679 (figure 4–1).

6–2. Scope

a. The ARNG, as a community-based force, often performs work incident to FTNGD training or IDT in support of the local community and various private organizations. Such activities are authorized under a variety of statutes (such as 10 USC sections 2012, 2548, and 2572(d)(2)(B), and 32 USC 508), a number of which apply to all the military components, not just the ARNG. Claims arising from the involvement of ARNG soldiers in such statutorily sanctioned activities are within the scope of employment for purposes of the FTCA. The fact that such activities might also be performed in a state active duty (SAD) status, with exclusively State claims liability, is irrelevant in processing claims arising from such activities conducted in a FTNGD or IDT status under the FTCA.

b. Because claims arising from the acts or omissions of both technicians and ARNG personnel on training or other Federally funded duty fall under the FTCA, the NGCA's scope differs from that of the MCA, even though pertinent language in the two statutes is identical. Both technicians and ARNG personnel performing training or other federally funded training duty remain under State control. If a person in either category is performing a State mission or function, particularly at State installation armories, the investigation must determine where there is a direct benefit to the Federal government. Each claim, particularly those arising at ARNG installations and armories, must be investigated with this difference in mind. (See FTCA Handbook, section II, para B5b for applicable case law.)

6–3. Claims payable

See chapter 3 of this publication.

6–4. Claims not payable

a. See the list of claims not payable set forth at AR 27–20, paragraph 3–4, and discussion at paragraph 3–4 of this publication.

b. Additionally, claims for damage to State-owned property caused by an ARNG member of that particular State are not payable.

c. Claims for injuries or death arising from the operation or administration of a State-owned or -leased ARNG camp or armory are not payable. Examples of such claims are a slip and fall injury due to a defective or improperly maintained surface and injury from removing an explosive device from an impact area.

6–5. Applicable law

See chapter 3 of this publication.

6–6. Settlement authority

See chapter 3 of this publication.

6–7. Action on appeal

See chapter 3 of this publication.

32 USC 715. Property loss; personal injury or death; activities under certain section of this title.

(A) Under such regulations as the Secretary of the Army or Secretary of the Air Force may prescribe, he or, subject to appeal to him, the Judge Advocate General of the armed force under his jurisdiction, if designated by him, may settle and pay in an amount not more than $100,000 a claim against the United States for—

(1) damage to, or loss of, real property, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property, including property bailed to the United States, or the National Guard, and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the National Guard; or

(3) personal injury or death; either caused by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under section 316, 502, 503, 504, or 505 of this title or any other provisions of law for which he is entitled to pay under section 206 of title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.

(B) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of title 10 or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or a person employed under section 709 of this title, whose injury or death is incident to this service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee, or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and end of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(C) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States or of any State or the District of Columbia or Puerto Rico.

(D) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

(E) Except as provided in subsection (d), no claim may be paid under its section unless the amount tendered is accepted by the claimant in full satisfaction.

(F) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(G) Notwithstanding any other provision of law, the settlement of a claim under this section is final and conclusive.

(H) In this section, “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or disallowance.

Figure 6-1. National Guard Claims Act, extract from 32 USC 715

Chapter 7
Claims Under Status of Forces and Other International Agreements

Section I
General

7–1. Statutory authority

See FTCA Handbook, section II, paragraph B5h for case law.

a. The NATO SOFA came into force and was ratified in 1953, TIAS No. 2886. This treaty required the United States to reimburse the receiving State for 75 percent of any payment made to settle claims created by the United States as well as to settle claims created by sending State forces within the United States. Enacted in 1954, the statute authorizing payment of these obligations is codified at 10 USC 2734a and b, shown at figure 7–1. The NATO SOFA was supplemented in 1996 by the Partnership for Peace Agreement, which extended the provisions of Article VIII to claims arising within its signatory States, such as Hungary. The German Supplemental Agreement is found at TIAS No. 3425, 1954. The statute implements obligations similar to those arising under NATO SOFA created by any other treaty, such as those executed with Iceland (TIAS No. 2295, 1951), Japan, (TIAS No. 2492, 1952), Korea (TIAS No. 6127, 1966), and Australia (TIAS No. 5346, 1963). Of these agreements, only NATO SOFA contains reciprocal provisions covering claims arising from the acts or omissions of foreign forces in the United States.

b. See figure 7–2 for a comprehensive list of terms relevant to NATO SOFA Article VIII claims. These are some of the most important terms:

(1) *Contracting Party and third party.* Article VIII recognizes two kinds of claimants:

(a) A Contracting Party (Party) is a member nation of NATO that is also a signatory to NATO SOFA.

(b) A third party is a person or entity, such as an individual, association, enterprise, organization, or even another nation, that is not a party to NATO SOFA. A political subdivision of a party may be a third party.

(2) *Force and civilian component.* Many provisions of Article VIII apply to damages and injuries caused by members of a force or civilian component. These terms are defined in Article I of the NATO SOFA as follows:

(a) "Force" means the personnel belonging to the land, sea, or air armed services of one Party when situated in the territory of another party in the North Atlantic Treaty area in connection with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units, or formations shall not be regarded as constituting or included in a force for the purposes of the present agreement, NATO SOFA, Article I, paragraph 1(a). For example, agreements between the United States and other NATO countries further implementing NATO SOFA often provide that attachés, Military Assistance Advisory Group (MAAG) personnel, or other personnel who enjoy diplomatic immunity are not considered members of the U.S. force. The German Supplemental Agreement to the NATO SOFA provides that service attachés, members of their staffs, and any other service personnel enjoying diplomatic or other special status in the Federal Republic of Germany (FRG) shall not be regarded as constituting or included in a force, TIAS No. 5351. However, other agreements differ from the German agreement. For example, agreements between the United States and Norway (TIAS No. 2950) and the United States and Denmark (TIAS No. 4002) provide that members of the U.S. MAAG will not be considered in a force. The latter agreements also exclude Offshore Procurement Program personnel. U.S. Army regulations state that claims arising from the activities of MAAG personnel in foreign countries are not generally processed under NATO SOFA or similar agreements but by U.S. authorities under the standard procedures for the administrative settlement of foreign claims, AR 1–75, paragraph 6–3. "Standard procedures" here refers to settlements under the MCA or FCA (see AR 27–20, chaps 3 and 10, and paras 7–1 through 7–9 of this publication).

(b) "Civilian component" means the civilian personnel who accompanying a force of a Party, who are employed by an armed service of that Party and who are not Stateless persons, nationals of any State that is not a party to the North Atlantic Treaty, nationals of, nor ordinarily resident in, the State in which the force is located (NATO SOFA, Art. I, para 1(b)). Most U.S. citizen civilian employees of the U.S. armed services and their supporting NAF activities located in NATO countries may be classified as members of a civilian component. Most locally hired foreign employees of the U.S. armed services and their NAF activities do not qualify as members of a civilian component, however, because such persons ordinarily are nationals of, or resident in, the State in which the force is located. Dependents of members of a force or a civilian component are not themselves members of a force or a civilian component unless they are employed by an armed service. Damages and injuries caused by dependents who do not qualify as members of the civilian component are not subject to treatment under the claims provisions of NATO SOFA.

(3) *Sending State and receiving State.* Two other terms are pertinent to the claims provisions of NATO SOFA:

(a) "Sending State" is the Party whose force is situated in a foreign country (NATO SOFA, Art. I, para 1(d); AR 27–20, para 7–1*b*).

(b) "Receiving State" is the Party in whose territory the sending State force or civilian component is located, whether it is stationed there or passing in transit (NATO SOFA Art. I, para 1(e); AR 27–20, para 7–2*a*).

c. DOD has assigned single service responsibility for the investigation and settlement of claims including but not limited to countries in which a SOFA is in force. (See DODD 5515.8; see also figure 7–3). A mailing address list for single service claims offices is at figure 7–4.

7–2. Scope

a. Types of claims. Article VIII covers three types of claims:

(1) Intergovernmental claims by one Party against another Party (NATO SOFA, Art. VIII, paras 1 through 4).

(2) Claims by third parties for damages they sustain in a receiving State, that arise either out of the acts or omissions of members of a force or civilian component done in the performance of official duty or out of any other act, omission, or occurrence for which a force or civilian component is legally responsible. These are the "scope" claims, NATO SOFA, Article VIII, paragraph 5. See figure 7–2.

(3) Claims by Contracting Parties or third parties, which, but for the agreement's provisions, would be asserted against individual members of a force or civilian component, and which arise out of tortious acts or omissions in the receiving State done outside the performance of official duty. These are the "non-scope" claims (see para c(3)). NATO SOFA, Article VIII, paragraph 6, as set forth at figure 7–2.

(4) Certain types of claims are expressly excluded from consideration under Article VIII. These include contractual claims based upon private contracts of members of the force or civilian component with third parties (NATO SOFA, Art. VIII, para 5), and third-party claims of a maritime nature (NATO SOFA, Art. VIII, para 5(h)). However, claims for death or personal injury arising from maritime operations that are not waived under Article VIII, paragraph 4, may be covered under the Agreement. In addition, certain claims of Contracting Parties against each other are waived either wholly or in part (see subparas (1)(*a*)–(d)).

b. Discussion. The following is a discussion of each of the three types of Article VIII claims.

(1) *Intergovernmental claims.* Article VIII, paragraphs 1 through 4, concern claims that one Party may bring against another Party. Of course, intergovernmental claims covered by Article VIII are limited to those exhibiting some connection with the North Atlantic Treaty implementation. International claims of one member nation against

another member nation that do not arise from NATO-related activities are beyond Article VIII scope. Moreover, the scope of intergovernmental claims covered by Article VIII is rather narrowly defined, so some claims related to NATO operations—for example, contractual claims between parties (NATO SOFA, Art. VIII, paras 1 and 2) and war damage claims (NATO SOFA, Art. XV, para 1)—do not necessarily fall within its terms. Intergovernmental claims are divided into four categories:

(a) Claims for damage to military property. Pursuant to Article VIII, paragraph 1, each Party waives its claims for damage to property owned by it and used by its armed services when the damage is caused by a member or employee of the armed services of another Party in the execution of the latter Party's duties in connection with the operation of the North Atlantic Treaty. The waiver would apply, for example, when a receiving State vehicle is damaged in a collision with a sending State vehicle during a joint training exercise. The waiver also applies when the property damage is caused by the use of a vehicle, vessel, or aircraft owned by another Party and used by its armed services in connection with the North Atlantic Treaty. Further, even when the military vehicle, vessel, or aircraft that caused the damage is not being used in connection with NATO, claims are waived if the damaged military property was being used in that connection (NATO SOFA, Art. VIII, para 1(ii)). For the waiver provisions to operate, the military property damaged or the military personnel or instrumentalities causing the damage must have some relationship with the North Atlantic Treaty operation. In practice, however, military property belonging to a NATO sending State located within a NATO receiving State is normally presumed to provide the needed NATO link.

(b) Claims for damage to nonmilitary property. Article VIII, paragraph 2, provides for a waiver, in an amount of $1,400 or its equivalent, for damage to property owned by a party but not used by that party's armed services, NATO SOFA Art. VIII, paragraph 2(f). DOD does not construe this waiver as establishing a "deductible" rule. If, for example, a German Bundespost vehicle is damaged in a collision with a U.S. forces vehicle while the U.S. vehicle is engaged in a NATO exercise, the Bundespost claim will not be waived unless the damage sustained was less than $1,400. Liability for damage to nonmilitary national property in amounts in excess of $1,400 is apportioned between the party responsible for the damage and the party whose property is damaged in accordance with the formulas set out in Article VIII, paragraphs 5(e)(i), (ii), and (iii). If the parties are unable to resolve the issue of liability for damage to nonmilitary property by mutual agreement, the SOFA provides for arbitration procedure (NATO SOFA, Art. VIII, para 2(a)). Property owned by a Party's political subdivision is property owned by the Party unless determined to be national property. If it is determined that the property of the political subdivision is not national property, the political subdivision may then be recognized as a proper third party claimant under Article VIII, paragraph 5.

(c) Maritime salvage claims. Article VIII, paragraph 1, provides that claims for maritime salvage by one Party against another will be waived when the vessel or cargo salvaged is owned by another Party and used by its armed services in connection with NATO. In addition to the usual concepts relied upon to establish ownership, a vessel is considered to be owned by a Party when the shipowner has leased it to the Party under bareboat charter (in a "bareboat charter," the Party taking the vessel under lease, the charterer, maintains sole possession, control, and management of the vessel), the Party has requisitioned the vessel on bareboat terms, or has seized it as a prize. A prize is a vessel belonging to a belligerent power, apprehended or forcibly captured at sea by a warship of the other belligerent, claimed as enemy property. Such a prize is therefore liable to appropriation and condemnation under the law of war. These concepts of vessel ownership (bareboat charter or seized prize) apply also to military vessels.

(d) Claims for injury to or death of a soldier. Each Party to NATO SOFA waives any claims it might have against other Parties for injury to or death of members of its armed services occurring while they are engaged in the performance of official duties (NATO SOFA, Art. VIII, para 4). Such duties need not bear a direct connection to NATO operations. However, the waiver does not extend to injuries to or deaths of civilian employees of the armed services of the Parties. It applies only to claims that one Party might assert against another and does not in any way affect a proper third Party claimant's right to assert a claim under Article VIII, paragraph 5 or 6.

(2) *Third party scope claims.* As stated in paragraph 7–1*b*, a third party is an individual or entity that is not a Party to the NATO SOFA. A political subdivision of a Party is considered a third party, provided that it is established as an entity separate from the national Government. Article VIII, paragraph 5, sets forth procedures for settling and paying certain claims asserted by third parties for damages and injuries attributable to the duty-related acts, omissions or activities of Parties' visiting forces and civilian components while located in the territory of other Parties. A claim for damage or personal injury arising out of an act or omission of a member of a force or civilian component in the performance of official duties or under circumstances that would make the force otherwise "legally responsible" under the receiving State's law falls under NATO SOFA Art. VIII paragraph 5. An act, omission or occurrence for which a force or civilian component is legally responsible may include liability under the law of the receiving State based on absolute or strict liability. The term legally responsible is defined by local law and custom rather than by U.S. notions of tort liability. Third parties are the only claimants to whom Article VIII, paragraph 5, applies.

(3) Non-scope claims fall under the FCA as discussed in chapter 10 of this publication.

c. Presentation of claims. Article VIII, paragraph 5, provides that third party claimants will file their claims in accordance with the laws and regulations of the receiving State as though the claim had arisen from activities of that State's own armed forces. Thus, a claim arising from U.S. Army activities in Germany would properly be presented to German authorities and not to the U.S. Army. The German authorities would then adjudicate the claim under German law. Receiving State authorities must designate offices where claims may be presented. While claims predicated upon a sending State's responsibility under the SOFA are properly filed with the receiving State's designated authorities, claimants may also seek redress from the individual tortfeasor by any means available under local law (NATO SOFA, Art. VIII, para 9). Both sending and receiving States must be alert to discover actions brought against individual tortfeasors so that the remedy provided by Article VIII may be substituted for direct action against the individual. Although possibly subject to personal judgment, a member of a force or civilian component is immune from proceedings for enforcement of any judgment against him or her as long as the claim arose out of the performance of official duties.

Section II
Claims Arising in the United States

7–3. Claims payable
See paragraphs 3–3, 4–3, and 8–4 of this publication.

7–4. Claims not payable
See paragraphs 3–4, 4–4, and 8–5 of this publication.

7–5. Notification of incidents
a. An ACO or CPO that learns of an incident must report it to USARCS immediately. As USARCS is the receiving State office in the United States, this requirement applies equally to all uniformed services as well as to DOD. Puerto Rico and most of Hawaii do not fall under NATO SOFA as they are south of the 20th parallel or Tropic of Cancer.

b. USARCS, as sole liaison to sending State representatives, should be informed of any local contact or inquiry, such as one related to a joint maneuver, by a member of a NATO SOFA force.

7–6. Investigation.

Claims personnel will process claims arising from acts or omissions done in the performance of official duty by members of a foreign force or civilian component under the same provisions as those governing the acts or omissions of U.S. armed services soldiers or civilian employees; responsibility and the manner of investigation are the same. Forward a mirror file to USARCS as required for claims arising under Chapters 3, 4, and 8, regardless of the amount claimed. See chapter 2, sections I and II. The term "in the performance of official duty" is considered to be the same as "within scope of employment." USARCS will obtain from the sending State a statement on whether the claim arose from the performance of official duties.

7–7. Settlement authority

Settlement authority is not delegated to any ACO or CPO but is reserved for Commander, USARCS and higher authority set forth in chapters 3, 4, or 8.

7–8. Assistance to foreign forces

NATO SOFA, Article VIII, paragraph 10, provides for mutual cooperation in the procurement of evidence. Claims personnel should provide sending State forces the same assistance and guidance as they do unit claims officers.

Section III
Claims in Foreign Countries

7–9. Claims procedures

See chapter 2, sections I and III for the role a Claims Service, ACO or CPO plays in identifying and processing a claim that falls under a SOFA. See also AR 27–20, paragraph 7–10.

7–10. Responsibilities

See text of AR 27–20

10 USC 2734a

Property loss; personal injury or death; incident to noncombat activities of armed forces; foreign countries; international agreements.

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Transportation or their designees may-

(1) reimburse that country for the agreed pro rata share of such amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.

(b) A claim arising out of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Transportation or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of the appropriation for claims of the Department of Defense, subject to reimbursement from the Department of Transportation.

10 USC 2734b

Property loss; personal injury or death; incident to activities of armed forces of foreign countries in United States; international agreements.

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.

(b) When a dispute arises in the settlement of adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle f the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations for that purpose.

Figure 7-1. Statutes Implementing Status-of-Forces Agreements

1. Each Contracting Party waives all its claims against any other Contracting Party for damage to any property owned by it and used by its land, sea or air armed services, if such damage:

(i) was caused by a member or an employee of the armed services of the other Contracting Party in the execution of his duties in connection with the operation of the North Atlantic Treaty; or

(ii) arose from the use of any vehicle, vessel or aircraft owned by the other Contracting Party and used by its armed services, provided either that the vehicle, vessel or aircraft causing the damage was being used in connection with the operation of the North Atlantic Treat, or that damage was caused to property being so used.

Claims for maritime salvage vessel Contracting Party against any other Contracting Party shall be waived, provided the vessel or cargo salvaged was owned by a Contracting Party and being used by its armed services in connection with the operation of the North Atlantic Treaty.

2. a. In the case of damage caused or arising as stated in paragraph 1 to other property owned by a Contracting Party and located in its territory, the issue of the liability of any other Contracting Party shall be determined and the amount of damage shall be assessed, unless the Contracting Parties concerned agree otherwise, by a sole arbitrator selected in accordance with subparagraph b. of this paragraph. The arbitrator shall also decide any counter-claims arising out of the same incident.

b. The arbitrator referred to in sub-paragraph a. above shall be selected by agreement between the Contracting Parties concerned from amongst the nationals of the concerned are unable, within two months, to agree upon the arbitrator, either may request the Chairman of the North Atlantic Council Deputies to select a person with the aforesaid qualifications.

c. Any decision taken by the arbitrator shall be binding and conclusive upon the Contracting Parties.

d. The amount of any compensation awarded by the arbitrators shall be distributed in accordance with the provision of paragraph 5 e (i), (ii) and (ii) of this Article.

e. The compensation of the arbitrator shall be fixed by agreement between the Contracting Parties concerned and shall, together with the necessary expenses incidental to the performance of his duties, be defrayed in equal proportions by them.

f. Nevertheless, each Contracting Party waives its claim in any such case where the damage is less than—

Belgium:	B.fr. 70,000.	Luxembourg:	L.fr. 70,000.
Canada:	$ 1,460	Netherlands:	Fl. 5,320.
Denmark:	Kr. 9,670	Norway:	Kr. 10,000.
France	F. fr. 490,000.	Portugal:	Es. 40,250.
Iceland:	Kr. 22,800.	United Kingdom:	£ 500.
Italy:	Li. 850,000.	United States:	$ 1,400.

Any other Contracting Party whose property has been damaged in the same incident shall also waive its claim up to the above amount. In the case of considerable variation in the rates of exchange between these currencies the Contracting Parties shall agree on the appropriate adjustments of these amounts.

3. For the purposes of paragraphs 1 and 2 of this Article the expression “owned by a Contracting Party” in the case of a vessel includes a vessel on bare boat charter to that Contracting Party or requisitioned by it on bare boat terms or seized by it in prize (except to the extent that the risk of loss or liability is borne by some person other than such Contracting Party).

4. Each Contracting Party waives all its claims against any other Contracting Party for injury or death suffered by any member of its armed services while such member was engaged in the performance of his official duties.

5. Claims (other than contractual claims and those to which paragraphs 6 or 7 of this Article apply) arising out of acts or omissions of members of a force or civilian component done in the performance of official duty, or out of any other act, omission or occurrence for which a force or civilian component is legally responsible, and causing damage in the territory of the received State to third parties, other than any of the Contracting Parties, shall be dealt with y the receiving State in accordance with the following provisions:

a. Claims shall be filed, considered and settled or adjudicated in accordance with the law and regulations of the receiving State with respect to claims arising from the activities of its own armed forces.

b. The receiving State may settle any such claims, and payment of the amount agreed upon or determined by adjudication shall be made by the receiving State in its currency.

c. Such payment, whether made pursuant to a settlement or to adjudication of the case by a competent tribunal of the receiving State, or the final adjudication by such a tribunal denying payment, shall be binding and conclusive upon the Contracting Parties.

Figure 7-2. Article VIII, Status of Forces Agreement—Continued

d. Every claim paid by the receiving State shall be communicated to the sending States concerning together with full particulars and a proposed distribution in conformity with sub-paragraphs e (i), (ii) and (iii) below. In default of a reply within tow months, the proposed distribution shall be regarded as accepted.

e. The cost incurred in satisfying claims pursuant to the preceding sub-paragraphs and para. 2 of this Article shall be distributed between the Contracting Parties, as follows:

(i) Where one sending State alone is responsible, the amount awarded or adjudged shall be distributed in the proportion of 25 per cent. chargeable to the receiving State and 75 per cent. chargeable to the sending State.

(ii) Where more than one State is responsible for the damage, the amount awarded or adjudged shall be distributed equally among them: however, if the receiving State is not one of the States responsible, its contribution shall be half that of each of the sending States.

(iii) Where the damage was caused by the armed services of the Contracting Parties and it is not possible to attribute it specifically to one or more of those armed services, the amount awarded or adjudged shall be distributed equally among the Contracting Parties concerned: however, if the receiving State is not one of the States by whose armed services the damage was caused, its contribution shall be half that of each of the sending States concerned.

(iv) Every half-year, a statement of the sums paid by the receiving State in the course of the half-yearly period in respect of every case regarding which the proposed distribution on a percentage basis has been accepted, shall be sent to the sending States concerned, together with a request for reimbursement. Such reimbursement shall be made within the shortest possible time, in the currency of the receiving State.

f. In cases where the application of the provisions of sub-paragraphs b. and e. of this paragraph would cause Contracting Party serious hardship, it may request the North Atlantic Council to arrange a settlement of a different nature.

g. A member of a force or civilian component shall not be subject to any proceedings for the enforcement of any judgment given against him in the receiving State in a matter arising from the performance of his official duties.

h. Except in so far as sub-paragraph e. of this paragraph applies to claims covered by paragraph 2 of this Article, the provisions of this paragraph shall not apply to any claims arising out or in connection with the navigation or operation of a ship or the loading, carriage, or discharge of a cargo, other than claims for death or personal injury to which paragraph 4 of this Article does not apply.

6. Claims against members of a force or civilian component arising out of tortious acts or omissions in the receiving State not done in the performance of official duty shall be dealt with in the following manner:

a. The authorities of the receiving State shall consider the claim and assess compensation to the claimant in a fair and just manner, taking into account all the circumstances of the case, including the conduct of the injured person, and shall prepare a report on the matter.

b. The report shall be delivered to the authorities of the sending State, who shall then decide without delay whether they will offer an ex gratia payment, and if so, of what amount.

c. If an offer of ex gratia payment is made, and accepted by the claimant in full satisfaction of his claim, the authorities of the sending State shall make the payment themselves and inform the authorities of the receiving State of their decision and of the sum paid.

d. Nothing in this paragraph shall affect the jurisdiction of the courts of the receiving State to entertain an action against a member of a force or of a civilian component unless and until there has been payment in full satisfaction of the claim.

7. Claims arising out of the unauthorized use of any vehicle of the armed services of a sending State shall be dealt with in accordance with paragraph 6 of this Article, except in so far as the force or civilian component is legally responsible.

8. If a dispute arises as to whether a tortious act or omission of a member of a force of civilian component was done in the performance of official duty or as to whether the use of any vehicle of the armed services of a sending State was unauthorized, the question shall be submitted to an arbitrator appointed in accordance with paragraph 2 b. of this Article, whose decision on this point shall be final and conclusive.

9. The sending State shall not claim immunity from the jurisdiction of the courts of the receiving State for members of a force or civilian component in respect of the civil jurisdiction of the courts of the receiving State except to the extent provided in paragraph 5 g. of this Article.

10. The authorities of the sending State and of the receiving State shall cooperate in the procurement of evidence for a fair hearing and disposal of claims in regard to which the Contracting Parties are concerned.

Figure 7-2. Article VIII, Status of Forces Agreement

SUBJECT: Single-Service Assignment of Responsibility of Processing of Claims

References:
(a) DoD Directive 5515.8, subject as above, June 3, 1987 (hereby canceled)
(b) Title 10, United States Code, Sections 2733, 2734, 2734a, 2734b, 2736, and 2737
(c) Public Law 86–740, "National Guard Claims Act," June 3, 1987 (32 USC 715)
(d) NATO Status of Forces Agreement (4 UST 1972, TIAS No. 2846) and Similar Status-of-Forces Agreements
(e) Public Law 87–693 (76 Stat. 593), "Medical Care Recovery Act" September 25, 1962 (42 USC 2651 through 2653)
(f) 31 USC 3711

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update assignments for processing claims.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman, Joint Chiefs of Staff and Joint Staff, the Unified and Specified Commands, and the Defense Agencies.

C. POLICY

It is DOD policy that claims against the United States and claims by the United States shall be processed and settled expeditiously. To implement this DOD policy, responsibility for processing and settling such claims arising in overseas areas is assigned to the Military Departments named in enclosure 1. Assignments should correspond wherever possible with the appointment of the designated commanding officer (DCO) for each host country.

D. RESPONSIBILITIES

1. The General Counsel, Department of Defense (GC, DOD), is authorized to change the assignments for processing claims arising in those countries listed in enclosure 1 and to assign responsibility for processing claims in countries not listed in enclosure 1.

2. The Military Departments listed in enclosure 1 shall process the following claims arising in those countries named in enclosure 1:

a. All claims against the United States arising under 10 USC 2733, 2734, 2734a, 2734b, 2736, and 2737; the National Guard Claims Act; and under the NATO SOFA (references (b), (c), and (d)), and other SOFAS with countries not covered by reference (d).

b. All claims on behalf of the United States arising under the NATO SOFA and PL 87–693, and tort claims under 31 USC 3711 (references (d), (e), and (f)).

3. The Secretary of the Navy is authorized to settle nonscope of duty claims under $2,500 arising in foreign ports visited by U.S. forces afloat (including ports in those countries where singe-Service assignment for processing claims has been assigned to the Departments of the Army and Air Force in enclosure 1) and, if the authorities of the receiving state concur, may process such claims regardless of the provisions of any international agreements governing nonscope claims processing by receiving and sending State authorities.

4. The Unified and Specified Commanders may assign interim responsibility for processing claims in countries where such assignment already has not been made under this Directive. They shall seek immediate confirmation and approval of such assignments from the GC, DOD.

E. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel, Department of Defense, within 90 days.

Figure 7-3. Single-Service Assignment of Responsibility of Processing of Claims, extract from DODD 5515.8

Australia
USCINPACREP/JA
337 ASUF (Unit 11004)
APO AP 96549–1004

Austria
Commander
US Army Claims Service, Europe
Unit 30010, Box 39 (Mahnheim)
APO AE 09166

Azores
65 ABW/JA
Unit 7710
APO AE 09720–7710

Bahrain
Force Judge Advocate
COMIDEASTFOR, Box 133
FPO AP 09834–2800

Belgium
HQ 21st TAACOM (Northern Law Center)
CMR #451, Box 5029 (Mons)
APO AE 09078

Canada:
Foreign Claims:
HQ AFSPACECOM/JA
150 Vandenberg St., Ste. 1105
Peterson AFB, CO 80914–4320

All Other Claims:
AFLSA/JACT
1501 Wilson Blvd., Rm 835
Arlington, VA 22209–2403

Cyprus
US Defense Attaché Office
Nicosia, Cyprus
PSC 815
FPO AE 09836–1000

Denmark (except Greenland)
426 ABS/JA
Unit 6655
APO AE 09706–6655

Egypt
USCENTAF/JA
524 Shaw Drive
Shaw AFB, SC 29152–5029

El Salvador
Office of the Staff Judge Advocate
Headquarters, U.S. Army South
ATTN: SOJA–CS
Unit 7104
Fort Clayton, Panama
APO AA 34004–5000

Figure 7-4. Single-service claims offices for sending State office of each country in which single-service claims responsibility has been assigned—Continued

France
HQ 21st TAACOM (Northern Law Center)
CMR #451, Box 5029 (Mons)
APO AE 09708

Federal Republic of Germany
U.S. Army Claims Service, Europe
Unit 30010, Box 39
APO AE 09166

Greece
US Naval Support Activity
PSC 814, Box 15
FPO AE 09865–0015

Greenland
Personnel Claims:
21 SW/JA
660 Mitchell St., Ste. 540
Peterson AFB, CO 80914–1154

International Agreement Claims:
AFLSA/JACT
1501 Wilson Blvd., Room 835
Arlington, VA 22209–2403

All Other Claims:
HQ AFSPACECOM/JA
150 Vandenberg St., Ste. 1105
Peterson AFB, CO 80914–5001

Grenada
Commander
U.S. Army Claims Service (USARCS), OTJAG
ATTN: JACS–TCF
Room 202
4411 Llewellyn Avenue
Fort George G. Meade, MD 20755–5360

Haiti
Consolidated Legal Office
U.S. Support Group Haiti
Unit 3080
APO AE 09301–3080

Honduras
Office of the Staff Judge Advocate
Headquarters, U.S. Army South
ATTN: SOJA–CS
Unit 7104
Fort Clayton, Panama
APO AA 34004–5000

Iceland
Commander, Iceland Defense Force
PSC 1013, Box 1
FPO AE 09728–0301

India
HQ PACAF/JA
25 E Street, Ste. A314
Building 1102, Room #A–318
Hickam AFB, HI 96853–5403

Iraq
U.S. Naval Legal Services Office
(Europe and Southwest Asia)

Figure 7-4. Single-service claims offices for sending State office of each country in which single-service claims responsibility has been assigned—Continued

PSC 810, Box 8
FPO AE 09619–0500

Israel
U.S. Naval Legal Services Office
(Europe and Southwest Asia)
PSC 810, Box 8
FPO AE 09619–0500

Italy
U.S. Naval Legal Service Office
(Europe and Southwest Asia)
PSC 810, Box 8
FPO AE 09619–0500

Japan
5 AF/JA
Unit 5087
APO AP 96328–5087

Korea
U.S. Armed Forces Claims Service, Korea
Unit #15311
APO AP 96205–0084

Luxembourg
52 FW/JA
Unit 3860, Box 205
APO AE 09126–0205

Marshall Islands
Commander
U.S. Army Claims Service (USARCS), OTJAG
ATTN: JACS–TCF
Room 202
4411 Llewellyn Avenue
Fort George G. Meade, MD 20755–5360

Morocco
Morocco–US Liaison Office
American Embassy, Rabat
PSC 74, Box 023
APO AE 09718

Nepal
HQ PACAF/JA
25 E Street, Ste. A314
Hickam, AFB, HI 96853–5403

Netherlands
Headquarters, 21st TAACOM
Hoensbruek Legal Service Center
Unit #21602
APO AE 09703

Norway
426 ABS/JA
Unit 6655
APO AE 09706–6655

Oman
USCENTAF/JA
524 Shaw Drive
Shaw AFB, SC 29125–5029

Pakistan
USCENTAF/JA

Figure 7-4. Single-service claims offices for sending State office of each country in which single-service claims responsibility has been assigned—Continued

524 Shaw Drive
Shaw AFB, SC 29125–5029

Portugal
U.S. Naval Station Rota
PSC 819, Box 1
FPO AE 09645–1000

Saudi Arabia
USCENTAF/JA
524 Shaw Drive
Shaw AFB, SC 29125–5029

Somalia (Operation Restore Hope)
USCENTAF/JA
524 Shaw Drive
Shaw AFB, SC 29125–5029

Spain
US Naval Station Rota
PSC 819, Box 1
FPO AE 09645–1000

Switzerland
US Army Claims Service, Europe
Unit 30010, Box 39
APO AE 09166

Tunisia
U.S. Naval Legal Service Office
(Europe and Southwest Asia)
PSC 810, Box 8
FPO AE 09619–0500

Turkey
39 WG/JA
Unit 7090, Box 125
APO AE 09824–0125

United Kingdom
3 AF/JA
Unit 4840
APO AE 09459–4840

Claims arising from operations of US Central Command (CENTCOM)
USCENTAF/JA
524 Shaw Drive
Shaw AFB, SC 29125–5029

Claims arising from the operations of US Special Operations Command (USSOC)
USCENTAF/JA
524 Shaw Drive
Shaw AFB, SC 29125–5029

Figure 7-4. Single-service claims offices for sending State office of each country in which single-service claims responsibility has been assigned

Chapter 8
Maritime Claims

Section I
General

8–1. Statutory authority

a. The Army Maritime Claims Settlement Act (AMCSA), Act of 29 November 1989, PL 101–189, 10 USC 4801–6, figures 8–1 through 8–3, authorizes the Army to settle maritime tort and salvage claims for or against it. (See FTCA Handbook, section II, para B4f, for case law.)

(1) Upon its codification by Act of 10 August 1956, PL 1028, the AMCSA authorized the Army to settle claims in amounts up to $500,000 and required Congress to certify any payment in settlement above that amount. The present AMCSA retains the same requirement. When it was first enacted, the statute authorized the Service Secretary to delegate only $1,000 in settlement authority. By amendment, Congress raised the level of delegable settlement authority to $10,000, Act of 29 August 1972, PL 92–415; and then to $100,000, the level presently in effect. Act of 29 November 1989, PL 101–189. Similar Acts conferred corresponding maritime claims settlement authority upon the Department of the Navy (10 USC 7365 and 7621–7623) and the Department of the Air Force (10 USC 9801–9804 and 9806).

(2) When first enacted, the AMCSA limited the Army's settlement authority to claims for damage caused by an Army vessel and for towage or salvage of an Army vessel. Subsequent amendments expanded settlement authority over any maritime tort committed by an Army agent or employee, 10 USC 4802, figure 8–2.

(3) The Army's settlement authority is not restricted to claims arising only within the United States or upon the high seas. Maritime claims arising within another country's territorial waters may be paid under either the AMSCA, the Military Claims Act or the Foreign Claims Act, upon approval of the Commander, USARCS. Normally, the AMSCA authority and procedures will be the primary basis for settlement of maritime claims arising in the territorial waters of other countries. See AR 27–20, paragraphs 3–3*c* and 10–2*c*. The authority and procedures of the FCA or MCA may be used in special circumstances with the prior approval of the Commander, USARCS.

(4) The AMCSA requires that affirmative maritime claims brought by the Army must fall "within the admiralty jurisdiction of the United States," unless the Army seeks compensation for damage caused by a vessel or floating object. 10 USC 4803(a)(1), figure 8–3. Therefore, if a foreign court is the only appropriate venue for a lawsuit, and the claim is not for damage caused by a vessel or floating object, the Army must report it to the Department of Justice (DOJ) for resolution.

(5) Unlike several other affirmative claims statutes, the AMCSA's provisions prohibit the Army from retaining the funds it recovers; the Army must remit these monies to the Financial Management Service (FMS) for deposit to the U.S. Treasury.

b. The Rivers and Harbors Act of 1899, 33 USC 401–467, specifically authorizes the U.S. Army Corps of Engineers (USACE) to assert claims against shipowners and vessels causing damage to the USACE's navigational structures, 33 USC 408 and 412, figure 8–4. This statute does not require a finding of fault for the imposition of liability and the Limitation of Shipowners Liability Act does not limit the shipowner's liability on these claims. Funds that the USACE recovers this way are credited to the appropriation for the improvement of the waterway in which the damage occurred, 33 USC 412.

c. The North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA) obligates the United States, as the receiving State, to adjudicate and pay any claim arising within the United States incident to the official duties of a member of a sending State force. Once the claim has been paid, the sending State reimburses the receiving State according to a formula set forth in the treaty. See NATO SOFA, Article VIII, and AR 27–20, chapter 7. Under the statute implementing the NATO SOFA, 10 USC 2734, the United States, as the receiving State, is responsible for settling maritime personal injury claims, but not maritime property damage claims, arising from the operation of any sending State's naval vessels in U.S. territorial waters. The corresponding settlement authority is set forth therein.

8–2. Related statutes

a. The AMCSA authorizes the Army to settle maritime claims but, unlike the FTCA, it does not expressly waive the United States' sovereign immunity from such claims. The primary statutory waivers of sovereign immunity allowing maritime claims against the United States are found in the Suits in Admiralty Act (SIAA), 46 USC 741–752, and the Public Vessels Act (PVA), 46 USC 781–790.

(1) Because both the SIAA and PVA were enacted before the FTCA, they are the exclusive remedies for maritime claims brought against the United States. The FTCA specifically bars claims falling within the Federal maritime jurisdiction for which either the SIAA or the PVA provides a remedy, 28 USC 2680(d), figure 4–1.

(2) Upon its 1922 enactment, the SIAA waived sovereign immunity for maritime claims under circumstances similar to those in which the plaintiff could sue a private person. It covered claims arising from the operation of a vessel, but only one "employed as a merchant vessel." The PVA, enacted in 1925, authorized settlement of suits arising from the operation of other public vessels, such as warships. Notably, a 1960 amendment repealed the SIAA's "merchant vessel" restriction. Because the PVA was not repealed, however, the coverage that these two statutes provide overlaps.

(3) The SIAA permits payment of prejudgment interest but the PVA does not, except in certain contractual cases, 46 USC 782. An alien may sue under the PVA only if his or her country of origin permits U.S. citizens to bring suit in the alien's country of origin, 46 USC 785.

(4) Neither the SIAA, the PVA, nor the AMCSA requires claimants to file administrative claims with the Army before filing suit. Because the AMCSA authorizes the Army to settle such claims, however, claimants may elect to file them. Filing an administrative claim does not toll the two-year statute of limitations (SOL) on suing the United States. The exception to the rule that an administrative claim is not required is found in what is known as the Admiralty Extension Act (AEA), 46 USC app 740, figure 8–5.

b. While it does not expressly waive sovereign immunity, the AEA affects the Army maritime claims process in important ways. It extends U.S. maritime jurisdiction to claims for property damage or personal injury caused by a vessel on navigable waters, even when the damage or injury occurs or is consummated on land. Before Congress enacted the AEA in 1948, these claims were not deemed maritime at all. The statute states that the SIAA and PVA are the exclusive remedies for any such claims against the United States. It further requires that a suit based on this extension may not be filed against the United States until six months after the claim has been presented in writing to the Federal agency owning or operating the vessel. Unlike the FTCA, the AEA does not permit a person's filing of an administrative claim to toll the SOL. Nevertheless, if an AMSCA claim is filed and settled under AEA jurisdiction, all action must be completed within the two-year SOL.

Section II
Claims Against the United States

8–3. Scope

It is important to recognize a maritime claim promptly. Generally, a claim falls within the Federal maritime jurisdiction if it arises in or from a maritime location and involves some traditional maritime nexus or activity, Annot., *Admiralty Jurisdiction: Maritime Nature of Tort*, 80 ALR Fed 105.

a. Maritime location. Traditionally, U.S. maritime jurisdiction extended only to injuries or damage sustained on the high seas or domestic waters that were navigable in fact in interstate or international commerce, even if an act on land caused the injury.

"Maritime location" was critical—that is, did the incident occur on navigable waters? Case law defines "navigable waters" as any body of water or any waterway used or capable of being used for trade or travel between two States or between the United States and a foreign country. To determine a waterway's navigability, the courts look to both its current and historical uses. For example, if a dam is constructed across a waterway but a lock for sending boats upstream is not, the area above the dam will no longer lie within the maritime jurisdiction regardless of its historic uses. See, for example, *Adams v. Montana Power Company*, 528 F.2d 437 (9th Cir. 1975). And a large reservoir straddling two States' boundaries may lie within the maritime jurisdiction even though the river above or below it does not. The traditional rule did not allow a suit in admiralty to lie if an act on navigable waters caused an injury on land. For example, a court would have dismissed a wharf owner's claim for damages caused by a vessel colliding with the wharf because the traditional rule considered wharves, piers, and jetties to be extensions of the land. The AEA changed that rule and made injury on land resulting from an act on navigable waters subject to a suit in admiralty.

b. Traditional maritime nexus or activity. In 1972, the Supreme Court appeared to narrow the scope of United States maritime jurisdiction when it held that a maritime location was not necessarily sufficient to confer maritime jurisdiction.

(1) In *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249 (1972), a jet aircraft en route from Cleveland to New York lost power when its engines ingested a flock of birds during takeoff. The jet descended suddenly and skidded down the runway through the airport fence, coming to rest about 1/5 of a mile offshore in Lake Erie. There were no injuries to the crew, but the aircraft soon sank and became a total loss. The Supreme Court held that a maritime location was not sufficient to confer maritime jurisdiction in the case. Stating that the case at bar was "only fortuitously and incidentally connected to navigable waters" and bore "no relationship to traditional maritime activity," the Court saw no reason why Ohio tort law should not apply to the facts. The Justices noted that even if the wind or wave forces affecting the downed aircraft resemble those that a sinking ship might encounter, the plane's unexpected descent "will almost invariably have been attributable to a cause unrelated to the sea," and held that there must be both a maritime location and a connection to a traditional maritime activity. In general, recent Federal court decisions interpret this principle to require some impact on commercial shipping or navigation.

(2) Following *Executive Jet Aviation*, many courts held that a traditional maritime activity must involve commerce. Therefore, accidents caused by pleasure boats were held not to fall within the Federal maritime jurisdiction. Yet the Supreme Court subsequently held that many accidents involving pleasure boats and other vessels not engaged in traditional maritime commercial activity may give rise to a maritime claim. If the pleasure boat was in navigation or operated in the course of some activity that could disrupt maritime commerce, then the claim sounded in maritime jurisdiction, *Foremost Insurance Co. v. Richardson*, 457 U.S. 668 (1982); *Sisson v. Ruby*, 497 U.S. 358 (1990). The courts interpret this potential impact on navigation or commerce broadly. For example, the *Sisson* court found maritime jurisdiction where a fire destroyed a pleasure boat while it was moored to a marina dock.

(3) Aircraft crashes into navigable water typically will not give rise to maritime claims if the intended flight route is between two points within the continental United States. However, claims from airplane crashes in navigable waters may fall within the maritime jurisdiction if the intended flight route is to or from an offshore island or a drilling rig.

(4) *Kelly v. Smith*, 485 F.2d 520 (5th Cir.1973), a case involving someone on land, who fired shots from a gun at poachers fleeing by boat across the Mississippi River, provides an excellent analytical framework. The court considered the parties' functions and roles, the types of vessels and instrumentalities involved, the causation and type of injury and the traditional concepts of maritime jurisdiction.

c. Applicable statute. Because the FTCA excludes maritime claims, such claims, even those arising within a State's territorial waters, are not adjudicated according to that State's law. Instead, general maritime law or special maritime statutes such as the Jones Act (46 USC 688) or the Death on the High Seas Act (DOHSA) (46 USC 761 and 767) apply. These Acts' provisions and implementing regulations may differ from those of the various States' on such issues as the effect of the plaintiff's negligence or the type and amount of compensable damages. For example, general maritime law applies the pure comparative negligence rule and allows no recovery for loss of society *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990). Similarly, both the Jones Act and the DOHSA limit wrongful death damages more narrowly than most State laws do.

(1) Maritime claims arising outside the United States are not within the scope of the Army's single-service responsibility for tort claims.

(2) Property damage claims arising out of a ship's navigation or operation or the loading, discharge or carriage of cargo are not covered by host country adjudication provisions of the NATO SOFA and some other SOFAs. See NATO SOFA, Article VIII, paragraph 5(h). See figure 7–2

(3) Unlike FTCA claims payments over $2,500 and FCA or MCA claims payments over $100,000, none of the money paid to settle an administrative maritime claim is disbursed from the FMS Judgment Fund. Rather, the Army's claims appropriation funds the entire payment, up to the $500,000 limit of its authority, on an Army maritime claim. However, if the DOJ resolves a claim after a claimant files suit, the payment will be made from the Judgment Fund.

8–4. Claims payable

a. Every field claims office should ensure that all claims personnel who receive claims notify the Area Claims Office (ACO) or the Claims Processing Office (CPO) immediately about any claims that might be maritime in nature, whether or not they are labeled as such. Potential maritime claims include those involving—

(1) Damage to any type of ship, boat or watercraft, such as jetskis, canoes, or rafts, occurring on any body of water.

(2) Damage to an Army aircraft caused by crashing into any body of water.

(3) Damage or injury sustained in or on any body of water, involving a boat or other watercraft.

(4) Damage or injury sustained on land or on water, allegedly due to the negligent operation of an Army-owned or -leased ship, boat or barge.

(5) Damage to any wharf, pier, jetty or other structure on or adjacent to any body of water.

(6) Any injury alleged to have occurred on board any Army vessel.

b. Upon receipt of such claims, the ACO or CPO must determine whether the claim falls within the Federal maritime jurisdiction. In most cases, this determination will be fairly easy to make, but there will be many times when the issue is in doubt. If that is the case, consult the Area Action Officer (AAO) on the question of maritime jurisdiction immediately.

8–5. Claims not payable

See paragraph 2–66.

8–6. Limitation of settlement

a. The claimant must agree to accept the settlement, which must be approved for payment by the appropriate settlement authority, before the SOL expires. Neither presentation of a claim nor the Army's consideration of it waives or extends the two-year SOL. Claims personnel should so inform the claimant when the claim is received. See figure 8–6.

b. In the event that the claimant files a civil action in a U.S. District Court before the end of the two-year statutory period, the Commander, USARCS, may negotiate an administrative settlement with the claimant, even though the two-year period has elapsed since the cause of action accrued, provided the claimant obtains the

written consent of the appropriate DOJ office charged with defending the complaint. The claimant must agree to dismiss a timely filed suit as part of any settlement. Payment may be made upon dismissal of the complaint.

c. Upon receiving a maritime claim under this section, a notice of damage, invitation to a damage survey, or other written document indicating an intention to hold the United States liable, the ACO or CPO will immediately forward such document to the Commander, USARCS. The ACO or CPO receiving notice of the claim will promptly advise the claimant or potential claimant in writing of the SOL's comprehensive application. Figure 8–6 sets forth a sample letter advising the claimant about the SOL.

d. When a maritime claim is presented to an ACO or a CPO and action on such claim by that office may be appropriate pursuant to the delegation of authority set forth in AR 27–20, paragraphs 8–8 and 8–11, that office will promptly advise the claimant in writing of the time limitation on the Army's authority to settle the claim as well as the fact that filing the claim does not toll the SOL.

e. If the injury or damage giving rise to the claim is sustained on or in navigable waters, claimants are not required to file an administrative claim before filing suit. However, an administrative claim must be filed before a civil suit in cases where maritime jurisdiction is based on the AEA (such as damage or injury on land resulting from an act on navigable waters, see para 8–3 above). Even in those cases, however, the filing of an administrative claim neither tolls the two-year SOL nor extends the Army's authority to settle a claim. Claims personnel should bring any such claim filed within six months of the running of the SOL to USARCS' attention immediately and make every reasonable effort to complete final agency action before the SOL expires.

8–7. Limitation of liability

a. Limitation of liability under the Limitation of Shipowners' Liability Act, 46 USC 181–188, applies to all vessels, whether seagoing or used on lakes and rivers for inland navigation, such as canal boats, barges, and lighters, 46 USC 188. This Act covers pleasure craft as well. The statute limits liability to the amount or value of the owner's interest in the vessel and her freight, 46 USC 183. If the vessel is wrecked or sunk, the District Court determines its value.

b. If a maritime claim involves an Army vessel, the United States may limit its liability to the value of that vessel after the accident, if the DOJ files a special limitation action within six months of receipt of the claim. This means that the ACO or CPO must notify the AAO of such claims within 10 days of receipt. See AR 27–20, paragraph 8–7, discussing the Limitation of Liability Act.

8–8. Settlement authority

See chapter 2, section IX.

Section III
Claims in Favor of the United States

8–9. Scope

a. The Army may pursue affirmative claims for property damage, including damage caused by a vessel to an Army structure on land. Usually, such incidents involve vessels striking a lock, dock or other structure under the Army's control. Such claims may involve a determination on whether the vessel was properly moored during a severe storm. Process as a normal claim with mirror copy sent to USARCS if potential recovery exceeds the field office's authority.

b. The USACE is responsible for wreck removal, 33 USC 403, 406, 409, 414 and 415. These authorities impose on the shipowner the duty to mark the wreck with a buoy and commence its removal immediately, regardless of whether the wreck was caused by an accident or otherwise and whether the wreck is located in a channel. Where the maintenance of a navigation channel is involved, the Army may raise and remove the wreck at the expense of the owner or the person who negligently sank the vessel, 33 USC 414. The USACE may mark and remove the wreck at the owner's request and expense, 33 USC 409.

c. This list is neither definitive nor all-inclusive. For calculation of damages, including overhead, see chapter 2, section VI.

8–10. Civil Works Claims

The USACE has authority to recover compensation for certain types of damage, such as to a lock, dam or other structure on land. However, where such recovery effort fails, the USACE should process the affirmative claim under the AMCSA and forward it to USARCS together with a memorandum as set forth in paragraph 2–64. USARCS will determine whether further demand is indicated. If suit by the United States is indicated, the Commander, USARCS, will forward the claim to the Admiralty Section, DOJ, with a memorandum explaining past recovery efforts, and an opinion stating why those efforts did not succeed.

8–11. Settlement authority

See chapter 2, section IX.

8–12. Demands

See AR 27–20, chapter 8.

Section 4801. Definition

In this chapter, the term “settle” means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowances or by disallowance.

Figure 8-1. The Army Maritime Claims Settlement Act, section 4801

Section 4802. Damage by United States vessels; towage and salvage of United States vessels.

(a) The Secretary of the Army may settle or compromise an admiralty claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Army or by other property under the jurisdiction of the Department of the Army;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Army or to other property under the jurisdiction of the Department of the Army; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Army or by property under the jurisdiction of the Department of the Army.

(b) If a claim under subsection (a) is settled or compromised for $500,000 or less, the Secretary of the Army may pay it. If it is settled or compromised for more than $500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $100,000, the Secretary of the Army may delegate his authority under subsection (a) to any person in the Department of the Army designated by him.

Figure 8-2. The Army Maritime Claims Settlement Act, section 4802

Section 4803. Admiralty claims by United States

(a) Under the direction of the Secretary of Defense, the Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Army or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than $500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Army may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $100,000, the Secretary of the Army may delegate his authority under subsections (a) and (b) to any person in the Department of the Army designated by him.

Section 4804. Salvage claims by United States

(a) The Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Army. Amounts received under this section shall be covered into the Treasury.

(b) In any case where the amount to be received by the United States is not more than $10,000, the Secretary of the Army may delegate his authority under subsection (a) to any person designated by him.

Section 4806. Settlement or compromise: final and conclusive

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 4802 or 4803 of this title is final and conclusive.

Notes:
Section 4805 has been repealed.

Figure 8-3. The Army Maritime Claims Settlement Act—Army Settlement, sections 4803, 4804, and 4806

Section 408. Taking possession of, use of, or injury to harbor or river improvements.

It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any ;piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: Provided, That the Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest: Provided further, That the Secretary may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.

Section 412. Liability of masters, pilots, etc., and of vessels engaged in violations

Any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who shall knowingly engage in towing any scow, boat, or vessel loaded with any material specified in section 407 of this title to any point or place of deposit or discharge in any harbor or navigable water, elsewhere than within the limits defined and permitted by the Secretary of the Army, or who shall willfully injure or destroy any work of the United States contemplated in section 408 of this title, or who shall willfully obstruct the channel of any waterway in the manner contemplated in section 409 of this title, shall be deemed guilty of a violation of this Act, and shall upon conviction be punished as provided in section 411 of this title, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. And any boat, vessel, scow, raft, or other craft used or employed in violating any of the provisions of sections 407, 408, and 409 of this title shall be liable for the pecuniary penalties specified in section 411 of this title, and in addition thereto for the amount of the damages done by said boat, vessel, scow, raft, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damaged occurred and said boat, vessel, scow, raft, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof.

Figure 8-4. Corps of Engineers Affirmative Claims Authority Act—Navigation and Navigable Waters, extract from 33 USC

Section 740. Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period.

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, that as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, that no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

Figure 8-5. Admiralty and Maritime Jurisdiction, extract from 46 USC 740

(Letterhead)

Claims Office Symbol

SUBJECT: Claim of Jane Thorn, 96–C01–T001

Mr. George Westerbeke
Attorney at Law
111 East 2d Street
Seattle, Washington 98104

(or if not represented)

Ms. Jane Thorn
100 Northwest Street
Seattle, Washington 98104

Dear Mr. Westerbeke (or) Dear Ms. Thorn:

The (your) claim was received on January 2, 1996. A copy of the claim, with the date-stamp from this office reflecting the date of receipt, is attached. You may contact Sergeant Samuel S. Scott (investigator assigned to this claim) or me at (301) 677–7009.

The (your) administrative claim will be processed under the Army Maritime Claim Settlement Act, Title 10, United States Code, Section 4801, as it falls under the maritime jurisdiction of the United States.

The following information is provided concerning the statute of limitation (SOL):

The two year statute of limitation for the Suits in Admiralty Act, Title 46, United States Code, Section 741–752, or Public Vessels Act, Title 46, United States Code, Section 781–790, or Admiralty Judicial Extension Act, Title 10, United States Code, Section 740, is not tolled by the filing of the (your) administrative claim.

Unless all settlement action(s) are completed within two years of accrual, suit must be filed in order to toll the SOL. This is applicable even if a tentative settlement has not been reached.

If you (your client) considers the claim not to be a maritime claim, but cognizable under the Federal Tort Claims Act (FTCA), Title 28, United States Code, Section 2671 et seq., and desires to process the claim under the FTCA, the SOL is tolled indefinitely. However, suit may not be brought until the expiration of six months from the date of filing, Title 28, United States code, Section 2675(a). However, if suit commences more than two years from the date of accrual, our position will be that the SOL bars any such suit.

Sincerely,

Francis R. Moulin
Colonel, U.S. Army
Chief, Tort Claims Division

Enclosure

Figure 8-6. Sample letter to claimant/potential claimant—time limitation

Chapter 9
Claims Under Article 139, Uniform Code of Military

9–1. Statutory authority

Article 139 of the Uniform Code of Military Justice (UCMJ) (10 USC 939), entitled "Redress of Injuries to Property," states that—

a. Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that a person's property has been wrongfully taken by members of the armed forces, the commanding officer may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of one to three commissioned officers and, for the purpose of that investigation, has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

b. If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

9–2. Purpose

a. Scope. Article 139, UCMJ, provides an administrative mechanism for assessing and paying restitution to the victims of certain types of criminal offenses committed by military personnel subject to the UCMJ (see para 9–4). Victims of these offenses often have no other adequate means of obtaining restitution. Article 139 ensures that a victim is compensated directly from the wrongdoer's military pay rather than from the United States Treasury. This serves both to implement the goals embodied in the Victim and Witness Protection Act of 1982 and to promote military discipline and protect the civil or military community from these types of disorders. Article 139 provides, however, an extraordinary administrative claims settlement authority. In essence, commanders are granted special powers normally reserved to the civil judicial authority. This authority must not be expanded beyond its strict limits; doing so could raise serious constitutional issues.

b. Historical background.

(1) Article 139 is descended from Article V of section IX of the British Articles of War of 1765, which was adopted by the Continental Army as Article XII of the American Articles of War of 1775. Although the British provision afforded redress only for offenses committed against persons with whom soldiers were billeted and for "disturbing Fairs or Markets, or . . . committing any kind of Riot," Article XII was applied to all abuses or disorders in quarters or on a march.

(2) Article XII was designed to maintain order and discipline by securing indemnification for civilians who sustained damages from the kind of riotous or disorderly conduct punishable under the article that became Article 109 of the UCMJ after World War II. As the United States Army evolved, the article was amended to include soldiers as proper claimants and to permit claims for wrongful takings as well as for willful damage. At the same time, provisions that allowed compensation for bodily injury and made it a criminal offense for a commander to refuse to comply with the article's provisions fell away.

(3) Throughout its history, Article 139 has provided redress for the offenses of wasting, spoiling, or destroying nonmilitary property, presently proscribed by Article 109, UCMJ. Because disorderly soldiers often commit acts of depredation in groups, the article contains a unique provision allowing a commander to levy against the pay of all members of a unit who were present when damages were inflicted if an individual offender cannot be identified.

9–3. Effect of disciplinary action, voluntary restitution, or contributory negligence

a. Disciplinary action. Disciplinary action taken against an offender is entirely separate from action taken under Article 139. Under no circumstances should the approval authority or anyone acting for, or appointed by, the approval authority to act on the claim delay action under Article 139 pending resolution of disciplinary action. Because different evidence is admissible and a different standard of proof is applied, acquittal on the charges underlying an Article 139 claim is not, in itself, a basis for dismissal of the claim or for modification on reconsideration. Action under Article 139 requires an independent inquiry.

b. Voluntary restitution. The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant. Any amount paid to the claimant as partial restitution will be deducted from the amount assessed.

c. Contributory negligence. An Article 139 claim is founded upon a criminal act. A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

9–4. Claims cognizable

Any individual (including civilians and soldiers), business entity, State, territorial or local government or non-profit organization may submit a claim under Article 139. An appropriated fund (APF) or non-appropriated fund (NAF) entity of the United States may not. The article provides compensation only for loss of, or damage to, real or personal property that has been willfully damaged or wrongfully taken by a member of the U.S. Armed Forces, to include active duty personnel, retired personnel against whom an Article 139 claim was brought while the offender was still serving on active duty, and Reserve and National Guard personnel when their status subjects them to the UCMJ. Article 139 is not a system of general indemnification: claims for death or personal injury and subrogated claims (such as, claims by insurers) are not cognizable. Similarly, claims founded in negligence or founded in breach of a contractual or fiduciary relationship are also excluded. Finally, consequential damages such as loss of revenues or earnings, carrying charges, interest, attorneys' fees, inconvenience, telephone charges, or time spent preparing the claim are also not compensable (see AR 27–20, paras 9–5 and 9–7*d*).

a. Willful damage. Willful damage falls into two categories. The first category involves damage caused intentionally without justification. Such damage is essentially the result of vandalism. The second category involves riotous, violent, or disorderly acts, acts of depredation or acts showing a reckless and wanton disregard for the property rights of others. Loss or damage caused thoughtlessly or inadvertently by a soldier's negligent conduct is not covered. Only damage that is "incidental to violence against the person or the outgrowth of a breach of the peace" falls within the meaning of Article 139.

(1) A claim that a soldier accidentally broke a lamp during a drunken brawl is cognizable. Even though the soldier did not intend to break the lamp and the breaking alone may be construed as simple negligence, the soldier's conduct shows a reckless and wanton disregard for the property rights of others.

(2) A claim that a soldier drove a car at 80 miles per hour in a 55 miles per hour speed zone, crossed the center line and collided into an oncoming vehicle is not cognizable, absent proof that the soldier acted intentionally.

(3) A claim that a soldier randomly fired a weapon into the air and broke a window is cognizable because such an act shows a reckless and wanton disregard for the property rights of others.

b. Wrongful takings. A wrongful taking is essentially a theft—that is, an unauthorized taking or withholding of property with the

intent to deprive the owner of either temporary or permanent possession. Claims for property taken through larceny, forgery, embezzlement, misappropriation, fraud or similar conduct are normally cognizable. Takings that involve a dispute over the conduct of a soldier acting as the claimant's agent, over the terms of a contract or over ownership of property are not cognizable unless the dispute is merely a cloak for an intent to steal. Article 139 is not a mechanism for the collection of debts, and the Army has no interest in mediating business disputes under the guise of preventing theft.

(1) A claim that a soldier borrowed a videocassette recorder (VCR) and did not return it on the promised date is not cognizable unless the soldier borrowed the VCR as a pretext and sold it or kept it permanently. This is evidence of an intent to steal.

(2) A claim that a soldier issued a worthless check and received property in return is cognizable if evidence establishes an intent to defraud. Such intent may be inferred when the soldier fails to make good on a bad check within five working days after receiving notice of insufficient funds, in the same way that a criminal intent to defraud may be inferred under Article 123a, UCMJ, Making, drawing, or uttering check, draft, or order without sufficient funds.

(3) A claim that a soldier stole a check or credit card and used it to obtain items of value is cognizable.

9–5. Claims not cognizable

a. Negligence. Article 139 may not be used to hold a soldier liable for negligent acts. Negligence is the failure to use the level of care that a reasonably prudent person would use under the same or similar circumstances. Negligent conduct differs from conduct in which a soldier sees or should clearly see that his or her actions are likely to cause damage to property but blatantly disregards that risk and causes property damage. For example, if a soldier accidentally breaks a dish in a china shop, that soldier may not be held liable under Article 139 unless additional facts prove that the act was willful.

b. Personal injuries, wrongful death, and theft of services. Article 139 is designed to compensate victims only for loss of or damage to property. Hence, claims for personal injury and wrongful death are not cognizable and are treated elsewhere. Similarly, claims for theft of services are not cognizable under Article 139.

c. Scope of employment. Soldiers may not be held liable under Article 139 for acts or omissions which are made within the scope of their employment. For example, a soldier employed by the military police whose duty requires breaking a lock to impound evidence may not be held liable under Article 139 for damage to the lock.

d. Reserve component personnel while not subject to the UCMJ. Claims resulting from the conduct of Reserve component personnel who are not subject to the UCMJ at the time of the offense are excluded from coverage under Article 139.

e. Subrogated (third party) claims. Subrogated claims are those in which a third party, such as an insurance company, asserts the claimant's rights. Article 139 will not be used to pay subrogated claims, including those brought by insurers. However, an insurance company may be a proper claimant if its property has been willfully damaged or wrongfully taken. For example, when an insurance company has made a settlement payment to a soldier who has filed a fraudulent insurance claim, the company is a proper party claimant.

f. Contractual and fiduciary disputes. Article 139 is not designed to be a mechanism for debt collection. Claims resulting from a breach of a contractual or fiduciary duty are not actionable unless the agreement is merely a cloak for an intent to steal. A soldier who falls behind on the repayment of a loan may not be held liable under Article 139 unless the soldier obtained the loan as a pretense to steal money and did not intend to repay it.

g. Claims for consequential damages. Consequential damages flow indirectly from the wrongful act. They differ from direct damages. Article 139 may be used to recover only direct damages from the wrongdoer.

(1) The costs of telephone calls, mileage, postage, copies, or attorneys' fees incurred to pursue a claim under Article 139 are consequential damages and are not compensable.

(2) Where expenses are necessary to repair a damaged item, such as the cost of moving it to a repair shop (drayage), such costs directly result from the soldier's willful damage and are compensable as direct damages.

(3) The cost of a rental car may be considered direct, compensable damage when a soldier steals or willfully damages a claimant's privately owned vehicle (POV). Such costs, such as rental of a vehicle comparable in value to the claimant's POV, must be reasonable.

9–6. Limitations on assessments

Limitations on the amount of money that may be paid to a claimant depend on the level of authority at which the claim is handled. The Special Court-Martial Convening Authority (SPCMCA) with jurisdiction over the claim may approve any claim for a single incident up to $5,000. The General Court-Martial Convening Authority (GCMCA) or designee may approve any claim up to $10,000. Only TJAG, TAJAG and the Commander, USARCS, or designee may approve claims for more than $10,000. If the claim is within the GCMCA's payment limitation and the soldier whose pay is assessed is prosecuted in an action arising out of the same incident as the Article 139 claim, special considerations apply. Under Rule for Court-Martial (RCM) 1107, the convening authority in a general court-martial shall take action on the sentence and findings of the court-martial unless impracticable. See paragraph 9–7*h*(2) for application of RCM 1107.

9–7. Procedure

a. Time limitations on submission of a claim. A claim must be submitted within 90 days of the incident that gave rise to it, unless good cause for the delay is shown. The SPCMCA acting on the claim determines what constitutes good cause. Generally, a person who is not aware of Article 139 or does not know the identity of the offender has good cause for delay in submitting a claim.

b. Form of a claim. A claim may be submitted orally, but it must be reduced to writing and signed by the claimant within ten calendar days. Anyone with knowledge of the Article 139 process should encourage the claimant to do this promptly. An oral claim that is not reduced to writing within ten calendar days may be dismissed. The claim must also seek a definite amount. An amount stated in a foreign currency must be converted to U.S. dollars. The claims judge advocate (CJA) or claims attorney should encourage claimants to follow the sample set forth at figure 9–4, but claimants are not required to do so.

c. Action on receipt of a claim. Any Army officer who receives an Article 139 complaint must forward it to the SPCMCA having UCMJ jurisdiction over the alleged offender or offenders within two working days. The SPCMCA is a commander authorized to convene a special court-martial under the UCMJ and Army regulations, regardless of whether the exercise of such jurisdiction has been withheld. If more than one SPCMCA may have authority over the alleged offender or if the claim is against a member of another military service, then special rules apply. If all SPCMCAs who have potential jurisdiction over the alleged offender or offenders fall under the command of a single GCMCA, the CJA or claims attorney should forward the claim to that GCMCA, who will designate one of the SPCMCAs to process the claim. If the SPCMCAs who have potential jurisdiction fall under the command of different GCMCAs, then the SPCMCA whose headquarters is closest to the place where the incident giving rise to the claim occurred has jurisdiction. Finally, if the claim is brought against a member of one of the other military services, then it should be forwarded to the commander of the nearest major command of the relevant military service equivalent to a major Army command (MACOM).

d. Initial action by the SPCMCA. If the claim appears cognizable, the SPCMCA will appoint an investigating officer (IO) (see sample appointment set forth at figure 9–5) to conduct an investigation using the informal procedures of AR 27–20, chapter 9, and AR 15–6, chapter 4, within four working days of receiving the claim. If

the claim does not appear cognizable, the SPCMCA may refer it for legal review within four days of receipt. If after legal review, the SPCMCA determines that the claim is not cognizable, he or she may disapprove the claim without appointing an IO.

e. Expediting payment through Personnel Claims Act procedures. There are times when a delayed payment may result in hardship to a claimant. If the Article 139 claim resolution will be unduly delayed, the area claims office may process the claim under the Personnel Claims Act (31 USC 3721) pursuant to AR 27–20, chapter 11, if it is otherwise cognizable. If claims personnel handle the claim under chapter 11, then the claims office must inform the claimant of the responsibility to repay to the Government any overpayment should the Article 139 claim later succeed. Payment of an Article 139 claim under Chapter 11 should be approved only when necessary to prevent financial hardship to the claimant, not merely to avoid an inconvenience.

f. Action by the investigating officer. Within 10 working days of appointment, the IO will complete a claims investigation. The SPCMCA may extend this ten-day period for good cause. The CJA or claims attorney should advise the IO before the investigation begins on the scope of the investigation, procedural steps to follow and restrictions on evidence. The IO will promptly notify the soldier against whom the claim has been brought (see sample letter set forth at figure 9–6). In addition, the IO will submit findings of fact and a recommendation based on those findings to the SPCMCA through the claims office and will provide the soldier against whom the claim is brought with a copy of such findings and recommendations so the soldier has an opportunity to respond. The IO should contact the CJA or claims attorney for guidance on legal and procedural questions.

(1) *Generally.* The IO should interview all available witnesses and obtain copies of police reports and other relevant documents. Evidence need not be in the form of sworn statements nor must it be admissible under the rules of evidence applicable in a court of law (see AR 15–6, para 3–6). For example, the IO may accept unsworn statements or consider hearsay evidence. When taking oral evidence in person or over the telephone, the IO should contemporaneously summarize the substance of the conversation in a memorandum for record. The IO should physically inspect all damaged items claimed and record findings in the same memorandum.

(2) *Restrictions on evidence.* Although the standards of evidence that apply to this administrative procedure are flexible and permissive, there are some restrictions on the questions that the IO may ask and the evidence that the IO may use. The IO should consult the CJA or claims attorney before asking a witness or suspected offender any question that may be impermissible. When interviewing a soldier suspected of an offense, the IO must warn the suspect of his or her rights against self-incrimination under Article 31, UCMJ. The IO should use DA Form 3881 (Rights Warning Procedure/Waiver Certificate) for this purpose. The IO should not consider any of the following evidence unless the criteria permitting its use are met:

(a) Privileged communications. Information discovered through an Inspector General's (IG) report or from communications between a soldier and that soldier's attorney, spouse, or clergyman (if the latter were made either as part of a formal religious act, such as the rite of confession in the Catholic Church, or as a matter of conscience) is not admissible (AR 15–6, para 3–6*c*(1)).

(b) Polygraph test results. The results or taking of, or the refusal to take, a polygraph (lie detector) test will not be considered without the consent of the person involved in such a test. (AR 15–6, para 3–6*c*(2)).

(c) Involuntary admissions. Confessions or admissions obtained by unlawful coercion or inducement likely to affect their truthfulness are not admissible (AR 15–6, para 3–6*c*(6)).

(d) Bad faith unlawful searches. If members of the Armed Forces acting in their official capacity (such as military police acting in furtherance of their official duties) conduct or direct a search they know is unlawful under the Fourth Amendment of the U.S. Constitution, as applied to the military community, evidence obtained as a result of that search may not be accepted or considered against any respondent whose personal rights were violated by the search. Such evidence is acceptable only if the IO reasonably determines that the evidence would inevitably have been discovered. In all other cases, the IO may accept evidence obtained as a result of any search or inspection, even if it has been or would be ruled inadmissible in a criminal proceeding (AR 15–6, para 3–6*c*(7)). If uncertain about the admissibility of any evidence, the IO should consult the CJA or claims attorney conducting the legal review of the claim.

(3) *Standard of proof.* A preponderance of the evidence is necessary for a finding of pecuniary liability under Article 139. This means that, to recommend liability, the IO must conclude that it is more likely than not that the claim is valid. The IO should base this judgment on the weight of the admissible evidence gathered during the investigation.

(4) *Valuation of a claimant's loss.* Normally, the measure of a loss is either the repair cost or the depreciated replacement cost for the same or a similar item. Most items depreciate at rates that depend on their age and condition. The Military Allowance List Depreciation Guide may (but is not required to) be used to determine depreciated replacement cost.

(5) *Findings and recommendation.* The IO should submit findings and recommendation to the SPCMCA on DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) and will address each of the following conditions for payment:

(a) Whether the claim is brought by a proper claimant, in writing, and seeks a definite sum.

(b) Whether the claim is brought within 90 days of the incident that gave rise to it, or the claimant has shown good cause for the delay.

(c) Whether the claim seeks compensation for property belonging to the claimant that was wrongfully taken or willfully damaged by a member or members of the U.S. Army.

(d) Whether the claim is meritorious in a specific amount.

(6) *Claims against more than one soldier.* If the claim is brought against more than one soldier, the IO will make a determination with respect to each named soldier. Several soldiers may be present when property is wrongfully taken or willfully damaged. If the IO determines that one or more of them committed the act but cannot determine the identity, the IO may recommend that equal amounts be assessed against each soldier who was present. If a soldier is in a no pay due status, the Defense Accounting officer will notify the approval authority.

(7) *Processing claims against soldiers absent without leave (AWOL).* If a soldier found liable pursuant to Article 139 is AWOL, and thus cannot be notified of the impending assessment, then the approval authority may act on the claim in the soldier's absence. If the claim against the AWOL soldier is approved, the approval authority will ensure that a copy of the claim and a memorandum authorizing a pay assessment against the soldier is transmitted to the servicing Defense Accounting Office (DAO) to process an offset against the soldier's pay account.

g. Legal review by the CJA or claims attorney. Within five working days (which the SPCMCA may extend for good cause), the CJA or claims attorney will review the IO's findings and recommendation and will advise the SPCMCA whether they are legally sufficient and supported by the evidence (see figure 9–7 for a sample review memorandum). If they are not, the CJA or claims attorney will return the claim to the IO for additional findings. The CJA or claims attorney may review the findings and recommendation even after providing earlier legal or procedural advice to the IO. The CJA or claims attorney will prepare letters to the claimant and to the soldier against whom the claim is brought for signature by the SPCMCA (see figures 9–8 and 9–9 for samples of such letters). If pecuniary liability is recommended and the claim is legally sufficient, the CJA or claims attorney will prepare an action for the SPCMCA's signature (sample shown at figure 9–10), directing the appropriate DAO to withhold pay from the soldier for disbursement to the claimant.

h. Final action by the convening authority.

(1) *Action at the SPCMCA level.* The SPCMCA may disapprove

the claim regardless of the amount or, if the findings and recommendation are legally sufficient, approve it in an amount equal to or less than the amount recommended by the IO for claims of $5,000 or less. The SPCMCA will notify both the soldier and claimant in writing of the decision and of their rights to request reconsideration. The SPCMCA will then delay final action on the claim for ten working days pending receipt of a request for reconsideration unless this delay will result in an injustice (such as the discharge of the liable soldier from active duty and thus the Army's inability to disburse funds by pay assessment). If either party requests reconsideration within that time, the SPCMCA shall reconsider the claim within five days. If the SPCMCA approves a claim against a soldier subject to his or her jurisdiction, the SPCMCA will direct the appropriate DAO to withhold pay from that soldier in an amount up to $5,000 per claim and to pay that sum to the claimant. The SPCMCA should then return the claim file to the claims office for disposition.

(a) Soldiers not subject to the SPCMCA's jurisdiction. For soldiers not subject to the SPCMCA's jurisdiction, the SPCMCA will forward a copy of the claim to the SPCMCA who does exercise jurisdiction. This SPCMCA is bound by the determination made by the first SPCMCA and will direct the appropriate DAO to withhold pay from that soldier in an amount up to $5,000 and pay it to the claimant.

(b) Assessments in excess of $5,000. If the IO recommends an assessment in excess of $5,000 and the SPCMCA concurs, the SPCMCA will forward the claim to the field claims office for legal review. After completing a review for legal sufficiency, the CJA or claims attorney will forward the file to the head of the area claims office. In most cases, the head of the area claims office will also be the GCMCA's SJA.

(2) *Action at the GCMCA level.* Within five working days of receipt of the claim, the head of the area claims office will review the claim for legal sufficiency and determine whether or not action by the GCMCA on the claim would interfere with the GCMCA's obligations under RCM 1107. The GCMCA's authority may be compromised if the GCMCA has a predetermined view of the outcome of a case. If the head of the area claims office (usually the GCMCA's SJA) determines an actual conflict exists, that officer, on the GCMCA's behalf, will forward the claim with an explanation of the problem to the Commander, USARCS, for final review. (See AR 27–20, para 9–6*a*(2)(*b*)). If a conflict of interest under RCM 1107 does not exist, then the GCMCA shall disapprove or approve the claim in the amount equal to or less than the amount recommended by the IO, up to $10,000, within five working days. The GCMCA will notify the soldier and the claimant of the decision in writing and of their rights to request reconsideration. The GCMCA will postpone final action for ten working days to allow either party to request reconsideration. If such a request is received within that time, the GCMCA has five working days from the date of receipt to reconsider the claim. If deciding to approve the claim in whole or in part, the GCMCA will then take final action by directing the appropriate DAO to withhold an amount up to $10,000 from the soldier's pay. If the GCMCA determines that the claimant is entitled to an amount in excess of $10,000, then the GCMCA will approve the claim for $10,000 and forward the claim, along with the GCMCA's recommendation, to the Commander, USARCS, for final action. If, as a result of reconsideration, the GCMCA disapproves the claim, the GCMCA will take final action by notifying, in writing, the parties of the decision.

(3) *Final action by USARCS.* If determining that a claim in excess of $10,000 should be approved, the Commander, USARCS, or designee, will send a memorandum to the GCMCA approving a cumulative assessment in an amount over $10,000 and authorizing the appropriate DAO to withhold additional monies from the offending soldier's pay and to make restitution to the victim.

i. Assessment. Upon receipt of the Article 139 assessment, the appropriate DAO will withhold the amount directed by the approval authority. The assessment is binding on the DAO. It is not subject to appeal. However, the assessment is subject to the limitations set forth in regulations governing military personnel pay administration. If the DAO to whom the assessment is directed cannot withhold the soldier's pay because it does not have the soldier's pay record or the soldier is in a no-pay-due status, it must promptly notify the approval authority of this fact in writing.

j. Post settlement action. After action on the claim is completed, the servicing claims office will retain the original claim file and forward a complete copy to the SPCMCA. The claim file will be filed locally, per AR 25–400–2. If a personnel claim is filed for the same incident under AR 27–20, chapter 11, the claims office will incorporate a copy of the Article 139 claim into the chapter 11, claim file.

k. Remission of indebtedness. By statute and regulation, an enlisted soldier is entitled to seek remission of a debt which is owed to the U.S. government. In an Article 139 claim, the debt is owed to the soldier's victim, not to the United States; therefore, remission of indebtedness procedures do not apply to Article 139 claims. A soldier may not be relieved of a financial obligation arising under Article 139 through the remission of indebtedness process.

9–8. Reconsideration

Upon receipt of a request for reconsideration by either the claimant or a soldier who has been assessed pecuniary liability, the approval authority or successor in command will direct the legal advisor to provide a recommendation. If the request raises an issue of fact, the approval authority may appoint an IO to make further findings of fact. If the approval authority contemplates modifying the decision, he or she shall provide all parties to the claim with notice and an opportunity to respond. The approval authority will record the basis upon which the decision is modified and notify all parties.

a. Action by the original approval authority. The approval authority should not modify a decision on a request submitted more than ten days after the original decision was issued except on the basis of newly discovered evidence, fraud, or obvious error of fact or law.

b. Action by a successor in command. A successor in command to the original approval authority may not modify a decision on any request except on the basis of newly discovered evidence, fraud, or error of fact or law apparent from the file.

c. Disposition of files. The approval authority will ensure that a copy of the reconsideration is filed with the claim.

9–9. Additional CJA and claims attorney responsibilities

In addition to conducting legal review of Article 139 claims, the CJA or claims attorney is responsible for—

a. Forwarding copies of completed actions to USARCS. Within ten working days of final action on the claim, the CJA or claims attorney will prepare a cover sheet for the claim and forward it, along with a copy of the claim, to the Commander, USARCS, ATTN: JACS–PC. The cover sheet will state the claimant's name, the offender's name, the convening authority, the amount of the assessment, the date approved or disapproved and, if applicable, whether an additional assessment by USARCS is recommended. The CJA or claims attorney must also state whether DAO action was completed if pecuniary liability was recommended.

b. Monitoring time requirements. The CJA or claims attorney will maintain an Article 139 log and monitor time requirements ("suspenses") on pending Article 139 claims, acting to ensure that they are met. Timely completion of Article 139 actions is essential since delays may prevent proper assessment against an offender's pay account. If the offender is separated from active duty it may be impossible to collect anything from his or her pay account. If the offender is tried by court-martial any resulting forfeitures may also preclude proper assessments.

c. Publicizing the Article 139 program. The CJA or claims attorney has a duty to publicize the Article 139 program to commanders, soldiers and the general public. Methods of disseminating Article 139 information include publishing articles, ensuring that attorneys involved in legal assistance and military justice know about the Article 139 process so they can advise victims and, finally, teaching Article 139 procedures in Army legal classes.

Assessment of
$5,000 or Less? → Yes → SPCMCA May
↓ Approve Claim
↓
No
↓
Assessment of
$5,000.01 to
$10,000? → Yes → GCMCA May Approve Claim
Unless Conflict Exists
No Under RCM 1107 → Conflict? → No → GCMCA May Approve
Claim
↓ ↓
↓ Yes
↓ ↓
↓ Forward to USARCS for Final Action
↓
↓
↓
↓
Assessment of
Over $10,000? → Yes → GCMCA Approves Claim for a Total of $10,000
if No RCM 1107 Conflict Exists and
Forwards to USARCS with Recommendation for Final Action.

Figure 9-1. Liability forwarding flow chart, Article 139, UCMJ

Claims Time Line

Claim Received Within 90 Days of Incident

↓

2 Working Days to Forward to SPCMCA

↓

4 Working Days for SPCMCA to Appoint IO or
Send to the Claims Judge Advocate for Legal Review
Claims Judge Advocate has 5 Working Days to Complete Legal Review

↓

10 Working Days for the IO to Complete the Investigation and
Tender Findings and Recommendation for Legal Review

↓

5 Working Days for Claims Judge Advocate to Complete Legal Review and
Submit Findings and Recommendation to SPCMCA

↓

A Decision is Made Within 5 Working Days by the SPCMCA and
both Parties are Notified

↓

10 Working Days for Either Claimant or Respondent to Request Reconsideration
If a Request for Reconsideration is Received, 5 Working Days to Reconsider the Claim

↓

If the Claim is Determined to be Valid, then Direct Finance to Pay the Victim

Figure 9-2. Procesing a claim for less than $5,000, Article 139, UCMJ

Claims Time Line

Claim Received Within 90 Days of Incident

↓

2 Working Days to Forward to SPCMCA

↓

4 Working Days for SPCMCA to Appoint IO or
Send to the Claims Judge Advocate for Legal Review
Claims Judge Advocate has 5 Working Days to Complete Legal Review

↓

10 Working Days for the IO to Complete the Investigation and
Tender Findings and Recommendation for Legal Review

↓

5 Working Days for Claims Judge Advocate to Complete Legal Review and
Submit Findings and Recommendation to SPCMCA

↓

Send to GCMCA's Area Claims Office For Legal Review Which Will be Completed Within 5 Working Days
If GCMCA's Claims Office is the Same as SPCMCA's Claims Office,
Use the Initial Legal Review, to Include a RCM 1107 Conflict Analysis

↓

If a RCM 1107 Conflict Exists, Forward to USARCS

↓

If No Conflict, 5 Working Days for GCMCA to Decide on an Assessment up to $10,000 and
Notify both Parties in Writing

↓

10 Working Days for Either Claimant or Respondent to Request Reconsideration
If a Request for Reconsideration is Received, 5 Working Days to Reconsider the Claim

↓

If the Claim is Determined to be Valid, then Direct Finance to Pay the Victim up to $10,000 and
Forward to USARCS with Recommendation for Any Assessment Over $10,000

Figure 9-3. Procesing a claim for more than $5,000, Article 139, UCMJ

DATE:

NAME: TELEPHONE NUMBER:

ADDRESS: SSN:

Pursuant to Article 139, UCMJ, and AR 27–20, chapter 9, I state that on (date), (name) of (unit) wrongfully took/willfully damaged personal property of mine. I request that you assess his/her pay in the amount of (amount) and pay that sum to me.

On the back of this form as part of my claim, I have listed in detail the facts and circumstances and described the property lost or damaged, including the date of purchase, the purchase price, and the replacement or repair cost, and provided the names and addresses of any witnesses.

(*signature of claimant*)

REQUIRED ACTION UPON RECEIPT OF THIS CLAIM

The Commander exercising special court-martial convening authority over the soldier against whom the claim is made will appoint an officer to investigate the claim in accordance with AR 27–20, paragraph 9–7*d*, within 4 working days. Any other commander or subordinate receiving this claim will forward it to that commander exercising special court-martial convening authority over the soldier against whom the claim is made in accordance with AR 27–20, paragraph 9–7*c*, within 2 working days. Any questions concerning this claim should be referred to the Office of the Staff Judge Advocate.

DATA REQUIRED BY THE PRIVACY ACT OF 1974 (5 USC 552a)

AUTHORITY: 10 USC 939.

PRINCIPAL PURPOSE: Investigation and processing of claims.

ROUTINE USES: Information is principally used to provide a legal basis for the administrative settlement of a claim against a soldier for property willfully destroyed or wrongfully taken. The SSN is used to ensure correct identification of a claimant to ensure payment to the proper claimant.

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUALS NOT PROVIDING INFORMATION: Disclosure of information is voluntary. Failure to provide information substantiating a claim will delay action and may result in denial.

Figure 9-4. Format for claim for personal property wrongfully taken or willfully damaged by a member of the armed forces, Article 139, UCMJ

(Letterhead)

S: 15 April 1997

ABCD–EFG (27–20) 1 April 1997

MEMORANDUM FOR COMMANDER, 43RD MAINTENANCE BATTALION, ATTN: OPQR–STU (CPT DUDLEY), CAMP JENKINS, CA 20755–1111

SUBJECT: Appointment of Investigating Officer, Article 139 Claim of Specialist Benjamin Compson

1. Effective this date, you are appointed as an investigating officer pursuant to AR 15–6 and AR 27–20, chapter 9, to investigate the claim filed by Specialist Benjamin Compson against Corporal Leslie Burden. You will notify Corporal Burden of the claim, and using informal procedures, you will determine whether the claim is cognizable and meritorious under the provisions of Article 139, UCMJ, and if cognizable, the amount of damages.

2. Prior to beginning your investigation, you will report to the Office of the Staff Judge Advocate for an initial briefing. This appointment takes precedence over other duties.

3. Within 10 working days, you will submit findings and a recommendation on DA Form 1574 to this headquarters through the Office of the Staff Judge Advocate and will provide Corporal Burden with a copy. If you require additional time to complete your investigation, you will contact this headquarters for authorization.

FOR THE COMMANDER:

R. PETER MASTERTON
CPT, AG
Adjutant

Figure 9-5. Sample appointment of investigating officer memorandum, Article 139, UCMJ

(Letterhead)

April 1, 1997

43rd Maintenance Battalion

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

Corporal Leslie Burden
Headquarters and Headquarters Company
U.S. Army Garrison
Camp Jenkins, California 20755–2222

Dear Corporal Burden:

By order of the Convening Authority, Colonel John Nolan, I have been appointed to investigate a claim in the amount of $197.50 filed against you pursuant to Article 139, Uniform Code of Military Justice, by Specialist Benjamin Compson, Company A, 441st S and T Battalion. Specialist Compson alleges that on the night of March 1, 1997, you entered his barracks room and wrongfully took his Sansui cassette deck.

This action is administrative in nature and is independent of any other administrative or criminal action that may be taken against you as a result of this incident. If, as a result of my investigation, Colonel Nolan determines that Specialist Compson's claim is cognizable and meritorious under the provisions of Article 139, he will direct that pay be withheld from you and used to compensate Specialist Compson.

Within five working days of the date of this letter, please provide me with any statement you wish to make concerning the incident or with the names of any witnesses you wish me to contact. You may make your statement to me either orally or in writing. However, realize that any statement you make would not be privileged and may be used against you in a court of law. You may wish to consult an attorney. You do not have to make a statement.

I anticipate completing this investigation within 10 working days. At the conclusion of my investigation, I will provide you with a copy of my findings and recommendation. You will be informed of Colonel Nolan's decision.

Should you pay Specialist Compson in full, I will terminate this investigation at that time.

Sincerely,

Donna J. Dudley
Captain, U.S. Army
Investigating Officer

Figure 9-6. Sample notification letter, Article 139, UCMJ

(Letterhead)

IJKL–MNO (27–20) 15 April 1997

MEMORANDUM FOR COMMANDER, U.S. ARMY GARRISON AND CAMP JENKINS, ATTN: ABCD–EFG (CPT MASTERTON), CAMP JENKINS, CA 20755–2530

SUBJECT: Legal Review, Article 139 Claim of Specialist Benjamin Compson

1. In accordance with AR 27–20, paragraph 9–7, I have reviewed the investigating officer's findings and recommendation for legal sufficiency.

2. I have concluded that the findings and recommendation are legally sufficient and supported by the evidence, and that there has been substantial compliance with the provisions of Article 139, UCMJ; AR 27–20, chapter 9; and AR 15–6. I find that the claim did not result from negligence and that the property was (*wrongfully taken*) (*willfully damaged*) by a member or members of the U.S. Army.

3. If you concur in the investigating officer's findings and recommendation, please sign the letters at Tab A.

Encl

PAUL D. METREY
CPT, JA
Claims Judge Advocate

Figure 9-7. Sample legal review memorandum, Article 139, UCMJ

(Letterhead)

April 18, 1997

Headquarters, U.S. Army Garrison Camp Jenkins

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

Specialist Benjamin Compson
Company A, 441st S and T Battalion
Camp Jenkins, California 20755–5360

Dear Specialist Compson:

I have determined that your Article 139, UCMJ, claim against Corporal Leslie Burden is cognizable and meritorious in the amount of $175.95 after the application of normal depreciation on your cassette deck.

You may request in writing that I reconsider my decision. Such request must set forth your basis for requesting reconsideration and be submitted within 10 working days of the date of this letter. Unless either you or Corporal Burden request reconsideration, I will direct that this amount be withheld from her pay and paid to you at that time.

Sincerely,

John H. Nolan III
Colonel, U.S. Army
Commanding Officer

Figure 9-8. Sample notification letter to claimant of results of investigation, Article 139, UCMJ

(Letterhead)

April 18, 1997

Headquarters, U.S. Army Garrison Camp Jenkins

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

Corporal Leslie Burden
Headquarters and Headquarters Company
U.S. Army Garrison
Camp Jenkins, California 20755–2222

Dear Corporal Burden:

I have determined that you wrongfully took property belonging to Specialist Benjamin Compson and that his Article 139, UCMJ, claim against you is cognizable and meritorious in the amount of $175.95 after the application of normal depreciation.

You may request in writing that I reconsider my decision. Such request must set forth your basis for requesting reconsideration and be submitted within 10 days of the date of this letter. Unless either you or Specialist Compson request reconsideration, I will direct that $175.95 be withheld from your pay and paid to Specialist Compson at that time.

Sincerely,

John H. Nolan III
Colonel, U.S. Army
Commanding

Figure 9-9. Sample notification letter to an individual wrongdoer of the results of an investigation, Article 139, UCMJ

ABCD–EFG (27) 30 April 1997

MEMORANDUM FOR DISBURSING OFFICER, USA FINANCE AND ACCOUNTING OFFICE, ATTN: NOPQ–RST (CPT BRYAN), CAMP JENKINS, CA 20755–8888

SUBJECT: Article 139 Claim of Specialist Benjamin Compson

1. I have determined that the claim submitted by Specialist Benjamin Compson, 433–54–4334, 441st S and T Battalion, is cognizable and meritorious under the provisions of Article 139, UCMJ, and AR 27–20, chapter 9, in the amount of $175.95. I have assessed the pay of Corporal Leslie Burden, 566–56–5665, Headquarters and Headquarters Company, U.S. Army Garrison, Camp Jenkins, California 20755–2222, in that amount.

2. Pursuant to Military Pay and Allowances Entitlements Manual, DOD 7000.14R, paragraph 70702 and table 7–7–5, you are directed to withhold $175.95 from the pay of Corporal Burden and pay it to Specialist Compson. Notify CPT Metrey, Office of the Staff Judge Advocate, when you have completed this action.

JOHN H. NOLAN III
COL, IN
Commanding

Figure 9-10. Sample memorandum to disbursing officer, Article 139, UCMJ

Chapter 10
Claims Cognizable Under the Foreign Claims Act

Section I
General

10–1. Statutory authority

a. The Foreign Claims Act (FCA) (10 USC 2734) (figure 10–1), was enacted on 2 January 1942, retroactive to 27 May 1941, the date on which President Roosevelt proclaimed that the threat of a German advance in Western Europe constituted a national emergency for the United States. The FCA was designed to engender good will and promote friendly relations between the U.S. Armed Forces and host countries. On 7 July 1941, after the government of Iceland formally invited the U.S. Marine Corps to that nation, the Secretary of the Navy urged Congress to enact the FCA to provide coverage for claims resulting from the Marines' presence in Iceland. Originally, the FCA was intended to remain in effect only during the national emergency; by various amendments, however, Congress continued it in force until 1956, when the FCA entered into permanent law. Act of 28 July 1956, Ch. 769, 70 Stat. 703.

b. Upon its enactment, the FCA authorized compensation only to a friendly inhabitant of a friendly foreign country filing a claim within one year of the incident giving rise to it, limiting payment to $1,000. The 1943 amendment raised this threshold to $5,000, and the 1956 amendment expanded upon the requirement that the claim arise in a foreign country, recognizing as actionable claims arising anywhere outside the United States, and thus broadening the FCA's scope to include maritime claims. Additionally, the 1956 amendment no longer required the claimant to be an inhabitant of the country in which the claim arose. Since that time, then, any person permanently residing outside the United States may properly bring a claim under the FCA. Subsequent amendments repealed the limitation on amounts payable by the Service Secretary, and increased to $100,000 the amount that persons designated by the Secretary may approve for payment. (See FTCA Handbook, section II, para B4l for cases defining a foreign country.)

10–2. Scope

a. Eligible Claimants.

(1) *Inhabitants of foreign countries.*

(a) Who is an "inhabitant"? The word "inhabitant" conveys a broader meaning than do either the words "citizen" or "national." Soldiers and civilian employees of the U.S. Armed Forces or other agencies and their family members, who reside in a foreign country mainly because of their own or their sponsors' military orders, are not considered inhabitants of that country. Similarly, a U.S. domiciliary who is in a foreign country as a tourist or visitor or on a business trip will not be considered an inhabitant of the foreign country. Usually, it is obvious whether the claimant qualifies as an inhabitant. In those uncommon situations in which the claimant is a U.S. citizen or national, the test for determining foreign country inhabitant status is whether the claimant dwells in and has assumed a definite place in the economic and social life of a foreign country. Command claims services or ACOs should design a questionnaire for routine use. Figure 10–2 lists some recommended questions.

(b) Where does the inhabitant need to be? The location of the claimant's inhabitance and the situs of the tort need not be the same because neither the FCA nor its implementing regulations require the claimant to be an inhabitant of the particular foreign country in which the claim arises. Thus, a French citizen injured by a U.S. Army vehicle while visiting Bosnia is a proper claimant under the FCA.

(c) Death claims. In a wrongful death case, only the decedent must be an inhabitant of a foreign country. Anyone, not otherwise excluded, who would be eligible to assert a claim for the decedent's death under the laws of the country in which the incident causing the death occurred may be a proper claimant.

(2) *Corporations.* A corporation or other foreign business located in a foreign country may be a proper claimant even though it is organized under U.S. law. Branches, subsidiaries or affiliates of private corporations organized in the U.S. but located and doing business in foreign countries may be proper claimants. The test is whether the corporation or its branch has assumed a definite place in the economic life of a foreign country. If so, it is considered an inhabitant of the country whether or not it is a separate juridical entity.

(3) *Enemy nationals.* The FCA prohibits paying claims presented by nationals of a country at war with the United States or of countries allied with a country at war with the United States (Armed conflict falls within the meaning of the term "war"). An exception may be made when a FCC or local military commander determines that the claimant is friendly to the United States 10 USC 2734(b)(2).

(4) *Unfriendly nationals.* The Commander, USARCS, may provide instructions to FCCs regarding the processing of claims presented by inhabitants of, or arising in, unfriendly foreign countries. Where the propriety of settling such claims is in doubt, the FCC receiving the claim should seek advice from the Commander, USARCS. Additionally, FCCs may forward to USARCS for adjudication claims brought by inhabitants of countries not at war with, but considered "unfriendly" to, the U.S., or claims brought by persons who, individually, are considered unfriendly to the U.S. This provision grants greater flexibility than the blanket disqualification excluding all nationals of a country at war with the United States unless the individual claimant is considered friendly. "Enemy national" status is a factor in determining whether a potential claimant is eligible to bring a claim under the FCA. This question presents a threshold issue; after that initial finding, a claimant's "unfriendly" status is factored into the exercise of discretion in considering a claim on its merits.

(5) *Foreign governmental bodies.* Foreign national governments and political subdivisions of foreign countries, including municipalities and local governmental bodies, are proper claimants. The standard exclusion for subrogated claims applies to them (see subpara *f*). For example, a foreign government may not recover social security payments made to an injured beneficiary who files a FCA claim. In considering claims of foreign governmental bodies, however, the adjudicating authority must determine whether any treaty, agreement, or understanding between the U.S. and the foreign country concerned precludes considering the claim under the FCA.

(6) *Subrogees.* A property damage claim brought by a subrogee is not payable, regardless of whether subrogation arises by operation of law or under the express terms of an insurance policy. Furthermore, a claim or any part of a claim that has been or will be recoverable from an employee's workers' compensation or health insurance plan, social security, or other indemnifying law or contract, is not payable. The Commander, USARCS, may grant exceptions in unusual cases.

b. Cognizable claims.

(1) The FCA authorizes compensation for personal injury or death or for damage to or loss of real and personal property.

(2) Claims for damage to or loss of real property incident to its use and occupancy by the U.S. Armed Forces and for damage to or loss of personal property bailed to the United States are cognizable.

(3) Unless the property owner has expressly assumed the risk of loss, claims arising from the use and occupancy of real estate by the U.S. Armed Forces under an express or implied lease are cognizable. Where a lease expressly covers damages that are the subject of a claim, the claim will be treated as a contract claim under AR 405–15. See paragraph 2–28. Damages beyond those contemplated in a lease agreement, however, as well as those arising out of trespass or other tort are compensable. Damages from trespass are compensable under the FCA even though the claimant presents a claim for "rent." See AR 27–20, subparagraph 10–3*c*(1); AR 405–15, Real Estate Claims Founded Upon Contract, 1 February 1980, paragraph 5, provides a remedy for such claims based on an implied contract.

(4) Unless the property owner has expressly assumed the risk, claims for loss of or damage to personal property loaned, rented or bailed to the United States are cognizable. A claim for property, such as building materials, however, seized without following

proper procurement procedures during a deployment, should be administered according to procurement law.

c. American Battle Monuments Commission claims. The Army has sole responsibility for claims brought by foreign country inhabitants arising in foreign countries that seek compensation for loss, damage or injury caused by the wrongful acts or omissions of officers or civilian employees of the American Battle Monuments Commission while acting within the scope of their employment. Such claims are cognizable and may be settled by military FCCs. If meritorious, such claims are paid from the American Battle Monuments Commission's appropriations. 36 USC 138b, figure 2–20.

d. Maritime claims. Maritime claims are cognizable if they:

(1) Arise on the high seas; or

(2) Involve incidents occurring in the territorial waters of foreign countries. See paragraph 8–3. A claim arising from a maritime incident that sounds in tort also may be brought under the Army Maritime Claims Settlement Act or by lawsuit under the Suits in Admiralty Act or the Public Vessels Act. See chapter 8 of this publication.

10–3. Claims payable

a. Noncombat activities. A claim arising out of noncombat activities is payable. AR 27–20, Glossary, defines noncombat activities that give rise to cognizable claims. The principles underlying this definition also apply to noncombat claims cognizable under the FCA. See chapter 3 for a discussion of these principles.

b. Combat activities. Claims arising "directly or indirectly" from combat activities of the U.S. Armed Forces are not payable. Whether damages sustained in areas of armed conflict are attributable to combat activities or noncombat activities depends upon the facts of each case. Damages caused by enemy action, or by the U.S. armed services resisting or attacking an enemy or preparing for immediate combat with an enemy, are certain to be considered as arising from combat activities. After war has been declared, an entire country's designation as a "combat zone" will be determinative—that is, it will operate to classify as combat activity claims all claims arising within that country's boundaries. When war has not been declared as, for instance, during a peacekeeping operation, the combat activities exclusion nevertheless applies to actual combat situations until hostile activities cease. Training for combat and the operation of military facilities not directly involved in combat actions often will not be classified as combat activities, even though its purpose may be to prepare for combat operations. See FTCA Handbook, section II, paragraph B4k.

c. Acts of soldiers and civilian employees.

(1) Liability under the FCA may be based on acts or omissions of U.S. soldiers or civilian employees of a U.S. military department only if they are considered negligent or wrongful. These persons need not be acting within the scope of their employment for their negligent conduct to cause actionable loss, damage or injury. Additionally, there is no bar to claims arising from off-duty or criminal conduct of U.S. soldiers or civilian employees.

(2) The "scope of employment" restriction to the waiver of sovereign immunity does apply, however, to non-U.S. citizens who are hired locally by the U.S. Armed Forces and whose negligent or wrongful conduct causes damage, injuries or death in the country in which they were hired to work. The FCA's purpose—to maintain friendly relations with foreign countries and their inhabitants—is not furthered by accepting responsibility for the off-duty acts of local citizens whose only tie to the U.S. Army or other military department is their employment.

(3) Liability may be based on non-scope acts of civilian employees who are not U.S. citizens but who are hired in one country to work in another country. The adjudicating authority may consider the place of hire, the place of employment, and the place of the incident giving rise to the claim in determining Federal liability. For example, the United States need not accept liability for a British citizen's off-duty acts occurring in England simply because a U.S. military department hired this tortfeasor to work in Germany.

10–4. Claims not payable

The exclusions set forth in AR 27–20, chapter 2, section V are discussed in paragraph 2–66 of this publication. The exclusions peculiar to the FCA are discussed in chapter 10 of this publication.

a. Domestic obligations. Claims arising from private domestic obligations rather than Government transactions are not payable. Such claims arise through off-duty conduct of U.S. military or civilian personnel for which the persons incurring them may be held personally accountable. At times, claimants may seek compensation for damage and loss of personal property bailed to individual members of a U.S. armed force. If the damage or loss results from a noncombat activity, the bailor's claim may be payable. However, although the United States accepts liability for damage to and loss of property bailed to the United States, it will not accept liability for bailments that constitute private domestic obligations.

b. Contractual claims. Claims brought pursuant to the breach, or the interpretation of the terms, of a personal contract with a U.S. soldier or civilian employee are not payable. For example, damages sustained from the act of a U.S. soldier passing a bad check would not be payable, nor would property damage to a privately owned vehicle loaned to a U.S. soldier for personal purposes. Note, however, that if the U.S. soldier caused a vehicle collision, any damage to a third party's car would be payable. Similarly, a FCA claim brought by the immediate relatives of a foreign citizen spouse of a U.S. soldier who apparently murdered the spouse is cognizable because the damages arise not out of the marriage contract but from the apparent murder, a criminal act.

10–5. Applicable law

The amount allowed for compensation will not exceed the amount normally allowed in the place of occurrence, whether by law or custom. Since many countries pay social benefits which replace the monetary damages normally allowed by local courts, the adjudicating authority should take this factor into consideration when determining the amount allowed. (Remember that the FCA does not permit subrogation, even when governmental agencies are the subrogees). Generally, AR 27–20, subparagraphs 3–5(*b*) through (*d*), provides sufficient guidance to determine allowable elements of damage. However, where moral damages are permitted under the law of the place of occurrence, a claim for such damages is payable to a member of the immediate family despite the absence of physical impact. See paragraph 2–74*c*(3).

Section II
Foreign Claims Commissions

10–6. Appointment and functions

a. Appointing authority.

(1) The Commander, USARCS, or the senior JA of a command having a command claims service, such as USAREUR or 8th Army-Korea, or his or her delegee, is authorized to appoint a Foreign Claims Commission (FCC). Normally, a senior JA will appoint a FCC to process claims arising in the command's area of geographic responsibility. USARCS will appoint them throughout the rest of the world.

(2) Because of rapid troop deployment, the senior JA must closely coordinate the appointment of FCCs with USARCS. For example, when troops drawn from a senior JA's area of responsibility are deployed to an area outside that area of responsibility, the senior JA should appoint the FCC. However, if the troops are drawn from posts within the United States, USARCS should appoint the FCC. The appropriate authority is responsible for the FCC's training and support; such a system enhances the authority's responsibility. USARCS must be informed immediately of the FCC appointment, however. A copy of the appointing order(s) should be sent to USARCS so that a separate office code may be assigned to each FCC, thereby permitting computer tracking of the amounts paid. Without such fund citation assignment, a FCC has no authority to pay a claim.

b. FCA claims are processed by a FCC composed of either one or three members. If a one-member FCC cannot reach a settlement

or believes that the claim should be presented before a three-member FCC, that one-member FCC should investigate and evaluate the claim in accordance with the calculation guidance set forth in AR 27–20, paragraph 10–9, and the provisions set forth in chapter 2, section IV through XIII of this publication. Where available, a unit claims officer should conduct the initial investigation. Before forwarding the file to a three-member FCC, the one-member FCC should discuss the basis for the claim and, if meritorious, the amount the claimant seeks with the claimant. If a claimant maintains that the claim is meritorious, despite the FCC 's position to the contrary, the claimant should state that position in writing whenever possible. The one-member FCC must consult with an attorney versed in applicable local law, such as a CJA or claims attorney working for the Army or an attorney connected with the military mission. If none is available, consult USARCS by telephone at (301) 677–7009, extensions 251 through 253. The one-member FCC report should include the information set forth in paragraph 2–64, including the FCC's observations of the claimant based on personal interviews and a site visit. Photographs should be taken for use by the three-member FCC.

10–7. Composition

Upon approval by the Commander, USARCS, a FCC may be composed of one or more members from another uniformed service. If another service has single-service responsibility for claims arising in the foreign country where the particular claim arose, that service is responsible for the claim. If requested, USARCS, a command claims service, or an ACO should cooperate either in conducting the investigation or by furnishing a member.

10–8. Qualification of members

The qualifications required of FCC members are set forth at AR 27–20, paragraph 10–8.

10–9. Settlement authority

See paragraph 2–89*f* of this publication.

10–10. Solatia payments

a. In certain countries, particularly those within Asia and the Middle East, an individual involved in a PCE may, in accordance with local custom, pay solatia to a victim or to the victim's family without regard to liability. An offering of solatia seeks to convey personal feelings of sympathy or condolence toward the victim or the victim's family. Such feelings do not necessarily derive from legal responsibility; the payment is intended to express the remorse of the person involved in an incident. Such payments usually are made immediately, in a nominal amount that varies according both to the responsible party's ability to pay and to local custom. In certain countries, the payment is not always made in money. A custom need not be of ancient origin or common to an entire country to be a basis for the payment of solatia.

b. Solatia payments are made from the unit's operation and maintenance funds pursuant to directives established by the appropriate commander for the country concerned—they are not disbursed from claims funds. Although solatia programs are usually administered under the supervision of a command claims service, they are essentially a theater command function, whose propriety is based on a local finding that solatia payments are consistent with prevailing customs.

c. A solatium payment may not be used in lieu of an advance payment, if such is warranted and authorized under the provisions of 10 USC 2736 and AR 27–20, chapter 2. Normally, a nominal solatium payment is not offset from a subsequent award based on statutory liability. However, when a solatium payment amount is high in relation to the claim's value, the adjudicating authority may consider this fact in determining the claim award.

10 USC 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) To promote and to maintain friendly relations through the prompt settlement of meritorious claims, the Secretary concerned, or an office or employee designated by the Secretary, may appoint, under such regulations as the Secretary may prescribe, one or more claims commissions, each composed of one or more officers or employees or combination of offices or employees of the armed forces, to settle and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to, or loss of, real property of any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country; if the damage, loss, personal injury, or death occurs outside the United States, or the Territories, Commonwealths, or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, "foreign country" includes any place under the jurisdiction of the United States in a foreign country. An officer may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within two years after it accrues;

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commissioner or by the local military commander to be friendly to the United States; and

(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(c) The Secretary concerned may appoint any officer or employee under the jurisdiction of the Secretary to act as an approval authority for claims determined to be allowable under subsection (a) in an amount in excess of $10,000.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Comptroller General for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Upon the request of the department concerned, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another department.

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of Transportation shall be made out of the appropriation for the operating expenses of the Coast Guard.

(h) The Secretary of Defense may designate any claims commission appointed under subsection (a) to settle and pay, as provided in this section, claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department. Payments of claims under this subsection shall be made from appropriations available to the Office of the Secretary of Defense for the payment of claims.

Figure 10-1. Foreign Claims Act 10 USC 2734

Ask the following questions to determine whether a claim may be processed under the Foreign Claims Act or the Military Claims Act.

Questions:

1. Date and place of birth.

2. List all countries of residence other than the United States since birth and include the years of residence.

3. List all years of residence in the United States and reasons for such residences, such as military assignment.

4. List any years of employment in other countries.

5. Name and status of spouse. If deceased, give date of death.

6. List date of marriage to sponsor.

7. If sponsor is deceased, furnish date and place of marriage and occupational status of spouse.

8. Names of countries in which you maintain citizenship and state basis of citizenship, such as birth, naturalization.

9. What country do you call home?

Figure 10-2. Questionnaire—Foreign Claims Act or Military Claims Act

Chapter 11
Personnel Claims and Related Recovery Actions

Section I
General

11–1. Authority

a. Purpose. 31 USC 3721, the Personnel Claims Act (PCA), as implemented by AR 27-20, chapter 11, authorizes the payment of soldiers' and civilian employees' claims for the fair market value of personal property lost, damaged, or destroyed incident to service. (See figure 11-1 for the complete text of the PCA.) The PCA is a gratuitous payment statute. It does not provide insurance coverage, nor is payment conditioned on tort liability. Congress instead determined to lessen the hardships of military life by providing prompt and fair recompense for certain types of property losses, especially those caused by frequent moves and transient assignments to areas with limited police and fire protection.

b. The Army Claims System. The Army Claims System intends that, within approved guidelines, soldiers and civilian employees will be compensated for such losses to the maximum extent possible. The PCA provides that the administrative settlement of such claims is final and conclusive (31 USC 3721(k)). Settlement is subject only to a claimant's right to request reconsideration.

c. History. Private relief acts passed by Congress were the first means of compensating soldiers for property losses suffered incident to their service. Because of the number of soldiers seeking such acts, Congress enacted a law to settle soldiers' claims for the loss of personal military equipment and horses after the War of 1812 (3 Stat. 261 (1816)). That law was reenacted following the Mexican War (9 Stat. 414 (1849)). In 1885, a new personnel claims statute was enacted covering the loss of all types of personal property in certain circumstances (23 Stat. 350 (1885)). In 1918, this coverage was extended to other types of losses, including losses of property in shipment pursuant to orders (40 Stat. 880 (1918)). In 1921, Congress shifted settlement authority from the Department of the Treasury to the Secretary of War (41 Stat. 1436 (1921)). During World War II, the Secretary of War was permitted to delegate authority to subordinates as the volume of claims increased (see 55 Stat. 880 (1942); 57 Stat. 357 (1943)). In 1945, Congress repealed existing legislation and substituted a comprehensive act for the settlement of claims for losses of personal property incident to the service of Army personnel (59 Stat. 135 (1945)). In 1952, after the Department of Defense (DOD) was formed, coverage was extended to all DOD personnel (66 Stat. 548 (1952)). In 1964, it was extended to employees of all Federal agencies (78 Stat. 767 (1964)). The legislative history of the 1964 Act reflects that improved morale occasioned by the prompt and fair payment of losses incident to service benefited the Government, and that the regulations and settlement experience of the military departments provided guidelines for the extension of coverage to the other Federal agencies (S. Rep. No. 1423, 88th Cong., 2d Sess., reprinted in 1964 U.S. Code Cong. & Admin. News 3407, 3413). In 1982, the statute was recodified as 31 USC 3721 without substantive change. The maximum payment per claim originally authorized in 1945 was $2,500. This was successively increased to $6,500 (70 Stat. 376 (1956)), to $10,000 (79 Stat. 789 (1965)), to $15,000 (88 Stat. 1381 (1974)), and to $25,000 (96 Stat. 245 (1982)). A special provision enacted in 1980 authorized payment of up to $40,000 for evacuation and hostile act claims (94 Stat. 3031 (1980)), and 1988 legislation increased the maximum payment for all claims accruing after 31 October 1988 to $40,000 (PL 100-565 (1988)). In 1996, Congress amended the statute to increase the maximum payment from $40,000 to $100,000 in situations where the loss of, or damage to, personal property arose from certain types of emergency evacuations or other extraordinary circumstances (110 Stat. 458(1996)).

11–2. Delegation of authority

The PCA empowers the head of each agency to issue rules for settling claims. AR 27-20, paragraph 1–18*e*, authorizes the Commander, USARCS, to interpret and grant exceptions to rules issued for Army personnel. The Army is also authorized to settle personnel claims presented by DOD employees who are not employees of one of the military services such as the Navy or the Air Force, pursuant to DOD Directive (DODD) 5515.10. Although the PCA does not provide for the payment of claims of nonappropriated fund (NAF) employees, AR 27-20, chapter 12, provides that such employees' personnel claims are adjudicated under the same principles and paid from NAFs. Within DA, the following settlement authority is delegated.

a. The 1996 amendment to subparagraph (b)(1) of the PCA provides that claims for loss of, or damage to, personal property due to emergency evacuations or extraordinary circumstances may be paid up to $100,000. This increase in the statutory amount does not change the respective monetary authorities of the heads of area claims offices or claims offices with approval authority. These claims will be handled no differently from any other claim for which the adjudicated amount exceeds the field claims office's monetary authority, unless the field claims office believes that the incident giving rise to the loss or damage is extraordinary, such as total loss of personal property. In this case the field claims office will recommend to USARCS in the seven-paragraph memorandum of opinion an additional amount be paid. Be sure to address why the incident is considered extraordinary. Claimants will not be told what the field claims office recommended. Extraordinary is defined as beyond what is common or usual. For example, the eruption of a dormant volcano that causes personal property loss may be extraordinary, whereas damage or loss of a few items during a government sponsored move would not.

b. Regardless of the amount claimed, the Commander, USARCS, or a designee may pay any amount up to the statutory maximum and deny claims in any amount. The head of an area claims office (ACO) or the chief of a command claims service may pay up to $25,000 and deny claims in any amount. U.S. Army Corps of Engineers (USACE) ACOs do not have approval or settlement authority except as explained in paragraph *d*, below. A claims processing office (CPO) with approval authority may pay up to $10,000 and deny compensation for line items on the claim, but it may not deny the entire claim. A CPO must transfer denials and claims that are payable in an amount greater than its approval authority to the ACO with a personnel claims memorandum of opinion. For example, a CPO with approval authority receives a claim for $30,000 and determines that it is meritorious in the amount of $1,000. Because this amount is within the office's approval authority, the office may settle the claim for $1,000. If the claim were meritorious in the amount of $12,000, however, the office would have to pay $10,000 and forward the file to the ACO for payment of the additional $2, 000, which exceeds the CPO's monetary authority.

c. Within each office, the head of an area claims office or command JA, may redelegate up to the full amount of his or her approval authority to subordinate JAs and to claims attorneys. The head of an ACO or command judge advocate must, however, act personally on denials, transmittals to the next higher settlement authority, waivers of maximum allowances, and requests for reconsideration (see para 11-20*g* for a discussion of the approval and settlement authority), and may not delegate disapproval authority to any other person.

d. Claims from USACE personnel involving loss or damage incident to transportation to or from Saudi Arabia, Kuwait, Bahrain, Sudan, Egypt, or Morocco may be paid from special accounting classifications rather than from the claims budget. Claims from Army Materiel Command (AMC) personnel incident to transportation between the United States and Saudi Arabia may also be paid from special funds. Files involving such personnel should be assembled, adjudicated, and transferred to the offices authorized to pay the claims. As an exception to paragraph 11-10*i*, USARCS approval for such transfers is not necessary.

(1) *USACE personnel.* Such claims should be transferred to USACE Middle East/Africa Projects Office, PO Box 2250, Winchester, VA 22601-1450. USACE personnel may be assigned to

foreign military sales projects in other African and Middle Eastern countries in the future. If claims are received from such personnel, the USACE Middle East/African Projects Office should be contacted to determine if transfer is appropriate.

(2) *AMC personnel.* Such claims should be transferred to office 343, Commander, HQ, USAMC, 5001 Eisenhower Avenue, ATTN: AMCGC-S, Alexandria, VA 22333-0001.

11–3. Scope

Claims cognizable under other claims payment statutes (see AR 27-20, para 11-3*c*) should be processed as follows:

a. Claims cognizable as tort claims. Except for claims cognizable under Article 139, UCMJ, claims cognizable under other claims statutes will first be considered for payment under the PCA. As an exception to this general rule, if a military vehicle strikes a privately owned vehicle (POV) driven under orders for the convenience of the Government, the claim will first be considered under applicable tort claims statutes. Persons using their vehicles for the convenience of the Government should be compensated for damage at least as well as persons not using their vehicles for the convenience of the Government. If a claim is not compensable under the PCA, it will be considered under any other applicable claims statute and, if appropriate, forwarded for investigation and settled under the provisions applicable to that statute. For claims involving personal injury as well as property damage, an investigation must be conducted to determine if payment or emergency partial payment may be made. The incident giving rise to the claim cannot have been caused by the claimant's negligence.

b. Claims cognizable under Article 139, Uniform Code of Military Justice. If a claim that appears cognizable and meritorious under Article 139 is presented, the field claims office should so inform the claimant and assist in completing a claim against the soldier(s) who stole, damaged, or vandalized the claimant's property. Action on the claim as a loss incident to service should be deferred pending resolution of the Article 139 claim. Should recovery under Article 139 appear unlikely or inordinately delayed, the claim may be processed as a loss incident to service and paid under this chapter, directing the claimant to repay the field claims office if the offender makes payment under Article 139.

11–4. Claimants

a. General. Congress granted the right to be compensated for a loss incident to service to certain classes of people. While the PCA applies to all Federal employees, Army claims offices are authorized to compensate only—

- Soldiers on active duty.
- Members of the U.S. Army Reserve (USAR) or the Army National Guard (ARNG) engaged in active service or inactive duty training.
- Civilian employees of the Army or the ARNG.
- DOD civilian employees who are not employees of the Air Force, Navy, or Marine Corps.

Entitlement to present a claim is based on one's status at the time the claim accrued. For example, if a soldier's vehicle is vandalized at quarters on the installation while the soldier is on active duty, that soldier is still a proper claimant for that particular claim even if no longer on active duty. As an exception to this general rule, a person leaving the Service or its employ who is authorized a final shipment at Government expense is a proper claimant for a loss incurred during that shipment, regardless of the actual date of the loss.

b. Civilian employees transferring between Services. By agreement among the Services, a claim brought by a civilian employee transferring from one Service to another—from the Army to the Navy, for example—is processed by the gaining Service.

c. DOD Dependents Schools teachers. By agreement among the Services, the claim of a DOD Dependents Schools (DODDS) teacher is processed by the Service operating the installation where the schoolteacher is employed, under the authority of DODD 1342.6-M. If the claim is presented by a DODDS teacher who is leaving DODDS employment, the Service operating the installation where the teacher was last employed should process the claim.

d. Reserve Officers' Training Corps cadets. A Reserve Officers' Training Corps (ROTC) cadet is a proper claimant while traveling at Government expense or while attending military summer camp or a Service school.

e. Nonappropriated fund employees. NAF employees (but not NAF independent contractors or their employees) may be compensated from NAFs for losses incident to their employment. The PCA, subsection (a)(1), specifically states that NAF activities are not agencies for purposes of the Act, and its legislative history states that NAF employees were not intended as beneficiaries (S. Rep. No. 1423, 88th Cong., 2d Sess., reprinted in 1964 U.S. Code Cong. & Admin. News 3407, 3410).

(1) *Definitions.* NAF employees are employees whose salaries are paid from NAFs. Day care providers, independent contractors, volunteer workers, and persons paid from appropriated funds (APF) assigned to NAF organizations are not NAF employees. Soldiers who are also part-time NAF employees will be considered NAF employees for claims purposes if the loss occurred while they were functioning as such. Claims by NAF employees for losses incident to service are processed in exactly the same way as such claims by soldiers or APF employees, except that they must be paid from NAFs as per AR 27-20, paragraph 12-7*b*(1)-(4).

(2) *Household goods or hold baggage claims.* For Army and Air Force Exchange Service (AAFES) household goods or hold baggage claims, the entire claim file should be sent to the appropriate office with a cover letter. AAFES does its own recovery action on such claims. For other claims, a copy of DD Form 1842 (Claim for Loss or Damage to Personal Property Incident to Service) should be sent with a cover letter. In all instances, the NAF entity should be directed to send the claims office a copy of the check sent to the claimant or other proof showing the date and amount for which the claimant was paid. NAF entities have no discretion about whether to pay a claim. However, they should be encouraged to contact the claims office if they believe an error has been made.

(3) *Nonappropriated fund organization member claims.* Claims by members of NAF organizations, such as riding clubs, sport parachute clubs, and boating clubs, for losses arising from organizational activities or property stored in a building used by the organization are not cognizable as losses incident to service. This is so even when the club member is a proper claimant, such as an active duty soldier. Such claims should be denied or considered under any applicable tort claim statutes.

(4) *Customer complaints and claims for losses occurring at NAF facilities.* Customer complaints for defective items purchased, inadequate repairs, and counterfeit money received in change are processed through AAFES channels. Claims by soldiers or APF employees for losses that may be considered incident to service should be treated as normal personnel claims and paid from APF even if the losses occurred at an AAFES facility. Other claims should be denied or considered under any applicable tort claims statutes.

f. Civilian employees. A loss unconnected with the performance of duty, particularly a loss occurring outside of normal duty hours, is often not incident to a civilian employee's service, even though the same loss might be deemed incident to a soldier's service. In general, a loss that does not occur at the workplace during duty hours or incident to temporary duty travel would not be incident to a civilian employee's service. This is especially true of losses by foreign national employees. In particular, an unlawful confiscation by a foreign power of property belonging to its nationals would not be incident to service.

g. Agents or legal representatives (including spouses) of living claimants and survivors of deceased claimants.

(1) *Initiation of a claim by a spouse or an agent.* The authorized agent or legal representative of a proper claimant may file on behalf of the claimant if the agent provides a power of attorney that complies with local law. In addition, a spouse may file on a claimant's behalf if the latter has signed authorization for the spouse to

do so. The claims office must maintain a copy of the agent's power of attorney or the spouse's letter of authorization in the file. Payment is made in the claimant's name and sent to the address of record. If the agent does not provide the claimant's written authorization to file the claim, the claim should be considered the agent's claim rather than the claimant's and, if the "agent" is not a proper claimant in his or her own right, claims personnel should deny the claim. An agent should sign the claim form as follows:

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Claimant By: Claimant's Agent, Attorney in Fact.
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(a) By an agent with a power of attorney. The claimant may authorize anyone (including a spouse) to file a claim on his or her behalf with a power of attorney that is valid under local law. The document should grant specific permission to file a claim. A limited power of attorney that authorizes the agent only to accept a shipment does not provide authorization to file a claim.

(b) By a claims preparation service. When the agent presenting a claim is a private company, especially one that specializes in preparing claims in return for ten percent of the amount received (the maximum permitted by the PCA), the claims office must look beyond the power of attorney creating the agency to see if an assignment exists. Assignment of claims is prohibited except as provided by 31 USC 3727. Whenever a claimant hires an agent to prepare and submit a claim, the claimant will be required to examine the completed claim and sign the DD Form 1842 to ensure correctness. If evidence indicates that the claimant did not do so, return the claim directly to the claimant to certify in writing that it is correct. In addition, payment will be made in the claimant's name and sent with the settlement letter directly to the claimant, regardless of any agreement the claimant may have entered into to the contrary. If the claimant declines to certify that the claim is correct or the agent refuses to provide the claimant's address, the claim may be denied as an unlawful assignment. Claims personnel should closely examine estimates of repair provided by claims preparation services and reject any inflated estimates. In addition, if it appears that a particular claims preparation service is submitting its own estimates as estimates ostensibly prepared by a disinterested repair firm, claims personnel should investigate this practice for possible fraud (see para 11-6*f* for a thorough discussion of fraud and its applicability to claims).

(c) By a spouse without a power of attorney. Any contemporaneous writing, such as a letter signed by the claimant and authorizing the spouse to file a claim, will be accepted in lieu of a power of attorney. This policy is designed to facilitate action by the spouse on the claimant's behalf; the spouse has no independent right to file except as a survivor of a deceased claimant (see subpara *g*(2) below). Because of the increased risk of duplicate or fraudulent claims, claims personnel should take great care, particularly when they know that the spouse is estranged from the claimant. In such instances, contact the claimant by telephone to confirm that the claimant has indeed authorized the spouse to act.

(d) By a guardian. The legal guardian of a minor or claimant declared incompetent by a court may file a claim on the claimant's behalf.

(2) *Survivors of deceased claimants.* Certain relatives of a deceased proper claimant may file any claim the claimant could have filed. Survivors are ranked in order, and a claiming survivor must establish that there is no survivor higher in order. However, if more than one person is equal in order, the first claim settled will extinguish the rights of all the others. The estate of a deceased proper party claimant is not a proper claimant, nor is an executor or personal representative who cannot file as a survivor. Survivors are ranked in the following order of relationship to the claimant:

- Spouse.
- Child or children.
- Father, mother, or both.
- Brother, sister, or both.

If claims personnel need additional information, check with the Summary Court Officer or the Survivor Assistance Officer, especially on claims where the decedent leaves behind a minor child or children.

h. Members or employees of other services or Federal agencies. Claims by members or employees of other Services or agencies will not be logged onto the automated database, but a log will be maintained showing that the claim was received and forwarded to that agency. Forward claims by Air Force, Navy, or Coast Guard personnel to the nearest legal office of that Service. Record and forward claims by Marine Corps personnel to the Commandant of the Marine Corps (MHP-40), Headquarters, U.S. Marine Corps, WASHINGTON, DC 20380-0001. Claims personnel should investigate such claims and assemble them with all supporting documents completed short of adjudication. Forward claims by members of other Federal agencies such as the American Battle Monuments Commission or the Public Health Service to the headquarters of that agency.

i. Claims by other persons.

(1) *Claims by private employees and contractors.* Contractors' employees, Red Cross employees, United Service Organization (USO) employees, university personnel, and independent contractors (such as a physical fitness instructor who contracts with a Morale Support Activity to provide aerobics classes) are not proper claimants. Claims by such persons should be considered under other chapters, or denied. For example, a University of Maryland, Munich, instructor's household goods are shipped to Germany on a Government Bill of Lading (GBL) and damaged. The instructor is not a proper claimant. In the absence of evidence suggesting that the loss occurred while the property was in the hands of Government personnel and is cognizable as a loss of bailment under the Military Claims Act (MCA), the claim should be denied.

(2) *Claims by insurers and other third parties.* Claims by insurers, subrogees, assignees, and other third parties are not cognizable under the PCA. If the property owner could have presented a claim for the loss under the PCA, claims by such third-parties are barred from consideration under the provisions of any other claims statute. Effective 1 September 1995, claims for subrogation under the MCA are excluded. In addition, such claims are not cognizable under the Federal Tort Claims Act (FTCA); *Preferred Insurance Co. v. United States*, 222 F.2d 942 (9th Cir. 1954), cert. denied 350 U.S. 837 (1955); and *United States v. United Services Auto. Ass'n*, 238 F.2d 364 (8th Cir. 1956). Also see *Wallis v. United States*, 126 F. Supp. 673 (E.D.N.C. 1954); *Lund v. United States*, 104 F. Supp. 756 (D. Mass. 1952); *Rivera-Grau v. United States*, 324 F. Supp. 394 (D. N.M. 1971); and *Pratt v. United States*, 207 F. Supp. 132 (D. Mass. 1962). For this reason, an insurer's claim that faulty wiring caused a fire in Government quarters or that military police officers failed to take adequate measures to prevent a soldier's vehicle from being vandalized in a fenced lot would not be considered under other claims statutes. It should be disapproved as a personnel claim. The allegation that Government personnel were negligent is irrelevant under these circumstances, and there is no need to investigate the incident exhaustively or to assert that the Government was free from negligence.

j. Personnel claims by AWOL personnel. Occasionally, a claims office must process a personnel claim from a soldier who is absent without leave (AWOL). In addition to the practical problems involved in locating such persons to obtain additional evidence or to pay claims, a philosophical dilemma arises from using a gratuitous payment statute to compensate wayward soldiers. Accordingly, claims offices should hold in abeyance personnel claims from soldiers who have been AWOL less than 30 days at the time the claim is adjudicated. If an AWOL claimant is dropped from the rolls (DFR), the claims office will deny the claim and send a denial letter to the claimant's last known civilian address. If the soldier later returns to military control and submits a request for reconsideration within 60 days of the claim settlement date in accordance with AR 27-20, paragraph 11-20, the office should consider the reconsideration request as any other.

11–5. Claims payable

The following are nonexclusive categories of damage to, or loss of, property that may be considered incident to service and, therefore, payable under the PCA.

a. Claims occasioned by the negligent acts of contractor personnel.

(1) A claim for loss or damage caused by the negligent act or omission of a Government contractor, such as flooded on-post quarters caused by faulty contractor work, should first be referred to the contractor and to the contracting officer for settlement. The claims office should make every effort to assist the claimant in obtaining compensation from the contractor or the contractor's insurer. Assist the claimant in completing DD Form 1844 (List of Property and Claims Analysis Chart), in preparing a written demand on the contractor (in lieu of the DD Form 1842, which presents a claim against the United States), and in obtaining necessary substantiation.

(2) Should the contractor fail to resolve the matter, the claims office should coordinate with the contracting officer to offset the appropriate amount due the claimant from moneys payable to the contractor, as long as the contract contains such a clause. As an important preventive measure, the claims office should coordinate closely with local contracting officers to ensure that contracts routinely include such offset clauses.

(3) If the matter has been pursued through the contracting officer but the contractor either fails to resolve it or delays inordinately in doing so, claims personnel may settle it as a loss incident to service as long as it is otherwise meritorious as a personnel claim. The claims office then pursues recovery action against the contractor for the amount paid the claimant. AR 27-20, paragraph 11-3*d*, requires that such claims be referred first to the contractor or its insurer.

b. Tangible personal property. The PCA provides only for payment for losses of personal property. Accordingly, compensation is authorized only for loss of, or damage to, personal property, for expenses associated with the repair or replacement of personal property, and for fees to obtain certain documents. Loss of, or damage to, real property is not compensable, nor are other types of incidental expenses or consequential damages. Personal property is defined as any type of tangible property (for example, cars, stereos, pets, potted plants, and similar items) that is not real property.

(1) *Negotiable instruments.* A negotiable instrument such as a check is considered personal property. (See para 11-6*c* for treatment of other types of instruments.) Except in emergency situations, however, a claim for the loss of a negotiable instrument will not be considered if the instrument can be reissued or the bank on which the instrument is drawn is obliged to honor the check.

(2) *Items made or written by the claimant.* Compensation for an unpublished manuscript, a thesis, an unsold painting or similar artistic work composed by the claimant or the claimant's friends or relatives is limited to the cost of materials. The value of such items is speculative. However, compensation for a utilitarian object made by the claimant, such as a quilt or a bookcase, is instead limited to the value of an item of similar quality.

(3) *Ownership or custody of property.* A claim for property owned by the claimant and immediate family members residing with the claimant is cognizable. The claimant may claim for items purchased on an installment plan even if title is not transferred until the item is paid for in full. A claim for borrowed items over which the claimant exercises dominion and control at the time of the loss is also cognizable. Items stored or transported to accommodate another individual are not considered borrowed items, however, and special rules govern payment of claims for loaned vehicles. Contact the actual owner when the claimant does not own an item claimed.

c. Extraordinary hazards. The PCA is not a substitute for insurance. Quarters losses, losses of clothing and other items worn, and most vehicle losses are compensable only if caused by "fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism." The PCA provides protection only from extraordinary hazards (broadly categorized as losses due to abnormal climatic conditions or to the condition of the military installation that other soldiers and civilians do not face to the same degree) and the intentional torts of theft and vandalism, which may or may not have a service connection.

(1) *Fire.* Losses caused by fires are compensable, regardless of whether the fire was caused by an act of God or by a human agency, such as faulty wiring or arson. However, a fire in a vehicle's engine compartment resulting from the operation of the vehicle is normally caused by a mechanical defect and thus is not considered in this category. A claimant is expected to maintain quarters and to supervise small children to minimize the risk of fire. Claims offices are never bound by the determination in a report of survey that the claimant was not negligent; instead, they are required to reach an independent conclusion based on all the evidence, particularly that provided by the fire marshal or other experts. (See para 11-6*i*(1) for fires caused by the negligent conduct of a claimant's family members or houseguests.)

(a) When a fire starts in a soldier's government quarters and destroys personal property therein, claims personnel must determine whether preliminary findings indicate that the quarter's occupant, or the occupant's family members or agents, may have caused the fire before making an emergency partial payment from claims funds under the PCA. While claims personnel are willing to alleviate hardship in these situations, the law may not entitle the soldier to any payment, and the government actually may hold the soldier pecuniarily liable for damage to the quarters. The prohibition against paying claims for property that a claimant loses or damages due to his or her own negligence is statutory; paying such claims violates the Anti-Deficiency Act. Thus, until an investigation is complete, an emergency partial payment to a soldier in whose quarters a fire of unknown origin occurred is almost always inappropriate. AR 27-20, paragraph 11-18, authorizes an emergency partial payment if the claim is clearly payable in an amount exceeding the proposed emergency partial payment.

(b) Withstanding the temptation to make emergency partial payment becomes even more crucial when personal injuries or deaths result from the fire, leading to potential occupants' claims against the United States under the MCA or the Federal Torts Claims Act (FTCA). In such instances, claims personnel resolve the question of negligence and determine whether an emergency partial payment is allowable only by consulting with the overseas command claims service or the Tort Claims Division area action officer (AAO) at USARCS, who may, in turn, consult with the Department of Justice or higher authority within DA. Note, however, that these restrictions do not limit payment under the PCA if a fire spreads from its point of origin, destroying property belonging to other occupants of a multifamily building, provided they were not negligent.

(c) Whenever a quarters fire occurs, claims personnel should investigate the scene immediately to determine what items the claimant should salvage and to note the general nature of the property the claimant owned to avoid substantiation problems.

(d) If possible, claims personnel should photograph the scene. The CJA or claims attorney should then obtain the evidence necessary to determine independently whether the claimant's negligence caused the fire. In making this determination, the CJA or claims attorney is not bound by the report of survey, which an officer without expertise in determining the cause of fires usually has produced. The fire marshal's assessment and the Criminal Investigation Division report are the best sources of evidence. However, these reports are not adequate if serious injury or death has occurred; in such instances, claims personnel should contact USARCS AAO or the command claims service to determine whether to hire an outside expert.

(e) The PCA is not a disaster relief statute and is not the only source of assistance available in emergency situations. Claims personnel can steer soldiers who have been overwhelmed by catastrophic events to agencies that provide immediate assistance, such as Army Emergency Relief, the Red Cross, Army Community Service, or the installation chaplain's office. Some of these agencies can process grants or loans for immediate necessities. A claims examiner who has determined that payment under the PCA is proper can make emergency partial payment so that the claimant can repay these loans.

(2) *Flood.* Losses due to flooding caused by weather conditions or burst pipes in quarters are compensable. In areas plagued by frequent flooding below ground level, the claimant is expected to store items off the floor. Few items are destroyed merely by becoming wet, and claimants have a duty to mitigate, or lessen, damage by drying out wet items promptly; deterioration caused by failure to do so is not compensable.

(3) *Unusual occurrence.* Losses due to an unusual occurrence, defined as a hazard outside the normal risks of day-to-day living and working, are compensable. An unusual occurrence takes place at a particular time and location; it is not an accumulation of damage due to a continuing condition. Unusual occurrences do not normally result from human error (for example, a rock thrown by a lawn mower, or tearing one's trousers on the edge of a filing cabinet is not an unusual occurrence). Two different types of incidents may be considered unusual occurrences: those of an unusual nature, such as a lightning bolt striking and destroying a vehicle, and those of a common nature that occur in an unexpected degree of severity, such as a baseball-sized hailstone striking and denting a vehicle.

(a) Lightning, power surge, and power failure. Storms, power surges, and power outages are not unusual occurrences, and damage caused by such incidents is normally not compensable.

- Claims that electrical or electronic devices were damaged by a power surge may be paid when lightning has actually struck the claimant's residence or objects outside it, such as the transformer box, or when power company records or similar evidence show that a particular residence or group of residences were subjected to an unusually intense power surge. However, it is virtually impossible to distinguish damage caused by a mechanical defect from surge damage by inspecting the item; therefore, a repair firm's statement or a claimant's honest belief that the loss occurred as a result of a power surge during a storm may not be sufficient to show what caused the damage. Moreover, in areas subject to frequent thunderstorms or power fluctuations, claimants are expected to use a surge suppressor, if available, to protect delicate items such as computers or videocassette recorders.
- Claims that electrical or electronic devices were damaged by a power outage are not compensable. However honest a soldier's belief that damage was caused by power outage, an outage unaccompanied by a power surge will not damage a properly designed electrical or electronic device.
- Claims that food was spoiled by a power outage may be considered if the outage is of unusual duration. What constitutes "unusual duration" is determined by how long it normally takes food to spoil under local climatic conditions. In tropical countries, this might be less than one full day. Before paying such a claim, the approval authority must determine that the food did not spoil as a result of either the claimant's negligence in repeatedly opening and closing the refrigerator door or the food's existing condition.

(b) Collapse of walls and fixtures. The sudden manifestation of a substantial defect in a building may be considered an unusual occurrence. Minor deficiencies in a building are considered ordinary hazards of day-to-day living. For example, it is an unusual occurrence for a large ceiling light fixture in Government quarters to suddenly break loose and fall, damaging a table underneath. When damage to personal property is caused by a defect in economy quarters outside the United States, the claimant should first examine the landlord's insurance, if any, for coverage.

(c) Gradual deterioration. Gradual deterioration of furniture and other items due to prevailing climatic conditions, such as cracking or shrinkage of wooden panels in an extremely dry area, is not an unusual occurrence.

(d) Termite and other insect or rodent infestation. In areas where these pests are common, infestation is not considered an unusual occurrence. Panama is particularly subject to termite infestation, and many installations in CONUS encounter seasonal mice problems. If, however, installation facilities engineers are scheduled to correct the problem but fail to do so over an extended time, the occurrence may be considered unusual and the additional damage compensable to the extent that the claimant took reasonable steps to lessen the damage. The CJA or claims attorney at field claims offices located in such infested areas will periodically publish warnings in local media.

(e) Ice and snow. In regions subject to very cold weather, ice and snow sliding off a roof onto a vehicle or collapsing the roof of a utility shed is not an unusual occurrence. In areas where this may be considered unusual, apply a negligence analysis to determine whether it was reasonable for the claimant to park in the location where the damage occurred. It is not an unusual occurrence for a vehicle to skid off the road during bad weather.

(f) Hail. While a hailstorm is normally not considered an unusual occurrence, an exceptionally severe hailstorm, with baseball-sized hail, is unusual.

(g) Airborne emissions. Spotting, etching, discoloration, or other damage allegedly caused by precipitation of various airborne chemicals or other discharges from Army activities is not normally considered an unusual occurrence. Such a claim should be investigated as a tort and warrants particular scrutiny because of the potential for widespread damage. The Army often has a duty to warn potential claimants of known property or health hazards, and personnel may solicit technical advice and recommendations from the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM) and the U.S. Army Environmental Center (USAEC) for remedial action to avoid future exposure. Such occurrences may be considered unusual only when investigation reveals that the precipitation was caused by unusual weather conditions. It is not an unusual occurrence for sap from trees to settle on vehicles.

(h) Baseballs, golf balls, and rocks thrown up by lawnmowers or vehicles. Balls "escaping" from ball fields and golf courses, and rocks thrown up by lawnmowers, weed-eaters, or vehicles are not unusual occurrences. Such incidents may be paid as a personnel claim only when the vehicle was used under orders for the convenience of the Government and the claim is otherwise meritorious. Such claims should be investigated as torts under the Military Claims Act, the Federal Tort Claims Act, or other appropriate provisions. For example, payment under the Military Claims Act may be appropriate if a soldier's vehicle is damaged by the negligence of a Government employee or as the result of negligent design of a military golf course.

(i) Potholes and other road hazards. Damage to moving vehicles caused by defects or foreign objects in the road is not considered the result of an unusual occurrence. Such incidents may be paid as personnel claims only when the claimant used the vehicle under orders for the convenience of the Government and the claim is otherwise meritorious as a personnel claim. Investigate such claims as torts to determine whether the installation has a system for proper maintenance of roadways, including parking lots. If such a system exists, subject to the availability of funds and personnel, such claims are not payable unless there is a hazardous condition known to the Army and unknown to the claimant that would require a warning, such as a deep pothole or one of extraordinary width, particularly one filled with water.

(j) Paint overspray. Paint overspray of vehicles is not an unusual occurrence. Investigate such claims as torts. When the overspray is caused by the negligence of contractor personnel, refer the claim initially to the contractor and contracting officer for payment.

(k) Collisions, including hit-and-run and those involving animals or shopping carts. Collisions are not unusual occurrences. Claims for damages arising from such incidents may be paid as personnel claims only when the vehicle was being used under orders for the convenience of the Government. For example, it is not an unusual occurrence for a parked vehicle to be struck by a shopping cart in a commissary parking lot or by a hit-and-run driver, nor is it an unusual occurrence for a motor vehicle to strike a deer on the installation. Unless the vehicle was used for the convenience of the Government, claims for these incidents should be processed as tort claims.

(l) Wind damage. Damage to a vehicle's paint or exterior trim

caused by high winds blowing sand is common in certain areas and is considered gradual deterioration, rather than the result of an unusual occurrence. However, extraordinary damage to the paint or exterior trim caused on a particular occasion, as well as broken or cracked glass or severe pitting of windows and windshield caused by debris thrown up by high winds on a particular occasion, is considered an unusual occurrence. In determining whether other types of damage resulted from an unusual occurrence, consider the nature of the damage rather than whether the measured wind speed on a given day exceeded some arbitrary figure. In areas subject to wind damage, publicize the fact that most wind damage is not compensable. This will encourage soldiers to purchase insurance protection against this hazard. For example, it is not an unusual occurrence for a car's paint to be abraded by blown sand, allegedly during a windstorm. However, it is an unusual occurrence for high winds to drive a pebble through a windshield or to roll a dumpster into a parked vehicle.

(m) Falling trees and branches. While falling branches are not unusual, it is unusual for a large, healthy tree or a significant portion of one to fall.

(n) Paint, battery acid, ink, and oil spilled on clothing. Such incidents are usually considered normal hazards of day-to-day living and working. Spillage while handling such materials is not an unusual occurrence, even if the claimant's normal duties do not include painting or transporting batteries. Commanders who have soldiers working in areas where damage is likely to occur can provide protective clothing or direct exchange items. However, the uniform allowance is intended to replace damaged or worn items, and it is not appropriate to use claims funds to supplement that allowance for this type of loss. For example, it is not unusual for soldiers painting a building to drip paint on their clothing. It is unusual, however, for a soldier not engaged in painting to be splashed by a bucket of paint while walking past an open window.

(o) Tears, rips, or snags in clothing. Such incidents are usually considered normal hazards of daily living and working. Such damage is not considered unusual, even if the claimant does not normally perform the task that resulted in the damage. For example, it is not an unusual occurrence for a soldier or civilian employee to tear clothing on a nail protruding from a wall. It is an unusual occurrence, however, for a paratrooper to rip clothing when caught by a freakish gust of wind and dragged several hundred feet across a parking lot. The incident is unusual in degree although not in nature.

(p) Contamination. Contamination of clothing and other items by toxic chemicals is considered an unusual occurrence. For purposes of this paragraph, toxic chemicals are those that are highly poisonous, and do not include common chemicals such as paint, battery acid, ink or oil. Consider compensation for cleaning or replacement costs when evidence substantiates that contamination occurred. AR 700-84, paragraph 5-4, provides for the free issue of uniforms to replace those condemned by medical personnel. Alleged staining of clothing by excessive amounts of iron in an area's water supply is not normally considered an unusual occurrence.

(q) Clothing cut away to administer first aid. Although cutting clothing to administer medical treatment is not an unusual occurrence, military uniforms damaged in this manner may be replaced in kind. If persons administering first aid damage their own clothing to make a bandage, apply rules governing public service losses.

(4) *Theft.* Theft incurred incident to service is compensable, although failure to report the theft immediately or as soon as practicable is normally deemed a failure to substantiate it. Theft is an intentional, wrongful taking of someone else's property. Incidents reflecting quarrels over property ownership should not be considered thefts. The fact that the thief's identity is known does not mean the claim is not payable; Article 139 procedures may be invoked if the thief is a soldier. The following standards of care apply to various types of property and are used to determine whether a claimant was negligent. A claimant's negligence will bar payment of a claim. See subparagraph 11-6*g*.

(a) Thefts from barracks rooms. Cameras and similar expensive items, such as binoculars, should be secured in a wall locker or unit supply room. Stereos and other similar electronic items should be secured in a wall locker or unit supply room when the soldier is going on extended leave or will be absent. A barracks room is not a proper place to store cash and valuable jewelry. These policies should be publicized and reflected in unit standing operating procedures (SOPs), and unit commanders must be made aware of their obligation to promptly secure and inventory property belonging to soldiers who are hospitalized, AWOL, imprisoned, or on emergency leave.

(b) Thefts from quarters and the "no signs of forced entry" rule. Claimants are expected to secure the windows and doors of their barracks rooms, family quarters, wall lockers, and other storage areas so that a thief must force an entry. If a police report states that there were no signs of forced entry and the claimant asserts that the area was in fact secure, the claim file must reflect that the claims office considered whether forced entry would have left visible signs. Certain doors and window latches may be forced with a credit card or a putty knife without leaving visible marks. Other windows and locks cannot be forced without leaving scratches, imprints in dust, or other signs. Normally, the police investigators who examined the scene should be questioned and their pertinent observations recorded on the claim chronology sheet.

(c) Theft of money and small, valuable items, and the "double lock" rule. A claimant is expected to take extra measures to protect cash, valuable jewelry, and similar small, easily pilferable items. Normally, such possessions should be kept in a locked container within a secured room. In the negligence analysis, however, a claimant's failure to double lock such valuable items is not the cause of the loss if the evidence indicates that a locked container would not have deterred an obviously experienced thief. At the workplace, claims for the loss of a purse or of cash would generally be denied. Such items should not be left unattended for even short periods of time unless they are secured in a locked drawer, and they should not be left overnight.

(d) Theft of money and small valuable items incident to shipment. Money, which should never be shipped with a soldier's household goods, and small, easily pilferable items, such as jewelry, that are not being shipped with the soldier's household goods, should be secured at the time both of pickup and delivery. While it is preferable for claimants to hand-carry them, it is not negligent to ship these items. However, if claimants ship these items, they are expected to remain present in the residence while carriers pack the items to ensure that the items are actually placed in the box and that the inventory specifically reflects tender of each of the expensive items. Normally claims for the loss of such items are denied because the claimant cannot substantiate that they were owned or shipped. Loss of money, in any amount, during shipment is not compensable. This includes coin collections. Loss of items at origin is considered a loss incident to shipment, whether or not the claimant intended to ship them. Loss of hand-carried items at delivery is considered a theft from quarters.

(e) Theft of lawn decorations and other property kept outside of quarters. Normally, it is not unreasonable for a claimant to keep decorative items on display outside quarters. However, claimants are expected to exercise a degree of care commensurate with the risk of loss, and at installations where the risk of loss is high, claimants are expected to secure items of any significant value to make them difficult to steal. Items that most soldiers do not normally keep outside should not be considered for payment if they are lost while stored outside. Publicize local policy on this issue periodically.

(f) Theft of clothing at dining facilities and clubs. Thefts of clothing from installation dining facility coat racks are cognizable as losses incident to service if the clothing belongs to proper claimants authorized to use such facilities. Claims for clothing left on a coat rack or in the cloakroom of an Officers', NCOs', or Enlisted Men's club are cognizable only if the claimant was attending a mandatory staff or command activity, or similar function. If attendance was voluntary, the claim should be considered under any applicable tort claims statute. In determining whether the claimant was negligent under the circumstances, consider these factors: any disclaimer notices posted, the type of property involved, and whether it was

feasible for the claimant to wear or carry the item into the dining area, as well as other pertinent facts and circumstances.

(g) Theft of property from gym lockers. Because the Army has placed great emphasis on military personnel maintaining physical fitness, theft of soldiers' property from installation gymnasium lockers is considered incident to service, even if it occurs outside normal duty hours. Unless the commander has determined that the gymnasium is a high-risk area, such claims are payable even if the facility has posted signs intended to relieve it of any tort liability. Theft of property belonging to family members, however, is not considered incident to service, and theft of property belonging to civilian employees would be considered incident to service only during duty hours. Care should be taken to pay for only those items the possession of which is reasonable under the circumstances.

(h) Theft of property stored inside a vehicle. Although an experienced car thief can often enter a locked vehicle without leaving signs, claimants are expected to lock car doors and windows. Neither the passenger compartment nor the trunk of a vehicle is a proper place for the long-term storage of property unconnected with the use of the vehicle. Normally, such items stored overnight and for longer periods, even in the trunk, are not considered reasonable or useful under the circumstances. The passenger compartment of a vehicle does not provide adequate security except for very short periods; the length of such periods depends on the circumstances (such as the claimant's reason for keeping the property in the vehicle and measures the claimant could have taken to better secure the property) and its value. Except for maps, child car seats, a reasonable number of audio tapes or compact discs and similar items kept in the passenger compartment for immediate use, claimants are expected to remove their property when exiting the vehicle. A claimant is expected to lock such items in the trunk or, for longer periods, remove the property from the vehicle altogether. This is especially true of valuable, easily pilferable items such cameras and cellular telephones. For example, a claimant returns to on-post quarters and leaves a 35-millimeter camera in the passenger compartment of his or her car overnight, intending to take pictures the next day. Someone breaks into the car and steals the camera. Because the claimant should have removed it, the camera's loss is not compensable. If, however, instead of leaving a camera in the passenger compartment overnight, the claimant left a bag of groceries unattended for a few minutes while stopping at the Post Exchange (PX), the loss of the value of the groceries is payable.

(i) Theft of property attached to a vehicle. A claimant is expected to bolt to the vehicle items that are not factory-installed, such as tape and compact disc players, speakers, citizens' band radios, and similar accessories. Such items are not secured merely by mounting them on a slide. Similarly, loss of car covers and car bras are payable only if these items are bolted or secured to the vehicle with a wire locking device. An item may be considered permanently affixed if one needs tools or a key to detach it. Manufacturers continue to develop "theft-proof" products. One such product is a car radio with a removable faceplate. Drivers should remove the faceplate when exiting the vehicle. Barring unusual circumstances, failure to take the faceplate would prohibit payment if the radio is stolen. For example, a thief slips an unsecured car bra off a vehicle, and then breaks into the vehicle through a window and steals a stereo mounted on a slide. Since the claimant failed to take adequate measures to secure the car bra, this loss is not compensable. Nor is the loss of the stereo compensable, since it was not bolted to the vehicle. In addition, the damage to the window is compensable only if it appears that the thief could not see that the stereo was not properly secured until after breaking into the vehicle. If the facts indicate that the thief could not tell whether the stereo was permanently affixed to the vehicle or was a slide-in stereo, then compensate the claimant for the damage the thief caused to the vehicle but not for theft of the slide-in stereo.

(j) Theft of bicycles and motorcycles. A claimant is expected to keep a bicycle, motorbike, or motorcycle indoors or to chain it to a fixed object outdoors (such as a rack, pole, post, or tree), if one is reasonably available, to prevent the item from being stolen. Locking handlebars or locking the wheels together normally does not provide sufficient protection. If a very large motorcycle is stolen, however, consider whether chaining it would have deterred the thief. A claimant may be deemed to have acted reasonably if no fixed, immovable object is available. However, except in an emergency, a claimant who chooses a more convenient parking area that lacks such an object instead of an area within walking distance where the motorcycle or bicycle could have been secured should be deemed to have acted negligently.

(k) Theft of motorcycle helmets. Because chinstraps can be easily cut, securing a helmet to a motorcycle by the chinstrap or by a lock run through the chinstrap does not provide sufficient protection. The owner should take the helmet inside or secure it by a wire-locking device run through a hole in the helmet.

(5) *Vandalism.* Vandalism incurred incident to service is compensable and need not be considered an unusual occurrence. Vandalism results from intentional damage; stray marks caused by children playing, rocks or gravel thrown up by vehicles, falling branches, and similar occurrences do not result from vandalism. Claims offices are never bound by a police report that particular damage resulted from vandalism; they are, instead, required to reach an independent conclusion based on all the evidence. Vandalism to vehicles is compensable when a claimant can prove (by clear and convincing evidence) that the vandalism occurred on-post or at certain off-post locations or was directly related to and attributable to the claimants' official duties (see subpara *h*(3) and (4) below). The fact that the vandal's identity is known does not mean the claim is not payable, although if the vandal is a soldier, the victim may bring a claim pursuant to Article 139, UCMJ, and chapter 9 of this publication.

d. Losses from quarters or other authorized places. Losses due to fire, flood, hurricane, or unusual occurrence, or to theft or vandalism, are cognizable. A number of "incident to service" rules apply to these types of losses. A loss by a soldier who is visiting another soldier's quarters is not cognizable as a loss incident to the visitor's service, although the soldier residing in the quarters may be entitled to submit a claim if he or she borrowed the lost property.

(1) *Assigned quarters.* Losses from Government-owned or -leased housing assigned or otherwise provided in kind to the claimant are cognizable. In addition, losses from temporary quarters are also cognizable. However, the PCA specifically provides that within a State or the District of Columbia, losses from quarters that are not assigned or provided in kind by the Government are not cognizable, and the fact that the claimant is entitled to receive a housing allowance does not make such claims cognizable. For example, private, for-profit rental apartments, located on an installation, which were not assigned to soldiers, are not considered Government-owned, -leased, or -assigned housing.

(2) *Overseas quarters.* Losses from authorized as well as assigned quarters that are not within a State or the District of Columbia are cognizable except when the claimant is considered a local inhabitant.

(a) Authorized quarters. Use local regulations to determine what constitutes authorization to live in a particular residence on the local economy. For example, a soldier serving in Europe who is not authorized family housing rents an apartment to bring over noncommand sponsored dependents. Losses from these quarters are not cognizable.

(b) Local inhabitants. In an overseas area, a civilian employee who is not a U.S. citizen is normally deemed to be a local inhabitant. A U.S. citizen hired as a civilian employee while residing abroad or after moving abroad to reside with a foreign spouse or relative is also deemed to be a local inhabitant. In doubtful cases, consult the local civilian personnel office to determine whether a particular employee is entitled to full logistical support. A soldier is never deemed to be a local inhabitant; however, a loss from overseas quarters occupied by a soldier's family is not compensable if the soldier is permanently stationed elsewhere. (See AR 27-20, para 11-5*a*(2)(*d*) for policy on USAR and ARNG, especially Active Guard Reserve (AGR) soldiers, who are local inhabitants of a U.S. territory.)

(3) *Temporary quarters.* Losses from temporary quarters that the

claimant is authorized to occupy in the performance of temporary duty (TDY) are cognizable, wherever those quarters are situated. For example, a soldier on TDY who is participating in a conference occupies a hotel room from which a suitcase is stolen. The claim would be cognizable. Permissive TDY, which is not at Government expense, is not considered temporary duty. Finally, losses from temporary quarters (such as visiting officer's quarters) occupied by a soldier while on leave are not cognizable.

(4) *Other authorized places.* Losses from any other place on the installation where the claimant is authorized to store property of the type that was lost or damaged, or where the claimant was directed to store the property by competent authority, are cognizable. For example, a superior directs personnel to secure their dufflebags temporarily in a vacant shed during in-processing and does not post a guard. Even though the shed is not an authorized area, the superior had "apparent authority" to direct the soldiers to place their dufflebags in it and the claimant acted reasonably in obeying the order.

e. Government-sponsored transportation losses.

(1) *During shipment or storage at Government expense.* Such losses are compensable unless the loss was the result of a mechanical defect in the item. Although transportation losses normally occur while the property is in the hands of a common carrier or warehouse firm, they can also occur while property being shipped or stored at Government expense is in the hands of military personnel, airline personnel, or postal authorities.

(a) Do-it-yourself moves. Loss of, or damage to, property during a Do-it-yourself (DITY) move is compensable. However, claimants are required to substantiate the fact of loss or damage in shipment. Claimants who do not prepare inventories have difficulty proving ownership, substantiating theft or differentiating between new and preexisting damage (PED). In addition, unless evidence shows that something outside the claimant's control caused the damage, breakage is presumed to be the result of improper packing by the claimant. For example, a claimant who rented a truck for a DITY move is rear-ended by a drunken driver during the course of the move. The police report substantiates that the claimant was free from negligence; the damage to the personal property caused by the collision is compensable.

(b) Shipment or storage at the claimant's expense. Shipment or storage is considered Government-sponsored if the Government later reimburses the claimant for it. However, loss or damage that occurs while property is being shipped or stored at the claimant's expense is not compensable.

(c) Shipment or storage partly at Government expense and partly at the claimant's expense. If property is shipped or stored partly at the claimant's expense and partly at Government expense, the loss or damage will be presumed to have occurred incident to shipment at Government expense unless evidence specifically shows when the loss occurred. This rule also applies to property the claimant picks up at the warehouse, although the claimant's failure to note obvious damage or missing boxes at the warehouse would be evidence that no such loss occurred during Government-sponsored shipment. However, if a shipment at Government expense is delivered and the claimant later ships it again without noting damages, any loss subsequently discovered would be presumed to have occurred during shipment at the claimant's expense. For example, a claimant's mobile home is delivered to the designated lot. Two weeks later, without reporting any damage, the claimant moves the mobile home to a different lot at his or her own expense. Subsequently discovered damage would be presumed to have occurred during the second shipment and would not be compensable.

(d) Shipment of property directly from a retailer. Occasionally, transportation offices will authorize carriers to ship soldiers' new furniture or other property directly from a retailer. Carriers will often accept such items without taking exceptions, and the soldier is in no position to verify the item's condition before shipment. (The law is unclear on whether a carrier has a duty to inspect factory packed items. The Tender of Service states that the "carrier has the responsibility to inspect all prepackaged goods. . .") When the evidence does not clearly indicate damage in transit, no allowance should be made for such items, particularly when the property delivered is not what the claimant intended to purchase. In determining whether the claimant has substantiated that such items were damaged in shipment, approval and settlement authorities should consider exceptions taken at time of pickup, the nature of the damage, the condition both of the shipping container and of other property in the shipment. When denying payment on such items, direct the claimant to seek legal assistance to obtain satisfaction from the retailer. Transportation personnel should be instructed to advise claimants about the risks inherent in such shipments.

(2) *During travel in a vehicle, vessel, or aircraft in performance of military duty or "space available" travel.* When a claimant is traveling in a public, private, or military conveyance pursuant to orders authorizing travel at Government expense, loss of luggage or hand-carried property is compensable. In addition, losses that occur while the claimant is awaiting public transportation in a bus, airline, or subway terminal may be compensable. As a general rule, travel is deemed to be in the performance of military duty if the Government will reimburse the claimant for it. Permissive TDY and similar travel is not deemed to be in the performance of military duty. If, however, the claimant is traveling on a military conveyance in a space available status pursuant to military leave orders, loss of the claimant's luggage or of property the claimant is carrying is compensable. For example, a soldier on TDY is robbed in the airline terminal while awaiting a flight. A second soldier on leave traveling space-available on an Air Mobility Command (AMC) flight has his or her checked luggage damaged. The first claim is cognizable because it is pursuant to the performance of military duty, the second because it occurred on a military conveyance.

f. Public service losses.

(1) *Belligerent or enemy activity, or unjust confiscation.* Unjust confiscation is the taking of personal property belonging to soldiers or U.S. national civilian employees by a foreign government without compensation or without any right that would be recognized under international law. Damage to or loss of property in such circumstances is compensable, unless the taking was entirely unconnected with a soldier's or civilian employee's duty in a foreign country.

(2) *Hostile acts.* These include losses caused by terrorist acts, acts of mob violence, and other hostile acts directed against the U.S. Government or its soldiers and employees in a foreign country. Under this provision, only acts that are anti-American in nature are payable. Not all riotous actions overseas in which American personnel are caught up are directed against the U.S. Government or its soldiers and employees.

(3) *Evacuations.* Claims brought by personnel who are evacuated from a foreign country upon recommendation or order of the Secretary of State, or other competent authority, in response to an act of political unrest or a hostile act by people in that country are payable. Soldiers and civilian employees entitled to shipment of property at Government expense may be compensated for property that is left behind and not recovered undamaged. Compensation is not authorized, however, for property belonging either to civilian employees who are not authorized shipment at Government expense or to family members who are not command sponsored. It is also not authorized for indirect losses or for loss of nontangible property such as forfeited lease deposits. Claimants are entitled to present a single claim for all property left behind, including POVs.

(4) *Action to quell civil disturbances or alleviate a public disaster.* Losses incurred in quelling riots, rendering emergency first aid, or assisting people during a declared public disaster are compensable.

(5) *Action to save human life or Government property.* Losses sustained during attempts to save human life or Government property are compensable. Saving private property belonging to another person is considered incident to service only if the Army would be required to compensate the owner for its loss. For example, an Army landing craft collides with a privately owned sailboat. Subsequently, a soldier on the landing craft boards the sailboat and tears his clothing in an effort to beach the boat to keep it from sinking. The damaged clothing would be compensable.

g. Loss of money delivered to an agent of the United States. The

loss of money delivered to a person authorized or apparently authorized to accept the funds is cognizable. Money given to unit personnel for safekeeping, to military postal personnel for conversion into postal money orders, or to other such personnel for similar purposes is considered lost if it is not applied as directed by the owner or returned. Persons are apparently authorized to receive funds if they appear to have the authority to do so by virtue of rank or position, regardless of whether they have actually been authorized to do so by regulation. The loss of money delivered to a person acting in a private capacity, such as a friend of the owner, or an officer in a private organization, is not cognizable.

h. Vehicle losses. Vehicle losses are cognizable in a number of different situations. Whenever possible, claims personnel should inspect vehicles before payment, and claimants should be directed to drive their vehicles to the claims office when presenting their claims. Compensable vehicle losses include automobiles, motorcycles, mopeds, utility trailers, ramping trailers, trucks with mounted camper bodies, motor homes, boats, boat trailers and aircraft. Compensable vehicle losses also include losses to bicycles, but only if they are owned and operated by the proper party claimant at the time of the loss or located at the claimant's quarters.

(1) *Vehicles used pursuant to orders for the convenience of the Government.* Loss or damage to the claimant's vehicle may be considered if the vehicle is used pursuant to orders for the convenience of the Government unless the loss is due to a mechanical or structural defect in the vehicle or there is a bar to payment. There is no requirement that the loss be due to fire, flood, hurricane, or other unusual occurrence, or to theft or vandalism. As a general rule, however, travel is not considered to be for the convenience of the Government unless it was pursuant to written orders authorizing use for which the claimant is entitled to reimbursement. Although travel from temporary quarters to a TDY site pursuant to orders is considered use in the performance of military duty, commuting to or from a permanent place of duty is not. Permissive TDY and similar travel is not considered to be for the convenience of the Government. Note that the maximum payment of $3,000 authorized by the Allowance List—Depreciation Guide (ALDG) applies to loss of, or damage to, vehicles and their contents used for the convenience of the Government. This maximum allowance does not, however, apply to DITY moves, which are considered under subparagraph 11-5*e*(1)(*a*).

(a) Orders. Written orders are normally required to establish that a claimant was using his or her vehicle for the convenience of the Government. Many claimants choose or are encouraged to use their own vehicles to accomplish routine tasks on the installation. Travel to other buildings on the claimant's installation is not considered to be under orders for the convenience of the Government and should be considered instead under the provisions of subparagraph *h*(3), covering loss or damage to vehicles located on the military installation. In addition, travel off the installation without written orders may be deemed to be for the convenience of the Government only if the claimant's superior directed the use of a POV to accomplish the mission. The issuance of written orders after the fact raises the presumption that travel was not for the convenience of the Government.

(b) Leave in connection with temporary duty or permanent change of station. Losses that occur while the claimant is in a leave status in conjunction with authorized TDY should not be considered, nor should losses that occur while the claimant is engaged in a significant deviation en route. To be significant, a deviation must take the claimant well away from the most direct route. A loss that occurs before the claimant has deviated or after the claimant has resumed the mission is incident to service. For example, a claimant authorized to use a vehicle to travel from Fort Drum, NY, to Fort Meade, MD, pursuant to a permanent change of station (PCS), travels by way of Maine to visit relatives. The vehicle is rear-ended in Maine. Since the deviation is significant and the loss occurred during the deviation, the claim is not payable. In determining whether a deviation is significant, consider its extent and the reason for it. For example, if a claimant traveling on orders from Fort Drum, NY, to Fort Meade, MD, deviates 20 miles from the most direct route in order to find a motel for the night, this deviation is not significant and any damage incurred at the motel may be compensable. Finally, losses occurring during a stopover made for personal reasons while on PCS travel, when leave is authorized in conjunction with such travel, are not payable.

(c) Collisions. Damage due to a collision, including a hit-and-run incident, is compensable if the claimant is free from negligence and the vehicle is being used under orders for the convenience of the Government. When a vehicle is being so used, there is no requirement that a loss result from fire, flood, hurricane, or other unusual occurrence, or from theft or vandalism. If the vehicle collides with a military vehicle, however, consider the claim as a tort claim instead of a personnel claim.

(d) Single-vehicle accidents. While normal negligence principles apply in determining whether there is a bar to payment, as a general rule a claimant who slides off the road during bad weather is deemed to be inattentive or driving too fast for road conditions, whether or not police authorities cite the claimant for an offense. Single-vehicle accidents, including those attributed to poor road conditions, will normally be presumed to be at least partly due to the claimant's negligence in the absence of strong indications to the contrary. There is no merit in the disingenuous argument that a claimant who negligently damages his vehicle while driving it under orders is acting within scope of employment and should therefore be compensated on a tort theory.

(e) Mechanical defect. Loss or damage caused by a vehicle's structural failure or mechanical defect is not payable. Without clear evidence indicating another cause, internal damage to the vehicle is presumed to result from a mechanical defect. Damage due to wear and tear or to faulty repairs or maintenance is also considered to be the result of a mechanical defect. Pay particular attention to the vehicle's age, condition, and odometer reading.

(f) Rental vehicles. Damage to rental vehicles is considered under the Joint Travel Regulations (JTR) rather than as a loss incident to service. Under the current agreement with rental companies administered by the Military Traffic Management Command (MTMC), the rental company will absorb such losses in most instances (see para 11-6*k* below).

(2) *Vehicles in shipment.* Loss of, or damage to, a vehicle shipped at Government expense (including Government-sponsored inland shipment) is compensable, unless the damage is the result of a mechanical defect. Damage caused during shipment at the claimant's expense, or while the vehicle is being moved to or from the port by an agent of the claimant, is not compensable.

(a) A vehicle shipped by the Government on a space-available or space-required reimbursable basis is considered to be shipped at the claimant's expense. Moreover, unless both spouses are soldiers, no more than one vehicle may be shipped for a family unit. If a second vehicle is inadvertently shipped, the owner will be required to reimburse the Government fully for the second shipment. Contact the International Traffic Division (MT-ITO), MTMC.

(b) If evidence shows that a vehicle shipped at the claimant's expense was damaged while on a Government-operated ship or in the hands of military personnel, rather than in the hands of Government contractors, a claim may be payable under the MCA. For example, a soldier buys a foreign car overseas and is not authorized to ship it to the United States at Government expense, pursuant to the Congressional policy underlying the "Buy American Act." The soldier applies for space-available shipment. The vehicle is shipped in a space on the vessel that otherwise would be empty. The soldier is required to reimburse the Government for all costs except those the Government would incur for not fully using the vessel's cargo space. A claim for damage incurred in shipment is not payable as a personnel claim. Instead, claims personnel should obtain a copy of the DD Form 788 (Private Vehicle Shipping Document for Automobiles) that accompanied the vehicle from the destination outport to determine whether the damage was caused by negligence of military personnel or civilian Government employees handling the POV. If so, a claim may be payable under the MCA (see chap 3 of this publication).

(c) Soldiers shipping vehicles on a space-available or space-required reimbursable basis should be counseled to maintain comprehensive insurance policies that cover shipment damage or to consider obtaining transit coverage.

(3) *Vehicles properly located on the installation or at quarters.* Loss of, or damage to, a vehicle or property in a vehicle properly on the installation or at assigned quarters or authorized overseas quarters is presumed incident to service and therefore cognizable, if the loss or damage is the result of fire, flood, hurricane, or other unusual occurrence or theft or vandalism. A number of incident to service rules apply to these types of losses.

(a) Definition of installation. The "installation" is normally a military reservation under the Army's control. It is also a military reservation operated by another military service if the claimant is stationed there. In addition, if the claimant is assigned to duty off a military reservation, the building and adjacent parking areas where the claimant works are the "installation." For example, the claimant is a professor of military science in a university ROTC program. A loss from the building that houses the ROTC department or from its parking area would be a loss occurring on an installation.

(b) Definition of "properly located" on the installation. A vehicle is presumed to be properly located on the installation unless it is unreasonable to so locate it under the particular circumstances. This presumption applies whenever the claimant or family members living with the claimant drive the vehicle while participating in activities or using facilities open to them only by virtue of the claimant's status. The presumption does not apply where the connection is tenuous or nonexistent. A vehicle left in a remote area of the installation for an undue length of time would not be presumed to be on the installation incident to service, nor would a vehicle driven onto the installation by the claimant's spouse pursuant to employment with the Red Cross. A vehicle driven by a civilian employee after duty hours because the employee is a retired soldier entitled to use the commissary also would not be presumed to be incident to service, nor would a vehicle driven by an emancipated child or a visiting relative to sightsee. A vehicle that is not properly registered or insured in accordance with local regulation or local law is not properly on the installation. However, the head of an area claims office may waive this requirement for good cause. (See AR 27-20, para 11-6*h*, for authority to waive this requirement.)

(c) Standard of proof for vandalism and theft claims. In the case of vandalism and theft, the claimant must be able to show that the vandalism or theft occurred at quarters or on the military installation by clear and convincing evidence. There is a presumption that vehicle theft or vandalism did not occur at quarters or on the military installation and, therefore, is not compensable. The claimant must rebut this presumption with clear and convincing extrinsic evidence. An MP report that corroborates that broken glass from the claimant's vehicle was found on the parking lot outside the claimants' place of duty will be sufficient to rebut this presumption. Similarly, a statement by a disinterested third party who saw that the claimant's vehicle and a number of other vehicles parked near it in the PX parking lot were vandalized in a similar manner, will be sufficient to rebut this presumption. However, the claimant's uncorroborated statement that a vehicle was vandalized on the military installation or at quarters will not be sufficient.

(4) *Vehicles not located on the installation or at quarters.* Theft or vandalism involving vehicles not located on the installation or at quarters, as defined above, may be compensable if the claimant can establish that these acts occurred incident to service. A claimant must establish a clear connection between the vandalism and the claimant's duties supporting a conclusion that the damage occurred directly incident to the claimant's service. Damage caused by random acts of vandalism or theft that occur off-post are not compensable. This risk should be covered by private insurance. The use of a vehicle off the military installation for commuting to or from work does not make the use incident to service for purposes of this paragraph. If a rock is thrown from an off-post overpass and breaks a claimant's car windshield while he is driving to work, the damage is not incident to service and is not compensable. If a soldier's vehicle bearing a military sticker is spray-painted at an off-post location with the phrase "soldiers kill babies," there is a direct connection between the claimant's service and the damage; therefore, a claim for such damage could be paid. Off-post theft or vandalism that occurs at economy quarters in a State or the District of Columbia is not compensable, even if it is incident to service as defined in this subparagraph. The PCA specifically prohibits compensation for damages incurred at off-post quarters in a State or the District of Columbia.

(5) *Loaned vehicles.* As an exception to the general rules governing borrowed property (see AR 27-20, para 11-13, about property ownership or custody), damage to a vehicle borrowed by a proper claimant is not compensable unless both the claimant and the owner are proper claimants or the vehicle is borrowed on a long-term or emergency basis from a close relative. For example, a young civilian employee living with his parents regularly drives a vehicle registered and insured in his parents' name; the parents allow the child to consider it "his" vehicle. The bank that made the car loan holds the title. Despite this, the vehicle would not be deemed to be loaned and, if the vehicle is damaged in a flood on post, the civilian employee would have a payable claim. In such instances, the owner should be contacted before payment even though the loss is not incident to the owner's service; if the owner and the claimant do not agree on proceeding with the claim, the claim may be denied. For purposes of this rule, a claimant is deemed to "own" any vehicle registered in his or her name or in the name of his or her spouse, whether or not a lienholder holds actual title to it. Cohabitation is not equivalent to a marriage, however, and damage to a vehicle belonging to a person the claimant is "living with" is not compensable unless the owner is also a proper claimant.

(6) *Soft top vehicles.* Theft from the interior of a multi-purpose vehicle, such as a Jeep, raises the issue of whether the vehicle was properly secured. Multi-purpose vehicles include vehicles having a soft (canvas) top, nonmetal doors and nonglass windows that do not lock. Such a vehicle may be opened easily by removing the doors from their hinges, unzipping the windows, or unsnapping the top from the vehicle's sides. Normally, thefts from these types of vehicles are not considered compensable because the vehicles offer no deterrence to any would-be thief. Owners of such vehicles, who purchase factory-installed stereo or radio equipment or who install stereo or radio equipment, should be warned that thefts from these vehicles normally will not be compensable barring extraordinary circumstances. Advise these individuals of the risks involved and of the need to consider purchasing insurance to cover the contents of the vehicle. This provision does not apply to convertible tops that cannot be removed or opened without unlocking the vehicle or cutting through the top; theft from such vehicles may be compensable if the other requirements of this chapter are met.

(7) *New theft and vandalism rules not retroactive.* Previous policy permitted payment for vehicle theft and vandalism only if the theft or vandalism occurred at quarters. AR 27-20 expands this policy by permitting payment of vehicle theft and vandalism claims when the theft or vandalism occurs on the military installation (see subpara (3) above) or when the claimant can prove the theft or vandalism was incident to service (see subpara (4) above). However, this expansion is not retroactive: vehicle theft and vandalism claims that were not be payable under the former policy are not payable under the new policy unless theft or vandalism occurred after the effective date of the current revision of AR 27-20.

i. Loss of clothing and other items being worn. Loss of clothing or other items worn on the installation or in the actual performance of duty is cognizable if the loss is the result of fire, flood, hurricane, or other unusual occurrence. This category may include hearing aids, eyeglasses, and items the claimant is carrying. For losses resulting from theft, rules governing on-post robbery (see subpara *j* below) apply. A number of incident-to-service rules applies to these types of losses.

(1) *Actual performance of duty.* Performance of organized physical training off the installation or other military missions is considered actual performance of duty. In addition, a claimant on TDY, though not in the performance of actual duty for the duration of the

TDY, may be considered to be performing duty while at the duty site, at temporary quarters, or at functions associated with the TDY.

(2) *Gratuitous issue of clothing.* AR 700-84, paragraph 5-4, governs gratuitous issue of clothing. Military clothing destroyed by medical personnel to prevent the spread of disease, cut away to administer first aid, or damaged in a Government-operated laundry may be replaced in this manner. When applicable, use gratuitous issue procedures instead of claims procedures.

(3) *Other items.* Claims for loss of, or damage to, clothing and other items being worn (such as jewelry, hearing aids or eyeglasses) often present unique challenges to claims judge advocates. Some offices misidentify other types of losses as "CZ—Clothing and other items worn" losses in assigning Personnel Claims Management Program category codes, while other offices pay clothing claims improperly. In categorizing losses, AR 27-20, paragraph 11-5*i*, states that the "clothing and items worn" category is limited to the loss of clothing and similar items while they are actually being worn. Field claims offices should not use the "CZ" code for claims involving lost laundry, lost duffle bags, or losses of clothing stored in unit supply rooms and other authorized places. Instead, those losses should be categorized as "ZZ" or "Q" losses. Moreover, claims offices should not use the "CZ" code in certain peculiar situations in which other category codes apply. Field claims offices should consider claims for loss of, or damage to, clothing and other items being worn incident to combat, lifesaving and on-post robberies under the provisions of AR 27-20, subparagraph 11-5*f*(1), *f*(4), and *h* respectively. Combat and lifesaving losses should be characterized as "PZ" claims, while robberies should be considered as "RZ" claims. Similarly, claims offices should consider claims for damage to clothing being worn while the claimant is traveling on an Air Mobility Command flight and categorize them as "FZ" claims. CJAs and claims attorneys must review category codes regularly and ensure that they are accurate and consistent.

(4) *Test to apply.* AR 27-20, subparagraph 11-5*f*, authorizes payment for the loss of, or damage to, clothing or other items worn if two tests are met:

(a) The loss must have occurred on a military installation or in the performance of military duty.

(b) The loss must have been caused by hurricane, fire, flood or other unusual occurrence, or by theft or vandalism. If a soldier is assigned to duty away from a typical military reservation, that soldier's "installation" could be a single building on a university campus. Applying the second test, the requirement that any loss be caused by "hurricane, fire, flood, or other unusual occurrence, or by theft or vandalism" presents greater problems. Claims for clothing worn that is lost or damaged because of hurricane, fire, or flood are rare, although occasionally a soldier whose unit is deployed to fight a forest fire might have clothing burned. Most claims for theft of clothing and other items being worn are covered by the rules for on-post robbery, which preclude payment for pick-pocketed items. The fundamental problem lies in determining whether a loss is due to an "unusual occurrence." An "unusual occurrence" is defined as an occurrence beyond the normal risks associated with day-to-day living and working; it is not a reasonably foreseeable consequence of normal human activity. Many incidents that may not appear to be "common" are not unusual occurrences. As a rule, any loss that is a predictable result of the type of work the claimant is performing is not an unusual occurrence—whether or not the claimant usually does that particular type of work. For example, contamination of clothing by highly toxic chemicals is considered an unusual occurrence, even when the soldier or employee works with these materials regularly. Except under very peculiar circumstances, however, paint, battery acid, oil, or ink spilling on a soldier's or civilian employees' clothes while the person is working with such fluids is not an unusual occurrence. Similarly, a soldier's or civilian employee's snagging or tearing clothing on a desk's rough edge, a fence, or a seat's loose spring is not an unusual occurrence; nor is damage to an injured person's clothing when medical personnel must cut it away to render treatment. Any decision to pay a loss of this nature must be coordinated with USARCS and fully explained in the claim file. Similar rules apply to claims for eyeglasses. If a customer accidentally knocks an employee's eye glasses to the floor, or if a claimant inadvertently collides with a protruding box and the glasses shatter, such mishap is not an unusual occurrence; nor is it unusual if a soldier playing volleyball breaks her eyeglasses. Rather, these are normal hazards of day-to-day living and working. Although a soldier's participation in a volleyball game for physical training would be considered "performance of duty," to be payable the loss must result from an unusual occurrence. Claims for losses of jewelry and watches being worn are not often compensable. Losing a ring or wristwatch during a field exercise or parachute jump is no more unusual than tearing clothing on an office desk. In short, there is no "unusual occurrence" unless the nature or the severity of the occurrence is extraordinary. Lightning striking a jogger is an example of an occurrence that is unusual by its very nature. While a tile falling on a maintenance worker repairing a ceiling would not be unusual, the sudden collapse of an entire ceiling would be unusual. The magnitude of the ceiling collapse makes it extraordinary. Claims personnel must understand the principles underlying "unusual occurrences" and conscientiously apply the two tests when adjudicating claims for clothing and other items being worn. When claims are deemed to result from unusual occurrences, claims personnel also should consider the claimant's possible negligence, recording the basis for their determinations on the chronology sheets.

j. On-post robbery. A loss occurring when a proper claimant is robbed on the installation or during the actual performance of official duty is cognizable. A robbery is a theft from the claimant's person by force, violence, or the threat of bodily harm. Such incidents are not substantiated unless reported immediately to appropriate police or command authorities, or as soon thereafter as is practicable.

(1) *Picking pockets.* A pickpocket lifts a wallet without force, violence, or the threat of bodily harm. Such incidents are not cognizable.

(2) *Robbery of family members on the installation.* The robbery of a family member of a proper claimant is not cognizable unless the robbery occurs at the family's quarters or unless the family member is acting as an agent for the claimant in performing a task at the claimant's direction or directly for the claimant's benefit. This exception should be construed narrowly. For example, a thief sneaks up on a soldier's spouse in the commissary parking lot and snatches the spouse's totebag. At the time, the victim was engaged in purchasing groceries for the soldier's family. The theft was accomplished by violence and the spouse was acting directly for the soldier's benefit. Thus, the claim is payable.

k. Property held as evidence. If property belonging to a crime victim is destroyed or damaged as a result of its use as evidence in a criminal proceeding, this loss is compensable. In addition, if property belonging to a crime victim is to be held as evidence for an extended period of time—that is, longer than two months—and the temporary loss of the property will work a grave hardship on the victim, a claim for the loss may be considered for payment. This provision will not be used unless every effort has been made to determine whether secondary evidence, such as photographs, may be substituted for the item. For example, a soldier tries to steal an automobile battery and radio, and it is determined that these items must be held as evidence against the soldier for not less than six months. The temporary loss of the battery would work a grave hardship on the victim, but the radio's temporary loss would not. Therefore, only the loss of the battery would be compensable. No compensation is allowed for property seized from the person suspected of an offense.

l. Damage to computers. Computers are sensitive and do not last forever. Parts and batteries wear out or develop loose connections; disks and drives develop bad sectors over time. When a computer accumulates enough internal problems, it stops working. If this occurs following a government-sponsored move, the claimant may genuinely believe that the computer was damaged by rough handling in transit.

(1) *Causes of damage to computers.* Sometimes internal computer problems following shipment are due to rough handling. Often, however, they are caused by inadequate maintenance or defects in computer components. Temperature fluctuations, humidity, static electricity, problems with power sources, foreign objects and airborne contaminants such as cigarette smoke all affect computer operation. Consequently, a computer that worked at point of origin may not work after shipment. Before adjudicating claims for internal damage to computers, claims personnel—and claimants—should be familiar with the problems that plague computers.

- A major cause of computer problems is the expansion and contraction of components due to changing temperatures. Computers are affected by changes in the external temperature; they also heat up when they operate and cool down when they are turned off. Repeated heating and cooling create problems, mainly in memory boards, the hard disk drive and controller, and the power supply.
- Socketed components in the power supply and on memory boards such as memory chips "creep" as the computer heats and cools when it is turned on and off. These components gradually work their way out of their sockets as the metal around them expands and contracts, loosening the glue that holds the connection together and corroding the joint. Ultimately, the connection often fails as a result. Many "blown" power supplies are the result of a failed solder joint or a transistor that burned out when it became separated from its heat sink because of expansion and contraction. Also, repeated heating and cooling makes the solder brittle, causing it to develop hairline cracks that sometimes break during movement. All types of socketed components—particularly those in older televisions—are subject to this type of wear.
- Hard disk drives, particularly inexpensive "stepper motor" disk drives, suffer the same problems from expansion and contraction. Generally, a stepper motor hard drive will fail. For a hard disk drive to function properly, the "head" must write data to the precise location on the track where the system expects it to be. Stepper motor drives have inherent problems tracking. As the drive expands with changing temperatures, the heads of the hard drive no longer write data to the same locations. In addition, only a few stepper motor drives automatically "park" the drive heads when the system is turned off. This increases the likelihood that dust or some other airborne contaminant will damage the head. When enough problems accumulate, the drive ceases to track where data is written and where track and sector identification marks are located; the drive then stops working. Indeed, even tightening the screws too much on one of these drives can distort the physical shape and cause the heads to write data to the wrong location.
- The greatest expansion problems are caused by turning the computer on and off; the quick temperature change causes a great amount of sudden stress. Marginal components manufactured poorly to begin with often simply fail when the system is turned on. This happens especially frequently when the system has not been turned on for an extended period of time and the computer has cooled down more than usual. Because computers are not turned on during shipment and are also subject to outside temperature extremes, shipment is often the last straw. When the computer is turned on again, chips stop working and poorly manufactured hard drives refuse to "boot." Many computer owners leave their computers on continuously to avoid expansion problems, but this is not a viable option during shipment.

(2) *Periodic maintenance.* Periodic maintenance reduces the likelihood that problems will occur during shipment. Dirt and debris collected by the computer's air flow must be cleaned out periodically to keep components from failing. Regularly reseating chips is a good idea; the boards, however, normally must be removed to accomplish this. Periodic low-level reformatting of hard disk drives (after backing up the data) is also good preventive maintenance, particularly with stepper motor hard disk drives. Periodic reformatting lays down a new set of track and sector identification marks that better correspond to the physical locations where the "heads" actually read and write the data.

(3) *Repairs.* Unfortunately, preventive maintenance does not prevent every problem, and repairs are needed sometimes. Repairing a computer often presents as much trouble as repairing a car. Most computer components are intended to be thrown away rather than repaired, and many shops will not take the time and trouble needed to determine what caused a problem. Further, a shortage of good computer repair personnel exists, and many firms that offer repairs lack expertise. Some of them will replace an entire board or hard drive rather than replace a loose chip or reformat a drive. Like some automobile repair firms, they practice "dart board" diagnosis—that is, they simply replace components until the system works. Advanced diagnostic programs are necessary to isolate errors, but they are no substitute for skill; indeed, many diagnostic programs are poor at identifying disk drive problems. Hard drive problems are particularly difficult to identify. Very few repair shops can open a hard drive and examine it. As a rule, if a hard drive develops major problems that reformatting cannot fix, it is simply discarded without any attempt to determine the nature or cause of the damage. Accordingly, without knowing the cause of the damage, it is difficult to substantiate that the damage to a hard drive resulted from rough handling in shipment.

(4) *Internal damage to computers.* Claims for internal damage to computers should not be paid unless sufficient evidence exists to conclude that the loss was due to rough handling in shipment. Obviously, when dealing with internal damage to computers, the information a good repair firm provides is essential in determining whether or not a claim is payable. The amount of damage other items in the same shipment sustained may also indicate rough handling. The mere fact that the computer worked well before shipment is not a sufficient basis to pay a claim.

(5) *Documenting the cause of damage.* Knowing the precise nature of the damage is critical. As with all internal damage claims, the fact that the repair estimate states "shipment damage" is of little evidentiary value. Question the repair firm closely to determine what the damage was and what may have caused it. Cracked or broken boards and components may be deemed to be the result of rough handling. Conversely, payment should not be allowed when parts work themselves loose and stop functioning or burn out. Some computers, particularly laptops, have their internal components shock-mounted to withstand a tremendous amount of "g" force; this is also a factor to consider. In determining whether internal damage to a hard drive is incident to shipment, consider the type of hard drive, whether reformatting was attempted, and whether the drive automatically parks the heads whenever the system is turned off. Most claims for internal damage to hard disk drives will not be payable. Claims for internal damage to computers create problems. It can be difficult to convince a claimant whose computer worked well before shipment that the damage was not caused by rough handling during shipment. CJAs and claims attorneys must exercise caution in this area to avoid making improper payments. They should note also that even in meritorious claims, obsolescence is almost always a factor in determining appropriate compensation.

(6) *Preventive law.* Because computer repairs can be expensive, CJAs and claims attorneys should practice preventive law by warning soldiers about the Army claims system's approach to computer damage. Information in this subparagraph can serve as a basis for a preventive law article. Because private insurance companies similarly will not cover damage when rough handling cannot be substantiated, claims personnel also should encourage soldiers who own computers to consider alternate methods of transporting them. Advance warning should reduce the number of uncompensated computer claims.

m. Claims involving animals. The PCA restricts compensation to damage and loss of personal property sustained incident to service. AR 27-20, chapter 11, amplifies this provision by noting the distinction between personal and real property and proscribing payment for loss or damage to the latter, including items permanently affixed to the land. Although they are unique in that they are living organisms

capable of locomotion, domestic animals such as dogs traditionally fit within legal definitions of personal property. The original claims statutes, 3 Stat. 261 (1816); 9 Stat. 414 (1849), authorized payment to soldiers for the loss of horses. The military services, therefore, have agreed that payment for loss of, or injury to, animals lawfully held for personal use is allowed. In most cases, these claims will be brought for household pets because of theft, intentional wounding, or fire at quarters. This policy is recognized in the current ALDG, which allows a maximum of $250 per pet and $750 per claim. For example, if a soldier owns a horse which is stabled at a NAF instrumentality and it is injured by gunfire from a passing car, this injury may be compensable. The soldier would be entitled to the cost of the horse's treatment because the incident constitutes a form of vandalism and the treatment fee is analogous to a repair cost. If, however, the horse's owner had executed a waiver agreeing not to hold the United States liable in the event of an injury to the horse while it was stabled there, the claim would not be payable. Another example is that of a soldier who purchased a mixed breed dog from an animal shelter for $25. The dog is injured by an unknown intruder who breaks into the soldier's on-post quarters. This injury is compensable to the extent of the purchase price, or $25. If the cost of treatment exceeds $25, this excess generally is not payable, unless the soldier can document that the dog received special training as a watchdog, thereby increasing its value. Payment of claims for pets lost or missing in shipment is specifically prohibited.

n. Vandalism claims when the vandal is known. Most personnel claims for vandalism involve unknown perpetrators. When a vandal is identified, however, the government has an interest in ensuring that person—rather than the government—ultimately compensates the crime victim.

- Whether or not the vandal's identity is known, a soldier or other proper claimant may present a claim and receive compensation for an on-post vandalism loss. Compensation, of course, is subject to the normal requirements that the loss must have occurred incident to service, that it must be substantiated and that the victim must first look to any private insurance (see subpara *h*, above, for limitations on vandalism to vehicles).
- If a vandal is identified as a soldier, the victim must assert a claim against the vandal under Article 139, UCMJ, before the claims office can process the victim's personnel claim. If the article 139 claim results in payment from the vandal's military pay and settlement of the article 139 claim will be unduly delayed, the CJA or claims attorney may pay or, if not within his or her monetary authority, recommend for payment the personnel claim and counsel the claimant to repay the United States.
- Often, however, the vandal is a soldier's family member or another person not subject to the UCMJ. If the vandal does not reimburse the claimant voluntarily, the claims office should pay the victim's personnel claim and pursue recovery from the vandal under local law. Restitution often may be obtained in connection with adverse administrative actions, such as suspending the vandal's privileges or barring the vandal from the installation. The magistrate's court, located on many installations, may be able to assist. Frequently, the vandal is a minor child. Accordingly, in States that hold the parents of these children liable, the claims office should pursue recovery from their parents.
- The limitations in AR 27-20, subparagraph 14-6*b* and *c*, on recovering for damage to government property from negligent, uninsured soldiers, do not apply to personnel claims recovery actions against soldiers for intentional damage to personal property.
- Claims personnel should categorize recovery from a vandal or other tortfeasor on a personnel claim as "Non-GBL Recovery," enter "refund from tortfeasor" in the "Contractor" field of the Personnel Claims Management Program, and deposit the money in the carrier recovery account.

o. Repairs to fitness machines. When presented with a claimant's request for replacement rather than repair of exercise equipment, for example, a NordicTrack exercise machine, do not overlook the possibility that the manufacturer replaces damaged parts. Contact the customer service department to inquire about replacement parts. Most major companies have toll-free numbers (usually found in owner's manuals, warranty books or from directory assistance).

p. Other meritorious losses. If a loss that does not fall within one of the above categories is deemed meritorious, or if the guidance set forth above leads to denial of payment for a loss that appears meritorious because of the peculiar circumstances, the claim should be forwarded to the Commander, USARCS, with a personnel claims memorandum of opinion recommending approval. Before forwarding the claim, contact the Personnel Claims and Recovery Division, USARCS, by telephone to discuss the merits. The claimant should be advised that the claim is being forwarded but should not be advised of the recommendation.

11–6. Claims not payable

a. Real property (real estate).

(1) The PCA does not provide for loss of, or damage to, land, crops, garden flowers, and trees and other things permanently joined to the land. Portable houses, house trailers, mobile homes, fences, storage bins, sheds, and other objects temporarily joined to someone else's land that may be removed by the claimant at a later date are considered personal property. Appliances such as washers or dryers are considered personal property. Other types of fixtures, such as furnaces and doors, are not considered personal property if they are permanently made part of a house or other structure.

(2) In determining whether something is permanently or temporarily joined to the land, consider the claimant's lease, license, or other contractual arrangement in determining what the parties to the agreement intended. With on-post housing, consider post regulations or directives that specify what the occupant is authorized or required to remove. For example, a claimant living in authorized off-post housing in Germany builds a shed, attaching a door and light fixtures. By agreement, the shed will become the property of the landlord after the claimant departs. The shed is real property, and the door became real property when it became part of the shed. However, by the terms of the agreement and according to German custom, the claimant is entitled to remove the light fixtures. They remain personal property.

b. Unusable airline tickets. The claim of a soldier who purchases a nonrefundable airline ticket and whose leave is later canceled or whose orders are changed so that the tickets become worthless is not compensable. The fact that a soldier cannot use a purchased ticket does not constitute a loss of tangible personal property within the meaning of the PCA. An installation's claims education program should publicize this fact to alert soldiers that purchasing nonrefundable tickets carries this risk.

c. Intangible property. Compensation will not be allowed for the loss of intangible property—that is, property that is merely representative of value and has no value in itself, such as nonnegotiable stock certificates, bank books, insurance policies, oil leases, etc. When such documents are lost, the owner retains the property rights they represent.

d. Expenses that are not compensable.

(1) *General.* Expenses that are not directly connected with loss of, or damage to, personal property are not compensable. These include interest charges, attorneys' fees, costs of food or lodging while awaiting shipment, vehicle rental costs, and long-distance telephone charges.

(a) Telephone reconnect charges and similar relocation costs. Relocation costs incurred at a commander's direction may not be considered under 31 USC 3721; refer such matters to the appropriate Defense Accounting Officer for payment from command operation and maintenance funds. For trailer relocation costs, see 52 Comp. Gen. 69 (1972); for telephone reconnect charges, see 56 Comp. Gen. 767 (1977).

(b) Inconvenience or loss of use. Food or lodging costs, vehicle

rental costs, or similar expenses incurred because a claimant's goods or vehicle were not delivered in a timely manner may not be considered under 31 USC 3721; refer such matters to the installation transportation and legal assistance offices. If a common carrier caused the delay, a claim should be made directly against that carrier. Expenses should be documented by receipts or sworn statements. If the installation transportation and legal assistance offices cannot settle with the carrier, refer the matter to the MTMC. The expense incurred for an additional delivery of household goods occasioned by circumstances that were not the soldier's fault may be referred to the Defense Accounting Office (DAO) for consideration under the federal travel regulations.

(2) *Appraisal fees.* An appraisal—as distinguished from an estimate of replacement or repair—is a valuation of an item provided by a person who is not in the business of selling or repairing that type of property. Normally, a claimant is expected to obtain, and pay for, appraisals on expensive or unusual items. Except in unusual cases, appraisal fees should not be considered for payment. Appraisers should be used in claims where an appraisal is reasonably necessary and useful to determine an item's value. If an appraisal is considered necessary, the CJA or claims attorney and the claimant should agree upon a disinterested appraiser and the approximate cost of the appraisal. For example, a claimant whose Ming vase is missing at delivery obtains a replacement estimate of $250 to $500 for the item from Jack's Antique Shop. The claimant claims $500 for the vase and $25 for an estimate fee. Telephonic inquiry reveals that Jack does not normally sell this type of property and based the "estimate" upon the claimant's description of the item. Unless Jack has expertise in valuing this type of property and the claimant can substantiate that the description of the missing property provided to Jack was accurate, disregard Jack's valuation entirely. Call USARCS if a question arises about the use of an appraiser and the field claims office is not sure that an appraiser should be used.

(3) *Fees paid by claimants to attorneys and representatives.* Attorney fees and similar expenses are not compensable under the PCA. Subsection 3721(i) of the PCA provides, "Notwithstanding a contract, the representative of a claimant may not receive more than ten percent of a payment made under this section for services related to the claim. A person violating this subsection shall be fined not more than $1,000." Whenever PCA claimants are represented by counsel, the settlement letter should cite this statutory language.

e. Types or quantities of property that are not reasonable or useful.

(1) *Items not reasonable or useful under the circumstances.* Under some circumstances, particular items serve no useful purpose and are not reasonable for a claimant to own. Some items that are perfectly reasonable to possess in quarters serve no useful purpose in the field or on TDY travel. For example, it is not reasonable for a soldier to bring a set of golf clubs on maneuvers, on one-day TDY, or to store them in a car trunk or an office.

(a) Personal tools and other equipment used to perform official duties.

1. Normally, it is not reasonable for a soldier to use personal tools and equipment, such as typewriters, sleeping bags, and computers, in the performance of official duties. Use of personal property in place of Government tools and equipment circumvents the Army supply system and is normally done for personal convenience; payment for the loss of such items is deemed an improper use of claims funds. Privately owned personal computers are particularly inappropriate for use in performing official duties because of both the stringent requirements for obtaining such equipment through Government channels and the fact that proper security for such expensive items is rarely available. This policy does not apply to small items of military equipment, such as canteens or ammunition pouches; it is reasonable and permissible for a soldier to have more than the authorized number.

2. The loss of personal tools and equipment is compensable if the claimant used them to perform assigned tasks on a temporary basis and had the unit commander's specific authorization. Such authorization would be granted if Government equipment was requested but was not available or if the claimant is a civilian employee who is required to provide his or her own tools as a condition of employment. Agencies hiring such employees must provide the employee with a list of all basic required tools, provide a method to substantiate ownership and possession of the tools, provide for the security of such tools, and inform each employee periodically of the maximum payment of $1,500 for tools and $500 for toolbox. When AAFES employees are required to provide their own tools as a condition of employment, AAFES may waive the maximum allowance for the loss of such tools and toolboxes as a matter of policy. Check with AAFES to determine if waiver is appropriate. For example, a claimant brings in several handtools to perform work more efficiently and the section chief approves. Such use was neither temporary in nature nor was it authorized by the unit commander. The theft of the tools from the office is not compensable.

(b) Property kept permanently at the workplace. With limited exceptions, the workplace is not a proper place for storing personal property. Items such as televisions, used at lunch or during breaks or to decorate the office, would not be considered reasonable or useful. However, coffeepots, small radios, microwave ovens, and similar items are normally reasonable and useful to keep at the workplace, and their loss is payable up to the maximum allowance for office furnishings. Decorative items such as pictures or plants, and utilitarian items such as professional books, would similarly be considered for payment. Generally, claimants are not deemed negligent for leaving such items in the office overnight or during weekends even if they are not secured in a locked area.

(c) Money. Normally, $100 is a reasonable amount of cash to carry. Persons should bank amounts over $100 or store them in a safe. It is not considered reasonable to keep an excessive amount on hand unless the claimant had no opportunity to bank the excess or had a specific reason for carrying it (such as the intention to purchase an expensive item after work or to begin vacation travel that day). When it is reasonable for the claimant to carry more than $100 for purposes such as travel, the claimant is expected to carry traveler's checks instead of cash if possible. If the claimant's unit publishes guidance that an amount less than $100 is reasonable to keep on hand, the claimant will normally be held to that standard.

(d) Property shipped in vehicles. The only items appropriate to ship in a vehicle are child cribs or car seats, tools for emergency road repairs (including jacks, tire irons, tire inflators, fire extinguisher, flares, jumper cables, first aid kits, warning triangles, and basic handtools such as wrenches, screwdrivers, pliers, and hammers), one spare tire and two snow or mud tires with wheels (either mounted or unmounted), the catalytic converter and components, and small comfort items like thermos bottles or car cushions. Other items or types of tools are not appropriate to ship with a vehicle, and even more stringent restrictions govern property shipped in vehicles to Hawaii and Guam. Further, as a general rule, only the items listed above are reasonable or useful to keep in the vehicle while it is parked on the installation or at quarters on other than a temporary basis. An exception may be made for campers or other recreational vehicles parked at quarters or on the installation. Outdoor use items that are not normally removed from such vehicles, such as sleeping bags, lanterns, outdoor grills, paddles, oars and utensils, may be considered reasonable and useful. See paragraph 11-6*j*.

(2) *Property never deemed reasonable or useful.* Congress intended to authorize compensation only for losses incurred incident to service. Certain types of property do not serve any purpose that could be considered incident to service or useful within the meaning of the statute.

(a) Items acquired for resale or for use in a private business. Property acquired or kept for resale, or acquired for or used in a private profession or business, is not reasonable or useful to possess. Loss of, or damage to, such property is not considered incident to service, whether or not the claimant actually sold or used the item in a private business. A claimant's assertion that an item was intended for personal use is not dispositive, and a determination should be based on the nature of the item and all other evidence. In doubtful cases, the claimant may be required to provide copies of tax returns

showing properly deductible business expenses. Additionally, claims personnel may contact the manufacturer to ascertain the intended market for the item(s) in question. Items manufactured for professional use (such as the vehicle diagnostic oscilloscope used in the claimant's hobby of vehicle restoration) are not normally payable.

1. Items acquired for both personal and business use. Some personal-use items are kept both for personal and for business use. If the business use is only occasional, allow compensation unless the items are actually lost or damaged while being used for business. Compensation will not be allowed if the business use is substantial or if the item is designed for professional use and not normally intended for personal use. For example, a claimant's spouse, an active tennis player, contracts with Morale Support Activities to teach tennis classes. A fine tennis racket is subsequently destroyed in shipment. Under these circumstances, the business use is not substantial, and the claim is payable. As another example, however, a claimant acquires a professional sewing machine used to stitch upholstery. Although the claimant asserts that the machine is intended for personal use and actually is used to repair the family's furniture, the item's nature indicates that it is intended for business use, and its loss would not be payable.

2. Large quantities of items acquired for both business and personal use. If the claimant owns so many tools or similar items that it is impossible to distinguish those that are intended for business use from those intended for personal use, the claimant may be compensated in a reasonable amount for items normally kept for personal use. For example, a claimant obtains and ships a large number of tools for automotive repair and they are lost in shipment. Although the claimant used many of the tools to repair his own vehicle, he acquired most of them to use as a paid mechanic after leaving the service. The claims office would exclude tools that are clearly of a professional nature and pay for only a reasonable number of the other tools.

3. Items sold or traded by collectors. Collectors of coins, stamps, or similar items often trade or sell parts of their collection. If, however, it appears that the claimant is operating as a dealer, no compensation should be allowed for any part of the collection.

(b) Radar detectors. No compensation will be allowed for loss of a radar detector. Even in States where it is lawful to possess such items, they serve no proper purpose but are used instead to evade established speed limits without penalty. In addition, no compensation will be allowed for damage to a vehicle when the evidence indicates that it was broken into solely to steal a radar detector.

(c) Enemy property or war trophies. Compensation will not be allowed for loss of enemy property or war trophies identified by regulation, directive or order as inappropriate or unlawful to possess. However, the prohibition against the claimed item must be in effect when the claim is brought. For example, it may have been unlawful to possess certain World War II enemy property for a few years after the war; however, today, because of expiration or repeal of a valid prohibition, possession of such enemy property would be lawful.

(d) Money in shipment or storage. No compensation will be allowed for any type of money, including coin collections, lost in shipment or storage. This prohibition does not apply to coins that have been converted into jewelry, such as an interesting coin mounted in a necklace or belt buckle.

(e) Property acquired, possessed, or transported in violation of law, regulations, or directives. Such property is not considered reasonable or useful. Loss of, or damage to, vehicles or weapons that are not licensed, registered, or insured in accordance with local law or regulations is not considered incident to service. Loss of, or damage to, property shipped to accommodate another person, such as a friend or relative, is not compensable; when the claimant has improperly shipped such items, no allowance should be made for items that cannot clearly be shown to have belonged to the claimant and immediate family members. As an exception to the general rule, compensation may be allowed for those rare instances in which the claimant (and the owner, if a different person) simply could not be expected to comply with the requirement. For example, an insurer declines to continue liability coverage (required by State law) of claimant's vehicle after due notice because the soldier has received too many traffic citations. The soldier is in the field continually and does not receive this notice, and the vehicle is vandalized on the installation before the soldier returns. Even though the vehicle normally would not be considered to be properly on the installation (because it is uninsured), the loss is compensable. However, a different result might be reached if coverage ended for nonpayment of premiums. The head of an ACO may waive this prohibition and pay a claim if good cause exists as to why the claimant failed to comply with the local requirements.

(f) Government property. Soldiers often claim for the loss of Government-issued TA-50 equipment and for money or property belonging to unit funds. The Army Claims System is not an appropriate mechanism for handling the loss of Government property.

(3) *Quantities of property not reasonable or useful.* Quantities of property far in excess of what a claimant can use under the attendant circumstances are not reasonable or useful. In determining whether the quantity possessed was excessive under the circumstances, consider the claimant's living conditions, family size, social obligations and any particular need to have more than average quantities as well as the actual circumstances surrounding acquisition and loss. For example, someone steals a suitcase from the hotel room of a civilian employee attending a conference on TDY. The employee claims and substantiates the loss of two mink coats and four tennis rackets. Even if possession of these items is deemed reasonable after consideration of all the circumstances, such as the nature and length of the conference and the social obligations attendant on the employee's duty there, the quantities are excessive. In many instances, claims for excessive amounts of property may be denied or awards reduced based on the claimant's failure to substantiate ownership in the quantity claimed. For example, a soldier claims the loss of 50 handmade silk suits during shipment. The evidence fails to substantiate that the claimant shipped more than an average quantity of clothing and indicates an intent to defraud the United States. No allowance should be made for the suits and the matter should be referred for criminal investigation.

(4) *Overweight shipments.* Property lost or damaged in shipment at Government expense is considered lost or damaged incident to service even if the shipment is overweight and the claimant is required to pay part of the shipping costs.

(5) *Property purchased and shipped after the issuance of orders.* It is permissible to ship at Government expense property purchased after the issuance of travel orders. Note, however, that transportation regulations prohibit shipment of property acquired only after the effective date of such orders (the date the claimant is required to begin travel to arrive at the new duty station on the date authorized).

(6) *Pornographic materials.* USARCS and its field claims authorities are not censors. Pornographic books and tapes lost incident to service may be considered for payment. However, seizure by customs inspectors or other police personnel is not considered a loss incident to service.

f. Fraud.

(1) *General.* Most claimants are honest. In the absence of clear evidence, a claimant will be assumed to be mistaken rather than dishonest, and great care should be taken to avoid characterizing a disagreement over the value of a loss as an intent to defraud. When fraud is detected in whole or in part, however, it is important to reduce the claim as appropriate. Such action will be taken even if the claimant alleges that another person, such as a spouse, completed the paperwork on the claimant's behalf.

(2) *Detecting fraud.* Most claimants who intend to defraud make it obvious from a cursory inspection of their forms that they are overreaching.

(a) Fraud may be discovered by inspecting questionable items and reviewing estimates for alteration. Listed repair firms should be encouraged to report instances in which the claimant requested them to inflate estimates artificially or to provide copies of estimates. Claims personnel should always inspect claims involving large or questionable household goods or quarters losses as well as vehicles when the claimant comes to obtain forms or file the claim; record

handwritten observations and sign, date, and file the inspection report. In addition, instruct claimants to bring in small broken items of value when no inspection is contemplated. This decreases the probability that a claimant will be induced to commit fraud. Army claims offices hold to the presumption that all soldiers filing claims are honest. However, credibility questions sometimes arise when there is no substantiation available to show ownership or purchase. Claims personnel often rely on their own experience with claimants in these situations to reach a practical and equitable resolution. However, a complete lack of substantiation or the presence of other factors sometimes lead claims personnel to question the accuracy or honesty of a claimant's representations. Claims officials are authorized to deny a claim under this chapter in its totality if the claim was "tainted by fraud" even if it contains some legitimate items.

(b) Fraud is an intentional perversion of the truth made in an effort to obtain a more favorable payment on a claim. A misunderstanding or inadvertent falsification is not fraud. In addition, a claimant's inability to substantiate ownership, the item's value, quality, purchase price, replacement cost, extent of damage or PED does not constitute fraud, although it may be evidence of fraud. A claims examiner or attorney who determines, by a preponderance of the evidence, that a claimant has engaged in fraud, may take or recommend the action described below.

(c) Some cases of fraud are clear and unmistakable (changing dollar numbers on repair estimates). Refer these claims to the military police or Criminal Investigation Division command for appropriate criminal investigation. Because the criminal proceeding and the administrative claims proceeding are governed by different standards, the result of a criminal investigation or proceeding is not binding on the claims adjudication process. The claims examiner must assess the available evidence independently.

(d) The more difficult claims are those involving questions of ownership, value, purchase price, replacement cost, extent of new or PED, and item quality. Prematurely referring these claims for criminal investigation—based on the claim as submitted—may be nonproductive. The investigation often is too inconclusive to permit prosecution and provides little help to the claims office.

(e) One approach is to seek clarification. Write the claimant and provide a clear explanation of the standards (what is required to substantiate ownership or replacement costs). Ask the claimant to review appropriate portions of the claim submitted in light of this information to ensure that it is complete and accurate and represents the property claimed.

(f) This approach affords the claimant an opportunity to resolve any misunderstanding, to clarify questionable entries, and to reaffirm that the information is accurate. Often a claimant may not fully understand what is required as supporting evidence for replacement costs or ownership.

(g) When requesting additional information, members of the claims office are not acting as criminal investigators. They have an independent responsibility to ascertain the facts necessary for proper payment of valid claims. When requesting clarifying information to substantiate a pending claim and not for purposes of disciplinary action or criminal prosecution, claims personnel need not issue UCMJ, Article 31 warnings, provided they are not acting as agents of a law enforcement agency or disciplinary official.

(3) *Fraud detected before payment.* When fraud is detected before payment, the entire claim, or only the line items tainted by fraud, may be denied.

(a) Denial of payment on line items tainted by fraud. When a claimant has committed fraud, claims personnel should deny all line items tainted by the fraud, whether or not a lower award on the item is substantiated. A line item that is not tainted by fraud may be allowed to the extent that an award on the item is substantiated. For example, a claimant alters a $30 repair estimate for a bookcase damaged in shipment to read $300 and also claims $50 for a vase. Since the bookcase is tainted by fraud, no allowance should be made for it. However, an award could be made on the vase if the claimant has substantiated the value of this item.

(b) Denial of entire claim. If the head of an ACO determines by a preponderance of the evidence that a claimant has engaged in fraud, he or she may decide to deny the entire claim. In deciding whether to deny the entire claim, the head of an ACO should consider the nature and extent of the fraud. The decision to deny an entire claim when a claimant has engaged in fraud, however, is within the discretion of the head of an ACO—that individual may deny an entire claim even if only one line item is tainted by fraud.

(4) *Fraud detected after payment.* When fraud is detected after payment is made, the claim should be readjudicated. DD Form 1842 and AR 27-20, paragraph 11-13*f*, authorize withholding for any payments made on the basis of incorrect or untrue information. If the claimant refuses to repay an amount incorrectly paid, the Defense Accounting Office will be directed to withhold the money and credit it to claims funds, using DD Form 139 (Pay Adjustment Authorizations).

(5) *Criminal action.* Action reducing the award is independent of any criminal action taken against the claimant. An award may be reduced for fraud whether or not charges are brought. When claims personnel reasonably suspect fraud, they should immediately inform the CJA or claims attorney. Sometimes a CJA or claims attorney determines that further clarification from the claimant is inappropriate or the claimant fails to provide a reasonable explanation for the actions taken. In such cases, the CJA, claims attorney and SJA should refer the matter to appropriate police authorities and make every effort to ensure that the claimant is prosecuted to deter other persons from committing fraud. Convictions should be publicized.

g. Negligent acts.

(1) *Analysis.* Negligence is a failure to exercise the degree of care expected under the circumstances, which is the proximate cause of a loss. A loss that is due, in whole or in part, to the negligence of the claimant or of the claimant's spouse, child, houseguest, employee, or agent, is not compensable. The analysis is broken into two parts: what the claimant was expected to do under the circumstances and whether the claimant's action wholly or partly caused the loss.

(2) *Degree of care.* A claimant is expected to exercise the same degree of care that a "reasonable and prudent" person would have exercised under the same circumstances. In general, if the claimant does something a reasonable and prudent person would not have done, the claimant is deemed negligent. What is expected will vary with the circumstances, including the locale. In areas plagued by theft, for example, claimants are expected to exercise a high degree of care. In a particular case, however, if the claimant does something that normally would be considered negligent but does so because it is the best option available, the claimant has done what a reasonable and prudent person would have done under similar circumstances. For example, a soldier moving from one set of quarters to another packs belongings in the passenger compartment and trunk of the family's POV. While the soldier is taking a last look around the old quarters to check for items left behind, a thief breaks into the locked vehicle and steals four suitcases full of clothing from the passenger compartment. Although the automobile passenger compartment is normally not considered a proper place to store personal property, this claimant had no better place to keep the property under the circumstances and has done all that a reasonable and prudent person would do. Note that this claimant would still be expected to keep the most valuable possessions in the trunk of the vehicle.

(3) *Proximate cause.* If the loss would have occurred whether or not the claimant committed the negligent act, the loss did not result from claimant's negligence. For example, a claimant properly parks a POV at quarters, leaving a tape deck on the back seat and the doors unlocked. A bolt of lightning destroys both the car and the tape deck. Although the claimant failed to take adequate precautions to protect the tape deck from theft, this had no bearing on the loss and the claim for the damage to the car and the tape deck is payable. If the claimant had locked the car and affixed the tape deck properly, lightning still would have destroyed them. As a second example, a claimant leaves a diamond bracelet on the nightstand in Government quarters. A skillful burglar breaks into the house and steals the bracelet, but also cracks the indoor safe and empties it of valuables. Although the claimant failed to take adequate precautions

to safeguard the bracelet, this failure had no bearing on the loss and the claim for the diamond bracelet is payable. If the claimant had kept the bracelet in the safe, the burglar still would have stolen it.

h. Wrongful acts. Property acquired, possessed, or transported illegally or in violation of competent regulations is not reasonable or useful, and thus its loss is not compensable regardless of whether the violation was a proximate cause of the loss. However, the head of an ACO may waive this rule if good cause exists as to why a claimant failed to comply with the local law, regulation, or directives. If the claimant's conduct was criminal in nature, a loss is not considered incident to service. If, however, personal property is damaged or lost while the claimant is in violation of a nonpunitive regulation, the loss may be considered incident to service if the claimant's conduct was not a proximate cause of the loss. For example, a soldier parks an unlicensed, unregistered vehicle in front of the barracks, where it is destroyed by a lightning bolt. The soldier's failure to properly insure and register the vehicle had nothing to do with the loss (in other words, it was not a proximate cause). However, the vehicle was not properly on the installation, and the claim would be denied unless the soldier shows good cause for failing to properly insure and register the vehicle. As a second example, a claimant sets out to rob the DAO and parks his vehicle in an authorized parking space, where it is destroyed by another errant lightning bolt. Again, the claim would be denied. Or a soldier improperly parks her properly licensed and registered vehicle in a no-parking zone, where it is vandalized. The soldier's failure to park in a proper parking place is considered neither a criminal act nor a proximate cause of the loss. For this reason, the claim would be payable.

i. Other persons whose negligent or wrongful acts will bar payment.

(1) *Family members, spouses, and houseguests.*

(a) Losses resulting from the negligent or wrongful conduct of spouses, children over the age of seven, adult family members, and houseguests are not compensable. For example, the day after signing a separation agreement, a soldier's spouse takes a sledgehammer to the soldier's car while it is properly parked in front of the soldier's barracks. The loss is the result of the spouse's wrongful act and is not compensable. (Note, however, that roommates and other persons with a legal right to live in a dwelling would not be considered houseguests.)

(b) Children under the age of seven are deemed to be incapable of negligence, and a lesser degree of care is expected of children between the ages of 7 and 14 than is expected of adults. However, parents and persons to whom young children are entrusted are expected to supervise such children properly. For example, the claimant's three-year-old son finds a cigarette lighter on a low nightstand and sets the claimant's Government quarters on fire while the claimant's spouse is asleep upstairs and the claimant is on duty. The son is incapable of negligence. However, the claimant's spouse's failure to put the lighter out of reach and to supervise the child is negligence, which is a proximate cause of the loss.

(2) *Agents.* Agents are persons selected by the claimant to carry out particular actions on the claimant's behalf. Claims resulting from an agent's negligent or wrongful conduct are barred so long as the conduct occurs within the scope of his or her agency and reasonably relates to the tasks the agent was engaged to perform. For example, the claimant asks a friend to watch over his on-post quarters and feed his cat while he is away on TDY. The claimant parks his car in front of the barracks and departs. The friend, as agent, fails to lock the back door of the house. A burglar notices this and ransacks the house. Seeing this, the "friend" steals the claimant's television and also breaks into the claimant's car and steals the jack. The loss of the jack is compensable because the agent's wrongful conduct in stealing it does not reasonably relate to the tasks entrusted to him. The loss of the television and other property is not compensable.

(3) *Employees.* Employees are persons, such as maids, who work for the claimant. Claims resulting from an employee's negligent or wrongful conduct are barred as long as the conduct occurs within the scope of employment. For example, the claimant's maid goes out for a walk and leaves open the back door to the claimant's on-post quarters. A burglar notices this and ransacks the house. Seeing this, the maid steals a sweater from the closet. The loss of the sweater is compensable because the maid stepped outside the scope of employment in stealing the sweater and there is no other bar to compensation. The loss of the other property is not compensable because it resulted from the maid's negligent conduct within the scope of employment.

j. Claims for TVs or VCRs shipped in privately owned vehicles. The pamphlet, *Shipping Your POV*, distributed by MTMC through Personal Property Shipping Offices (PPSOs), establishes items authorized for shipment inside POVs in transit. Televisions and VCRs are listed as items not authorized for this type of shipment. Consequently, claims for the loss of such items are not payable.

k. Damage to rented vehicles. Field claims offices may have encountered a claim seeking to recover for a rental car that was damaged while a soldier was on TDY. The soldier was authorized a rental car on the TDY orders, did not purchase the daily liability or collision coverage offered by the rental car agency (within the continental United States (CONUS) purchasing such insurance is prohibited), had an accident in which the rental car was damaged, and the rental car agency has asserted a demand against the soldier for damage to the car. The traditional response has been to deny the claim and refer them to the DAO under the provisions of the Joint Travel Regulation. The MTMC has negotiated a government car rental agreement on behalf of the armed services with the following major car rental companies:

- 3C Rent-A-Car.
- ABC Car Rental and Motorhomes.
- Able Rent-A-Car.
- Ace Rent-A-Car.
- Admiral Car Rental.
- Advantage Rent-A-Car.
- Airline Rent-A-Car.
- Airways Rent-A-Car.
- Ajax Rent-A-Car.
- Alamo Rent-A-Car.
- American Rentals Systems, Inc.
- Avis Rent-A-Car.
- Budget Rent-A-Car.
- Checkered Flag Toyota Rent-A-Car.
- Courtesy Car Rental and Sales, Inc.
- Delta Rent-A-Car.
- Discount Car Rental.
- Discount Car and Truck Rentals.
- Dollar Rent-A-Car.
- ECR European Car Reservations.
- Enterprise Rent-A-Car.
- Eurorent USA, Inc.
- Freeway Ford Rent-A-Car.
- Hayat Car Rental Systems, Inc.
- The Hertz Corporation.
- Interamerican Car Rental.
- ITS International Travel Services.
- Jack Trebour Rental & Leasing.
- Kenning Car and Van Rental.
- Ladki International Rent-A-Car.
- McRae Ford, Inc.
- Midway Rent-A-Car.
- Midwest Auto Rental Services.
- National Rent-A-Car.
- Payless Car Rental.
- Practical Rent-A-Car.
- Quality Auto Rentals, Inc.
- Raceway Ford.

- Rebate Rent-A-Car.
- Senator Rent-A-Car.
- Standard Rent-A-Car.
- Thrifty Rent-A-Car.
- Tim Whitehead Chrysler Plymouth Dodge Jeep Eagle.
- Toyota Rent-A-Car.
- Tropical Rent-A-Car.
- U-Save Auto Rental.
- Value Rent-A-Car.

(1) This agreement is of interest to claims personnel because the insurance and damage liability paragraph provides coverage for Government drivers with a few exceptions. The pertinent part of that paragraph reads:

> Government renters will not be subject to any fee for loss or collision damage waiver and, *in the event of an accident will not be responsible for loss or damage to the vehicle except as stated below* ... Personal accident insurance or personal effects coverage may be offered to a renter, but is not a prerequisite for renting a vehicle.
>
> Notwithstanding the provisions of any Company rental vehicle agreement executed by the Government employee, the Company will maintain in force, at its sole cost, insurance coverage, or a fully qualified self-insurance program, which will protect the United States Government and its employees against liability for personal injury, death, and property damage arising from the use of the vehicle ... The company warrants that, to the extent permitted by law, the liability and property damage coverage provided are primary in all respects to other sources of compensation, including claims statutes or insurance available to the Government, renter, or authorized driver.
>
> Notwithstanding the provisions of any Company vehicle rental agreement executed by the Government renter, the Company hereby assumes and shall bear the entire risk of loss of or damage to the rented vehicles (including costs of towing, administrative costs, loss of use, and replacements), from any and every cause whatsoever, including without limitation, casualty, collision, fire, upset, malicious mischief, vandalism, falling objects, overhead damage, glass breakage, strike, civil commotion, theft and mysterious disappearance, except where the loss or damage is caused by one or more of the following:
>
> (a) Willful or wanton misconduct on the part of a driver.
>
> (b) Obtaining the vehicle through fraud or misrepresentation.
>
> (c) Operation of the vehicle by a driver who is under the influence of alcohol or any prohibited drugs.
>
> (d) Use of the vehicle for any illegal purpose.
>
> (e) Use of the vehicle in pushing or towing another vehicle.
>
> (f) Use or permitting the vehicle to carry passengers or property for hire.
>
> (g) Operation of the vehicle in a test, race or contest.
>
> (h) Operation of the vehicle by a person other than an authorized driver.
>
> (i) Operation of the vehicle outside the continental United States except where such use is specifically authorized by the rental agreement.
>
> (j) Operation across international boundaries unless specifically authorized at the time of rental.
>
> (k) Operation of the vehicle off paved, graded or maintained roads, or driveways, except when the company has agreed to this in writing beforehand.
>
> Note. The above exceptions are not valid where prohibited by State law.

(2) The local installation travel office knows which car rental companies participate in this agreement, and it should attempt to make reservations with these participating companies where at all possible. Should a potential claim arise, contact the installation travel office (if it made the reservation) to confirm a car rental company's participation and, if necessary, contact the car rental agency that has asserted a demand against the soldier to review the agreement and to request withdrawal of the demand.

l. Insurance premiums and deductibles. The PCA does not provide for the payment of insurance premiums or the deductible amount of an insurance policy. When an insurance payment is involved in a claim, follow the procedures set forth in paragraph 11-21*a*. This involves computing how much the Government would have paid for each item and subtracting what the insurance company paid; the claimant is generally paid the difference. While this amount may be equivalent to the amount of the insurance deductible, it often is not. For example, if the claimant has insurance that pays the replacement cost of lost items, the insurance company may determine the value of a lost leather coat to be $500. If the deductible amount is $200, the insurance company will pay the claimant $300. The Government may calculate the value of the same coat to be $400, after deducting depreciation. In this case, the Government will pay the claimant only $100 ($400 minus the $300 insurance payment).

11–7. Time prescribed for filing

a. Time limitations on presentation.

(1) *General.* A claim must be presented in writing to a military installation within two years after it accrues (31 USC 3721(g)). This requirement is statutory and may not be waived, even when the claimant relies on bad advice given by claims personnel. For purposes of presentation within the two-year period, the claim is presented when it is received at a U.S. military establishment. The postmark date of a claim does not toll the statute of limitations (SOL). Submission of DD Form 1840-R to the claims office does not stop the running of the two years. USARCS policy aims to assist claimants rather than entrap them, and claims personnel should make every effort to advise claimants about the two-year time limitation and what must be done to stop it from running. For example, a claimant comes in near the expiration of the two years to pick up paperwork on a large claim. Claims personnel should advise

the claimant about the time limitation, allow the claimant to complete and present DD Form 1842, and inform the claimant in writing that the claim will be denied if the remaining documentation is not submitted within 30 days.

(2) *Computing the two years.* In computing the two years, exclude the first day and include the last day (the day the claim was received) unless the last day falls on a Saturday, Sunday, or legal holiday. If the last day falls on a nonworkday, extend the two years to the next workday. For example, a soldier's claim accrues on 18 January 1995. Normally, the claim must be presented by the close of business on 18 January 1997, but 18 January 1997 is a Saturday, 19 January 1997 is a Sunday, and 20 January 1997 is a legal holiday. The soldier's claim must be presented by the close of business on 21 January 1997, the next workday.

(3) *Claims accruing during time of war or armed conflict.* If a claim accrues during time of war or if war intervenes before the two years have run, and if good cause is shown, the claim may be presented not later than two years after the end of the war or armed conflict.

(4) *Periods of captivity.* In computing the two years, exclude the time the claimant is held as a prisoner of war or as a hostage.

b. When a claim accrues.

(1) *General.* A claim accrues on the day that the claimant knows or should know of the loss. This begins the running of the two-year SOL.

(2) *Loss in shipment.* A claimant knows or should know of obvious loss or damage on the date of delivery. A claim normally accrues on that day or on the day when the claimant loses entitlement to storage at Government expense, whichever occurs first. This general rule is modified in certain instances:

(a) If a claimant's entitlement to Government storage terminates but the property is later delivered out at Government expense, the claim accrues on delivery.

(b) If the only damage is sustained internally (for example, there is no external damage to an electronic item) or only to items that the claimant would not be expected to examine individually at delivery, the claim accrues when the claimant should have known of this damage.

(c) If a shipment sustains no damage but inventory items are missing, the claim accrues at the time the claimant should know that tracer action has failed to turn up the missing items. Normally, if a response to the tracer is not received within 30 days, the claimant should assume that the items are missing.

(3) *Loss in storage.* If the claimant is informed that the goods sustained partial loss in storage, the claim accrues when the claimant has reason to know what the loss is, which is normally when the goods are delivered out of storage. If, however, a claimant is informed that the shipment is a total loss, the claim accrues on the day this notice is received or should have been received (see AR 27-20, para 11-7*c* about damage in non-temporary storage (NTS)).

(4) *Multiple deliveries.* USARCS frequently receives claims for reconsideration that involve "split" or multiple deliveries made on the same GBL. In these cases, the claim accrues for items damaged or lost in subsequent deliveries on the date those items are delivered—not on the date that the first shipment was delivered. The claim accrues for items damaged or lost in the first delivery on the date those items are delivered. The "bad advice" issue arises when claims personnel inform claimants that they cannot file a claim until the entire shipment has been delivered. Claimants must be told to file timely claims for items they know to be lost or damaged and to amend their claims if they sustain additional damage or loss in subsequent deliveries. When possible, refrain from giving oral advice about the various time limitations—such as the time for submitting the DD Form 1840R (Notice of Loss or Damage) or for filing a claim. It is better to prepare and distribute a written handout specifying the various time limits. This eliminates confusion, provides claimants with accurate information to file their claims in a timely manner, and protects the claims office from the claimant who runs afoul of the SOL, then alleges that some unknown person in the claims office provided misinformation. A suggested handout paragraph follows:

> You have two years from the date of delivery to file a claim against the government for property damaged, lost, or destroyed in shipment or storage. If you receive more than one delivery on the same Government bill of lading, you have two years from each delivery date to file a claim for that portion of your personal property. Example: You had 12,000 pounds of personal property packed at origin. When you arrived at destination, your quarters were not large enough for all your property. You accepted a portion of your property on 8 January 1996, and the remainder was placed in storage at Government expense. You must file your claim for all damage and loss to the portion you accepted by 8 January 1998. Larger quarters become available and the remainder of your goods are delivered on 13 January 1997. You must amend your claim to include all damage and loss incurred during storage and subsequent delivery by 13 January 1999.

11–8. Form of claim

Any written demand for compensation may be considered a claim, even if no specific sum is mentioned or supporting documentation provided.

11–9. Presentation

a. General. Normally, a claim is not presented until it is received by an active military installation of one of the Services. If the claim was mailed and is received by the claims office a few days after the time limitation on presentment has run out, contact the mail room or APO to ascertain when the installation actually received the claim. Merely mailing a claim does not constitute presentation, nor does receipt by a Federal agency outside DOD; however, effective 1 September 1995 for ARNG and USAR claims, a claim may be presented to any full-time officer or employee of the ARNG or USAR, other than the claimant.

b. What constitutes a presentation. Initially, the claim does not need to be submitted on DD Forms 1842 and 1844; however, these forms must be submitted before the claim may be paid. Submission of DD Form 1840-R does not constitute presentation of a claim. Although a claimant, informed of the time limitations on presentation, may choose to submit incomplete paperwork, claims personnel may not refuse to accept a written demand that constitutes a claim. Such claims are accepted and logged in. Claimants submitting such claims, however, should be informed in writing that they must submit properly completed forms or necessary substantiation within a fixed period of time (normally 30 days); otherwise, the claim will be denied or paid only in the amount substantiated.

c. Allegations that an unrecorded claim was presented. If a claimant alleges that a claim was presented within two years and evidence shows that the claimant visited a claims office with the apparent desire to obtain compensation, lacking evidence to the contrary it may be presumed that the claimant submitted a claim (see AR 27-20, para 11-8, about office procedures for accepting claims). This provision offers redress in those instances when claims personnel neglect to log or improperly refuse to accept a claim because documentation is incomplete. It does not apply when the claimant visited the claims office only to submit DD Form 1840-R.

Section II
Evaluation, Adjudication, and Settlement of Claims

11–10. Policy

The Personnel Claims Act limits payment to losses incurred incident to service. Under this Act, "incident to service" is a broad term that encompasses the circumstances of military living, such as frequent

moves pursuant to orders, assignment to quarters, and duty in foreign countries. (It does not have the same meaning under the FTCA.) Many losses that neither relate to the actual performance of duty nor result from the tortious conduct of other Federal employees are considered incident to service losses. Generally mirroring positions taken by the Air Force and the Navy, AR 27-20 sets forth specific categories of such losses. Refer losses that appear to be incident to service but do not fall within these categories to the Commander, USARCS. Losses that are not incident to service are not compensable.

a. Prompt, fair disposition of claims. The claims payment process is not an adversarial one. The policy underlying the PCA endorses prompt and fair payment of meritorious personnel claims to maintain morale and avoid financial hardship. Soldiers who have suffered loss or damage are entitled to helpful, friendly, and courteous service.

b. Small claims procedure. The small claims procedure applies to claims that can be settled for less than $1,000 (although the claimant may claim more than $1,000) and that do not require extensive investigation.

(1) This procedure requires the claims office, when first receiving and reviewing claims, to distinguish those that can be settled quickly from those that require more extensive processing; the former can then be separated out and processed as soon as possible, preferably within one working day.

(2) Claims personnel relax the evidentiary requirements slightly in these claims, and place greater emphasis on catalog prices, telephone calls to confirm prices, and agreed cost of repairs (AGC) and loss of value (LOV) procedures.

(3) The small claims procedure is not a "give-away" program, but a method permitting claims personnel to concentrate effort on those claims that require greater investigation, regardless of amount, while allowing them to accomplish the overall mission of prompt and fair claims processing. "First in, first out" processing of all claims, large or small, is contrary to Army policy; however, field claims offices must guard against letting more difficult claims languish while small claims are pushed through.

(a) Technique. Where local resources permit, formal adjudication techniques should be set aside, and an experienced claims examiner should adjudicate the claim while the claimant is present to explain the details. The claimant should be directed to bring in small damaged items, particularly valuable ones, for inspection. This means the person who first counsels the claimant must have enough experience to recognize a small claim and to tell the claimant what evidence is needed before scheduling an appointment with the examiner to adjudicate the claim. If amounts claimed seem reasonable based on the face-to-face interview, the examiner should waive substantiation for replacement costs of inexpensive items and use catalog prices and telephone calls to confirm other replacement costs. The examiner should also make full use of LOV and AGC procedures for minor furniture damage.

(b) Payment procedures. Where local finance procedures permit, small claims should be approved on the spot so the claimant can hand-carry the voucher to the DAO for immediate cash payment. Claims personnel must persuade their servicing DAO to allow full use of cash payment procedures to ensure that claimants are paid shortly after the claims office certifies payment (see AR 37-1, para 20-47, on payment vouchers). It does little good for a claim to be adjudicated immediately only to have the claimant wait a week or more to receive payment by check.

c. Rounding sums. Compensation for each line item on a personnel claim is rounded to the nearest whole dollar. After the examiner takes depreciation and makes any other proper adjustments, amounts ending in 50 cents or more are rounded up and amounts ending in 49 cents or less are rounded down. In some instances, this results in the claimant receiving a few cents more than the amount claimed.

d. Repair or replacement costs stated in a foreign currency. After receiving a claim, claims office personnel must convert repair or replacement costs stated in a foreign currency into U.S. dollars. Purchase prices may be entered in a foreign currency or the U.S. dollar equivalent at the claims office's option. For items that have been replaced or repaired and paid for in foreign currency before submission of the claim, claims personnel should convert using the exchange rate in effect at the time the item was repaired or replaced. For items that have not been repaired or replaced, they should use the exchange rate in effect on the day the claim is received. Claims personnel may use the military exchange rate or a commercial exchange rate obtained from a newspaper listing or commercial bank.

(1) The amount allowed for items that will later be repaired or replaced using a foreign currency should be adjusted up or down if the exchange rate changes significantly between the time the claim is received and the time it is adjudicated. If the amount allowed on the claim exceeds the amount claimed as a result of currency fluctuation, claims personnel must change the amount claimed on the claims data record.

(2) A field claims office is authorized to deviate from this general rule if it appears that the claimant would receive a windfall as a result. Any deviation must be fully explained on the chronology sheet. A change in the exchange rate occurring after a claim is settled is not a basis for further payment on reconsideration.

e. Shortage of claims funds. If a claims office runs short of claims funds and is unable to obtain more money from USARCS, it should send written notice to all claimants it cannot pay, advising them when they may expect payment. To continue paying small claims and to avoid a large backlog in adjudicated claims awaiting payment and recovery action, a claims office may make partial payments on very large claims, informing these claimants in writing when they may expect final payment. Such payments are logged as emergency partial payments.

f. Use of chronology sheets. Claims personnel must explain on the chronology sheet the basis for the actions they take. In addition, they must enter any information received from the claimant or other persons that the claims file does not otherwise reflect. The chronology sheet is attached as the top document on the left-hand side of the claim file, and additional sheets may be used. Claims personnel should not write abusive or derogatory language about a claimant or other individuals on the chronology sheet or on any claims document. All entries on the chronology sheet should indicate the date the entry was made and the name of the individual who made the entry. Do not use initials to indicate who made the entry.

g. Amendment of claims and supplemental claims. Until a claim is settled, a claimant may amend a claim simply by changing DD Form 1844. Thereafter, a claimant may submit a supplemental DD Form 1844 as part of a request for reconsideration. Relief will be granted based only on facts that were not apparent when the original claim was settled. The fact that a claimant did not finish unpacking before submitting a claim is not, in itself, a basis for requesting reconsideration.

h. Abandoned claims. A personnel claim may be considered abandoned when the claimant either withdraws it or does not follow it through. If the claimant can be contacted, a personnel claim may be abandoned only if the claimant expresses a desire to do so. Claims personnel should notify claimants who do not provide complete documentation about what they must provide, further informing them that the claim will be processed as is unless the required paperwork is submitted within a specified time (normally 10 or 15 days). If the claimant fails to respond within the time specified, the claim should be processed for payment to the extent it is substantiated, or denied if no amount is meritorious. It should not be abandoned.

i. Transfer of claims.

(1) A transferred claim is a claim that is still open within the claims system. Except as provided in subparagraphs (2) to (5) below, a personnel claim will not be transferred to another Army field claims office. It is inappropriate to transfer a personnel claim merely because the incident occurred in another claims office's geographic area of responsibility unless justification exists for such transfer. It is equally inappropriate to return a claim and suggest that the claimant resubmit it to another claims office. One Army field claims office may request another to assist in investigating a claim at any

time without coordination with USARCS or a command claims service; however, such claims remain open on the database of the office requesting assistance. Figure 2-1 lists all the settlement and approval authorities and their areas of responsibility for tort claims.

(2) *Transfers to a higher settlement authority.* A field claims office that does not have authority to take final action on a claim will transfer it to the next higher settlement authority, submitting a personnel claims memorandum of opinion.

(3) *Claims cognizable under tort claims statutes.* A claim not meritorious as a personnel claim but cognizable as a tort claim will be converted to the tort claims database. It will then be transferred to the office having jurisdiction over the area in which the claim occurred in the same manner as a tort claim, using a tort claims memorandum of opinion.

(4) *Claims of settlement authorities and their raters.* The head of a claims office is the SJA or Command JA. That person may settle claims brought by any subordinate working in that claims office. However, claims presented by the head of a claims office or by persons rating that officer will be forwarded to the next higher settlement authority to avoid a conflict of interest. Such claims are not adjudicated but will be fully investigated, and DD Form 1840-R dispatched, before transfer.

(5) *Transfers with the approval of USARCS or a command claims service.* Prompt payment of meritorious claims is a fundamental claims policy; transfers delay settlement. Except as provided above, transfers must be approved by USARCS by telephone or by a command claims service, neither of which will grant approval unless the claim merits investigation and another claims office is better situated to process the claim. Factors to consider include place of the loss, the claimant's and the property's present location, and location of the office receiving the original claim. If a transfer is approved, the forwarding office will prepare a transmittal letter stating, "Authority to transfer this claim was granted by (name) at (organization) on (date)." All claim files transferred will include a computer screen printout and a data disk with the claims record on it. Offices transferring special interest claims (those generating Inspector General or Congressional interest and those brought by SJAs and their raters) will mark the files as such on the outside cover in red. Offices receiving improperly transferred personnel claims should inform USARCS.

(6) *Translation of documents.* Documents written in a foreign language must be translated before the claim is forwarded for reconsideration, recovery, or retirement. Translations should also accompany recovery packets sent to U.S. carriers and warehouse firms. Brief estimates of repair, receipts, and similar items necessary for payment should be translated verbatim. Lengthy estimates, foreign police reports, and similar documents may be summarized. If claims office personnel do not have the necessary skill, they should seek help from other organizations on the installation.

j. Erroneous payments. A payment is erroneous if it is based on facts the claimant provides that are later determined to be incorrect, or if it is determined to have been made improperly or without legal authority. Normally, erroneous payments should be recouped from the claimant. (See AR 27-20, para 11-14*f* about recoupment procedures.) If the claimant refuses to repay voluntarily or fails to meet an arranged payment schedule, the CJA or claims attorney will prepare DD Form 139 for the servicing DAO to recoup the money from the claimant's pay. By signing DD Form 1842, the claimant consents to this action. Any erroneous payment that cannot be recouped from the claimant will be reported to USARCS.

k. Liaison with local offices. Each CJA or claims attorney must personally contact local transportation, contracting, and finance officers regularly to ensure, at a minimum, that outbound personnel receive adequate counseling, that inspections are performed when requested by claims personnel to the extent possible, that direct procurement method (DPM) offsets are accomplished quickly, and that meritorious emergency and small claims are promptly paid. These persons should freely turn to the CJA or claims attorney for help in resolving problems that affect claims administration.

(1) *Transportation officers.* Transportation officers (TO) should not be asked routinely to inspect shipments with less than $1,000 worth of damaged items. However, to the extent possible, they should inspect all shipments for which the damage claimed exceeds $1,000 or the claimant's credibility is in doubt. Experienced claims personnel should brief new inspectors on what to look for when completing DD Form 1841. To accomplish this, the CJA or claims attorney should establish a good working relationship with the TO. If transportation inspectors are not available, CJAs or claims attorneys should have claims personnel inspect shipments, especially where the claimant's credibility is in doubt or the quality and quantity of the personal property are disputed.

(2) *Contracting officers.* The CJA or claims attorney should try to explain the mechanics of DPM recovery to contracting officers, to ensure that appropriate claims are offset promptly. In addition, contracting officers should be aware of their responsibility to resolve claims arising out of the negligent acts of Government contractors.

(3) *Defense Accounting Officers.* The CJA or claims attorney should coordinate with the local Defense Accounting Officer to set up a mechanism for immediate payment of emergency partial payments and small claims. When necessary, finance personnel should be reminded that claims payments, including claims paid electronically, are precertified and need no further certification by DAO personnel. The CJA or claims attorney must also ensure that payments and recovery deposits are credited to the proper accounts.

l. Fees paid by claimants to attorneys and representatives. Attorney fees and similar expenses are not compensable under the PCA. Subsection 3721(i) of the PCA provides, "Notwithstanding a contract, the representative of a claimant may not receive more than ten percent of a payment made under this section for services related to the claim. A person violating this subsection shall be fined not more than $1,000." When dealing with PCA claimants who are represented by counsel, claims personnel should cite the statutory language in the settlement letter. Sample letters effecting denial and partial approval are found at figures 11-2a and b, worksheets for PC letters. Figure 11-2a includes paragraphs for you to use to help you prepare the appropriate response for partial approval of a claim; figure 11-2b includes paragraphs for you to use to help you prepare the appropriate response for disapproval of a claim.

11–11. Preliminary findings required

These findings are necessary to award compensation under the PCA:

a. The claimant is a proper claimant.

b. The loss was incident to the claimant's service.

c. The type of property claimed (the lost or damaged tangible personal property and compensable associated expenses) and the amount or quantity possessed were reasonable or useful under the attendant circumstances.

d. The evidence substantiates ownership and value of the property, and the fact of loss or damage as claimed.

e. There is no bar to payment, such as a violation of the statute of limitations.

f. The amount otherwise allowable has been reduced to reflect compensation from other sources, including insurance and lost potential recovery. If private insurance is involved, generally the claimant must settle with the insurance company first. The claim usually will be held in suspense until the insurance company takes action. A CJA or claims attorney may pay a claim before settlement with an insurance company if the claimant shows good cause.

11–12. Guides for computing amounts allowable

a. Allowance List—Depreciation Guide. Periodically the Commander, USARCS, will update this information for use by claims personnel. The current ALDG is reproduced at Table 11-1.

b. Standard abbreviations. The claims examiner's findings should be clear and unmistakable to anyone reviewing the Remarks section of DD Form 1844. The standardized abbreviations set forth below are used in completing the Remarks section. Other abbreviations should not be used. When one or more abbreviations do not adequately explain how the claimant has been compensated, the examiner should briefly explain in the Remarks section, in the

Comments section at the bottom of DD Form 1844, or on the chronology sheet.

(1) *AC—amount claimed.* The amount claimed was awarded to the claimant. This abbreviation is not used if the item award is based on an estimate of repair.

(2) *AGC—agreed cost of repairs.* The claimant did not present an estimate but instead, after discussing the matter with claims personnel, entered an amount that represents the claimant's guess of the cost to repair the damaged item. The claims office may accept this amount as a fair estimation of the cost of repair based on the amount of damage, the value of the item, and the cost of similar repairs in the area. A claimant may be allowed up to $50 as an AGC without an inspection, and between $50 and $100 if claims personnel inspect the item. The use of AGC is an integral part of small claims procedures.

(3) *CR—carrier recovery.* The carrier paid the claimant this amount for the item. The payment is recorded in the Remarks column, and the total carrier payment is deducted at the bottom of DD Form 1844 in the same manner as insurance recovery.

(4) *D—depreciation.* Yearly depreciation was taken on the destroyed or missing item in accordance with the appropriate depreciation guide in effect at the time of the loss. Explain any deviations from standard rates.

(5) *DV—depreciated value.* A claimant's repair cost exceeded the value of the item, so the depreciated value was awarded instead. When a claimant claims a repair cost that is very high, relative to the item's age and probable replacement cost, obtain the replacement cost and determine the depreciated value.

(6) *ER—estimate of repair.* The claimant provided an estimate of repair that was used to value the loss. If multiple estimates were provided, number them as exhibits.

(7) *EX—exhibit.* When numerous documents have been provided to substantiate a claim, number them as exhibits.

(8) *FR—flat rate depreciation.* Flat rate depreciation was taken on an item in accordance with the ALDG in effect at the time of the loss. Claims personnel must explain any deviations from the normal rate.

(9) *F & R—fair and reasonable.* A fair and reasonable award was made to the claimant based on the examiner's determination that it fairly represents the amount of the loss.

(10) *LOV—loss of value.* LOV was awarded (see para 11-14*d*(1) for a discussion on appropriate use of LOV).

(11) *MA—maximum allowance.* The adjudicated value, listed in the "Amount Allowed" column, exceeds the maximum allowance for that item. The amount in excess of the maximum allowance is subtracted at the bottom of the DD Form 1844 (see para 11-14*a* for a discussion of MA).

(12) *N/P—not payable.* The claimed item is not payable. Note the reason for this comment (for example, "not substantiated") in the Remarks section or in the Comment section, if space allows; if not, explain the finding on the chronology sheet.

(13) *OBS—obsolescence.* A percentage was deducted for obsolescence (see para 11-14*g*(4) for a discussion of OBS).

(14) *PCR—potential carrier recovery.* A deduction was made for lost PCR (see para 11-14*i* for a discussion of PCR).

(15) *PED—preexisting damage.* A deduction was made for PED (see para 11-14*d*2) for a discussion of PED).

(16) *PP—purchase price.* The purchase price was used to value the loss. Normally, the purchase price is not an adequate measure of the claimant's loss. However, if the claimant submitted the replacement cost of a dissimilar item or otherwise failed to substantiate the true replacement cost, claims personnel may, at their discretion, use a recent purchase price if a true replacement cost is not available.

(17) *PX—Post Exchange replacement cost.* A replacement cost from the PX was used.

(18) *RC—replacement cost.* A replacement cost was used. List the store or catalog from which the replacement cost was obtained.

(19) *SV/T—salvage value, item turned in.* A destroyed item was determined to have salvage value, and the claimant chose not to keep the item. If the item is part of an increased released valuation (IRV) shipment, the claimant must keep it for the carrier to pick up. Otherwise, the claimant must turn in the item before receiving payment on the claim (see para 11-14*l* for a discussion of salvage value).

(20) *SV/R—salvage value, item retained.* A destroyed item was determined to have salvage value, and the claimant chose to keep the item. Accordingly, a deduction was made for its salvage value.

(21) *SV/N—item has no salvage value.* A destroyed item was determined to have no salvage value.

11–13. Ownership or custody of property

A claim for property owned by the claimant and immediate family members residing with the claimant is cognizable. The claimant may claim for items purchased on an installment plan even if title is not transferred until the item is paid for. A claimant may also claim for items borrowed from others over which he or she has dominion and control at the time of the loss. Items stored or transported to accommodate another individual (including relatives who are not immediate family members) are not considered borrowed items, however, and special rules govern payment of claims for loaned vehicles (see para 11-5*h*(5)). The actual owner should be contacted when the claimant does not own an item claimed.

11–14. Determination of compensation

a. Item and category maximum allowances.

(1) *Application of maximum allowances.* The military services agreed to a single Table of Maximum Allowances contained within the ALDG (Table 11-1) to ensure uniform application among the services of the statutory requirement that property be reasonable or useful. A maximum allowance per item indicates that the allowance for a single item of a certain type will not exceed that amount. A maximum allowance per claim indicates that the total allowance for all items of a certain type is limited to that amount. Where both maximum amounts per item and per claim apply, the total allowance for all items will be limited to the maximum per claim, which will reflect the allowance of not more than the maximum per item for any one individual item. To the extent that the value of property exceeds a per item or per claim maximum allowance, that property is not deemed reasonable or useful.

(2) *Waiver of maximum allowances.* The head of an ACO, or a higher settlement authority, may waive the maximum allowance for good cause in certain situations. Before doing so, the settlement authority must personally sign a written memorandum for the file including—

(a) The facts establishing good cause.

(b) An explanation of how the claimant has established the following four factors by clear and convincing evidence:

1. The property was not held for use in a business or for commercial purposes.

2. The property was actually owned by the claimant. For lost or stolen items this is generally established by purchase receipts or statements by others who observed the property in the claimant's possession.

3. The property had the value claimed. This is generally established by a purchase receipt, appraisal obtained before the loss, or similar evidence. A statement by the claimant or a relative, a friend or an acquaintance of the claimant is not sufficient to establish the alleged value.

4. The property was damaged or lost in the manner alleged. In a claim for loss during a government shipment, the fact that the property was lost during shipment is generally established by showing that the property was clearly identified on the inventory. However, a generic reference on the inventory may be insufficient. For example, if the inventory simply lists four rugs, this will not be sufficient to establish shipment of four handmade wool Turkish rugs that cost $4,000 each.

b. The adjudication analysis. In essence, adjudication of a claim consists of making the findings necessary to award compensation. Claims personnel should determine—

• Is the claimant a proper claimant?

- Is the claim presented in a timely manner?
- Is the loss incident to service?
- Is there no bar to payment?
- If the answer to these questions is yes, then each line item on the DD Form 1844 must be examined. The examiner must determine—
  - If the item is tangible personal property.
  - Whether associated expenses are reasonable or useful.
  - Whether the claimant has provided evidence to substantiate the ownership and value of the property and the fact of loss or damage in the manner claimed.

This last determination is the most crucial step in the entire process. Finally, the value of the loss is determined and adjusted to reflect payments, repairs, or replacement by carriers or insurers, or lost potential insurance or carrier recovery. (For examples, see figures 11-3a through d.)

c. Time and place of the loss. The claimant is entitled to the reasonable cost of repair or loss of value on damaged property or to the fair market value of destroyed or missing property, measured at the time and place of the loss. The "time" of the loss is when the claim accrues. The "place" of the loss is where the loss occurred. For shipment claims, this is the place the property was delivered. For administrative ease, each claims office may use the time the claim was filed and the local area as the time and place of the loss, unless the result would be markedly inequitable.

(1) If a claimant delays presenting a claim and produces a current estimate that is far higher than the replacement or repair cost at the time and place of the loss, the claims office, to avoid providing a windfall, may determine the replacement or repair cost at the time of the loss and use this value instead. In determining this lower cost, the claims office may examine outdated catalogs or contact the firm providing the claimant's estimate to discover how much its prices have increased between the time of the loss and the time the estimate was prepared. This cost must be based on evidence, however, and may not be determined arbitrarily by adjusting for inflation. For example, a claimant's furniture is damaged in shipment to Fort Huachuca. The claimant obtains a reasonable estimate of repair from a repair firm in the local area. One year and 11 months later, the claimant obtains a second, higher estimate from the same repair firm and submits a claim. The claimant is entitled to only the original cost of repair. It would be inappropriate to award a higher amount merely because the claimant chose to delay presenting a claim.

(2) If a claimant delays presenting a claim and produces an estimate of the cost at the time and place of the loss that is far higher than the current repair or replacement cost, the claims office, again to avoid providing a windfall, may use current costs unless the claimant actually repaired or replaced the items at the higher cost.

d. Repair of items. For items that can be repaired economically, the measure of the loss is the cost of repair or an appropriate loss in value. The cost of repair may be the actual cost, as demonstrated by a paid bill; reasonable estimated costs, as demonstrated by an estimate of repair prepared by a person in the business of repairing that type of property, or an AGC.

(1) *Loss of value.*

(a) Minor damage not worth repairing. LOV, rather than replacement cost, should be awarded when an item suffers minor damage that is not economical to repair but the item remains useful for its intended purpose. LOV is particularly appropriate when the item is not of great value and has PED. LOV is also appropriate to compensate claimants for minor damage, such as a chip or surface crack to a figurine or knickknack. For example, a cheap, fiberboard coffee table with extensive PED is scratched. The cost to repair the scratch would exceed the table's value. Under the circumstances, LOV is appropriate.

(b) Damage to upholstered furniture. If damage can be repaired imperceptibly by cleaning or reweaving, the claimant is entitled to only repair cost. If repairs would be somewhat noticeable but the damage affects an area not normally seen, repair costs plus LOV are appropriate. Alternatively, if repairs would be somewhat noticeable but the item is of no great value and has already suffered PED, repair costs and LOV are appropriate even if the damage is in an obvious area. If, however, repairs would be so noticeable as to destroy the item's usefulness, the item should be reupholstered or replaced. What is noticeable will depend on the item's nature and value and the nature of the damage. Claims personnel should exercise sound judgment to avoid being too lenient or too harsh (see also Table 11-1, ALDG, note 3).

(c) Cosmetic damage to nondecorative items. LOV should also be awarded to compensate for cosmetic damage to items that were not purchased for purposes of display or decoration. For example, the casing of a washing machine is dented. The washing machine is not decorative in nature and still functions perfectly. LOV, rather than replacement of the washing machine or its casing, is the appropriate measure of the claimant's loss.

(2) *Preexisting damage to repairable items.* PED is damage that predates the incident giving rise to a claim. It is most commonly identified by the use of the exceptions and locations symbols on household goods shipment inventories. Whenever PED is listed on an inventory, claims personnel must determine whether the PED did in fact exist and whether the cost of repairing the item includes repair of PED. These findings are essential for recovery purposes. Often, inspecting the item or calling the repair firm that prepared the estimate is the only way to make an effective determination.

(a) Estimates that do not include repair of preexisting damage. If the estimate does not include repair of PED, even if PED is listed on the inventory, no deduction should be made. This fact should be recorded on the chronology sheet and on carrier recovery documents. If the estimate does not address PED, do not hesitate to call the repair firm to inquire whether it included repair of PED in its estimate.

(b) Estimates that include repair of preexisting damage. If the estimate includes repair of PED, deduct the percentage attributable to repair of PED unless the PED needs to be repaired in order to repair the new damage.

(c) Repair of preexisting damage in order to repair new damage. Whenever new damage to an item necessitates repair of PED, the entire repair cost should be allowed unless repairing the PED significantly enhances the item's value. For example, a claimant's inventory lists a scratch to a tabletop as PED. During shipment, the table top is so deeply gouged that it must be completely refinished. Because the PED is minor in comparison with the new damage and must be repaired to repair the new damage, the full repair cost should be allowed.

(d) Enhancement. If the extent of PED that must be repaired is roughly equal to or greater than the new damage, repair enhances the claimant's property and a deduction for the amount of PED repaired should be made. For example, a tabletop with two preexisting scratches sustains two more scratches during shipment. The repair firm must refinish the entire top to repair the new scratches. Because the new damage is roughly equal to the old damage in severity, however, repair has enhanced the claimant's property, and a deduction for PED is appropriate.

(3) *Mechanical defects.* The PCA authorizes compensation only for losses incurred incident to service. Damage resulting from a manufacturing defect or normal wear and tear is not compensable. Damage to the engine or transmission of an old vehicle during shipment is probably due to a mechanical defect. Internal damage to appliances, such as old televisions, is also often due to a mechanical defect, particularly when there is no external damage to the item. (See fig 11-3, note 2; also see para 11-5*c*(3)(*a*) of this publication about damage attributed to lightning, power surge, and power failure.) Claims for internal damage to small appliances that are not normally repaired, such as toasters or hair dryers, should be assessed based on damage to other items in the carton and the shipment, the age of the item, whether there are loose parts inside, and the claimant's honesty. If the evidence suggests that rough handling caused the damage, a claim for the item should be paid. Internal damage to larger items such as televisions or stereos should be evaluated by a repair firm. Evidence that suggests rough handling, such as smashed or broken circuit boards, provides a basis for payment. Evidence

that suggests a fault in the item, such as burned-out circuits, does not. Deterioration occurring because an item in storage was not used for a long time, rather than because the item was mishandled or the conditions of storage were improper, is also considered due to a mechanical defect. For example, a claim for replacement of faulty gaskets on a refrigerator stored for seven years would not be payable. For claims in which an electronic item sustains internal damage but no external damage, claims personnel must obtain a personal written statement from the claimant as well as an estimate of repair detailing what caused the damage and how it occurred. The claimant's statement should describe the condition of the electronic item before shipment and how the claimant knew that it functioned (for instance, the claimant used the VCR the night before the packers came and it "worked fine"). The statement MUST be in the claimant's own words. It MUST NOT be a form letter prepared by the field claims office.

(4) *Normal maintenance.* Normal maintenance expenses are not considered damage to property within the meaning of the PCA unless these expenses are necessitated by actual damage. Charges for cleaning and servicing, sometimes included in repair estimates, are typical maintenance expenses and are usually not compensable. Color alignment of televisions and piano tuning are considered normal maintenance and are not compensable unless necessitated by other damage.

(5) *Wrinkled clothing.* Clothing wrinkled in shipment presents special problems. Normally, unless the wrinkling is so severe as to amount to actual damage, the cost to press wrinkles out of clothing after a move is not compensable. The mere fact that clothing was "wadded up" or "used as packing material" is not, in itself, sufficient. The wrinkling must be such that professional pressing is necessary to make the clothing usable. This determination will depend on the wrinkling and the nature of the material.

(6) *Wet and mildewed items.* A claimant has a duty to lessen damages by drying wet items to prevent further deterioration. Items that have been wet are not necessarily damaged, and claimants who throw them away have difficulty substantiating a loss. Mildew is a fungus that sometimes infests wet fabric and similar material. Although a severe mildew infestation is almost impossible to remove completely, items slightly infested can often be cleaned. For example, a claimant's rug is delivered wet and slightly mildewed. Instead of drying the rug, the claimant leaves it rolled up in the basement. Three months later, the claimant files for damage, and inspection of the rug shows such extensive mildew that it cannot be cleaned. Because the rug was repairable and claimant's inaction caused its condition to deteriorate, the claimant would be entitled to only cleaning costs. The claimant would be entitled to the replacement cost only if the claims office determined that the rug had been irreparably damaged at time of delivery. If the rug had been merely wet when delivered, the claimant may not be entitled to any compensation.

e. Estimates of repair. Field claims offices will add the following criteria to the written instructions given to a claimant and explain to the claimant what is required in an estimate of repair. The claimant should be further instructed to find another firm if the repair firm refuses to provide such information. Repair firms charge a fee for estimating, which is reimbursed to the claimant or applied to the repair costs. Therefore, field claims offices should receive the most useful information possible. Field claims offices have the discretion to accept an estimate of repair that does not meet this criteria to ensure that a claimant does not suffer an undue hardship in filing a claim. Exercise discretion in exceptional cases where the availability of repair firms agreeing to meet the criteria is limited. The chronology sheet should be annotated to reflect this exercise of discretion. Field claims offices should contact local repair firms that provide the most estimates of repair for claimants and inform them of the need for this information. An acceptable estimate of repair should meet the following criteria:

(1) It should be legible.

(2) It should be from a company that is willing to stand behind its estimate and complete repairs indicated to the customer's satisfaction.

(3) It should differentiate between shipment damage, identifying its location on the item damaged, and normal wear-and-tear or PED. Additionally, it should describe the repairs to be made, and if an item is not repairable, state why not. Examples of statements substantiating nonrepairability include, but are not limited to, the following: "the item costs more to repair than it is worth," or "the item cannot be repaired because damage is too severe and it can never be used for its intended purpose." It does a claims examiner little good to receive an estimate of repair showing merely that an item is damaged and needs to be repaired or refinished, and nothing more. Upholstered furniture is a unique category of items needing repair. Here, a repair estimate should separate costs for material and labor, indicate the yards of material to be used and its cost per yard, and state that the material selected is equivalent to the material damaged. The above criteria are extremely important, especially when a field claims office deducts for PED on an item or recommends an unearned freight charge deduction.

(4) It should include the date the estimate was made, identify by inventory number the items evaluated, and fully identify the individual and firm preparing the estimate of repair. A claimant should show a copy of the inventory to the repair firm so its staff can consider the carrier's description of PED when preparing the estimate.

(5) It should state whether the firm will deduct the cost of the estimate from the work to be performed or whether the estimate cost is a separate charge.

(6) It should be prepared by a firm that has expertise in repairing the items damaged. For example, a furniture repair person should not provide a repair estimate on a damaged stereo unless the person has expertise in that area.

(7) It should include drayage fees, when appropriate.

f. Replacement of items. A claimant is entitled to the value of missing and destroyed items. An item that has sustained damage is considered destroyed if it is no longer useful for its intended purpose and the cost of repairing it exceeds its value. Value is measured in the following ways:

(1) *Similar used items.* If there is a regular market for used items of that particular type, the loss may be measured by the cost of a similar item of similar age. Prices obtained from industry guides or estimates from dealers in this type of property are acceptable to establish value. There is a regular market in used cars, and the value of a used automobile is always measured according to the *Automobile Red Book* rather than the depreciated replacement cost. Similarly, the *Mobile Home Manufactured Housing Replacement Guide* may be used to value a destroyed mobile home. Where there is no regular market in a particular type of used item, however, estimates from dealers in "collector's items" should be avoided.

(2) *Depreciated replacement cost.* This is the normal measure of a claimant's loss. Depreciate a catalog or store price for a new item similar in size and quality according to the ALDG to reflect wear and tear on the missing or destroyed item. The replacement cost for identical items—particularly decorative items—should be used whenever the item is readily available in the local area, but a claimant who is eligible to use the PX should not be allowed the replacement cost of an item such as a television from a high-priced retail specialty store when the PX carries an item comparable in size, quality, and features from another manufacturer.

(3) *Use of the Post Exchange Overseas catalog.* When a claimant is eligible to purchase a replacement item through the overseas section of the PX catalog at a lower cost, a PX replacement cost should be used to value the loss. When requested, CJAs or claims attorneys will provide a statement addressed to AAFES as additional substantiation for the claimant to use in placing an order, certifying that a particular catalog item is a replacement for an item missing or destroyed incident to service. Postage or customs duties may be paid after the claimant incurs these expenses.

(4) *"Fair and reasonable (F & R)" awards.* A fair and reasonable award should be used sparingly when other measures would

compensate the claimant appropriately. Overuse of such awards impedes carrier recovery, and "F & R" should never be used when a more precise abbreviation is available. A fair and reasonable award for a missing or destroyed item should reflect the value of an item similar in quality, description, age, condition, and function to the greatest extent possible. A fair and reasonable award for a damaged item should reflect either the amount a firm would charge for repair or its current reduced value. When such an award is made, explain the basis for the award on the chronology sheet, in the Comments block of DD Form 1844, or in a separate memorandum. A fair and reasonable award may be considered in the following instances:

(a) The item is obsolete, and a simple percentage deduction for obsolescence is not appropriate.

(b) The claimant cannot replace the item locally.

(c) The claimant cannot replace the item at any cost.

(d) Repair costs or replacement costs are excessive for the item, and LOV is not appropriate.

(e) The claimant has substantiated a loss in some amount but has failed to substantiate a loss in the amount claimed.

(5) *Adjusted dollar value.* If there is no better method of valuing a claimant's loss available, the purchase price of an item may be multiplied by the cost of living index figure in the *Adjusted Dollar Value Guide*, and the resulting number depreciated. This guide should be used only when there is no other readily available means of calculating an item's value. It is not a substitute for lack of substantiation. The 1*996 Adjusted Dollar Value Guide* is reproduced at Table 11-2. A current version of this guide is published annually in the April edition of *The Army Lawyer*.

(6) *DRMO auctions.* For all items purchased at a Defense Reutilization Marketing Office (DRMO) or similar Government auction, the amount paid for repair or replacement of these items will not exceed the purchase price paid to the DRMO. The benefit derived from the reduced purchase price through DRMO is the basis for limiting the maximum payment to the purchase price.

g. Depreciation. The PCA is intended to compensate claimants for only the fair market value of their loss (see AR 27-20, para 11-14). Except in unusual cases, a used item that has been lost or destroyed is worth less than a new item of the same type. The price of a replacement item must be depreciated to award the claimant only the value of the lost or destroyed item. Average yearly and flat rates of depreciation have been established to determine the fair value of used property in various categories; these rates are listed in the ALDG. The listed depreciation rate should be adjusted if an item has been subjected to greater or lesser wear and tear than normal or if the replacement cost the claimant provides is for a used item rather than a new one. The decision to adjust an item's depreciation rate would usually require an inspection of the item by the field claims office. Yearly depreciation is not taken during periods of storage, and normally no depreciation is taken on repair costs or replacement cost for items less than six months old, excluding the month of purchase and the month the claim accrued.

(1) *Depreciating replacement parts.* No depreciation should be taken on replacement parts for damaged items unless these parts are separately purchased or normally replaced during the useful life of the item. For example, television picture tubes and stereo turntable needles are replaced during these appliances' useful lives. The replacement cost for these items should be depreciated. A glass table top is not normally replaced during the useful life of the table, however, and should not be depreciated.

(2) *Depreciating fabric for reupholstery.* Fabric is normally replaced during the useful life of upholstered furniture. When upholstered furniture is reupholstered because the damage is too severe to be repaired and a LOV award is not appropriate, the cost of new fabric is depreciated at a rate of 5 percent per year, measured from the date the item was last reupholstered rather than from the date the item was originally purchased. Labor costs are allowed as claimed. If the estimate does not list separate costs for fabric and labor, the labor costs may be assumed to be 50 percent of the total bill.

(3) *Rapidly depreciating items.* Tires, most clothing items, and most toys rapidly lose their value, as the high depreciation rate for these items reflects. Depreciation should be taken on such items even when they are less than six months old.

(4) *Obsolescence.* Even though items do not depreciate, for purposes of the PCA, during periods of storage, obsolescence should be declared on those items that have lost value because of changes in style or technological innovations.

(5) *Depreciating automobile paint jobs.* The discussion about "Automobile Paint Jobs" (Item No. 10) in the ALDG states, "On complete paint jobs, depreciate both labor and material." On minor paint jobs, do not depreciate labor or material. However, depreciation should be taken on extensive paint jobs, even if every inch of a vehicle is not repainted; the rule of thumb here is substantial "repainting." At a certain point, a paint job is no longer "minor" and should be considered "complete." A repaint of three fenders, the hood and the trunk is not "minor" ; many repair firms would repaint the entire vehicle for almost the same price. The claims examiner's decision to take depreciation on a paint job should depend on whether the claimant has been enriched, not whether the repair firm has been creative in preparing the estimate. To further define the rule of thumb set forth above, a claims office should consider a paint job complete when more than two-thirds of the vehicle are repainted.

(a) A claims examiner who does not depreciate a paint job should consider any PED. Allow the full cost of repair if the PED is minor compared to the new damage. If, however, the old damage is equal to or greater than the new damage, the examiner should deduct an appropriate amount for PED.

(b) An inspection is absolutely essential to determine these factors. Obviously, it is difficult for a claims examiner to determine whether a paint job is complete or whether a deduction for PED is appropriate without inspecting the vehicle. Although some mail their claims, most claimants go to the field claims office in person. When the claimant comes to file a vehicle claim, claims personnel should inspect the claimant's vehicle where possible and photograph or note its condition. This should be a part of every field claims office's claims reception procedures. All photos and notes should be signed, dated, and filed until the claimant presents a claim.

(c) In many instances, an inspection will show that damage to an older car is not worth repairing. For example, replacing a lightly damaged bumper is inappropriate if a vehicle has a significant amount of PED or is nearing the end of its useful life—the appropriate measure for this damage would be LOV.

(d) While LOV usually is not appropriate for damage to paint because the exposed surface will rust, LOV should be considered for minor damage to paint if a vehicle badly needs repainting or is rusting out. It is important to determine early in the claims process whether LOV is appropriate. A claimant who has not been put to the trouble of obtaining a repair estimate for a higher amount is much more likely to be satisfied with a small LOV award. In the counselling process, do not instruct a claimant to obtain a repair estimate if a LOV award is appropriate.

(6) *Military uniforms.*

(a) Normally, no depreciation should be taken on military uniforms and they should not be counted toward the maximum allowance for clothing. T-shirts, underwear, socks, low quarter shoes, gym clothes, and towels are not considered military uniform items, even if they are colored brown, olive drab, or Army grey; for this reason, such items should be depreciated. Military uniform items include military shirts, pants, skirts, jackets, field jackets, wind breakers, raincoats, belts, ties, insignia, gloves, hats, combat boots, and similar items.

(b) In keeping with this general rule, do not depreciate items that are being phased out but are still authorized for use. In valuing such items, however, claims personnel should use the item's purchase price, rather than the replacement cost of an updated (new) item.

(c) Items that have been phased out and are no longer authorized for wear are not considered uniforms, and both depreciation and obsolescence should be taken on such items. Less obsolescence should be taken on phased-out items that are readily adaptable to civilian uses—such as windbreakers—than on items not readily adaptable.

(d) Finally, as an exception to the general rule that uniform items should not be depreciated, military uniform items belonging to persons separating from military service should be depreciated to avoid granting these claimants a windfall. Note, however, that persons leaving active duty and entering a Reserve Component are not separating from military service.

(7) *Depreciation on items with uncertain purchase dates.* Occasionally, claimants do not state, cannot remember, or simply guess when they purchased certain items. Claims personnel should presume that items claimed were purchased in the month and year listed on DD Form 1844. If, however, the purchase dates that a claimant lists appear improbable, the claims examiner first should determine whether the claimant's purchase dates are accurate and credible, and then take appropriate depreciation on the items if they are not. Factors that may indicate inaccurate purchase dates include large numbers of items purchased shortly before pickup; recently purchased but obsolete consumer items, such as 8-track tape decks or Beta system videocassette recorders; expensive items that a claimant who would have had difficulty affording them purchased shortly before the shipment; and items allegedly bought after the pickup date. Also consider the claimant's overall credibility.

(a) If only a few dates or a few relatively inexpensive items appear inaccurate, the claims examiner should resolve doubts in the claimant's favor. Factors to consider in making this determination include the item's useful life; the age of other items the claimant owns, and the claimant's credibility. When doubts persist, the claims examiner should direct the claimant to substantiate purchase dates by providing receipts, cancelled checks, credit card statements, or photographs. Destroyed items should be inspected.

(b) When the purchase dates do not appear accurate and purchase evidence is unavailable, a claims examiner should ask the claimant for more information, for example: Was the item purchased new or used? Was it a gift? Where were you stationed when you got the item? These questions often help a claimant better remember when and how the items were obtained. A claimant often will respond, "I don't remember the exact date, but I was stationed at Fort Hood. I was stationed there from...until..." This response provides enough information for a claims examiner to establish a basis for an adjudication. If, on the other hand, these questions do not help a claimant remember, depreciate the item as though it were at least five years old unless the weight of the evidence indicates that it is older.

(c) A few claimants list false purchase dates to avoid depreciation. If the evidence clearly indicates that the claimant did not only submit inaccurate dates but actually falsified them, the claims examiner should consider denying payment on those items or the whole claim on the basis of fraud (see subpara 11-6*f* above).

(d) The claims examiner must annotate the chronology sheets to reflect the basis for adjusting depreciation because of uncertain purchase dates. Additionally, the examiner must inform the claimant why the action was taken.

h. Substantiation. The PCA, subsection 3721(f)(1), requires substantiation of claims. The key to determining whether a claimant is entitled to compensation is ascertaining whether both the occurrence of the loss as alleged and the value of that loss have been substantiated. There is no set rule on how much proof claimants are expected to provide. As a rule of thumb, they should normally be required to provide a purchase receipt or similar evidence to confirm the value of items for which more than $100 is claimed and to show ownership when claiming missing items that would normally be listed on an inventory but do not appear. A repair estimate normally should be required both for internal damage, especially to electronic items, as well as for any claimed damage greater than $100. Factors to consider include the documentary evidence provided, the timeliness of the report of loss, and the claimant's overall credibility. A claimant who cannot prove that a loss has occurred as alleged is not entitled to compensation. A claimant who proves that the loss has occurred but fails to confirm the value is entitled to an award in some amount.

(1) *Documentary evidence.* Most claims are settled based on the documentary evidence claimants supply to establish that a loss has occurred and the value of the loss. These documents vary considerably in reliability.

(a) Inventories. The inventory is the most important document used in evaluating a household goods or hold baggage claim. A small claim that appears proper may be paid pending receipt of the inventory, but the claim should be reviewed later. PED reflected on the inventory must be considered and claimants should be questioned closely about discrepancies between the inventory description and the item claimed. A claimant whose inventory lists a 13-inch television should not be paid for a 19-inch television! As a general rule, if the inventory is well prepared, detailing carton contents, and the claimant asserts that unlisted, but similar, items are missing, the claimant must provide purchase receipts for these similar items to establish ownership and shipment. For example, if claiming loss of an armchair not listed on the inventory, a claimant is expected to produce at least purchase receipts showing ownership of an armchair to validate the claim. Note, however, the different levels of proof required to substantiate claims for loss of, or damage to, unlisted items: if damage to an armchair not listed on the inventory is claimed, its mere presence in the claimant's new quarters usually suffices to prove that it was shipped. Expensive items, such as jewelry, furs, sterling silver flatware, china or figurines must be listed on the inventory with specificity. Make sure the inventory identifies those expensive items, and it does not merely list a general description of the carton in which these expensive items are located, labeling them as "figurines," "dishes," or "clothes."

(b) Catalogs. A page taken from a catalog shows merely the source of the replacement cost of an item that the claimant asserts is similar to the lost or damaged item. It does not prove that the claimant owned or shipped a similar item

(c) Statements. A claimant's statements may reinforce what the claim form alleges. In settling issues such as proof of tender for items not listed on the inventory, whether an electronic item worked before pickup, or classification of discrepancies on the various claims forms, a detailed written statement by the claimant may help resolve the issues. Claims examiners must recognize early in the adjudication process the need for claimant's statement and they should request it. Statements by friends, relatives, or disinterested persons may also shed light on an issue. However, if a question of credibility arises, the person providing the statement should be interviewed, if possible. The interview may be conducted over the telephone. Record any conversation in the chronology sheet. Do not give weight to a statement if it becomes apparent that another person merely signed something prepared by the claimant.

(d) Purchase receipts and prior appraisals. Purchase receipts and prior appraisals are the best evidence to show the existence and value of a missing item.

(e) Estimates, paid bills, and subsequent appraisals. This is the best evidence to show the replacement or repair cost of items; however, discretion should be exercised. An estimate from a person who is not in the business of repairing or selling that particular type of property is essentially worthless, and an estimate prepared by someone who did not examine the item depends on the claimant's credibility. An estimate stating that the replacement cost for a 19-inch leather briefcase is $120 is worthless if the claimant did not own a 19-inch leather briefcase of similar quality. Sometimes, claimants obtain inflated estimates on stereo equipment, typically from stores that do not specialize in such equipment. Carefully review repair estimates for stereo components. Claims personnel should know which repair firms can be relied on to provide estimates for only new damage and which firms will provide estimates that cover PED. When an estimate raises questions, contact the person providing the estimate.

(f) Police reports. Police reports vary considerably in their helpfulness to the adjudication process. Where the police made an independent inquiry, the report may be used instead of an inspection to assist in determining whether a claimant was negligent, although the claims office still must reach an independent determination and may not merely repeat the police officer's conclusions. If the police merely wrote what the claimant said, the report is valuable only to

determine whether the claimant's story is consistent. Obviously, a claimant is expected to explain any inconsistencies.

(g) DD Form 1841. DD Form 1841 (Government Inspection Report (GIR) (see figures 11-4a and b)) should be prepared, when possible, by transportation personnel within 10 working days after claims personnel request an inspection. Coordination should be made with servicing transportation offices to ensure accurate and timely inspections. A GIR should reflect an actual physical inspection of damaged property by the inspector signing the document, and it should adequately describe damage and its location using correct inventory numbers. Where possible, the inspector should try to distinguish new damage from PED. Because the inspector is recording damage some time after delivery, however, the mere fact that damage is listed on DD Form 1841 is not necessarily evidence that this damage was in fact incurred in shipment. Field claims offices should conduct inspections when they are indicated but transportation personnel are not available.

(2) *Report of loss.* Claimants are expected to report losses promptly. The longer the delay in reporting a loss, the more substantiation the claimant is expected to provide.

(a) Obvious damage or loss not reported at delivery. Claimants are expected to list missing inventory items and obvious damage at time of delivery. Some claimants will simply not notice readily apparent damage. Claimants should provide a written explanation, but if the claimant cannot do so or lacks credibility, payment should be denied based on lack of evidence that the item was lost or damaged in shipment. For example, a claimant whose property was delivered at midnight would be entitled to far more consideration for failing to note that a piano leg was severely gouged than would a claimant who waited 30 days to report a missing sofa, unless the latter claimant could reasonably assume that the sofa was still in NTS or was in the second half of a split shipment.

(b) Later-discovered loss or damage. A claimant has 70 days to unpack and discover loss and damage that is not noticed at delivery. In most cases, later- discovered loss or damage that is reported in a timely manner is deemed to have been incurred in shipment. Exceptions may be made when a claimant promptly reports minor loss and damage but then later reports extensive loss and damage without an adequate explanation. Loss and damage not reported in a timely manner should be considered on a case-by-case basis to determine whether a deduction for lost PCR (see subpara *i* below for a discussion of lost PCR) should be taken. Even if the claimant appears honest, consider whether the damage could have occurred other than in shipment. For example, an apparently honest claimant reports scratches to the leg of a chair nine months after delivery. The chair was in normal use, and the claimant has two children and a dog in the home. There is little evidence to show how the damage occurred, and under the circumstances, the claimant has failed to show that the damage was incident to shipment.

(c) Shipment damage to privately owned vehicles. Persons shipping POVs are expected to list damage on DD Form 788 (Private Vehicle Shipping Document for Automobile) when they pick up the vehicles. Obvious external damage that is not listed may not be payable. Damage the claimant could not reasonably be expected to notice at the pickup point should be considered if the claimant reports the damage to claims personnel within a short time, normally a few days, after arriving at the installation.

(d) Prompt reporting of other types of loss. Occupants should report damaged quarters property to housing authorities within a few days. Thefts and vandalism should normally be reported to police authorities within 24 hours. Other incidents should be viewed in light of whether a reasonable person would have reported them.

(3) *Credibility.* Most claimants are honest and attempt to claim only what is due them. These persons are entitled to the presumption that their claim is correct, although it may not be. Some claimants lack credibility and their claims require careful scrutiny. Factors indicating that a claimant's credibility is questionable include amounts claimed that are exaggerated in comparison with the cost of similar items, insignificant or almost undetectable damage, very recent purchase dates for most items claimed, and statements that appear incredible. Such claimants should be required to provide more evidence than is normally expected. Lacking this proof, claims by such persons should be severely reduced or denied altogether. Where evidence of fraud exists, follow the procedures set forth in paragraph 11-6*f*.

(4) *Inspections.* Whenever a question arises about property damage, the best way to determine a proper award is to examine the nature of the damage. For furniture, it is advisable to examine under surfaces and the edges of drawers and doors to determine whether the material is solid hardwood, fine quality veneer over hardwood, veneer over pressed wood, or other material. If conducting the inspection at the claimant's quarters, claims personnel should determine the general quality of property. They should direct claimants to bring in vehicles and small valuable items such as figurines for inspection, and should conduct inspections on all large claims. Observations by repair firms and transportation inspectors are very valuable, but sometimes claims personnel must leave the office and inspect items themselves, to reduce both the number of requests for reconsideration and fraudulent claims. A hands-on inspection may be invaluable in enabling claims personnel to understand the facts.

i. Lost potential carrier recovery. Lost PCR is recovery money the Government is not entitled to collect from a carrier or warehouse firm because the claimant failed to provide timely notice. Absent "good cause," lost PCR is deducted from the amount that would otherwise be payable to the claimant. (See AR 27-20, para 11-21*a*.)

(1) *Timely notice.* So long as the carrier provides the claimant with DD Form 1840 at delivery, the carrier is entitled to timely notice of all loss and damage occurring in shipment. Claimants are required to list specific loss and damage (with inventory numbers) either on DD Form 1840 at delivery or on DD Form 1840-R within 70 days of delivery. When damage is listed on DD Form 1840-R, the claimant must turn this form in to a claims office (or a Navy transportation office) within 70 days of delivery. The claims office, in turn, must review the form and send it to the carrier, keeping a signed file copy, within 75 days of delivery; pursuant to the Military-Industry Agreement on Loss and Damage Rules (see figure 11-5) this 75-day period may be extended if the claimant is hospitalized or on TDY (see subpara11-21*g*(2)). For a DD Form 1840-R received between the 70th and 75th day, the claims office will try to send the form within 75 days, but the claimant will be penalized if this cannot be done. Claims offices will expeditiously dispatch the DD Form 1840-R if it is presented between the 70th and 75th day. Claims office should also promptly dispatch the DD Form 1840-R even if it is submitted after the 75th day. Dispatching such a "late" DD Form 1840-R may enable the Government to recover against the carrier, if the claimant was hospitalized or on TDY. In addition, dispatch of a "late" DD Form 1840-R may help locate missing items.

(2) *Failure to provide timely notice.* Every claim received with possible carrier recovery must be screened for timely notice as soon after receipt as possible, even if permission to transfer the claim has been obtained. When the claimant has failed to provide timely notice, the claim file must reflect that the claims office contacted the claimant, preferably in writing, to determine his or her reason for not complying. Such contact may be omitted only when failure to provide notice was obviously due to claims or transportation personnel. The claimant should be directed to reply within a given period, preferably 14 days. The approval or settlement authority must then determine whether the claimant had good cause (as defined below) for failing to provide timely notice and whether lost PCR will be deducted on the claim. In the absence of good cause, the entire amount that could have been recovered will be deducted on an item-by-item basis. No deduction is made on items for which the claimant's failure to provide notice did not cost the Army its recovery right. While the Army must be in a position to enforce carrier liability, the PCA's underlying purpose is to maintain morale by compensating personnel for losses incident to service. Deductions made mechanically do not further this purpose.

(3) *Good cause.* When good cause is shown, no deduction is made for lost PCR. A circumstance "directly contributes" to a

claimant's failure to provide timely notice when the claimant cannot reasonably be expected to comply as a result; an approval or settlement authority may find good cause and waive deduction of lost PCR only when one of the following circumstances directly contribute to the claimant's failure to provide timely notice.

(a) Officially recognized absence or hospitalization. An officially recognized absence (such as TDY or off-post training exercises) that results in the claimant's absence from his or her official duty station for a significant portion of the notice period, or hospitalization of the claimant for a significant portion of the notice period, is good cause. Generally, when an absence or hospitalization is not unexpected or lengthy (normally in excess of 45 days), or does not overlap the end of the notice period, it does not directly contribute to the claimant's failure to provide timely notice.

(b) Substantiated misinformation by Government personnel. Substantiated misinformation concerning notice requirements that claims or transportation personnel give the claimant is good cause. Allegations of misinformation should be considered in light of all attendant circumstances, including age, experience, and credibility of the claimant. Misinformation does not directly contribute when the claimant did not rely or should not have relied on the misinformation. When a claimant makes a good faith effort to comply with notice requirements by presenting a partially completed DD Form 1840-R to claims personnel who fail to instruct the claimant properly on correcting errors, the claimant may be deemed to have been misinformed.

(4) *Waiver by USARCS.* When the approval or settlement authority believes there was good cause for a claimant's failure to provide timely notice in circumstances other than those listed in 3(*a*) or 3(*b*) above, he or she will obtain a determination from USARCS, either by telephone or by forwarding the file with a personnel claims memorandum, prior to the final adjudication of the claim. Particular care should be taken to ensure proper consideration for young, first-move claimants.

j. Mobile homes. Mobile homes present special problems. Most mobile homes, particularly larger ones, are not built to withstand the stresses of multiple or long moves. While encouraging carriers to use extra axles when necessary may reduce the incidence of damage, mobile home shipments often result in large, uncompensated losses for soldiers and present unique difficulties for claims examiners. Because of the many hazards associated with moving them, field claims offices must coordinate with their servicing transportation offices to ensure that soldiers who ship mobile homes are advised of both the risk of damage and of their own responsibilities. Field claims offices must also ensure that the transportation office does not authorize shipment of a mobile home that is unfit for shipment.

(1) *Transportation counseling before shipment.* Soldiers should be advised that—

(a) They are responsible for placing the mobile home and its tires, tubes, frames, and other parts in fit condition to ship and for loading the mobile home to withstand the stresses of normal transportation. AR 27-20, paragraph 11-5*e*(1), discusses an owner's responsibility to ensure a mobile home's fitness for transport. Soldiers will not be compensated for any damage resulting either from a latent defect in the construction of the mobile home (except when the carrier is aware of the defect and the soldier is not) or from their failure to place the mobile home in fit condition to ship.

(b) They are responsible for paying for necessary repairs en route. Such repairs can amount to several hundred, even several thousand, dollars. Some mobile homes have been left in storage at the soldier's expense hundreds of miles from destination because the owner could not afford the necessary repairs.

(c) They are responsible for resealing the roof and weatherproofing the mobile home after delivery. A claim for these costs or any damage caused by the soldier's failure to perform it is not payable.

(d) They are responsible for removing obstructions, grading the roadway, or otherwise preparing the site to make it accessible for the carrier's equipment at both origin and destination.

(e) Because of the risk that damage for which they cannot be compensated will result, soldiers should consider purchasing private insurance coverage. A soldier anticipating shipment may purchase IRV (see para 11-21*b*) only for property shipped inside the mobile home; in addition, most mobile home carriers will sell some type of insurance coverage for damage to the mobile home itself. Often, when a mobile home has been moved repeatedly, the risk of uncompensated loss is so great that the soldier should consider selling the mobile home rather than attempting to ship it.

(2) *Inspection before shipment.* In all instances, transportation personnel should inspect the mobile home and record defects before shipment. In particular—

(a) A mobile home containing a soldier's furniture and other household goods should not be shipped. The maximum safe shipment weight of appliances and additional property is very low. An overweight mobile home tends to blow its tires and break apart during shipment. Advise soldiers well before shipment that they will need to make other arrangements for shipping such items at their own expense.

(b) A mobile home with a defective steel frame or tow hitch should never be shipped.

(c) Claimants should check and record the condition of all tires. Many carriers submit huge bills for "blown" tires during shipment, and the owner is responsible for the cost of replacing them.

(d) Structural changes to the home's interior, particularly those that involve cutting through beams, should be examined closely, and a civil engineer should be consulted. It is probably not safe to ship a mobile home in which the claimant has altered the interior framing.

(3) *Latent defects.* Carriers may attempt to escape liability by attributing all damage to latent manufacturing defects. Any loss due to a latent mechanical or structural defect is not considered incident to service. When an engineer's report or other evidence shows that a defect rather than the carrier's failure to exercise due care caused the damage, the following rules apply:

(a) If both the carrier and the claimant knew of, or should have known of, the defect and if the claimant took no corrective action and shipped the mobile home, the claim is not payable.

(b) If the carrier knew of, or should have known of, the defect and the claimant could not reasonably have been expected to know of it, the claim is payable and carrier liability should be pursued.

(c) If neither the claimant nor the carrier could reasonably be expected to know of the defect, the claim is not payable.

(4) *Substantiation of a claim.* Before adjudication of such claims, claims personnel should inspect the mobile home and obtain the following evidence, if possible:

(a) DD Form 1800. DD Form 1800 (Mobile Home Inspection Report) shows the condition of the mobile home at origin before shipment. The installation transportation office (ITO) prepares this document, which is signed by the soldier, the carrier's representative, and the Government inspector. A claim should not be paid unless the file contains this form. At destination, damages noted at delivery should be annotated and the form dated and signed by the driver and the soldier. Damages may be listed on this form or on DD Form 1840 at delivery.

(b) DD Form 1863. DD Form 1863 (Accessorial Services—Mobile Home) lists all services the carrier is required to provide, including line-haul, payment of tolls, over dimension charges, permits and licenses, provision of anti-sway devices, axles with wheels and tires (rental and replacement), temporary lights, and escort services. All costs and services may not appear on the GBL.

(c) DD Form 1840/1840-R. Later discovered damage must be listed on DD Form 1840-R and dispatched to the carrier within 75 days of delivery. Timely notice on mobile home shipments differs slightly from notice on other personal property shipments. Item 306 of the carrier's Mobile Home Rate Solicitation states that, "Upon delivery by the carrier, all loss of, or damage to, the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Later discovered loss or damage, including personal property within the mobile home, will be noted on DD Form 1840-R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt." See Item 310 of the

Mobile Home Rate Solicitation for a description of DD Forms 1840 and 1840-R.

(d) DD Form 1412. The carrier is required to prepare DD Form 1412 (Inventory of Items Shipped in House trailer) in coordination with the soldier.

(e) DD Form 1841. If a Government representative does not inspect the mobile home at delivery, the claimant or field claims office should request an inspection. If the TO cannot inspect it, the field claims office should make every effort to inspect.

(f) Driver's statement. The mobile home carrier should be requested to provide, within 14 days, a statement from the driver of the towing vehicle explaining the circumstances surrounding the damage as well as detailed travel particulars. If the mobile home carrier does not respond, the file should be so annotated. Such statements are often self-serving and should be reviewed critically to determine whether the carrier is attributing damage to a latent defect.

(g) Owner's statement. The claimant should provide a statement on the age of the mobile home, the date and place it was purchased, any prior damage or repairs, all prior moves, and prior claims. Claims personnel may contact USARCS to check prior claims history (ATTN: JACS-PCR).

(h) Estimates of repair. The claimant should obtain a repair estimate from a firm in the business of repairing rather than selling mobile homes. The estimate should list the approximate value of the home before and after damage, a breakdown of the repairs needed and their cost, itemizing parts and materials separately from labor, and the cause of damage. Small claims procedures are not appropriate if there is a possibility the damage was caused by a latent defect.

(i) Engineer's statement. Where the facts indicate the possibility of a latent defect, claims personnel should assist the claimant in obtaining a statement explaining the damage from a qualified engineer or vehicle maintenance professional who is an expert on mobile homes. Where possible, the field claims office should coordinate in advance with facilities engineers or with local Reserve units that have engineering expertise on conducting such inspections.

(5) *Compensable damage.* In adjudicating the claim, the claimant may be paid for loss of, or damage to, the mobile home except when the damage is due to either a latent defect, the soldier's failure to place the mobile home in fit condition to ship, or the soldier's failure to reseal the roof. The soldier may also be compensated for the reasonable costs of repair estimates provided by firms in the business of mobile home repair and for opinions prepared by qualified engineers. The claimant may not be compensated for costs of services the carrier failed to perform or performed improperly, or for other incidental expenses; claims personnel should refer the claimant to the ITO. Such costs for services (listed on DD Form 1843 and the GBL correction notice) include—

(a) Escort or pilot services costs, ferry fees, tolls, permit fees, over dimension charges, or taxes.

(b) Storage costs or parking fees en route.

(c) Expando charges and charges for anti-sway devices, brakes and brake repairs, or adding or replacing axles, tubes, or tires.

(d) Wrecker services.

(e) Connecting or disconnecting utilities.

(f) Blocking, unblocking, or removing or installing skirting.

(g) The cost of separating or reassembling and resealing a double-wide mobile home.

(6) *Carrier liability and attempted waivers.* In the absence of additional coverage, the carrier's maximum liability for personal property shipped with the mobile home is $250. The carrier is fully liable for damage to the mobile home itself. Carriers are also liable for damage caused by third parties with whom they contract, such as wrecker services. Some carriers may still try to obtain waivers from the soldier. A waiver signed by the soldier, however, is not binding on the United States. The Army is the contracting party, and the owner has no authority to sign a waiver agreement or any other document purporting to exempt the carrier from the liability imposed under the GBL.

k. Sets. Normally, when component parts of a set are missing or destroyed, the claimant is entitled to only the replacement cost of the missing or destroyed components. In some instances, however, a claimant would be entitled to replacement of the entire set or to additional LOV. Some claimants will assert that all the furniture pieces in a room are part of a set. However, pieces that are sold separately are ordinarily not considered parts of a set, and pieces that merely complement other items, such as a loveseat purchased to complement a particular living room table, are never considered part of a set. When a part of a set is missing or destroyed and cannot be replaced with a matching item or, after necessary repairs, no longer matches other component parts of the set, the following rules apply:

(1) *The set is no longer useful for its intended purpose.* When a set is no longer useful for its intended purpose because component parts are missing or destroyed, the entire set may be replaced. Note that several firms will match discontinued sets of china and crystal, and that replacement of the full set is not authorized if replacement items can be thus obtained. The value of china and crystal sets is not destroyed unless more than 25 percent of the place settings are unusable. Exceptions may be made if the claimant demonstrates a particular need for a certain number of place settings because of family size or social obligations. In those rare instances when an entire set is replaced, the claimant will be required to turn in undamaged pieces to the DRMO or hold them for salvage by the carrier.

(2) *The set is still useful for its intended purpose.* When missing pieces cannot be matched and there is a measurable decrease in the set's value but it is still useful for its intended purpose, the claimant is awarded the value of the missing pieces plus an amount for the decrease in value of the entire set. The LOV award will vary depending on the exact circumstances.

(3) *Mattresses and upholstered furniture are re-covered.* During normal use, a mattress and box spring set is covered by bedding. Such a set is still useful for its intended purpose even if one piece of the set must be reupholstered in a different fabric. No award will be made for the undamaged piece. When one piece of a set of upholstered furniture sustains damage that cannot be repaired or redone in matching fabric, claims personnel should consider reupholstering the entire set or only the damaged piece and paying LOV. Factors to consider include the set's value, any PED, the nature of the current damage and the extent to which the claimant's furniture is already mismatched.

l. Salvage value. Whenever a claimant has been fully compensated for a destroyed item that still has some value, the claimant has the option of either retaining the item and taking a deduction for its salvage value or turning in the item to the Government or to the carrier if the carrier will fully reimburse the Government.

(1) *Maximum allowances.* A claimant who will not be fully compensated for an item because its claimed amount exceeds the maximum allowance is not required to turn in the item to the DRMO. However, if the carrier recovery efforts result in reimbursement of the item's full value, the carrier may choose to pick it up.

(2) *Turn-in to the carrier.* On IRV shipments, the carrier may choose to pick up items for which it will fully reimburse the Government. Pursuant to a Joint Military-Industry Memorandum on Salvage (figure 11-6, the "Salvage MOU"), claimants may discard hazardous items such as mildewed dry goods or broken glass but must keep items such as figurines and crystal with a per item value of more than $50. Field claims offices will instruct claimants to retain other items for at least 90 days after settlement to allow the carrier to pick them up. The claimant should be instructed to contact the field claims office for permission before disposing of the items. Pursuant to the Salvage MOU, the carrier will take possession of salvage items no later than 30 days after receipt of the Government's claim against the carrier. The 30-day period will not end until the period for the carrier's right to inspect the property has expired. Field claims offices must identify files in which the carrier is entitled to salvage and must process these claims for recovery action within 30 days so that the claimant does not dispose of salvageable items before the end of the period allotted for carrier

pickup. Field claims offices must ensure that their written instructions to the claimant discuss salvage.

(3) *Turn-in to the Government.* On claims that do not involve IRV, if the claimant does not choose to retain the items and accept a reduction for salvage value, the CJA or claims attorney will require the claimant to turn in the items to a DRMO. Normally, the amount that the Government may obtain from selling such items is very low. A CJA or claims attorney who determines that the salvage value is less than $25 may advise the claimant to dispose of the items by other means, either discarding them or donating them to charity. Claimants may also be directed to make alternative disposition of items a particular DRMO will not accept, but claims personnel must note this alternative disposition on the chronology sheet. Claims personnel may not divert such items to personal use or furnish Government offices with them. In determining whether an item has salvage value, consider both its size and the distance the claimant must travel to turn it in. Claimants must make their own arrangements to transport salvageable items before payment. Claims personnel should ask the claimant's command to make transportation available to assist the claimant in appropriate cases, particularly when items are large or bulky. Normally, it is unreasonable to expect a claimant to turn in a piano or refrigerator to the DRMO without assistance. Sound claims practice prohibits requiring a claimant living far from a DRMO to turn in an item of relatively slight value.

(4) *Failure to exercise salvage rights.* If the carrier states that it does not intend to exercise its salvage rights to high value items on IRV shipments, such as figurines or schranks, and the item has salvage value greater than $25, field claims offices will direct the claimant to turn in the item to DRMO. Otherwise, the claimant would be unjustly enriched by receiving replacement value for the item and keeping it as well. Be sure to annotate the chronology sheet on the action taken. If turn-in to DRMO is unrealistic, the CJA or claims attorney should discuss other solutions with USARCS.

(5) *Practice pointers.*

(a) Claimants often delay turning in items and some claimants decide to retain items they intended to turn in. Some offices hold claims open for inordinate lengths of time, waiting for the claimant to act. Other offices mistakenly settle claims too quickly, before the claimant has had an opportunity to turn in an item, and then must reopen the file on reconsideration to pay the claimant the salvage value deducted from the "final" payment.

(b) Except in unusual circumstances, claims personnel should not pay a claim in full and then ask the claimant to turn in items for salvage. Nor should claims personnel hold a claim open for months, waiting for a claimant to turn in an item as agreed. On the other hand, it is equally inappropriate to pay a claimant based on retention of an item and later tell that same claimant that entitlement to further payment is contingent upon turn-in. Claims personnel must afford the claimant an opportunity to decide whether to retain items before the claim is settled.

(c) If claimants want to turn in items, the claims office should provide them with the necessary DRMO forms and inform them that if they do not turn in the item and return the paperwork to the claims office within a stated time period—usually 14 calendar days—the office will assume that the claimant wants to keep the item and will settle the claim after deducting a stated amount for salvage value. This approach minimizes problems associated with turn-in.

m. Substantiating the loss of original audio and video tapes. Both commercially recorded (prerecorded) and home-recorded video or audio tapes are often stolen from shipments. Under the PCA, a claimant who cannot establish loss of an original, prerecorded tape is entitled only to the depreciated value of a blank tape. Because the PCA authorizes compensation only for actual loss, such claimants are not entitled to additional compensation for any time and trouble involved in copying such tapes, or for the cost of renting a tape to copy.

(1) The substantiation required to establish that missing tapes were prerecorded depends on the circumstances. Claims personnel should note the basis for their decision on the chronology sheet. A soldier claiming the loss of two original prerecorded cassette tapes and forty-five copies is not expected to provide substantiation; on the other hand, a soldier who claims the loss of fifty prerecorded tapes is expected to provide purchase receipts or other evidence.

(2) Similarly, a soldier claiming the loss of expensive computer software is normally entitled to the depreciated value of blank floppy disks unless it is established that the missing software was commercial by evidence such as the original software documentation, registration information, purchase receipts or other information. Even if the claimant establishes that the software is commercial, the claimant is entitled to be compensated for only the amount the manufacturer charges to reissue the software to registered users. Most software manufacturers will reissue lost software to a registered user for a nominal fee.

n. Claims for inherited and used property. Claimants will sometimes claim the catalog price for new items to replace missing or destroyed items that they inherited or acquired in used condition. Frequently, they have no true knowledge of when the item was manufactured or originally purchased.

(1) As a general rule of thumb, and in the absence of specific evidence to the contrary, an item acquired in used condition may be deemed to be five years old at the time the claimant acquired it. Claims personnel should modify this rule if its application will result in an injustice. In doing so, claims personnel should consider the item's useful life as well as the possibility of reducing or increasing the depreciation rate if the item has been subjected to either less than or more than average usage.

(2) In Germany, many soldiers acquire items that German families leave outside for trash pickup; this practice is known as "junking." A small F & R award is normally appropriate for loss or damage to such property.

o. Recreational vehicles, lots, stables and boat marinas. Many installations have storage lots where soldiers may park recreational or nonoperational vehicles, stables where soldiers can store their riding tack, or marinas where soldiers can moor boats. Inevitably, some property stored at such facilities is stolen, vandalized, or otherwise damaged.

(1) Claims for losses occurring at recreational and nonoperational vehicle lots, stables, and marinas should be denied whenever soldiers storing property at these facilities have been advised that because they are not covered under the PCA, they should consider purchasing private insurance or making storage arrangements off-post. Although claims may be paid when soldiers have not received such guidance, these facilities exist primarily as conveniences, and losses of property stored at them normally should not be considered losses incident to service.

(2) Field claims offices should ensure that commanders post signs at such facilities informing users that the PCA does not authorize compensation for loss of, or damage to, personal property stored there and that they should consider purchasing private insurance. Where appropriate, redraft registration or waiver forms that soldiers sign to state this warning clearly.

p. Poor repairs provided by repair firms. A claimant is entitled to the fair repair cost of damage incurred incident to service. A claimant is not entitled to any additional amount to cover inadequate repairs by the firm he or she chose to use, even if the claims office listed the repair firm on a claims instruction packet. Additional repair costs occasioned by inadequate repairs are consequential damages and are not compensable under the PCA. Similarly, a claimant is not entitled to payment for loss of, or additional damage to, an item while it is in the repair firm's possession. If, for example, someone stole a bicycle damaged in shipment from the repair shop, the CJA or claims attorney may compensate the claimant for the cost of repairs, not for the value of the bicycle.

(1) Claimants who allege inadequate repairs are entitled to additional compensation only if they demonstrate that the original estimate of repairs understated the true cost of repairing the item—for example, by failing to include the cost of repairing certain hidden damage. In determining whether additional payment is appropriate, claims personnel should contact the repair firm and may direct the

claimant to obtain another estimate. An approval or settlement authority may allow additional compensation only if evidence shows that the original allowance was insufficient to repair the original, shipment-related damage to the item.

(2) For this reason, the current list of repair firms that field claims offices are required to provide to claimants must state that inclusion of a repair firm does not provide any warranty or guarantee of the quality of service rendered by that firm. Field claims offices should, of course, remove from their lists firms that consistently provide inadequate repairs. A claimant who is dissatisfied with the quality of repairs provided by a repair firm may have legal recourse against that firm. Claims personnel should advise those claimants to consult a legal assistance attorney in these instances.

(3) Additionally, a claimant may choose a repair firm selected by a carrier rather than file a claim. In some instances, these firms provide inadequate repairs. When a repair firm selected by a carrier provides repairs that the CJA or claims attorney determines are inadequate, claims personnel should advise the carrier of this finding and state that it will be fully liable for the damages unless and until the carrier's repair firm makes adequate repairs.

q. Describing a lost or damaged item. DD Form 1844, block 7, "Lost or Damaged Items," directs the claimant to "describe the item fully, including brand name, model and size. . ." Field claims offices should instruct claimants orally and in their written claims instructions to provide descriptive details, especially for major appliances—such as audio and video equipment, washers, dryers and refrigerators. This description should include the information discussed on the DD Forms 1840/1840-R and, where possible, provide the model number for the major appliance. If the claimant does not have or cannot provide this information (such as for missing items or mail-in claims without information), field claims offices must decide if they can adjudicate the claim and conduct successful recovery without it. Requiring this additional information should not burden claimants, but it does enable field claims offices to better determine the accuracy of purchase prices, replacement costs, and correct amounts.

11–15. Payable incidental expenses

a. Expenses associated with repair or replacement.

(1) *General.* Certain expenses are necessary to repair or replace personal property, and payment has been authorized on the theory that these expenses are so closely tied to the actual item that they are a measure of the amount of damage itself. These expenses are payable after the claimant has paid them or become obligated to pay them. The best evidence of this is a paid bill.

(2) *Drayage.* Drayage is the cost of having property transported to or from a repair shop or of shipping replacement items or parts. Normally, drayage costs are incurred when the property is actually transported. Reasonable drayage costs are compensable. If a claimant incurs unnecessary or inordinate drayage costs, only reasonable costs should be allowed. Drayage costs up to $50 per claim can be allowed before they are incurred, but payment in excess of this will require the claimant to substantiate that the cost has been incurred. (This $50 limit is combined with the limit for sales tax; the maximum per claim that can be paid for both expenses combined, prior to their being incurred, is $50. See subpara *a*(4) below.)

(3) *Estimate fees.* An estimate fee is a fixed cost charged by a person in the business of repairing property to provide an estimate of what it would cost to repair property. An estimate fee should not be confused with an appraisal fee. Claims personnel should examine estimate fees higher than $50.00 with great care to determine whether they are reasonable. A person becomes obligated to pay an estimate fee when the estimate is prepared. A reasonable estimate fee is compensable if the firm will not credit it toward the cost of repair that the owner has authorized repair. If an estimate fee will be credited toward the cost of repair, the estimate fee is not compensable, whether or not the claimant chooses to have the work done. When an estimate fee is claimed, the claim file must reflect whether the fee is to be credited. For example, at the request of claims personnel, a claimant obtains estimates for repair of a table and sofa from a furniture repair firm and a reupholsterer, respectively, for $30.00 each. Both repair firms are contacted, and both state that they will credit the fee if they are hired to do the work. The table, however, cannot be repaired. The estimate fee for the table is compensable; the estimate fee for the sofa is not.

(a) Field claims offices may pay for repair or replacement estimate fees even if the items ultimately are not compensable. In practice, field claims offices have claimants obtain estimates to substantiate the loss or damage, and claimants, for the most part, do not know whether or not the damage or loss was caused incident to service. A classic example is the claimant whose stereo receiver does not work. The claimant does not know why it is not working, and there is no external damage. The claimant then obtains an estimate of repair and the repair firm states that the damage is not shipment-related. The claimant should not bear the loss of the fee paid to the estimator.

(b) Whether to pay the estimate fee will be determined based on the facts of each claim. If a field claims office determines that the claimant knew that the damage claimed was not caused incident to service (for example, evidence indicates that the claimant knew that the claimed damage to an item existed before shipment of the household goods) or the item is never compensable for policy reasons (as a radar detector is not), then it may not be appropriate to pay the estimate cost.

(4) *Sales tax.* Sales tax or value added tax, such as the German Mehrwertsteuer, is compensable after it is incurred unless the claimant could have avoided paying the tax by purchasing through the local Morale Support Activity or from the Army PX for the same or lower price. Sales tax up to $50 per claim can be allowed before it is incurred, but payment in excess of this will require the claimant to substantiate that the tax has been paid. (This $50 limit is combined with the limit on drayage; the maximum per claim that can be paid for both expenses combined, prior to their being incurred, is $50. See subpara *a*(2) above.)

b. Fees for obtaining certain documents. The fees for replacing birth or marriage certificates, college diplomas, passports, or similar documents may be allowed if the original or certified copy is lost or destroyed incident to service. In general, compensation will be allowed for replacing only documents with a raised seal that are official in nature. No compensation will be allowed for documents that are representative of value, such as stock certificates, or for personal letters or records.

11–16. Property recovered

a. When a carrier or contractor informs the Government that missing property has been located after payment of the claim, the carrier or contractor should be directed immediately to hold the property pending disposition instructions.

b. The claimant should be contacted and advised of the option to accept or reject the property.

c. If the claimant furnishes a written statement disclaiming further interest in the property, the approval or settlement authority should have the property inspected to detect any possible fraud and determine what disposition would be most advantageous to the Government. In every instance, payment of the carrier's full liability will be required.

(1) On IRV shipments, advise the carrier that the Government waives further interest in the property (unless the amount paid on the claim far exceeds the carrier's liability at $1.25 times the net weight of the shipment). Disposition of the property is at the carrier's or contractor's discretion.

(2) On non-IRV shipments, advise the carrier or contractor to deliver the property to the DRMO nearest the area where it is being held, unless it clearly appears that the carrier would be entitled to receive more money for completing delivery than the Government could expect to realize from sale of the property. Direct the carrier or contractor to provide the field claims office with a copy of the DD Form 1348-1A (Issue Release/Receipt Document) or DA Form 3161 (Request for Issue or Turn-In) it will receive as a receipt. Include this copy of the turn-in receipt in the claims file.

(3) If it appears that the carrier would be entitled to receive more

money for completing delivery of the property (after deduction of unearned freight) than the Government could expect to realize from sale of the property, the carrier or contractor should be advised that the Government waives any further interest in the property. This normally occurs only if the entire shipment is lost. Claims personnel should contact the Transportation Operations Division at Defense Finance and Accounting Service (DFAS) for guidance in determining what the carrier would be paid for completing delivery.

11–17. Companion claims

When two or more claims arise out of the same incident (such as a theft, storm, fire, or act of vandalism), one claim may be designated the master file. To avoid unnecessary duplication, that file, rather than its companion files, will contain the investigation report. List each companion claim number on the chronology sheet. The computerized claims record and the chronology sheet of each companion claim will list the master file number.

11–18. Emergency partial payments

Frequently, a claimant needs money immediately to repair or replace necessary damaged or destroyed property, such as a crib. In such instances, the claims office may make an emergency partial payment that allows the claimant to repair or replace the property. This step reduces the hardship to a claimant who has sustained a large loss or one that is difficult to substantiate fully. But such payment is not granted to relieve hardship unconnected with the claimant's loss. If the amount claimed will exceed a CPO's settlement authority, that office will contact the area claims authority by telephone for permission to make the emergency partial payment. The Chief, Personnel Claims and Recovery Division, may approve emergency partial payments over $2,000.

a. Procedure. The claimant will complete DD Form 1842 and at least one DD Form 1844 listing items for which immediate compensation is sought, and will provide whatever evidence is needed for payment of these items. If the claims office determines that a hardship exists and that, based on documentation, the claim is clearly payable in an amount equal to or exceeding the proposed emergency partial payment, the field claims office will execute an acceptance agreement with the claimant and arrange for the claimant to receive an immediate cash payment.

b. Acceptance agreement. The field claims office will keep in the file one copy of a signed and dated acceptance agreement in the following format and give one copy to the claimant:

> I, _____, agree to accept the sum of $_____ as a partial payment to relieve immediate hardship. I understand that this sum will be deducted from any award made in final settlement of my claim. I understand that if I do not provide the documentation needed to complete my claim within ____ months, my claim will be processed for final settlement.

11–19. Personnel claims memorandum

a. Personnel claims memorandum of opinion. The claims officer, CJA or claims attorney must draft a memorandum of opinion addressed to the SJA for every claim denied or routed through the SJA for every claim transferred for action to a higher settlement authority. The memorandum will be arranged as set forth in subparagraph *b* and must sufficiently and clearly detail the basis for the action recommended.

b. Necessary information. Include the following information in the memorandum:

(1) *Claimant's name and address.* The claimant's rank or pay grade, and the claimant's status as a NAF employee, Red Cross employee, Army retiree, ROTC cadet, reservist on active duty, foreign national employee should be identified. This information is needed to determine that the claimant is a proper party claimant.

(2) *Date and place of the incident giving rise to the claim.* Describe the nature and location of the incident. It is not sufficient to list a building number without further elaboration. The memorandum should clearly state whether the incident occurred on or off the military installation. For shipment claims, the place of the incident is the residence where the property was delivered.

(3) *Amount of claim, date it was filed, and the date reconsideration was requested.* The CJA or claims attorney should also explain any excessive delays in settling the claim or taking action on the request for reconsideration.

(4) *Chapters under which the claim was considered and a brief description of the incident or the issues raised by the claimant on reconsideration.* State the nature of the claim and the chapter or chapters of AR 27-20 under which it is being considered.

(5) *Facts.* Set forth in detail the relevant facts.

(6) *Opinion.* Provide all factual or legal bases supporting the recommended action. A claimant's negligence should not be cited as the sole basis for a disapproval recommendation when other valid bases exist. Any analysis of the claimant's negligence should state what conduct was expected of the claimant under the circumstances. A summation that the claimant was negligent without further elaboration is of little use, and it is wise to consider both the standard of care and proximate cause.

(7) *Recommended action.* Specify the action recommended. If the claim is deemed payable, state the specific amount recommended. On reconsideration, the office should pay any amount within its authority deemed meritorious and forward the claim with the recommendation that no further payment be made.

11–20. Reconsideration

a. General. Claims personnel have a duty to ensure that claimants are compensated fairly for losses incident to service. The reconsideration process is an opportunity to continue a dialogue with a dissatisfied claimant, and claims personnel should be sensitive to claimants' assertions of unfair treatment. They must fully explore any indication that the claimant's grievance is well-founded and correct any error.

b. Who may request reconsideration. The claimant, the claimant's authorized agent or legal representative, or a spouse acting on the claimant's behalf may request reconsideration. A claimant's complaint made through a Member of Congress that the settlement was inappropriate should be treated as a request for reconsideration.

c. Effect of a settlement agreement. Since a settlement agreement is used to settle a personnel claim only when the claim is cognizable under another claims statute, the execution of a settlement has no effect whatsoever on a claimant's right to request reconsideration under the PCA.

d. Time limitations on requests for reconsideration. No relief will be granted on reconsideration more than 60 days after the date the original action was taken, but the head of an ACO may waive this time limit in exceptional cases. Claims personnel should ask the claimant to submit a written explanation for requesting reconsideration beyond the sixty day time period. The CJA or claims attorney should submit a recommendation in writing to the head of an area claims office. If the claimant delays submitting evidence for a long time without good cause, the doctrine of laches may bar relief. Laches is a legal doctrine preventing someone from pursuing a legitimate claim after an unexplained and inordinate delay, in other words, "sitting on one's rights."

e. Request for return of files. If the claim file has been forwarded for centralized recovery or retirement, the field claims office normally must request its return from USARCS before taking action on reconsideration. In such cases, the field claims office should request the claim file in writing. If the file is lost, it must be reconstructed as thoroughly as possible; mark the new file, "RECONSTRUCTED FILE," in red on the outside cover and use the same claim number so that it will match the original if this is ever located. If the claimant asks for payment of drayage that was not yet incurred when the claim was settled, the field claims office may pay the drayage to facilitate settlement and forward a copy of the voucher to USARCS with a personnel claims memorandum of

opinion explaining the action taken and asking that it be incorporated into the claim file.

f. Reconsideration without a written request. Reconsideration without a written request is entirely at the discretion of the field claims office. If there is an error or miscalculation, or if the claimant provides additional information, the field claims office may reopen the claim and pay the claimant an additional amount without requiring the claimant to submit a written request. This is a particularly appropriate way to pay drayage incurred after settlement. The chronology sheet and other documents in the file must reflect the basis for any additional payment. If a claimant expresses dissatisfaction orally and the field claims office cannot justify an additional payment, it should not reopen the claim but instead advise the claimant to submit a written request clearly stating the factual or legal basis for relief.

g. Reconsideration upon a written request.

(1) *General.* An approval or settlement authority must act on a written request for reconsideration. The field claims office should encourage the claimant to fully explain the basis for requesting relief and fully explore any factual issues. Field claims offices must act on requests that do not present new information or a factual or legal basis for relief but, in these cases, they should advise claimants that such requests are normally denied.

(2) *Action by the original approval or settlement authority.* The original approval or settlement authority may modify the original action, if he or she believes this to be appropriate. A settlement or approval authority may take final action on a request for reconsideration if the action taken results in the claimant's acceptance as full relief on the claim. In addition, the head of an ACO (typically a SJA) or higher settlement authority may take final action on a request for reconsideration if—

(a) The action taken on reconsideration results in the claimant's acceptance as full relief on the claim; or

(b) The reconsideration request does not contain a new factual or legal basis for requesting reconsideration; or

(c) There was no timely request for reconsideration and no exceptional circumstances are present; or

(d) The total amount in dispute after the head of an ACO has acted on the request for reconsideration does not exceed $1,000. The amount in dispute is the difference between the amount requested by the claimant in the request for reconsideration and the amount granted in response to the request for reconsideration, after deducting—

- The amount claimed in the request for items which the claimant voluntarily withdraws from reconsideration, after receiving an explanation for the partial payment or nonpayment, or for any other reason.
- The amount claimed in the request for items where the claimant accepts the amount offered in full relief for the damage or loss.

If the request for reconsideration does not contain a request for a specific amount, the amount requested by the claimant will be considered to be the amount requested in the original claim for the items included in the request for reconsideration. If there is a question as to the amount in dispute, err on the side of determining that the amount is over $1,000 and forward the request.

(3) *Forwarding the request for reconsideration.* The head of an ACO must forward a request for reconsideration to USARCS or U.S. Army Claims Service, Europe (USACSEUR) for final action if it—

(a) Does not meet the criteria in subparagraphs *g*(2)(*a*) through (*d*) above;

(b) Involves a claim on which the head of an ACO has personally acted, where that individual believes the request for reconsideration should be denied; or

(c) Involves a question of policy or practice that the head of an ACO believes is appropriate for resolution by USARCS or U.S. Army Claims Service, Europe (USACSEUR).

(4) *Action by a successor or a higher approval or settlement authority.* A successor to the original approval or settlement authority or a higher settlement authority will modify the original action only if that officer determines that the original action was incorrect or is now incorrect based on new evidence. Reasonable men and women may differ over whether a claimant acted negligently or provided enough evidence to justify a particular payment, and approval and settlement authorities are granted considerable discretion. Successor or higher settlement authorities, however, should not substitute their judgment for that of the original approval or settlement authority.

(5) *Procedure.* Each settlement or approval authority must act on the request personally; this authority may not be delegated. If additional payment is made, the chronology sheet and other documents in the file must reflect the basis for it. The settlement or approval authority should notify the claimant in writing of the action taken on the request for reconsideration. If the action taken on the request modifies the original action, the settlement or approval authority should make any additional payment involved and determine if the modification satisfies the claimant. The settlement or approval authority should forward appropriate claims files and personnel claims memoranda of opinion, to the head of the ACO. The head of the ACO may take final action on a request for reconsideration according to the criteria set forth above; this authority may not be delegated. If the request must be forwarded to USARCS or USACSEUR, the outside cover of the file must be clearly marked, "RECONSIDERATION." The claimant should be told that the claim has been forwarded, but not what action the claims office has recommended. The head of the ACO may concur in a previous memorandum of opinion or may attach a supplemental memorandum. When a request for reconsideration is forwarded to USARCS or USACSEUR for final action, the file should contain a memorandum or endorsement personally signed by the head of the ACO. This memorandum or endorsement must contain, at a minimum, a specific recommendation on the request for reconsideration. For example, a claimant at Fort Sill submits a written request for reconsideration of the amount paid on a table, contending that the amount awarded will not cover the cost of repair. The claimant requests payment of an additional $150. Claims personnel consider the matter and allow the claimant 14 days to obtain a second repair estimate. After reviewing the second estimate, the CJA or claims attorney pays the claimant an additional $100. The CJA or claims attorney should notify the claimant in writing of the action taken and determine if he or she is satisfied. If the claimant is not satisfied, the CJA or claims attorney should forward the file with a personnel claims memorandum of opinion to the head of the ACO. The head of the ACO may take final action on the request for reconsideration or forward the claim to USARCS if he or she believes the request involves an issue of policy which is appropriate for resolution by USARCS. If the head of the ACO forwards the claim to USARCS, he or she may prepare a new personnel claims memorandum of opinion or an endorsement concurring in the previous memorandum of opinion. In either case, the memorandum or endorsement must be personally signed by the head of the ACO and recommend a specific action to be taken on the request for reconsideration.

(6) *Subsequent requests for reconsideration.* If a claimant submits a request for reconsideration after USARCS or USACSEUR has taken action, the subsequent request should be forwarded to USARCS or USACSEUR with a cover letter for action. If the claimant raises a new issue or provides additional information, a memorandum of opinion should accompany the request.

(7) *Completing the DD Form 1844 on reconsideration.* Field claims personnel may inadvertently create additional work for themselves and for the claims services in adjudicating requests for reconsideration, including requests for items that were not claimed earlier (so-called "supplemental" claims). On reconsideration, claims personnel should never alter or erase information previously entered on the DD Form 1844 (List of Property and Claims Analysis Chart). Nor should claims personnel reenter line items from the original DD Form 1844 to show the action taken on reconsideration. These

methods are time-consuming and make it difficult to determine what action was taken originally. Field claims personnel will simply enter changes made on reconsideration onto the original DD Form 1844 above the information previously entered, adding the notation, "On Reconsideration," in any free space on the line. They should make such entries in red or another color to clearly distinguish the reconsideration action from the original action. For example, if a claimant requested reconsideration and substantiated payment of an additional $25 sales tax on a vase on line 3, claims personnel would enter in red ink "+ $25" in the "Amount Claimed" column, "Amount Allowed" column, and "Total Amount Allowed" block; "On Reconsideration," in one of the exceptions columns; and "$25 Sales Tax AC" in the "Remarks" column. This shows at a glance what action was taken on reconsideration. "Supplemental" claims for items never claimed previously are also treated as requests for reconsideration, but they present slightly different problems. Often, claims personnel do not indicate which items were claimed on reconsideration. If there is sufficient space on the original DD Form 1844 to enter the additional items, simply have the claimant add them at the bottom. Claims personnel should have the claimant separate these supplemental items from the items originally claimed with the words "Supplemental Claim" and the date reconsideration was requested. If there is not enough space to list the supplemental items on the original form, have the claimant complete a new DD Form 1844; however, the additional form should be marked clearly with the words "Supplemental Claim" and the date. Note that if a supplemental claim for loss or damage in shipment is presented within 75 days of delivery, the claims office should immediately dispatch a supplemental DD Form 1840-R listing the additional items; otherwise, the claims office should consider deducting lost PCR.

11–21. Judge advocate responsibilities

a. Private insurance.

(1) *General*. Congress enacted the PCA to confer a distinct benefit on certain classes of people. It was not intended to substitute for private insurance or to benefit private insurers. Claimants whose insurance policies cover all or part of their loss must provide a copy of their insurance policy to the claims office. As a general rule, such claimants must file and settle claims with their insurers before settling a claim with the United States.

(2) *Computing compensation.* To compute compensation for claimants seeking compensation from their insurer, determine what the insurer paid for each line item. If there is only one line item, as with a vehicle loss, the amount the insurer paid is the amount stated on the insurer's check. If there is more than one item, obtain the insurer's line-by-line breakdown of the amount awarded. If the total on the breakdown differs from the total on the check (because the insurer applied a deductible or policy maximum), divide the amount on the check (the smaller number) by the total on the breakdown (the larger number). Carry the result to six (6) decimal places (example: .631752). Then multiply each line on the breakdown by this percentage to figure out what the insurer paid on each item. This gives the claimant the benefit of the higher payment (by the insurer or by the Government) on every item. If the insurer did not prepare a breakdown, then and only then may the amount the insurer paid simply be subtracted from the amount otherwise payable per item.

(3) *Item and category maximums and private insurance.* Individuals purchasing private insurance are allowed the benefit of that insurance. A claimant who is partially compensated for an item to which a maximum allowance applies would be allowed to retain both the insurance payment and an amount not to exceed the maximum allowance, up to the substantiated value of the loss. For example, a claimant owns a $6,000 ring that it is stolen from quarters. A per item maximum allowance of $1,000 applies to the ring. If the claimant's insurer paid $4,000, the claims office could pay an additional $1,000, leaving $1,000 of the ring's value uncompensated. If, however, the claimant's insurer paid $5,500 on the item, the claimant would be entitled to only $500.

(4) *Vehicle insurance.* Claimants are required to provide copies of their vehicle insurance policies in effect at the time of loss. Comprehensive policies will cover most loss and damage cognizable under the PCA; some, including USAA and AFIA, cover even loss and damage incurred during Government sponsored shipment. Local law or regulation requires liability coverage on almost every installation, and failure to maintain such coverage is normally a basis for denial. The only time a claimant is entitled to payment of an amount equal to the insurance deductible is when the adjudicated value of the loss, minus the amount the insurer has paid or will pay, equals the deductible amount. This will occur only if the claims office and the insurer are using the same estimate and the same depreciation rate.

(5) *Effect of claimant's refusal to take required action.* If the claimant refuses to provide a copy of his or her insurance policy, submit a demand on the insurer, or take other action necessary to present a demand on the insurer, the field claims office will, absent good cause, deny the claim. In the absence of clear evidence to the contrary in such cases, the field claims office may assume that the claimant's insurer would have fully compensated the claimant and may deny the claim on this basis. (See also AR 27-20, para 11-11*f*, on procedures to follow when claimant refuses to provide information concerning private insurance.)

(6) *Effect of claimant's failure to provide timely notice.* If, instead of refusing to take action, the claimant negligently fails to provide the insurer with timely notice, allowing the insurer to deny the insurance demand, the claims office generally will not deduct any amount from the claim. However, if it appears that the "failure" was intentional, the claims office may deny the claim.

(7) *Approval of claim prior to settlement with insurer.* A CJA or claims attorney may decide to approve a claim for payment under this chapter without a claimant first settling with his or her insurance company if:

(a) The insurance company improperly refuses to pay the claim.

(b) The claimant has good cause. Good cause exists if the CJA or attorney (or higher authority) determines that it would be appropriate to pay the claimant immediately because of hardship to the claimant or other good reason. The CJA or claims attorney should consider all factors, including the difficulty which may result in subsequent recovery actions based on the claim.

b. Increased released value and full replacement protection. There are three types of IRV on Government-sponsored domestic household goods insurance: "Basic Coverage" (normal IRV), which is purchased by the Government, and "Option 1" (higher IRV) and "Option 2" (full replacement protection), both of which the claimant purchases from the carrier through the ITO. Claims involving Basic or Option 1 coverage are presented in the normal manner; claims involving Option 2 must first be submitted to the carrier. When presented to the Government, such claims are adjudicated and paid in the normal manner from appropriated funds (APF) after applying depreciation rules and maximum allowances. Thereafter, the claimant may be entitled to an additional payment from money recovered from the carrier.

(1) *Normal increased released valuation (basic).* The claimant is entitled to an additional payment from money recovered only if the amount recovered exceeds the amount the Government paid because a maximum allowance was applied (see AR 27-20, para 11-29*a* on category maximums) or if the claimant was paid the statutory maximum (see AR 27-20, para 11-29 on payments above the statutory limit).

(2) *Higher increased released valuation (Option 1).* Option 1 is depreciated value coverage that the claimant purchased from the carrier under the provisions of item 130 in the Domestic Personal Property Rate Solicitation, either as a valuation in excess of $1.25 per pound times the weight of the shipment or as a lump sum declaration. It must be reflected in the Remarks section of the GBL. The claimant is entitled to the depreciated value of items and may be compensated from money recovered for substantiated losses in excess of a maximum allowance or the statutory maximum of $40, 000, to the extent the claimant purchased the additional coverage. For example, a claimant purchased an additional $5,000 worth of

Option 1 coverage and suffers the loss of a rug, the substantiated value of which is $10,000. The claimant submits a claim and is paid the maximum of $1,500 for the item from APF. A demand is asserted against the carrier for $10,000, and $7,000 is recovered. The first $5,000 of the amount recovered, equal to the additional coverage purchased, is paid to the claimant. The next $1,500, the amount the Government paid, is retained by the Government. Finally, the remaining $500 recovered is paid to the claimant. If only $6, 000 had been recovered, the claimant would have been paid the first $5,000 because he purchased $5,000 of additional coverage, and the Government would retain the remaining $1,000.

(3) *Full replacement protection (Option 2).* Option 2 is undepreciated value coverage the claimant purchased from the carrier through the TO under the provisions of item 152 in the Domestic Personal Property Rate Solicitation. Option 2 became available in March 1986 and it must be reflected in the Remarks section of the GBL. The cost is $0.85 per each $100.00 of declared value, and the minimum valuation is $21,000 or $3.50 per pound, whichever is greater. For this reason, it is far more expensive than Option 1. Because the rate solicitation affords the carrier the option to repair or replace items, the claimant must first submit a claim against the carrier. If delay would cause hardship, or if the carrier denies the claim or fails to settle it within 30 days, the claimant may submit a claim against the Government. A claim against the Government is processed normally, and the claimant is paid depreciated value, subject to maximum allowances. The undepreciated value will be placed in the "Amount Allowed" column of DD Form 1844, however, and a demand against the carrier will be prepared for the full adjudicated, undepreciated value. If the additional money is collected, it will be paid to the claimant. Collection of the additional money (as well as the depreciated amount paid to the claimant) depends on the strength of the evidence in the claim file supporting the demand.

c. Disapproval of claim or payment of amount less than that claimed. Whenever a claim is disapproved or is approved in an amount less than that claimed, give the claimant a detailed, clear, and understandable explanation of the reasons. An essential part of the claims process is to inform a dissatisfied claimant of the basis for the action taken, both to afford the claimant a meaningful opportunity to request reconsideration and to demonstrate fair and impartial treatment. Claims personnel sometimes use preprinted forms on which they check one general reason for paying less than the amount claimed without reference to the particular item involved. These form memoranda are not helpful to the claimant and in most instances they should not be used. A claimant may be given a copy of the adjudicated DD Form 1844, but this is not a substitute for a detailed explanation. A copy of any written explanation must be kept in the claim file. Explanations of disapprovals must be made in writing; explanation of approvals in less than the amount claimed may be made in writing or orally by the claims examiner who adjudicated the file, as long as the chronology sheet reflects that this was done.

d. Publicity. The claims program exists not only to pay meritorious claims but also to encourage potential claimants to adopt measures that reduce the risk of loss and to assist them in substantiating losses that do occur. Daily bulletins and other installation periodicals should be used to publicize such matters as the importance of completing household goods inventories, use of DD Form 1840/1840-R, the maximum allowances for various types of property, problems associated with DITY moves and mobile home shipments and with shipping expensive items such as jewelry, rules about securing bicycles and storing property in vehicles, liability insurance requirements, and the amount of cash on hand considered reasonable. Many of the Claims Notes published in *The Army Lawyer* are intended for general circulation. Notes should be updated and republished periodically to ensure widespread dissemination.

e. Risk management. Risk management is an important part of an installation's personnel claims program. A CJA or claims attorney is not merely the administrator of a claims office but also an advisor to the SJA and commanders. To provide commanders with the best professional guidance, the CJA or claims attorney must assess how installation and unit policies—local regulations, directives, and SOPs—affect claims. Prompt payment of claims is not a substitute for policies that reduce the occurrence of preventable losses. An effective claims prevention program can affect both the flow of claims funds in an era of tight fiscal restraints and the installation's overall quality of life. Four areas are of particular concern:

(1) *Installation parking policies.* Bicycles and motorcycles are particularly vulnerable to theft. Where bike racks are not installed, directives that prohibit securing bicycles to trees and other objects promote an unacceptably high degree of risk. Recreational, resale, or nonoperational vehicle storage lots are also a focus for concern, and where the command cannot provide adequate security and control, thought should be given to declaring them high-risk areas.

(2) *Contractor operations.* The PCA is not intended to provide a remedy for losses caused by the negligence of Government contractors. Laundry, spray-painting, and quarters renovation contracts are particularly prone to abuse. If such contracts are not drafted and administered to force the contractor to assume liability for such losses, claimants are often left without effective redress. Such contracts must contain an adequate claims clause that allows the contracting officer to offset the contractor's revenues for damage, and they must guarantee that the contractor carries adequate insurance for risk. Claims payable as personnel claims should be considered for payment only after exhausting all efforts to compel the contractor to resolve the matter.

(3) *Physical security.* Properly drafted and enforced unit SOPs, especially combined with the installation of security devices and publicity about soldiers' potential liability under Article 139, UCMJ help reduce the incidence of barracks theft.

(4) *Personal property of absent soldiers.* Unit commanders of soldiers who are absent on emergency leave, hospitalized, AWOL, or imprisoned, have a duty both to inventory and safeguard that soldier's property promptly and to maintain documentary records. Failure to do so encourages both theft and false claims.

f. Counseling claimants. A claimant's perception of the claims process will depend largely on the adequacy of the initial counseling received.

(1) *Information on time limitations and notification requirements.* Every claimant who enters a field claims office without submitting a claim should be informed of the two-year time limitation on presenting a claim. The claimant should also be informed of any requirement to notify a carrier or insurer and of the consequences of not doing so. Claimants calling or writing the field claims office for advice should be given similar instruction.

(2) *Assistance with forms.* Give every claimant who wants to present a claim the appropriate claim forms. DD Forms 1842 (figures 11-7a and b) and 1844 (figures 11-3b and d). Make every effort to explain the forms and assist claimants in completing them correctly. Claims personnel should make a special effort to help claimants accurately describe the facts and circumstances giving rise to the claim on DD Form 1842, and accurately list items and damage on DD Form 1844. Claimants are required to provide only one completed copy of each form and one copy of any documents needed to substantiate the claim. Claimants should be provided with a copy of any original repair estimate or inventory they submit. Claimants are not required to complete DD Form 1843 (Demand on Carrier/Contractor).

(3) *Instructions and advice.* Every field claims office should prepare a small instruction packet containing forms and guidance for prospective claimants. Where resources permit, claims personnel should individually assist every claimant who comes into the office. At a minimum, explain the claim forms and how to substantiate ownership. When appropriate, tell the claimant about using catalog prices and explain the AGC and LOV concepts.

(4) *Lists of local repair firms.* Every field claims office should maintain a current list of local firms that repair various types of property at a reasonable cost, especially those firms that will provide a detailed estimate of repairs. At a minimum, field claims offices should provide lists for both vehicle and furniture repairs,

preferably containing three names each. Advise claimants that a firm's inclusion in the list constitutes neither an endorsement of the firm nor a guarantee as to the quality of the repairs performed by the firm. Also, before obtaining an estimate from an unlisted firm, the claimant should consult the field claims office. If the claimant selects a firm which cannot repair the property in question or is known for inadequate work, exorbitant estimate fees, or unusually high repair charges, advise the claimant in writing to find another firm.

(5) *Catalogs.* Every field claims office should maintain current catalogs from the PX and local retail stores and provide an area where claimants may read them.

(6) *Inspections by carriers.* Advise claimants that the carrier has the right to inspect whatever damaged items are available. An inspection is just that; except on full-replacement protection shipments, a carrier has no right to repair items. The carrier must exercise this right of inspection within 45 calendar days of delivery, or 45 days from the date of dispatch of each DD Form 1840-R, whichever is later. Do not delay settlement of claims merely because the carrier inspection period has not expired. If the field claims office learns that a claimant has refused the carrier the right to inspect, the field claims office will ensure that the carrier is permitted to inspect. If necessary, the field claims office may deduct lost PCR on all damaged items the carrier has not been allowed to inspect.

(7) *Settlement by claimants directly with the carrier.* A claimant may choose to settle a claim directly with the carrier. Inform claimants, except for those who have purchased full-replacement protection, that the carrier has no right to repair items unless the claimant so wishes. On full-replacement protection shipments, the carrier does have the right to replace or repair, and the claimant must first try to settle the claim with the carrier.

(8) *Discarding items and salvage value.* Advise claimants not to discard any items before settlement of the claim and expiration of the carrier's inspection period. On claims where the carrier has no salvage rights, claims personnel should tell claimants which items to turn in to the DRMO when the claim is settled. In these cases, payment is contingent on turning in items to DRMO unless good cause exists to warrant an earlier payment. On IRV shipments, the carrier may exercise salvage rights. Normally, the carrier will take possession of salvage items at the claimant's residence or other location acceptable to the claimant and the carrier, not later than 30 days after the carrier receives the Government's demand. Field claims offices may instruct claimants to discard items that the field claims offices determine to be hazardous to the health and safety of the claimant's family, such as broken glassware or mirrors and spoiled foodstuffs. However, claimants will retain antiques, figurines, and crystal with a single item value of $50 or more so the carrier may exercise its salvage rights. At a minimum, claimants should retain salvageable items for 90 calendar days; then consult with the field claims office before disposing of salvageable items. If local recovery is involved, the field claims office will notify the carrier of possible salvage. If the claim has been forwarded to USARCS for recovery and the 90 days have passed, the field claims office will notify USARCS of the claimant's request to resolve the salvage issue and USARCS will provide guidance on this question.

(9) *Property turned in by claimants.* A field claims office will never accept property from a claimant and use it to furnish the claims office. This is an improper way to dispose of property belonging to the Government. All property turned in for salvage to the government must be turned in to a DRMO. If, however, the field claims office can demonstrate a need to furnish its workplace with particular items, some DRMOs will issue turned in items to the field claims office on a proper hand receipt.

g. Notice of loss and dispatch of DD Form 1840-R. The joint DD Form 1840/1840-R, shown at figures 11-8a and b, is used to notify carriers (including mobile home carriers) and warehouse firms making local deliveries of loss or damage in shipment. Recovery may be made on items for which timely notice was provided to the carrier on either form. At delivery, the claimant must list loss and damage on DD Form 1840. The carrier must give the claimant three completed copies of the form; if the carrier fails to do so, the carrier is not entitled to notice of loss and damage. Within the time limits prescribed in subparagraph *g*(2) below, the claimant must specifically list later-discovered loss or damage on DD Form 1840-R (located on the back of DD Form 1840) and submit this form to a field claims office (or Navy transportation office), which in turn must dispatch the form to the carrier. If the carrier is not provided with notice on some or all items within the time prescribed, the carrier is not liable for those items, and the claimant may be subject to the deduction of lost PCR. Army field claims offices are required to file and dispatch DD Forms 1840-R presented by members of other military services.

(1) *Completion of DD Form 1840.* The carrier must complete "Section A—General" and should note use of any continuation sheets. A continuation sheet may be used at delivery if there is insufficient room on the DD Form 1840. Such a continuation sheet should be signed by the soldier and the carrier. The carrier should not use any other form to list damage or loss. If no damage or loss is recorded, the "Description of Loss or Damage" should state "none." Both the claimant (or the claimant's agent) and the delivering carrier's representative will complete Section B (record of loss or damage) and sign the form in blocks 14g and 15e.

(2) *Time limits on dispatch of DD Form 1840-R.* A claimant must list additional shipment loss and damage noted after delivery on DD Form 1840-R and present it to the claims office within 70 days of delivery. Claims personnel will ensure that the carrier's address and other information from section A on DD Form 1840 are copied onto the DD Form 1840-R. Claims personnel must sign and dispatch the form and all continuation sheets to the carrier within 75 days of delivery, listing the date the form was sent. A second signed and dated copy is retained in the field claims office, and a third is returned to the claimant as a receipt. Pursuant to the Military-Industry Agreement on Loss and Damage Rules illustrated at figure 11-5, this 75-day period may be extended for good cause, such as the claimant's hospitalization or absence on official duty for a significant period of time that either overlaps the end of the notice period or exceeds 45 days; in such instances, claims personnel should note this on the form. The field claims office must assist the claimant as much as resources permit. If the claimant submits the completed form between the 70th and 75th day, the field claims office should make every effort to dispatch the form in a timely manner, such as mail or facsimile. However, if it is unable to do so for good cause, lost PCR should generally be deducted. Such a decision should be explained on the chronology sheet. If the claim and completed DD Forms 1844 are submitted before the 75th day, listing more or different items than were listed on the DD Forms 1840/1840-R, claims personnel should dispatch copies of signed and dated DD Forms 1844; they can serve as alternative notice forms.

(3) *Proper Dispatch of DD Form 1840-R.* Periodically, the carrier industry complains to USARCS that a field claims office has dispatched DD Form 1840-R improperly. Most commonly, a carrier will complain that it has received multiple DD Forms 1840-R with different dates in the same envelope or that the postmark date on an envelope differs by several days from the date of dispatch indicated on the enclosed form. Obviously, many of these complaints involve notices that come into the possession of claims personnel near the 75-day expiration point.

(a) The General Accounting Office (GAO) has consistently upheld the presumption that the date of mailing for a DD Form 1840-R is the date of dispatch recorded on the bottom of the form. It has repeatedly refused to address issues such as carrier receipt or differing dates. This presumption is important to the Government and to claimants. It preserves the Government's right to recover from a carrier by reference to a single entry in the claims file.

(b) To avoid needless litigation, a field claims office must mail each DD Form 1840-R promptly on the date indicated on the bottom of the form. Moreover, the office will avoid sending multiple DD Forms 1840-R with different dates in the same envelope. Finally, field claims offices should establish procedures for receiving and dispatching DD Forms 1840-R. CJAs and claims attorneys should

ensure periodically that claims personnel are following these procedures.

(4) *Dispatch of DD Form 1840-R to a carrier other than the listed carrier.* If it appears that a DPM carrier other than the delivering carrier is responsible for all or part of the loss, DD Form 1840-R must also be sent to the responsible intermediate DPM carrier. When a through Government bill of lading (TGBL) is converted to storage at the owner's expense, DD Form 1840-R must also be sent to the delivering carrier or warehouse firm.

(5) *Dispatch of supplemental DD Forms 1840-R.* If a claimant discovers additional loss or damage after DD Form 1840-R has been sent, but within 75 days of delivery of the property, claims personnel will help the claimant record the additional loss or damage on a photocopy of the original DD Form 1840-R or on a blank DD Form 1840-R for dispatch to the carrier. If a photocopy of the original form is used, the field claims office will mark it "SUPPLEMENTAL" and will cross out the original "Date of Dispatch," "Signature, " and "Date Signed" and enter new ones (see figures 11-8a and b for an illustration of DD Form 1840/1840-R). If a blank DD Form 1840-R is used, the claimant will complete Section A. The field claims office will mark it "SUPPLEMENTAL" and will fully complete Section B, entering the new date signed and the dispatch date. Signed and dated copies of supplemental DD Forms 1840-R will be given to the claimant and filed in accordance with standard procedures.

(6) *Review of DD Forms 1840 and 1840-R by claims personnel.* The field claims office must review these forms for completeness and legibility before dispatching them. Ideally, it should do this while the claimant is still in the field claims office and can make necessary changes to the form. On both forms, the claimant should properly describe the item, list its inventory number, and fully record the nature and location of new damage, particularly when PED is involved. For example, a hide-a-bed should not be described as a sofa nor a schrank as a wall unit, and the word "broken" does not adequately describe damage to items such as televisions, which are susceptible to mechanical defects. Encourage a claimant who is not sure about an inventory number to enter a best guess. Missing items must be listed as missing. Carriers will try to deny liability if damage is insufficiently described or if an item's inventory number is missing, and inventory numbers of missing line items are essential to tracer action. Thorough review greatly reduces problems.

(a) Review of DD Form 1840. Claims personnel should help claimants clarify inadequate descriptions on DD Form 1840 and have them submit missing inventory numbers. Clarifications and corrections will be entered on DD Form 1840-R. Items added to DD Form 1840 in original ink are invariably afterthoughts by the claimant, which must be entered on DD Form 1840-R instead. If the claimant alleges that DD Form 1840 continuation sheets were used and this is not reflected in block 14a of DD Form 1840 (illustrated in figures 11-8a and b), the field claims office should contact the carrier. It may be necessary to list these items again on the DD Form 1840-R.

(b) Review of DD Form 1840-R. All blocks on this form must be completed. If a claim is received at the same time as DD Form 1840-R, claims personnel should compare DD Form 1844 with DD Form 1840-R. Reconcile discrepancies in damage descriptions between the two forms; for example, a carrier will try to deny liability if DD Form 1840-R states that an item was "scratched" but DD Form 1844 states that it was "gouged." Claims personnel who discover items listed on a DD Form 1844 that were inadvertently omitted from a timely dispatched DD Form 1840-R should sign, date, and dispatch a copy of the DD Form 1844 to the carrier pointing out the items omitted from the DD Form 1840-R. In completing DD Form 1840-R, claimants often provide second and third copies that are illegible, and they sometimes fail to turn around the carbon sheets, resulting in reversed images. In such instances, send the best copy to the carrier and attach a photocopy to the others. If using continuation pages, claims personnel must number, date, and sign them; each page should indicate the claimant's name and GBL number; and DD Form 1840-R must indicate how many continuation sheets, if any, are attached.

(7) *File copies.* A signed and dated copy of each dispatched DD Form 1840-R must be filed alphabetically by claimant's name for each fiscal year. Offices may subdivide by month. The file copy must be incorporated into any claim submitted. Forms for which no claim is submitted must be maintained for two years after dispatch.

h. Carriers that fail to enter their addresses on DD Form 1840. Some field claims offices are confronted with a recurring problem—carriers that fail to complete their address in DD Form 1840-R, block 9. The absence of the carrier's address frustrates the field claims office's ability to dispatch the DD Form 1840-R within the allotted time.

(1) The Comptroller General has rendered two decisions on this issue. In its initial decision on the subject, the Comptroller General ruled that a carrier that "substantially completes" the DD Form 1840 is entitled to timely notice and the field claims office has "the responsibility to make a reasonable effort to find a carrier's address instead of merely holding an incomplete notice until the 75-day time period expires." See *National Forwarding Co.*, B-247457, Aug. 26, 1992. In that case, the carrier had provided its name, its Standard Carrier Alpha Code (SCAC), the GBL number, and the delivery agent's name and address. The Comptroller General decided that a minimal effort from the field claims office would have been required to determine the carrier's proper mailing address, and the carrier would have been on notice of the loss and damage if the office had dispatched the DD Form 1840-R to the delivery agent.

(2) Subsequently, the Comptroller General addressed the issue again, but with different facts. See *Dep't of the Army*, B-255795, June 3, 1994. The carrier failed to complete any of the blocks on the DD Form 1840; it simply gave the blank DD Form 1840 to the owner at delivery. The field claims office did not attempt to determine which carrier was responsible for the shipment or dispatch of the DD Form 1840-R within the 75-day period. Although the GAO decided that the field claims office should have determined which carrier was responsible for the move, (See Settlement Certificate Z-151685(58) (Gen. Accounting Office, July 19, 1993)), the Comptroller General overturned the Settlement Certificate in the Army's favor. The Comptroller General stated that the carrier, to be entitled to timely notice, must "substantially complete" the required information on the DD Form 1840. To require more from the field claims office would be burdensome and contrary to the intent of the MOU.

(3) The field claims office need not dispatch the DD Form 1840-R when a carrier gives an owner a blank DD Form 1840. However, if a carrier provides its SCAC, the GBL number, or its delivery agent's address, then the field claims office should determine which carrier was responsible for the shipment or serve the DD Form 1840-R on the delivery agent. Whenever possible, determine the carrier's address and dispatch timely notice to it.

i. Fiscal Integrity. The centralized funding of claims operations in the Army and the scarcity of claims resources make proper management of claims funds—including recovery deposits—essential. USARCS has seen far too many cases in which field claims offices have recorded deposits inaccurately, have deposited affirmative claims funds in recovery accounts mistakenly, and have persisted in using improper fiscal year codes. The failure of field claim offices to reconcile their records periodically with local DAO has forced USARCS to correct these problems. These inaccuracies have a substantial impact on the recovery dollars that fund soldier claims. USARCS uses funds deposited by field claims offices to modify or increase claims expenditure allowances. A field claims office's failure to maintain accurate deposit records harms individual soldiers. Moreover, fiscal problems left uncorrected for several months are often extremely difficult to resolve. All personnel claims, from clerks to SJAs, must remember their fiscal responsibilities. A field claims office will reconcile all accounts on a monthly basis. Account managers must not assume that finance officials will always "get things right."

j. Recommended payment procedures in a claims office using Standard Financial System Redesign (STANFINS SRD1). The

STANFINS system provides computerized issuance of checks and reduces processing times at the local DAO. Field claims offices can access this system to generate payment vouchers that are routed directly to the disbursing division, not commercial accounts, for payment.

(1) The following procedure is recommended when using STANFINS to process a claim for payment.

(a) The CJA or claims attorney signs the DD Form 1842 after reviewing the adjudicated claim and concurring with the amount awarded.

(b) If changes are to be made, the claim is returned to the claims examiner, then returned to the CJA or claims attorney who signs the DD Form 1842.

(c) The claims noncommissioned officer in charge, claims examiner, or claims clerk then enters the basic data for the claim on STANFINS using the general access claims office password. A disbursement date two days after the date of input is recommended to ensure that the payment report arrives at the local DAO before the check is issued. Dates later than two days after entry are discouraged. For emergency payments, the person entering data can enter "window pickup" in place of the claimant's mailing address to notify the local DAO that the claimant will pick up the check at the cashier's cage if the local DAO permits this practice.

(d) After entering the basic data for a particular claim, the noncommissioned officer in charge, claims examiner, or claims clerk prints the STANFINS summary screen, updates the claims management program to reflect payment, prints the payment report and presents the entire claims file with the accompanying documents to the CJA or claims attorney for approval and signature.

(2) The CJA or claims attorney compares the payment report with the basic claims information from the file to ensure the accuracy of this information—that is, the claims number, the amount to be paid, the claimant's name and address, and the type of claim. If there are no discrepancies, the CJA or claims attorney signs the payment report and logs into STANFINS using a private password. The CJA or claims attorney calls up the claims information using the system document number from the summary screen and approves payment before logging off.

(3) The noncommissioned officer in charge or clerk then hand-carries the signed payment report on a transmittal letter to the local DAO as substantiation for payment. The courier can pick up the comeback copy of vouchers previously processed.

(4) Each field claims office using STANFINS SRD1 should be able to conduct a data query, which lets the field claims office obtain automated reports on claims payments and refund deposits.

11–22. Finality of settlement

A settlement agreement is not required to pay a personnel claim. It may be required only as a precautionary measure if the claim is cognizable under another claims statute. Settlement agreements may not be used as a means to prevent a recalcitrant claimant from requesting reconsideration.

Section III
Recovery From Third Parties

11–23. Scope

a. The USARCS household goods recovery program pursues affirmative claims against carriers, warehousemen, or other third parties responsible for loss or damage occurring during the storage or transport of household goods and other personal property. Recovery from the carrier is based primarily on the carrier's contractual responsibility to deliver, in satisfactory condition, the property shipped. The United States is also subrogated to the recovery rights of the soldier or employee whose property was shipped. The statutory authority for recovery claims against third parties is the Federal Claims Collection Act, 31 USC 3701 through 3720E.

b. Recovery of amounts due for personal property lost or damaged while in transit or storage at Government expense is a command responsibility. To establish liability and pursue a recovery claim against a carrier effectively, claims approval and settlement authorities will ensure that all actions required of the property owner and of Army personnel are accomplished accurately and promptly. If the property owners or any Government agents fail to perform their duties diligently, it may be impossible to recover on the claim.

c. The basis for successful recovery requires the government to establish a prima facie case on three elements of proof:

(1) *Tender.* showing that the lost or damaged goods were received into the custody of the carrier in a certain condition. This involves identifying items by number as they appear on the inventory prepared at the origin residence or, in the case of an item missing from a packed carton, showing that a reasonable and logical relationship existed between the stated contents of the carton and the missing item. Ownership or possession must be substantiated. A personal account of the packing procedure in the claimant's own words and handwriting may be required.

(2) *Non-delivery or extent of damage.* showing that goods were delivered in worse condition than when picked up at origin or showing that goods were not delivered. This involves identifying, by inventory number, items not received at destination or identifying how the condition of items delivered differs from the condition of those items noted on the origin inventory.

(3) *Amount of loss or damage.* showing the value of the item lost or showing the cost to repair or restore an item to its pre-move condition.

d. Once all three elements are established, recovery action must be promptly pursued.

11–24. Duties and responsibilities

The following responsibilities expand upon, or augment, those set forth in AR 27-20.

a. Claims personnel must obtain from the claimant or from the transportation office (TO) the following documents needed to process recovery actions:

(1) A copy of the GBL or other document authorizing shipment or storage. See paragraph 11-25*b* on where to obtain GBLs.

(2) A copy of the origin inventory, and any related riders/exception sheets prepared if NTS occurred.

(3) A copy of DD Forms 1840 and 1840-R.

(4) A copy of the authorization from the TO allowing an extension of storage in transit at Government expense, if applicable.

(5) A copy of the claimant's contract with the warehouse and a copy of any rider prepared when storage converts from Government-paid storage to storage at owner's expense.

(6) A copy of DD Form 1164 (Service Order for Personal Property) from the TO, when NTS is used.

(7) DD Form 619-1 (Statement of Accessorial Services Performed) (see figures 11-9a and b) from the TO, when temporary storage is needed or when a reweigh is required.

b. Claims personnel must ensure that DD Form 1840-R is properly completed and sent to the liable third party or parties within 75 days of delivery of the property. See subparagraph 11-21*g* for detailed instructions on completing and dispatching DD Form 1840-R. In addition, a copy of the 1840-R must also be sent to the transportation office, for use in the carrier's evaluation as required by DOD 4500.34-R, Personal Property Traffic Management Regulation (PPTMR).

c. Claims personnel must inform claimants that the carrier has the right to inspect damaged goods within 45 days of delivery, or within 45 days of dispatch of the last DD Form 1840-R, whichever is later, and that the claimant must retain damaged items for carrier inspection during that period. Essential items such as washing machines, dryers, or televisions may be repaired before that time, if necessary (see also para 11-21*f*(6)). Claimants should not dispose of items until authorized by the field claims office.

d. Claims personnel must ensure that repair estimates describe the specific location of damage claimed and that the same damage is claimed on DD Form 1844. For additional information regarding proper repair estimates, see subparagraphs 11-14*e* and 11-14*h*(1)(*e*).

e. Claims personnel must ensure that the DD Form 1844 is properly and completely filled out. The claimant must fully describe the

nature and extent of the loss or damage to each item and must enter the correct inventory numbers and year purchased. See figure 11-3b for an example of a properly completed DD Form 1844. If appropriate, claims personnel must enter the correct item weights from the Joint Military-Industry Table of Weights (reprinted at Table 11-3), insurance payments must be noted, and heading data must be entered in each block of the form. See figure 11-3d for an example of a properly competed DD Form 1844 involving insurance payments and see figure 11-10b for an example of a properly completed DD Form 1844 demonstrating liability based on the table of weights.

f. Claims personnel must prepare written demands against appropriate third parties. No demand will be made where it conclusively appears that the loss or damage was caused solely by Government employees or where a demand would otherwise be clearly improper under the circumstances. If it is determined that a demand is not required because recovery action cannot, or will not, be pursued, include a brief written statement setting forth the basis for this decision on the chronology sheet. Pursuant to the Joint Military-Industry Agreement on Claims of $25 or Less (reprinted at figure 11-11), claims of $25 or less are not pursued because administrative costs outweigh recovery proceeds.

g. Claims personnel must inform the Commander, USARCS, ATTN: JACS-PCR, upon receiving information that any responsible third party is or may be involved in bankruptcy proceedings. USARCS will comply with the notice requirements for bankruptcy cases set out in AR 37-103, chapter 13. Upon request by USARCS, claims against the Government arising out of shipments transported by bankrupt GBL carriers should be promptly adjudicated, paid if appropriate, and immediately forwarded to USARCS for recovery action. Do not hold these claims to await upload of computer data. Such files should be marked "BANKRUPT" in red on the upper left corner of the folder and should be mailed separately from other files sent to USARCS. Do not forward as "CLOSED."

h. Claims personnel must prepare and dispatch unearned freight packets in appropriate cases. See paragraph 11-37.

i. Claims personnel must coordinate with the local transportation office to ensure proper counseling on potential claim procedures. The installation transportation office (ITO) outbound shipping counselor plays an important role in the claims process. This is the first person an owner (and a potential claimant) usually visits when preparing to ship personal property. Unfortunately, counselors sometimes do not provide owners with sufficient information or owners fail to realize its importance. Accordingly, a checklist is provided at figure 11-12 to assist field claims offices in coordinating with their respective ITO outbound shipping counselors. Give a copy of this checklist to the ITO outbound shipping counselors to use each time they counsel an outbound owner. The checklist should be attached to the owner's copy of DD Form 1797, Personal Property Counseling Checklist, as an Addendum to Part VII (Liability, Claims, Protection), to help owners better understand the claims process in case they need to file a claim for personal property lost or damaged in shipment.

j. If an AAFES employee's claim is determined to be meritorious by the approval or settlement authority, transmit the entire file to the proper NAF disbursing office for payment in accordance with AR 27-20, paragraph 12-7. Thereafter, AAFES will pursue appropriate recovery on the file.

11–25. Determination of liability

a. Military-Industry Agreement on Loss and Damage Rules. The Military-Industry Agreement on Loss and Damage Rules (set forth at figure 11-5) took effect in January 1992. Claims personnel should study and understand this document thoroughly. Questions may be directed to the Recovery Branch of USARCS, attention: JACS-PCR.

b. Examination of a Government bill of lading. This is the key document for determining which carrier will be liable for recovery of the owner's loss and damage. For a description of the information contained in the GBL, see the sample at figures 11-13a and b. When claims offices cannot obtain GBLs from other sources (such as the claimant, the destination TO, the origin TO, or the carrier), then, as a last resort, they may request them from the Defense Finance and Accounting Service-Indianapolis Center (DFAS-IN). However, note that DFAS-IN does not receive the GBL until the carrier submits its bill, and claims offices should not request GBLs (particularly recent GBLs) from DFAS-IN until they have tried other sources.

(1) Figure 11-14 shows a sample request for fiscal information concerning transportation requests, bills of lading, and meal tickets (DD Form 870), used to request a copy of a GBL and its related documents from DFAS-IN.

(2) It is important to list the owner's name and the Army claim number in Block 12 of DD Form 870. Also, list the year the GBL was issued in parentheses next to the GBL number in Block 4. This identifies the correct tape the finance clerk must retrieve to speed up responses. Send a separate DD Form 870 for each GBL requested.

c. Examining an inventory. An inventory is the property owner's receipt for the goods tendered to the third party carrier or contractor. It describes in detail that property's condition at pickup. Figures 11-15a and b shows a sample inventory.

(1) *Overflow/split shipment/partial delivery.* Occasionally, an inventory states the word "overflow" or "partial delivery" or "split shipment" somewhere on the first page. Such notations indicate that the entire shipment could not be loaded on the same truck and that a portion of goods may arrive at destination after a prior delivery of part of the shipment. This may be your first clue to look for a previous claim or to "flag" the initial claim so that the same claim number can be used should an additional delivery result in a claim.

(2) *When carriers fail to list carton size on the inventory.* Household goods carriers are required by their Tender of Service (DOD 4500.34-R, appendix A) to list the cubic size of cartons on the inventory they prepare. Often, carriers violate that provision and fail to note any carton size on the inventory. Carton size is vital in assessing liability in non-IRV claims, where the Joint Military-Industry Table of Weights is still in use and liability is based on the agreed weight of the packed carton. Some carriers insist on assigning a weight of only 25 pounds to cartons whose size is not noted on the inventory. This is the smallest size carton with the lowest liability and is not always correct. When the carrier fails to list a carton size, claims personnel should assign a size to that carton based on the type of property it contained. For example, linens are often packed in a 4.5 cubic foot carton. An unmarked carton containing linens may be assigned a size of 4.5 cubic feet with a weight of thirty-five pounds.

d. Problems relating to proof of tender to the carrier.

(1) *Carton capacity of compact discs.* Carriers will not list individual compact discs (CDs) on an inventory. How many CDs a carton holds will become an issue if a large number are claimed as missing or damaged. Industry personnel determined that 165 compact discs fit into a 1.5 cubic foot carton. If the carton contains record albums as well as compact discs, a maximum of 65 compact discs and 60 record albums fit when the record albums are placed flat in the bottom of the carton. If the record albums are stored vertically, 30 record albums and a maximum of 65 compact discs will fit in a 1.5 cubic foot carton.

(2) *Proof of tender when damaged items are not listed on the inventory.* The Comptroller General has consistently ruled that, when items alleged to have been delivered with damage were not listed on the carrier's inventory, the Government may not recover from a carrier because no proof of tender exists. However, we can prove an item that was not listed on an inventory was tendered if we can provide a personal statement from the owner concerning the packing of the item and proof of ownership.

(a) When a missing or damaged item is not listed on the inventory, the field claims office must build a prima facie case sufficient to establish that the owner tendered the unlisted item and the carrier omitted it from the inventory. First, the claims office must check the inventory to determine if the claimed item was listed and to verify not only that the correct inventory number was assigned but that it

actually described the same item claimed. If the item is not listed on the inventory, ask the claimant:

- What makes you sure that the carrier took custody of this item?
- What were the circumstances at the time the carrier took custody? Describe the details in writing in your own words.
- Why did you sign the inventory if the item was not listed?
- What evidence can you provide to prove that you owned this type and quality of item? Do you have paid receipts, cancelled checks, credit card statements or photographs?
- Do you have personal records showing the purchase date, price, and condition of the item?
- Can anyone else verify you owned the item(s)?
- Do you have or can you obtain statements from these people?
- Why did you not notice the damage at delivery?
- What were the circumstances at the time of delivery? Describe the details in writing in your own words.
- Did you take photographs of the damaged item at delivery or shortly thereafter? For instance, did you take movies or photographs during delivery, or during unpacking and placing of goods?
- Was there any evidence of carton tampering? Example: torn tape, ripped cardboard or crushed edges/corners.
- Did you speak to the carrier about the item?
- Was the item placed or kept in a particular room?
- Did you see the carrier pack the missing item?
- What particular memories do you have that the carrier shipped the item?

(b) Obtain as much evidence as the claimant reasonably can muster to establish ownership and tender to the carrier.

(c) If possible, obtain a detailed, and personalized written statement from the claimant while the claimant is still located in the area. Field claims offices are in the best position to obtain these statements and any other information that helps establish that the item was tendered but not delivered. Make it a standing office procedure (SOP) to ask claimants to prepare such a statement. These written statements greatly strengthen the Army's position in negotiating settlements with carriers or when offset becomes necessary. Explain to the claimant that this information is needed so that the claims office can recover from the responsible third party for the loss.

EXAMPLE: In *Sentry Household Shipping Inc.*, B-243922, 22 July 1991, an antique violin was not listed on the claimant's inventory but was noted on DD Form 1840-R as having a cracked front. The Air Force paid the owner $200 for repairs and offset the carrier when it refused to pay its assessed liability. On appeal, the GAO Claims Group found no credible evidence establishing that the antique violin was tendered and, even assuming that it had been tendered, the GAO noted that there was no evidence establishing that it was delivered in a worse condition than it was in when tendered.

The Air Force appealed this Settlement Certificate to the Comptroller General, contending that the carrier had a duty to prepare the inventory properly and that permitting a carrier to avoid liability by simply omitting an item from the inventory was unfair.

The Comptroller General affirmed the Claims Group Settlement Certificate, noting that there was no substantive evidence to establish that the violin was tendered to, or delivered by, Sentry. The Comptroller General noted that every household good need not be listed on the inventory, but some substantive evidence of tender must exist. At a minimum, that evidence ought to be a statement from the owner reflecting some personal knowledge of the circumstances of tender.

The Comptroller General found it unreasonable that the owner allowed an expensive antique violin to be shipped without being identified as part of the shipment and listed on the inventory. There was no statement from the owner establishing tender, or evidence indicating the violin's condition before shipment; thus, there was no basis to determine if the damage was PED.

EXAMPLE: In *American Van Service, Inc.*, B-249966, 4 March 1993, the GAO Claims Group upheld offset for a broken ceramic plaque packed in a carton of books, a crushed vacuum cleaner brush packed in a dishpack with shelf glass, a broken wicker basket packed in a carton of games, and two lampshades packed in a carton labeled, "lampshade." The carrier objected to offset, contending that no proof of tender existed because the damaged items were not listed on the inventory and that the items did not relate to the cartons in which they were allegedly packed.

The Comptroller General affirmed the GAO Claims Group decision in part, deciding that substantial evidence of tender for the lampshade existed because it would not be unusual to pack more than one lampshade in a carton. Also, the Comptroller General concluded that because the DD Form 1840-R described the plaque as broken into several hundred pieces, the damage resulted from improper packing (packing the plaque with heavy objects such as books). But the Comptroller General agreed with the carrier on the remaining items, finding that the carton's general contents were unrelated to the claimed damaged items. The Comptroller General specifically indicated that the claim record contained no personal observations by the owner or others describing the packing process and how the diverse items came to be packed together.

EXAMPLE: *In Security Van Lines*, B-254197, 2 February 1994, the GAO Claims Group held for the carrier when a decorative copper pot was delivered smashed. Because the inventory did not list the pot, the Claims Group agreed with the carrier's claim that there was no evidence that the item was tendered or delivered. The Army appealed the Settlement Certificate, and the Comptroller General reversed the Claims Group Settlement Certificate and held for the Army.

The Army argued that DD Form 1840-R informed the carrier that the copper pot was delivered smashed and not packed in a carton. A USARCS staff attorney obtained a statement from the claimant, who stated it was such a bad move that at the time of delivery his major concern was the missing items. He inadvertently failed to note damage to the copper pot on DD Form 1840. However, he remembered seeing the copper pot as it was taken off the van. It was unwrapped, unprotected, and was inside a plastic laundry basket along with legs from a child's table. At the time of delivery, he photographed the damaged pot inside the laundry basket as the carrier placed it on his front lawn. At USARCS' request, he forwarded a letter with photographs corroborating the telephone conversation. The letter and photographs were included in the agency's administrative report sent to the Comptroller General. The Comptroller General noted that the Army also should have obtained a specific statement from the owner describing the circumstances surrounding his transfer of the copper pot to the carrier. However, the record

now included sufficient evidence for the Army to have reasonably concluded that the owner tendered the pot, and that the damage was of the type likely to occur during transit. The Comptroller General cited the photograph showing the dented pot in the clothes basket along with claimant's letter describing events at delivery, and determined that the damage was consistent with the general condition of the shipment; items simply were thrown together without sufficient packing material.

EXAMPLE: The Comptroller General affirmed carrier liability for a trumpet missing from a 4.5 cubic foot carton described on the inventory as "games" in *Andrews Van Lines, Inc.*, B-257398, 29 December 1994. Andrews Van Lines maintained that a trumpet would not be packed with games, and the owner failed to show that the item was packed with games. The Comptroller General held that there was sufficient documentary evidence to establish tender of the trumpet to the carrier. Proof of ownership was shown by the fact that the trumpet had been slightly damaged in a move one year earlier. The owner presented a copy of a DD Form 1844 from the previous move in which he claimed that his trumpet was dented and provided a repair bill for the dented trumpet. The owner also provided a personalized handwritten statement describing how the trumpet was packed in its own case, which also contained a sheet music holder and a mouth piece. He indicated that the carrier packed his trumpet in its case along with his son's toys, and provided a statement that he checked all of the rooms in his home after the packers departed and saw nothing left behind. Everything had been tendered to the carrier. Because not every household item needs to be listed on the inventory, a carrier can be charged with loss where other circumstances are sufficient to establish that the goods were shipped and lost. The Comptroller General decided that it would not be unusual for a carrier to pack a trumpet with other entertainment articles such as games.

(3) *Standard of proof for tender of high value items not listed.* Proof of tender is needed to recover against the carrier for missing high value items such as expensive jewelry. The best proof of tender is a description of each item on the inventory. There should also be receipts establishing purchase, an explanation of how the owner acquired the property, or photos showing it in use before shipment.

(a) Items with higher value have a higher evidentiary standard for proof of tender. Recovery on missing high value items such as jewelry is rare.

EXAMPLE: In one case, engagement and wedding rings were packed in ring boxes inside a jewelry box. The inventory reflected a 4.5 cubic foot carton containing a "jewelry box." When the jewelry box was delivered, the ring boxes were inside it but the rings were missing. The owner submitted a photo of herself wearing the rings and a detailed explanation why she was not wearing the rings at the time of shipment. She stated that they were from a previous marriage. The owner had remarried and had not worn the engagement and wedding rings since 1984. She was keeping these rings for her son from that marriage for his use when he grew up. The Army paid the owner $789 for the two rings.

The carrier then denied liability, contending that there was no proof of tender for the rings. It acknowledged tender of a jewelry box, but denied that the jewelry box contained anything. It further maintained that it bore no liability for items of extraordinary intrinsic value unless the owner advised the carrier of their existence at the time the inventory was prepared. The carrier also indicated there was no proof of purchase.

USARCS cited Comptroller General opinions upholding offset for items missing from reasonably related cartons, such as a Waterpik toothbrush missing from a carton of bathroom items, tools missing from a toolbox, and a quilt missing from a carton of linens. Rings missing from a carton labeled "jewelry box" certainly fit into this category of reasonably related items. In addition, the owner provided a photograph establishing ownership along with a reasonable explanation why the rings were not on her person at the time of the move.

However, the GAO Claims Group denied recovery on the basis of insufficient proof of tender, ordering USARCS to refund $789 to the carrier. The GAO said that the owner should have informed the carrier that the rings would be shipped and that items of intrinsic value, such as the missing rings, should be noted on the inventory, even though the Tender of Service, (DOD 4500.34-R, Appendix A) does not obligate the owner to tell the carrier at the time of shipment that expensive high value items are included in the shipment. The GAO will scrutinize missing high value items, such as jewelry, and demand a high standard of proof of tender.

Therefore, a field claims office should not pay for packed missing expensive jewelry and other small items that are not specifically annotated on the inventory unless the claim is extremely well substantiated and there is strong proof of tender.

(b) At the time of the owner's counseling at the TO, the owner should be informed that jewelry and other small expensive items should be hand-carried to avoid this problem. If fine jewelry or other expensive items are to be included in the shipment, however, the owner must ensure that each item is individually recorded on the inventory. If the carrier declines to do this, the owner should add this information to the "Remarks/Exception" section found at the bottom of each inventory page. An owner who tenders a jewelry box should indicate the inventory number for it and specifically describe each expensive item within the jewelry box in the Remarks/Exception section. Occasionally, some carriers prepare, in addition to the normal household goods inventory, a high value inventory to reflect tender of expensive items. The owner should make sure that all the expensive items are listed and well described on this separate inventory. Merely listing a jewelry box is no longer sufficient to establish loss for expensive items missing from it. The owner should also verify that these items were received before signing the inventory at delivery.

(4) *Internal damage to electronic items.* Carriers will dispute any claim that an electronic item or appliance was damaged in shipment even though there was no external damage to the item or the carton in which it was packed. They often object by stating that there is no evidence that the item was working properly when tendered.

(a) For an electronic item or appliance, proof that an item was "tendered to the carrier in good condition" means showing that it actually worked when it was given to the carrier. Unlike many other household goods items—such as furniture—the inventory prepared by the carrier will be of little use in resolving this issue. Carriers are not required to know or to note the working condition of electronic items or appliances before shipment. The Tender of Service and many decisions of the Comptroller General preclude the government from arguing that the absence of inventory notations establishes a presumption that the item was in good working condition before shipment. These decisions recognize that for both practical and safety reasons, carriers cannot be expected to plug in electronic items to see if they work. For many items this would be especially difficult, if not impossible.

(b) To prevail on these claims, repair estimates must indicate that the internal damage was of the type that could be caused by rough

handling. In addition, field claims offices must obtain proof of tender in good condition from the owner and specifically document this information in the claim file. Usually, only claimants or their families will know whether an electric item worked immediately before shipment. Ask the claimant to provide a specific statement on the item's condition at the time the carrier arrived to pack the shipment. For example, was the stereo, VCR, or computer used shortly before the move? Was the item relatively new? Had it recently been repaired? Can visitors or neighbors state the working condition before shipment? Note that such statements must not be made on mere "fill-in-the blank" type forms. The statement should be in the claimant's own words and must specifically refer to the item in question, its damage, and any surrounding conditions.

EXAMPLE: In *Carlyle Van Line Inc.*, B-257884, 25 January 1995, the inventory stated that the TV's operating condition was unknown, the owner said it made a popping noise when plugged in, and a repair estimate indicated a circuit board was cracked. To establish the tender of the television in good operating condition, USARCS contacted the owner and asked him how he knew that his television was damaged in transit. The owner provided a statement in which he stated that the television worked when he gave it to the carrier because he had watched the NFL playoffs on television on the Sunday before it was shipped and that his spouse had tape-recorded soap operas from it until the day it was shipped. Based on this information, the GAO agreed that the television had been tendered in good condition and upheld the Army's offset.

EXAMPLE: In *Department of the Army-Reconsideration*, B-255777.2, 9 May 1994, the owner claimed internal damage to a VCR but there was no sign of external damage to either it or its shipping container. At origin, the carrier noted on the inventory that the VCR's operating condition was unknown. Based on the owner's repair estimate indicating that the VCR had a broken circuit board, USARCS held the carrier liable for the damage and offset for the cost to repair the VCR. On appeal by the carrier, the GAO ordered a refund in this instance because USARCS could not prove that the VCR was tendered in a good operating condition.

Before appealing to the Comptroller General, USARCS obtained the owner's written statement that "the VCR was functional before moving from Fort Wainwright, Alaska, to Fort Carson, Colorado. We used it often before moving with no problems. I assure you that the VCR was in working condition when packed and stored." Although the statement was not as specific as it could have been, the Comptroller General determined that the owner's statement established that she had tendered the VCR in good operating condition, that it was damaged at delivery, and that the carrier was liable.

These examples illustrate how field claims office personnel identify the additional information required to substantiate the owner's claim for an electronic item that has internal but no external damage. Ask the owner for a detailed statement that explains the condition of the item at the time of tender. "Fill-in-the-blank" or boilerplate language and general statements that the item worked before shipment are insufficient. The claimant must describe in detail the item's condition before shipment and, more importantly, demonstrate personal knowledge that the item was in good working order before the shipment. Each claimant's statement will be unique. Although this may require more initial effort from the field claims office, it will ease not only the claims process but also the recovery process, and it will eliminate USARCS' need to seek out the claimant months, sometimes years, after delivery to obtain this information. The following is a nonexclusive list of questions that an adjudicator should resolve before deciding to pay for damage to electronic items when no clear evidence of external damage to the item exists:

- Does a statement from a qualified repair firm specifically identify the nature and cause of the damage (beyond a statement that the item was "damaged in shipment")? Did you speak with the repair firm and, most importantly, was this recorded in the claim file?
- Is the internal damage of the type that is likely to have been caused by rough handling (such as cracked circuit board, loose solder points, internal parts rattling around)? Alternately, is the damage of the type that the claimant easily could have caused (such as a burned out power supply on an item that was subjected to dual voltage, or electrical connections that have corroded during long-term storage)?
- Is there evidence of rough handling or improper packing in the rest of the shipment (such as large furniture items broken, numerous boxes crushed, a great deal of broken glass)?
- Is the item relatively new in terms of its expected life? Is it covered by a warranty? Has the claimant inquired about the warranty?
- Can the claimant provide specific circumstances to help explain the damage? How was the item packed? Who packed it? What shows that the item worked before the move?

e. Carrier exception sheets (riders) and non-temporary storage. The Government often issues a TGBL, authorizing a carrier to pick up household goods from a NTS warehouse in which these goods have been stored pursuant to the basic ordering agreement (BOA) found at DOD 4500.34-R, appendix H. The TGBL carrier is liable for loss or damage as the "last handler" of the shipment, unless it can show that the claimed items were lost or damaged before the carrier accepted the shipment from the NTS warehouse. To prove that loss or damage occurred before pickup, the carrier's agent(s) must provide a valid exception sheet, or rider, prepared in accordance with paragraph 55m of the Tender of Service (See DOD 4500-34-R, appendix A). A sample exception sheet appears at figure 11-16.

(1) While an exception sheet signed by the carrier's agent and an NTS warehouse agent may shift liability to the warehouse, riders between two of the carrier's agents will not relieve the carrier of liability.

(2) Normally, a carrier will hire a number of different agents to perform services on a shipment. On a pickup from NTS, it may hire the NTS warehouse firm as an agent. When a carrier picks up a NTS shipment, the carrier's "primary hauling agent," or "hauler," takes items from the loading dock on which the NTS warehouse has placed them and loads them onto the truck. In some instances, a hauler will repack and re-inventory a shipment. If the hauler notices loss or damage that is not reflected as PED on the inventory, it should prepare an exception sheet and should ensure that an employee of the NTS warehouse signs and dates it. Normally, the hauler will then deliver the shipment or will place it in the carrier's storage-in-transit (SIT) warehouse closest to the shipment's destination. In the latter instance, a "delivery" or "destination" agent takes the shipment from the SIT warehouse to the soldier's residence.

(3) The carrier's "booking agent," whose name is usually listed in parentheses under the primary carrier's name in block 1 of the TGBL, acts as the carrier's point of contact on the shipment. An "origin agent" normally packs up shipments at residences. Because shipments in NTS are already packed, a TGBL carrier picking up a shipment from a NTS warehouse often will list its booking agent as the "origin agent" on its internal documents, even though this company may not actually handle the shipment.

(4) One carrier agent may pick up goods from another carrier agent, which temporarily stored the goods in transit. The pickup agent will probably prepare a rider to note the condition of the goods. This protects the pickup agent from being charged back by the GBL carrier for loss or damage that occurred before it took custody of the goods. In such cases, riders executed between agents of a carrier are referred to as "SIT riders." The carrier, of course,

remains liable to the Army for any loss or damage that is presumed to have occurred while the shipment was in the custody of any of the carrier's agents. Claims personnel should not mistake a "SIT rider" for a NTS rider.

(5) A TGBL carrier is relieved of liability only for loss or damage listed specifically on the exception sheet that its agent prepares when it picks up the shipment from NTS. For example, a carrier that listed only "table leg broken" on the rider would be liable for unlisted damage to the table top. See figure 11-17 for sample replies to carriers that deny liability on the basis of damage noted on a rider.

(6) Paragraph 55m of the Tender of Service (DOD 4500.34-R, appendix A) states that an exception sheet/rider is invalid unless it is signed by an employee of the NTS warehouse firm and dated. (If any sheet/rider is not signed, claims personnel should ask both the carrier and NTS warehouse why not). If both parties confirm that the exception sheets are valid, they may be accepted as proper. If the TGBL carrier (or its agent) did not sign an exception sheet, the sheet is still valid if the carrier can produce it and the NTS warehouse does not dispute its validity. See *In re Best Forwarders*, B-240991, 8 April 1991.

(7) If NTS warehouse employees initial an exception sheet, instead of signing it in the space provided, the rider is invalid unless the NTS warehouse acknowledges this mark as its agent's signature. If the employee abbreviates the warehouse firm's name so it cannot be read or lists only its carrier's agent number, the exception sheet may be valid, but claims personnel will need to ensure that this is the actual rider the carrier's agent prepared when the agent picked up the shipment from NTS.

(8) A rider should be prepared at "arm's-length" between two parties trying to protect their own interests. Two different companies may try to show that loss or damage occurred while the other party had custody of the shipment. An NTS warehouse's liability is only $50 per line item, but a TGBL carrier, on the other hand is liable for $1.25 times the net weight of the entire shipment. Thus, if both parties signing the exception sheet are employees of the same company, they have no incentive to ensure that the rider accurately reflects the condition of the shipment on pickup. Rather, they may be tempted to minimize the company's total liability by assigning to the warehouse the blame for loss or damage. On items stored after January 1, 1997, this will not be a problem, as the warehouse liability will be the same as the carrier. However, on items stored before that date, claims personnel should be aware of this difference in liability when evaluating the validity of a rider that was not submitted in response to the initial request.

Note. After preparing demands, field claims offices will forward all files involving both a carrier and a warehouse firm to USARCS.

11–26. Exclusions from liability

After claims personnel have identified the responsible carrier and determined there is sufficient evidence of tender, damage in transit and the amount of damage, they may make a demand against the carrier for any items for which the liability has not shifted to a NTS warehouse pursuant to a valid rider. However, the carrier may respond by raising a defense or exclusion that will bar holding the carrier liable. The burden is on the carrier to prove by credible evidence that the alleged exclusion applies. Nevertheless, claims personnel should screen their files for evidence of these exclusions before asserting a demand, and modify the demand to the extent an exclusion is valid.

a. Legal exclusions. Under both the common law and the Carmack Amendment to the Interstate Commerce Act, 49 USC 14706, a carrier may not be liable for transit loss or damage if it can prove that it was not negligent and that the loss was due to an act of God, an act of a public enemy, an act of the shipper, an act of a public authority, or the inherent nature of the property. Claims personnel must carefully evaluate carriers' objections to payment on the basis of these exclusions. Carriers often forget that they must also prove they were not negligent.

(1) Acts of God include such events as extraordinary floods, unusually heavy rains, electrical storms, extraordinary hot or cold weather, hurricanes, windstorms, and earthquakes. Fire is not an act of God unless it was caused by a lightning strike or occurs in the aftermath of some other event, such as an earthquake. Freezing is not generally considered an act of God for purposes of this exclusion when it occurs at seasons of the year and in parts of the country where freezing is normally expected. The same is true of hot, humid weather in tropical regions. The event must be both unusual and unexpected. For example, a flash flood that damages goods in temporary storage may be an act of God that excludes liability. But a flood that was predicted because of heavy rains may not be a valid exclusion if the carrier had sufficient notice to move the goods before the flooding of the warehouse. The key to this exclusion is to remember that the carrier must also prove that no act of negligence by its personnel contributed to the loss.

(2) Public enemies are military forces of a nation involved in an armed conflict only. Thieves, hijackers, and rioters are not public enemies in the legal sense of this exclusion.

(3) Act of the shipper is usually raised when an item is alleged to have been packed by the owner. However, paragraph 44a of the Tender of Service says the carrier is responsible for all packing and must inspect all prepackaged goods. The carrier is also responsible for determining if the items must be repacked to be safe and secure. DOD 4500.34-R, appendix A. Failure to do so may be considered negligence by the carrier and, therefore, the exclusion will not apply.

(4) Acts of public authority may include such things as prolonged detention in customs or quarantines due to insect infestation, during which containers leak or are broken into. Here again, the facts must be reviewed to see if any act of negligence by the carrier contributed to the loss, such as failure to properly pack an item or failure to have the proper clearance documents.

(5) Inherent nature of the items is most often raised in commercial shipments of agricultural goods that are subject to spoilage. It rarely occurs in household goods shipments. It may arise if metal items arrive rusted or if lacquered furniture warps because of climatic conditions. But here again, the facts must establish that the carrier was not negligent in protecting the items.

b. Negotiated exclusions. The contract with the carrier and several joint military-industry agreements may also exclude all or part of the carrier's liability.

(1) *Claims for $25 or less.* In order to save administrative costs, claims against carriers for $25 or less will not be asserted and carriers will not seek refunds for less than $25. See figure 11-11.

(2) *No timely notice.* Under the provisions of the 1992 Joint Military-Industry Agreement on Loss and Damage Rules, loss or damage reported to a claims office more than 75 days after delivery is presumed not to have occurred while the goods were in the possession of the carrier, unless good cause for the delay in notice can be shown. As a practical matter, the carrier usually will not be liable for any loss or damage listed on a DD Form 1840-R which has no dispatch date or a dispatch date more than 75 calendar days after delivery. The carrier may be liable if the evidence shows that the owner was unable to give notice in time because of illness, official absence, or other good cause. Also, if the evidence shows the carrier had actual notice of the loss, it may be held liable even though the DD Form 1840-R was not dispatched within 75 days. Actual notice may occur when the carrier sends an inspector to the house in response to the damage noted on a DD Form 1840 and the owner shows the inspector the additional damage noted on the DD Form 1840-R. See figure 11-5 for loss and damage rules.

(3) *Code T and Code 5 shipments.* Because part of the transportation on these codes of service is by the Government, initial demands on carriers will be for only 50 percent of the total liability, unless the evidence clearly shows the loss occurred while the goods were in the possession of the carrier. However, if the carrier refuses to accept the 50-percent compromise offer, the full amount will be sought in subsequent collection actions by offset or against the carrier's insurer. See figure 11-18 for the Joint Military-Industry Agreement on Carrier Recovery Code 5 and Code T Shipments.

(Figure 11-18 contains detailed discussions and/or sample paragraphs responding to these and other issues.)

11–27. Contractual limits on maximum liability of third parties

a. General. The liability of third parties for loss of, or damage to, personal property shipped by the Department of Defense is usually limited under the terms of the contract. These limits may be found in the Tender of Service, the rate solicitations, the carrier's tariffs, and joint military-industry agreements. These limits may be expressed as limits on the amount payable for each item, a limit on the total amount payable on the entire claim or both. The amount per item may be expressed as a flat rate (such as $50 per line item) or as a specific monetary amount per pound of the item or of the shipment. The date on which a shipment came into the possession of a carrier or was booked into NTS will determine the maximum limit per item. In addition, for items shipped under an agreement that makes the carrier liable only for the depreciated replacement cost of an item, the claims services and carrier industry have developed the Joint Military-Industry Depreciation Guide, found at Table 11-4.

b. Weight of Shipments. The net weight of the shipment is normally listed in block 3 or 4 of DD Form 1840, depending on the date printed (see the sample DD Form 1840 at figures 11-8a and b). If the net weight is missing, obtain it from the TO.

c. Types of shipment. Most carrier shipments of personal property or household goods are performed under authority of a Government Bill of Lading (GBL) contract, which stipulates the method by which the shipment moves (mode of shipment). Each mode of shipment is identified by a code composed of one or two characters, either letters or numbers, in block 3 of the GBL. The carrier's maximum liability on all GBL shipments picked up on or after 1 October 1995, is $1.25 times the net weight of the shipment. Depending on the pickup date of goods moved before 1 October 1995, the mode of shipment determines the level of liability as follows:

(1) *Code 1 or 2 (CONUS and Alaska, all basic increased released valuation).* IRV, also referred to as "basic coverage" , is the most common released valuation. The carrier's maximum liability for these shipments (after applicable depreciation-per-item settlement) is $1.25 times the net weight of the shipment. This increased liability is fully paid by the Government, not the owner, and is no longer reflected on the GBL by any special language. If, for example, the owner of a 10,000-pound code 1 GBL shipment makes no request for extra liability coverage (no language printed on the GBL refers to a higher released valuation), the maximum amount for which the carrier could be held liable is $12,500 ($1.25 times 10, 000 pounds net weight). In completing the "carrier liability" column of DD Form 1844, ignore item weights and enter the amount adjudicated on each item for which the carrier is liable. Where the Government payment was limited by application of a maximum allowance, enter the full, substantiated value of the item. Total the amounts for which the carrier is liable in the "carrier liability" column of the DD Form 1844. If the total exceeds the maximum carrier liability for the entire claim, enter the maximum carrier liability on DD Form 1843 as the amount demanded. However, do not change the total of the amounts for which the carrier is liable on the DD Form 1844. Note that the military services entered into a Memorandum of Understanding on Carrier Salvage Rights with the carrier industry in April 1989. See figures 11-6. On IRV shipments only, carriers have a right to pick up destroyed items (items for which the claimant was paid the depreciated value, rather than a loss of value (LOV) or repair cost). Mark basic IRV files forwarded to USARCS for centralized recovery "IRV" in red on the upper left corner of the outside manila folder. If you think the claimant may be due additional recovery money, add the words "CLAIMANT DUE CARRIER RECOVERY."

(a) Option 1 coverage is a higher level of IRV where the owner pays the cost in excess of what the Government pays for basic IRV coverage. This level of coverage is usually purchased by an owner who wants protection for items whose value exceeds a category maximum allowance or for a shipment whose value exceeds the released valuation and/or statutory maximum. Option 1 must appear on the original GBL in block 25 or block 27; a GBL correction notice is not acceptable. Option 1 may be shown as a lump sum (example:"Option 1: $30,000") or as a multiple (example:"Option 1: $3.00 times the net weight"). The carrier's maximum liability is whatever higher valuation the claimant places on the shipment and pays for. For example, if the owner of a 10,000-pound code 1 shipment requests Option 1 coverage of $30,000 and has this noted on the GBL, then the carrier's maximum liability is $30,000. Under basic IRV, the carrier's maximum liability for this shipment would have been only $12,500. In completing the "carrier liability" column of DD Form 1844, ignore item weights and enter the amount adjudicated on each item for which the carrier is liable. Where the Government payment was limited by application of a maximum allowance, enter the full, substantiated value of the item. Total the amounts for which the carrier is liable in the "carrier liability" column. If the total exceeds the maximum carrier liability for the entire claim, enter the maximum carrier liability on DD Form 1843 as the amount demanded. However, do not change the total of the amounts for which the carrier is liable on the DD Form 1844. Remember that carriers have a right to pick up destroyed items (those for which the claimant was paid the depreciated value, rather than a LOV or repair cost) in accordance with the terms of the salvage MOU. Option 1 files forwarded for centralized recovery should be marked "OPTION 1" in red on the upper left corner of the outside manila folder. If you think the claimant may be due additional recovery money, the words "CLAIMANT DUE CARRIER RECOVERY" must be added.

(b) Option 2 is the highest level of IRV and involves a no-depreciation liability settlement feature. This type of coverage is also called full replacement cost protection (FRC) and may be purchased under the same circumstances as Option 1, or merely because the claimant does not wish to have the replacement cost of destroyed or missing items depreciated to their fair market value. Option 2 must appear on the original GBL in block 25 or block 27; a GBL correction notice is not acceptable. Option 2 may be shown as a lump sum (example: "Option 2: $50,000") or as a multiple (example: "Option 2: $3.50 times the net weight"). Under Option 2, the carrier's maximum liability for a single item is the item's repair cost or undepreciated replacement cost. The minimum coverage available under Option 2 is $21,000, or $3.50 times the net weight of the shipment, whichever is greater. The carrier's maximum liability is the higher valuation the claimant purchases on the shipment. For example, the owner of a 10,000-pound shipment requests full replacement cost protection of $3.50 times the net weight of the shipment. This is noted on the GBL. The carrier's maximum liability will be $35,000 (10,000 pounds times $3.50), rather than $12, 500, as under Basic IRV. An owner who chooses this coverage must initially file a claim with the carrier, allowing the carrier the right to repair or replace items (see also subpara 11-21*b*(3)). The Government will accept a claim only if the carrier denies it, if delay would cause hardship, or if the carrier fails to settle the claim satisfactorily within 30 days. If a claim is submitted to the Government, it is adjudicated normally, and normal depreciation and maximum allowances are applied. In completing the "carrier liability" column of DD Form 1844, ignore item weights and enter the amount adjudicated on each item for which the carrier is liable. Where the Government payment was limited by application of a maximum allowance (or by depreciation), enter the item's full, substantiated value. Total the amounts for which the carrier is liable in the "Carrier Liability" column. If the total exceeds the maximum carrier liability for the entire claim, enter the maximum carrier liability on DD Form 1843 as the amount demanded. Do not change the total of the amounts for which the carrier is liable on the DD Form 1844 however. The claimant should be informed that any uncompensated loss MAY be reimbursed after recovery action against the carrier is completed. Mark Option 2 files forwarded for centralized recovery "OPTION 2: FRC" in red on the upper left corner of the manila folder. If you think the claimant may be due additional recovery

money, the words "CLAIMANT DUE CARRIER RECOVERY" must be added.

(2) Code 7, 8 or J. International through Government bill of lading carriers of unaccompanied baggage shipments are liable at the same rate as on Code 1 or 2 IRV shipments picked up on or after 1 October 1995. The carrier's maximum liability on shipments picked up on or after 1 October 1993 but before 1 October 1995 is $1.80 per pound per article. The weight of an item, or its carton if it is packed in one, is the weight listed in the Joint Military-Industry Table of Weights, shown at Table 11-3. In rare cases, the weight may be the gross weight of the shipment. But the Military-Industry Memorandum of Agreement (MOA) on carrier liability for loss or damage on baggage shipments dated 13 July 1993, reprinted at figure 11-19, severely restricts the use of gross weight to calculate carrier liability. It may be used only as a last resort, and only if carrier liability cannot be determined pursuant to the MOA. If questions arise on the proper application of gross weight in calculating carrier liability, contact your USARCS recovery team supervisor. Despite carriers' allegations to the contrary, there is no agreement to split liability on Code J shipments. The Joint Military-Industry Agreement on Carrier Recovery on Code 5 and Code T Shipments (figure 11-18) does not apply to Code J shipments. The "'last handler" rule applies to these shipments; therefore, unless the carrier takes proper exceptions on a valid rider, it is fully liable for all loss or damage.

(3) *Code 3, 4, or 6 (international and Hawaii).* As of 1 October 1995, these are all IRV claims; maximum liability is $1.25 times the net weight of the shipment. Carrier liability is computed in the same way as on Code 1 or 2 shipments discussed above. For such shipments picked up before 1 October 1995, maximum carrier liability is $1.80 per pound times the net weight of the shipment. For such shipments picked up before 1 October 1993, maximum liability is 60 cents per pound times the net weight of the shipment.

(4) *Code 5 or T (international and Hawaii).* Liability on these shipments is sometimes difficult to determine because both the Government and the carrier have custody of the shipment at some time during the move, and liability against the carrier may be pursued for loss or damage sustained only during its custody. To reduce disputes in such situations, the military services and the carrier industry have agreed that the military claims service will demand only 50 percent of the normal carrier liability (see figure 11-18). If the carrier does not settle the claim, the carrier will be offset for the full liability. For recovery on these two types of shipments, prepare DD Form 1844 as usual. Liability is calculated in the same way as on Code 1 or 2 IRV shipments picked up on or after 1 October 1995. For shipments picked up before 1 October 1995, liability is based upon the weight of items as reflected in the Joint Military-Industry Table of Weights, multiplied by $1.80 per pound per article. Two different sums should be shown as carrier liability at the bottom of DD Form 1844 by listing the amount of liability due under the 50-percent compromise and then listing the full amount to be offset if the carrier fails to pay. For example, "$100 code T/$200 Offset" . This same computation should be shown in the "amount of Government claim" box on DD Form 1843. If a carrier refuses to make a satisfactory settlement or fails to timely reply to the demand, forward the claim to USARCS as an impasse. The carrier's full liability will be pursued.

d. Non-temporaty storage contractors. There are two types of NTS shipments: a direct delivery from NTS by the company that stored the property and a delivery by a GBL carrier from a NTS warehouse. Direct deliveries of household goods from NTS are often misinterpreted as local moves. It may be difficult to tell the difference between the two, since a shipment delivered from NTS by the warehouseman is usually also a short-distance (local) move. The type of contract involved determines whether the shipment is a local move, a direct delivery from NTS, or a carrier delivery picked up from NTS. These distinctions are important because different liability formulas apply.

(1) *Direct delivery from non-temporary storage.* NTS of household goods requires completion of a DD Form 1164 (Service Order for Personal Property), to accomplish the "handling-in" portion of the shipment under the provisions of the BOA. The goods are stored for a period of usually six months to four years. The "handling-out" and post-storage services are accomplished by a supplemental service order. These are usually long-term storage, short-distance moves processed under the authority of at least two documents: the initial service order and the supplemental service order. The BOA for shipments booked into storage prior to 1 January 1997 states that the contractor shall be liable "in an amount not exceeding fifty dollars ($50) per article or package listed on the warehouse receipt or inventory form" (that is, $50 per inventory line item). A schrank is an exception to this rule; maximum liability for a schrank is $50, no matter how many lines are used on the inventory. Warehouse liability is $1.25 times net weight on all shipments booked into storage on or after 1 January 1997. Claims arising from loss or damage caused by a single contractor that was responsible for the pickup, NTS, and delivery of the shipment will be handled entirely by the field claims offices. (However, under a current test program, the Atlanta Regional Storage Management Office (RSMO) will handle the complete recovery process against warehouses under its jurisdiction.) This includes pursuing offset action through the appropriate MTMC RSMO. Figure 11-20 presents a map of the areas serviced by the RSMOs, and figure 11-21 provides a sample memorandum to the RSMO. NTS contractors are required to maintain insurance coverage; therefore, if a NTS contractor is no longer in business or is bankrupt, the claim file is still forwarded to the RSMO for collection, and that RSMO will automatically pursue liability against the insurer.

(2) *Carrier delivery picked up from NTS.* DD Form 1164 is also used for "handling-in" of the goods into the warehouse. When storage ends, the "handling-out" and post-storage services are accomplished by issuance of a GBL in accordance with the Tender of Service. The GBL may be issued to a different company or, in some cases, to the same company that stored the goods. These are long-term storage or long-distance moves processed under the authority of two documents: the initial service order and the GBL. Liability is assessed entirely against the delivering carrier at the appropriate rate for the code of service involved, unless the carrier prepares an exception sheet (rider) noting damage or loss at the time the goods are picked up from the warehouse. A warehouse representative must date and sign the exception sheet. An exception sheet should be prepared by the GBL carrier that picks up the goods from NTS even if that carrier is the same company that stored the goods. This is necessary to relieve the carrier from liability at the carrier rate and revert to liability at the warehouse storage rate. If a valid exception sheet exists, liability for items noted on it is assessed against the NTS warehouse at the maximum rate of $50 per inventory line item, if the shipment was booked into storage prior to 1 January 1997. Warehouse liability for shipments booked into storage on or after 1 January 1997 is $1.25 times the net weight of the shipment.

11–28. Settlement procedures in recovery actions

The goal of the recovery program is to recoup the carrier's full liability, subject to the maximum limits on carrier liability discussed above. The most efficient way to achieve this goal is a direct settlement with the carrier that is acceptable to both parties. Even if the carrier denies liability, the office responsible for recovery collection will respond to the carrier. As discussed below, the response will depend on the carrier's action.

a. Demand Packets. A demand is a monetary claim against a carrier, contractor, or insurer to compensate for loss or damage incurred to personal property during shipment or storage. DD Form 1843 (figures 11-22a and b) is used as a demand letter against a third party and must be accurately and completely filled out. The demand packet is a group of documents stapled together and sent to the liable third party. Do not use original documents. Demand packets should be mailed in official DA envelopes. An individual demand packet should be prepared for each party who is liable. No demand packet should be prepared when a claim file has been closed or when potential recovery is $25 or less. In this case, note the reason for closing on the chronology sheet, mark the outside of

file folder "CLOSED," and forward the file to USARCS. Affix this demand packet to the left inside cover on top of the file copies of these documents (opposite the side bearing claimant's complete name and file number). A demand packet will consist of the following documents in descending order:

(1) Original DD Form 1843.

(2) GBL and any related correction forms.

(3) Copy of DD Form 1840/1840-R.

(4) Copy of DD Form 1164, if applicable.

(5) Copy of DD Form 1844.

(6) Copy of DD Form 1841, if prepared.

(7) Copies of all repair estimates.

(8) Copies of all other supporting documents deemed appropriate.

b. Dispatch of demand packets. CONUS field claims offices send the following demand packets directly to the third party within 30 days after settlement (unless a private insurance payment or a bankrupt carrier is involved, or unless a TGBL shipment involves two or more third parties):

(1) Non-IRV shipments when the TGBL carrier's liability is $300 or less. This category includes code 4, 5, 6, 7, 8, J, and T shipments picked up before 1 October 1995. On code 5 and T shipments, the 50-percent compromise amount, not the full liability, must be $300 or less.

(2) IRV shipments when the TGBL carrier's liability is within the field claims office's designated $500 or $1,000 monetary jurisdiction. This category includes Higher IRV (Option 1), full replacement cost (Option 2) shipments, and all code 1, 2, 3, 4, 5, 6, 7, 8, J and T shipments picked up after 1 October 1995 at the basic level IRV.

(3) Direct deliveries from NTS.

(4) DPM shipments.

(5) Shipments involving demands against airlines or stevedoring contractors.

(6) Local contract shipments.

(7) POV shipments. See AR 27-20, paragraph 11-31, and paragraph 11-31 of this publication for detailed instructions on identifying responsible third parties to pursue for recovery.

c. Acceptance of checks. Immediately deposit checks received for the exact amount demanded from third parties. If a carrier or contractor forwards a check for less than the amount demanded, review the carrier's arguments against liability to determine whether they are acceptable. If they are valid in the light of all evidence, make appropriate corrections in the claim file and the unearned freight packet, deposit the check, record the deposit on the computer, and dispatch the unearned freight letter, if applicable (see fig 11-28). Then enter a FF transaction into the claims database, mark the front upper left corner of the file in red as "CLOSED," hold the file for 45 days, and then forward the file to USARCS for retirement.

d. Counter offers. If a third party offers to settle the claim for less than the initial demand, review the arguments for reducing liability to determine whether they are acceptable. If they are valid in the light of all evidence, make appropriate corrections in the claim file and the unearned freight packet, accept the offer but inform the carrier that offset action will commence if it does not submit a check for that amount within 45 days. If a release was included, sign, date, witness and return it. Suspend the file for 45 days. If the carrier submits a check in an acceptable amount, deposit it, record the deposit on the computer, and send the unearned freight letter, if applicable (see figure 11-23). Then enter a FF transaction into the database, mark the front upper left corner of the file as "CLOSED," hold the file for 45 days, and then forward it to USARCS for retirement. If the carrier does not submit a check in the proper amount within 45 days, forward the file to USARCS (or to the appropriate contracting officer) for offset action. Mark such files forwarded to USARCS as "IMPASSE" in the front upper left corner, record an "FR" transaction in the database, hold the file for 30 days, and then forward it for centralized recovery.

e. Unacceptable checks and offers. If a third party's basis for denying liability is not valid for any or all items, return any unacceptable checks, explaining why the check or offer is rejected, and request the correct amount. If a release was included, amend it to the revised amount and sign, date, witness, and return it. Warn the third party that the claim will be forwarded for offset action if a check for the amount requested is not received within 45 days. Suspend the file for 45 days. If a check in the proper amount is received, deposit it, record the deposit in the computer, and dispatch the unearned freight letter, if applicable (see figure 11-23). Then enter a FF transaction into the database, mark the front upper left corner of the file as "closed" hold the file for 45 days, and then forward it to USARCS for retirement. If a check in the correct amount is not received within 45 days, forward the file to USARCS (or to the appropriate contracting officer) for offset action. Mark such files forwarded to USARCS as "IMPASSE" on the front upper left corner, record a FR transaction on the database, hold the file for 30 days, and then forward it for centralized recovery. Normally, one rebuttal to a third party's denial of liability or counter offer is sufficient unless new arguments are raised or new evidence introduced.

f. Stale dated checks. Some carrier checks are valid only if cashed by a certain date, usually 60 or 90 days after issuance. To avoid complications caused by checks becoming "stale dated," the following rules apply:

(1) Return insufficient checks to the sender before forwarding files to USARCS for offset.

(2) DO NOT include checks in files forwarded to USARCS.

(3) DO NOT accept partial checks and then send the file to USARCS for offset of the balance.

(4) Affix the demand packet to the left inside cover on top of the file copies of these documents (opposite the side bearing claimant's complete name and file number).

(5) DO NOT request files be returned from USARCS for deposit of checks received after the file leaves the claims office.

(6) If a check is received after dispatch of the file to USARCS, telephone the Recovery Branch, (301) 677-7009, ext. 452, and determine if offset has been initiated. If it has, return the check to the carrier. If it has not, you may be instructed to send the check to USARCS. However, if the check is about to become stale, you may be directed to return it to the carrier, with a request that it be reissued and sent directly to USARCS.

g. Denials. Review the third party's basis for denying liability in light of all the evidence. If claims personnel agree with the third party's denial and decide to terminate recovery action, the reasons for this determination must be noted on the chronology sheet. Inform the third party in writing that denial was accepted. Enter this final transaction into the claims database, mark the front upper left corner of such file "CLOSED," hold the file for 45 days, then forward it to USARCS for retirement.

h. Depreciation. In determining payments to claimants, apply the depreciation rates from the Allowance List-Depreciation Guide (ALDG). The current version of this guide is shown at Table 11-1. In determining the amount of recovery from third parties, however, apply the Joint Military-Industry Depreciation Guide, shown at Table 11-4. In most instances, the depreciation rates are the same, and claims personnel are not required to consult the Joint Military-Industry Depreciation Guide or alter the depreciation taken on items before dispatching demands or forwarding files for centralized recovery. If a third party objects to the depreciation rate used to calculate liability for certain items, however, apply the Joint Military-Industry Depreciation Guide's rates if different from those set forth in the ALDG. If NTS was involved, it may be appropriate to apply depreciation during the period of storage. Refer to Table 11-5 for further discussion and a list of NTS depreciation rates.

i. Highlights of the Salvage Memorandum of Understanding. In April 1989, the military services entered into a Memorandum of Understanding (MOU) on Salvage with the carrier industry. This MOU is reprinted at figure 11-6 (the "Salvage MOU"). On IRV shipments only, carriers have a right to pick up destroyed items for which the claimant was paid the depreciated value, rather than a LOV or repair cost. The carrier will pick up these items directly from the claimant. For all claims involving IRV shipments, if the claimant refuses or cannot furnish a salvageable item to the carrier,

the carrier will be charged 75 percent of the item's value rather than 100 percent. Some highlights of the Salvage MOU are—

(1) The carrier must pick up items within either 30 days after the end of the inspection period (45 days after delivery, or 45 days after dispatch of the last DD Form 1840-R, whichever is later) or 30 days after receipt of the demand, whichever is later. The carrier forfeits its salvage rights if it does not vigorously attempt to collect the items within this period.

(2) The carrier has the right to pick up items whether or not that carrier ever fully pays for them. This is permitted for administrative convenience to ensure that claimants do not have to store destroyed items until recovery action is completed. Claimants will be directed to turn in destroyed items from IRV shipments to the DRMO if the carrier declines to exercise its salvage rights. If a claimant wishes to retain a destroyed item, a reasonable salvage value will be deducted from the amount otherwise payable at the time the claim is adjudicated. The carrier has no right to pick up items for which salvage value has been deducted.

(3) Destroyed items involving application of a maximum allowance are handled on a case-by-case basis. Even if the Government has not fully compensated the claimant for the full value of an item to which a maximum allowance has been applied, the carrier has salvage rights in the item. However, exercising that right depends on the carrier paying the full amount of the loss.

(4) If the carrier informs the installation claims office in a timely manner that the claimant has refused to allow pickup of a salvageable item, the claims office will contact the claimant and explain the carrier's rights. If the claimant continues to refuse to allow the carrier to pick up the item or discards the item without authorization to do so, the item's salvage value will be collected from the claimant. The CJA or claims attorney has authority to waive collection action or to assess a lesser salvage value when circumstances warrant but will fully explain any such action on the chronology sheet.

(5) If the carrier informs the claims office in a timely manner that it has been denied the right to pick up a salvageable item (hazardous items are not salvageable and may be disposed as prescribed in para 11-14*l*(2)), the carrier will be liable only for 75 percent of the item's value rather than 100 percent, except as provided in paragraph c of the Salvage MOU.

j. Property recovered after the claim is paid.

(1) When a third party informs the Government that it has located missing property after payment of the claim, immediately instruct the third party to hold the property pending further instructions.

(2) The claimant should be contacted and advised of the options outlined in AR 27-20, paragraph 11-16*b*.

(3) If the claimant furnishes a written statement disclaiming further interest in the property, inspect property to detect any possible fraud and determine what disposition would be most advantageous to the Government. In every instance, payment of the carrier's full liability will be required.

(a) On IRV shipments, advise the third party that the Government waives further interest in the property (unless the amount paid on the claim far exceeds liability at $1.25 times the net weight of the shipment). Disposition of the property is then at the third party's discretion.

(b) On non-IRV shipments, advise the third party to deliver the property to the DRMO nearest the area where it is being held, unless it clearly would be entitled to receive more money for completing delivery than the Government could expect to realize from sale of the property. Direct the third party to provide the claims office with a copy of DD Form 1348-1 (DOD Single Line Item Release/Receipt Document) or DA Form 3161 (Request for Issue or Turn-In) that it receives as a receipt. Include this copy in the claims file.

(c) If it appears that the third party would be entitled to receive more money for completing delivery of the property to the nearest DRMO (after deduction of unearned freight), than the Government could expect to realize from sale of the property, advise the third party that the Government waives further interest in the property. Claims personnel should contact the Claims and Adjudication Division, Transportation Operations Division at DFAS-IN (telephone: (317) 510-2489) for guidance in determining what the carrier would be paid for completing delivery. The weight of the goods, as well as the origin and destination locations will be needed to make this determination.

11–29. Reimbursements to claimants and insurers from money received from third parties

a. Claimants. Application of a maximum allowance (or depreciation on Full Replacement Protection claims) sometimes limits the amount of compensation we can pay a claimant, leaving the claimant with an uncompensated loss. However, claims personnel will assert claims against third parties for the full amount of the claimant's loss. If the amount recovered on the claim exceeds what the Army paid the claimant, the claimant or the claimant's insurer may be due reimbursement. Insufficiently compensated claimants who have basic IRV coverage are entitled to reimbursement from recovery money only if the amount recovered exceeds the amount paid the claimant by the Government. Insufficiently compensated claimants who purchased Option 1 or Option 2 are entitled to reimbursement up to the value of their additional coverage (see para 11-27*c*). Such files should be marked "CLAIMANT DUE CARRIER RECOVERY" in red. DO NOT promise the claimant that an additional payment is due; rather, inform the claimant that recovery from the carrier depends on the amount and quality of the evidence the claimant provides and that the actual recovery may be less than anticipated. The claimant should further be told that considerable time will elapse before recovery is effected and before any possible reimbursement can be made. The claimant should be told to notify USARCS of any change of address or phone number so any reimbursement due can be made expeditiously after recovery is completed. Such claims should be processed for recovery action as quickly as possible.

b. Private insurance. When a claimant has purchased a private insurance policy covering the shipment or storage of property and the insurance company pays all or any portion of the value of items lost or damaged, the insurance company is entitled, to the extent of its payment, to reimbursement of a pro rata share of the amount recovered on such items. Field claims offices will compute the third party's liability based on the highest amount paid to the claimant by the Government and/or the claimant's insurer on a line-by-line basis for each item involved. USARCS will compute and reimburse the insurer's pro rata share after it has completed recovery.

11–30. Recovery action against a claimant

AR 27-20, paragraph 11-14*f*, authorizes claims personnel to recalculate the amount allowed on any personnel claim and recoup over payment due to adjudication errors or because a claimant misrepresented, fraudulently or otherwise, the facts necessary for correct adjudication. Similarly, when a claimant is paid by both an insurer or other third party and the Government, claims personnel will readjudicate the claim directing the claimant to refund any overpayment.

a. Voluntary repayment. Voluntary repayment is the preferred method of collecting excess payments. Upon determining that a claimant has been overcompensated, the field claims office should notify the claimant, preferably in writing, of the overpayment and request voluntary repayment to the Government. The notice must include an explanation of the overpayment, and advise claimants that they have 30 days to pay, submit a rebuttal to the claim of overpayment, or request waiver or compromise of the debt. Advise the claimant that refusal to return the overpayment may result in the Government offsetting this sum against either the claimant's military or civil service pay or against a current Federal income tax refund or any future refund to which the claimant may be entitled. If the claimant agrees to repay the government, the field claims office may consider any reasonable offer to make full restitution. Claims personnel must use sound discretion in arriving at a repayment schedule. Factors to consider in devising a repayment schedule include, but are not limited to, the length of time the claimant will

remain on active duty, the soldier's rank, other debts, credit history and family obligations. If, after receiving written notification of the proposed action, the claimant refuses to return all or part of the overpayment, the field claims office must determine the proper grounds by which to obtain involuntary recovery from the claimant.

b. Involuntary collection by pay deduction. Debts may be deducted from a soldier's pay as an administrative offset under 37 USC 61007. The salary of a DA civilian employee may be offset under 5 USC 5514 and 37 USC 3716. If the claimant is a retired civil service employee, the Claims Collection Standards, 4 CFR 102.4, authorize an administrative offset of the retiree's civil service retirement pay. Moreover, all claimants who receive funds from the government, regardless of employment status, are subject to involuntary collection. By signing the DD Form 1842, each claimant expressly authorizes the government to withhold pay for any overcompensation received because of subrogated payments by insurers, carriers or any other persons, or because of any information that the claimant has provided to the government later discovered to be untrue.

(1) If the claimant is an active duty soldier or a civilian employee, claims personnel should complete a DD Form 139 (Pay Adjustment Authorization), and forward it to the DAO that services the claimant. The DD Form 139 should state the factual and legal basis and the authority for the collection action. Involuntary collection from retirees is handled similarly. If the claimant is receiving military retirement pay, the field claims office should complete and send the DD Form 139 to Defense Finance and Accounting Service, Cleveland, P.O. Box 99191, Cleveland, Ohio 44199-1126. If the claimant is a retired civil service employee, claims personnel should send the completed DD Form 139 or letter of indebtedness to the DAO at the employee's last place of Federal employment. The DAO will forward the DD Form 139 or letter of indebtedness to the agency responsible for disbursement of the claimant's civil service retirement pay.

(2) After the completion of recoupment action by any of the above methods, DFAS, the Office of Personnel Management, or the local DAO will send a check or will electronically deposit the amount recovered to the claims recovery account and verify in writing (certified copy of DD Form 1131, Cash Collection voucher) that recoupment action is completed. The field claims office must document the start and finish of recoupment action in the claim file. Claims personnel should record amounts collected into the Revised Personnel Claims Management Program as "Non-GBL Recovery" and enter "refund from claimant" in the "contractor" field.

c. Involuntary Collection—Internal Revenue Service tax refund offset. If debt collection by the above-listed methods is not possible because the claimant does not receive regular Federal income or salary from which the debt may be offset, 31 USC 3720A authorizes the government to recover lawful debts by withholding all or part of the amount from the claimant's Federal income tax refund.

(1) The Federal Income Tax Refund Offset Program allows USARCS to request the IRS to offset a claimant's income tax refund to collect an overpayment. USARCS may recover a delinquent debt under the program if it exceeds $25, cannot be collected by salary offset, is between ninety days and 10 years past due, and is valid and legally enforceable.

(2) An agency seeking collection under the offset program must inform the debtor by certified mail of the obligation to repay the debt, the agency's intention to pursue income tax refund offset, and the debtor's legal rights regarding the collection action. The agency must send this notice no less than sixty days and no more than one year before the agency applies to the IRS for income tax refund offset. Accordingly, in claims recoupment actions, a field claims office must send the debtor notice by certified mail at least sixty days before USARCS's application to DFAS-IN for income tax refund offset (see figure 11-24 for sample notice to debtor). USARCS's annual deadline for applying to DFAS-IN for income tax refund offset falls in December of each year. Consequently, the field claims office must send the certified letter to the debtor by 1 October to offset the debtor's income tax refund for the current calendar year. The procedure to initiate IRS offset is as follows:

(a) Send a demand letter to claimant by certified mail—return receipt requested, explaining the request for refund. If it is returned as undeliverable for any reason, forward the file to USARCS, ATTN: JACS-PC. If a field claims office receives the card indicating the letter was delivered but receives no immediate reply, wait a reasonable period of time (for instance, 30 calendar days), then attempt to contact the individual again to discuss repayment. If the second attempt fails, forward the claim file to USARCS, ATTN: JACS-PC. Include a memorandum explaining the steps taken to seek repayment.

(b) Include the claimant's last known address in the memorandum. Make every attempt to locate the individual. For former military personnel, contact ARPERCEN and/or the National Personnel Records Center. Be sure to include the information ARPERCEN provided in the memorandum.

(c) Enter the "FR" code into the computer. Include a print screen in the claim file. Hold the file in the field claims office for 30 calendar days.

(d) Clearly mark the outside of the folder near the top, "IRS OFFSET."

(3) In the offset application, USARCS must certify that the statutory notice requirements have been met and must indicate the amount of the debt to be offset. The field claims office must provide, by 15 November of each year, USARCS the identity of all debtors against whom offset should be initiated. Tax offset requests from field claims offices must include the debtor's name and social security number, the amount of the debt, and the circumstances justifying collection of the debt by tax offset, including a description of previous collection efforts.

(4) Once the IRS has taken offset action, DFAS will send verification of recoupment to USARCS, which will notify the field claims office.

11–31. Privately owned vehicle and other recovery from ocean carriers

a. Demands against ocean carriers.

(1) *Privately owned vehicles.* Demands for loss or damage to POVs will not be made directly against ocean carriers operating under contract with the Military Sealift Command (MSC). After the claim is paid, if there is evidence of ocean carrier liability, forward the entire claim file in duplicate directly to Headquarters, Military Traffic Management Command, ATTN: MTTM–C, 5611 Columbia Pike, Falls Church, Virginia 22041–5050. When forwarding POV claims, use a transmittal memorandum such as the sample shown in figure 11-25. Do not forward the claim file or copies of the claim file to USARCS for recovery action. (Also see para 11-36*d*.)

(2) *Other (non-privately owned vehicles) personal property.* After payment of a claim involving personal property other than POVs, forward entire claim file directly to the Commander, USARCS, for recovery action as appropriate.

b. Privately owned vehicle claims/shipping documents.

(1) *DD Form 788 (Private Vehicle Shipping Document for Automobile).*

(a) The DD Form 788 has three purposes.

1. To conduct a joint inspection and document the condition of the POV at the time of turn-in for shipment. An "X" code identifies PED. Accessory items will be inventoried and listed in the "accessories" block. The owner or owner's agent will acknowledge, by signing and dating the DD Form 788, that the inspection of the vehicle, as recorded, is a true representation of the POV's condition at time of turn-in.

2. To determine the validity of claims for loss or damage. Transit damage for non-single POV contractor shipments is annotated at each phase of the shipment process, using the appropriate user and condition codes. (See subparagraph *d* about single POV contractor shipments). The final inspection phase occurs when the owner or owner's agent picks up the POV at destination. An authorized inspector or contractor's representative will perform a joint inspection of the POV with the owner or agent, noting on the reverse of the

DD Form 788 any damage or discrepancies not previously annotated.

3. To determine third party responsibility for damage. For POVs shipped under the single contractor program, the prime contractor is liable for all damage in transit. But for other shipments, a different party reinspects the POV at each phase of shipment. Responsibility for loss or damage may be assigned to the stevedore, ocean carrier, or inland carrier in whose custody the damage occurred. A set of six user codes is provided on the form ("X," "T," square, diamond, circle, asterisk) for use during each successive inspection of the POV condition. These condition codes are used to identify the type and location of exterior or interior damage. If the damage occurred while the POV was in a MTMC terminal's custody, no third party liability exists.

(b) The DD Form 788 is a seven-ply document.

1. Two copies of the form should be available to claims personnel who must understand its uses and limitations.

2. The owner is issued one copy at the port of embarkation. This is a carbon entry copy, and will reflect all PED ("X" codes) annotated during the joint inspection when the POV was turned-in for shipment. No transit damage codes will appear. This copy specifies any damage existing when the POV is tendered and before any compensable damage occurs. This copy is inadequate to complete processing of a POV shipment claim for two reasons, however. It does not reflect the lift information MSC requires to assert a demand on an ocean carrier, and it does not reflect the transit damage codes necessary to apportion liability among ocean carrier, inland carriers, or stevedores. Files forwarded to MSC with only this copy will be rejected for billing (a demand against the ocean carrier, or stevedores) and retired to record storage.

3. Copy #1 of DD Form 788 reflects user and condition codes for all damage occurring in transit. It also reflects the lift information (vessel/voyage number) necessary for MSC to identify the liable ocean carrier. Claims personnel are required to determine whether liability exists against stevedores or ocean carriers pursuant to AR 27-20, paragraph 11-36. Without the #1 copy, these responsibilities cannot be met. Obtaining this copy depends on the distribution practices of the MTMC port of debarkation. Some Points of Debarkation may release the document directly to the POV-owner. If not, or if the POV-owner has lost it, then claims personnel must request the Points of Debarkation to provide a photocopy. Always try to obtain the original copy—it has color-coded entries that assist in determining contractor liability.

(c) The DD Form 788 is needed to properly evaluate a POV claim. The original or completed copy of the DD Form 788 is becoming increasingly important in processing POV claims damaged in shipment.

1. The owner's copy of the DD Form 788 provided after the initial inspection of the POV at turn-in may be sufficient, in many cases, to adjudicate and compensate the claimant, but it is not sufficient to pursue recovery afterwards. The key document to a successful recovery will be the completed DD Form 788, and claims personnel must know how to obtain it if the claimant does not have it.

2. The various port authorities keep the completed DD Form 788 on file for varying time periods. To help field claims offices determine how much time they have to contact the appropriate port authority, Table 11-6 provides filing periods and telephone numbers of the major port authorities that receive POVs. Remember to file DD Form 788 according to the owner's last name and the last four numbers of the social security number.

(2) *The repair estimate.* The POV transit chain for non-single POV contractor shipments typically employs several contractors, each performing separate services: stevedores, ocean and inland carriers. Each contractor works independently and is liable only for loss or damage that occurs while the POV is in its possession. POV claims, therefore, almost always require liability to be apportioned. For example, the stevedore dented the roof and the motor carrier scraped the left door.

(a) Because each contractor bears separate liability, the claims office must assert a demand for a sum certain against each liable party.

(b) Effective adjudication begins by obtaining properly itemized repair estimates. Repair estimates must identify and provide itemized cost for each element of the repair. The term "element" does not refer to each nut and bolt in the repair but rather to each major component of the POV that sustains damage, such as the left front fender, hatchback or roof. The repair estimate must be itemized to reflect the cost of labor, paint, and parts necessary to repair each element.

(c) Estimates that list only a single amount for labor, painting, and parts cannot be adjudicated on a line-item by line-item basis. In addition, repair firms that refuse to provide an itemized estimate should be viewed as highly suspect sources of repair work and may even be in violation of local consumer protection laws.

(3) *The privately owned vehicle claims inspection and worksheet.* The purpose of a POV claims inspection is to provide claims personnel an opportunity to assess objectively the extent of transit damage and to identify issues relevant to adjudicating the claim. A claims inspection cannot serve in place of the joint inspection conducted by the owner or agent and the authorized Government inspector or the contractor's representative. A claims inspection cannot cure a waiver of notice and the specific damage verification that the joint inspection provides. As a general rule, a Government inspector or a contractor's representative cannot verify any loss or damage discovered after the joint inspection and departure from the pickup point, and a claim for those items may not be honored. However, there are instances when the extent of damage, such as mechanical damage, is not readily apparent.

(a) The POV claims inspector worksheet will help insure that inspections are conducted in a uniform manner, regardless of who is making the inspection. This worksheet must be designed so that claims personnel may record accurate and detailed descriptions of each claim element. These elements may be subject to different degrees of PED, different depreciation factors, or different adjudication issues. For example, a POV's left door may have fifty percent PED, the right rear fender twenty-five percent PED, and the roof none at all. Because each element will cost a different sum to repair, claims personnel must deduct the correct percentage of PED for each element. A "lump sum" PED deduction, such as twenty-five percent for the entire POV, will result in either overpayment or underpayment to the claimant. A worksheet that clarifies the inspection process objectively not only ensures fair claims settlement but also validates the recovery action.

(b) A POV claims worksheet also can be an effective checklist. As part of the inspection, claims personnel should match the DD Form 1844 to the DD Form 788 and to the repair estimate.

- Are all the claimed damages documented as transit-related?
- Are the repairs on the estimate limited to the damages claimed?

Frequently, normal maintenance costs or non-transit damages are claimed. Sometimes these non-transit repairs are not claimed on the DD Form 1844, but the field claims office pays them by mistake because they were included in the estimate.

(4) *The DD Form 1844 (List of Property and Claims Analysis Chart).* Each element of the claim must be identified (schedule of property), and each element of the claim must be adjudicated on a line-by-line basis (claims analysis chart). The field claims office uses the claims analysis chart to determine the correct settlement and recovery amounts. The chart also plainly sets forth the details of the settlement process for a claimant, another field claims office, another government agency, or an industry member. Uniformity of application by claims personnel is essential to ensure uniformity of interpretation by other claims examiners.

(a) The claimant must identify each element of the claim (such as left front fender or right rear door), listing each as a separate line item on the DD Form 1844. The claimant must state how each element was damaged and provide a repair cost for each line item. This, of course, requires an itemized repair estimate. Unless the

POV is a total loss, it is incorrect to describe the damage on the DD Form 1844 as a "1985 Ford," and claims personnel must ensure that the claimant corrects the DD Form 1844 as quickly as possible.

(b) The adjudication must list a specific sum for the amount allowed on each line item. A lump sum for the entire claim or one that combines the repair costs for several elements of the claim is unacceptable and results in lost recovery dollars. Body work that involves repairing a door, a fender, and trunk lid must be itemized for each element. An element of the claim may involve several cost factors: parts, labor, and painting. The adjudicator must assemble these costs into the correct amount allowed for each element, and the amount allowed must reflect the appropriate PED, LOV, or applicable depreciation factor. It is incorrect to apply a lump sum PED percentage to the entire claim. Because different contractors may be liable for separate elements, the amount allowed must be tailored to the correct percentage of PED. This, in turn, will reflect correctly each contractor's liability for the transit damages that occurred during its possession.

(c) For POV recovery, specificity in the adjudication process is uniquely important. Unlike household goods recovery, in which a single carrier normally has responsibility for all the damage to a shipment, contractors in the POV shipment system are independent: no agency relationship exists. The ocean and inland carriers and stevedores, in CONUS or overseas, are liable only for the loss or damage that occurs while the POV is in their custody. They are entitled to know the specific amount of their liability. This can be accomplished only if the DD Form 1844 accomplishes its aim as a claims analysis chart. For example, an ocean carrier may bear $500 liability for damage to a car roof, a stevedore $300 for a fender, and an inland carrier $250 for a door. Combining the repair costs as a single item defeats the recovery action. Applying one across-the-board PED percentage to the entire POV is another adjudication error that adversely affects recovery. Using the same illustration, the roof may not have had any PED; therefore, the ocean carrier which caused fresh damage was not entitled to any reduction of liability even though PED existed elsewhere on the POV. At the same time, the stevedore and the inland carrier might demand that the adjudicator apply a higher PED percentage to the damage for which they are charged.

c. Demand on third parties. For field claims personnel, the final step in the POV recovery process is determining where to forward the file to assert a demand. AR 27-20, paragraph 11-33, requires that if the claim indicates that liability exists against a stevedore or related services contractor, the field claims office will process the claim through the responsible contracting officer to offset against the liable contractor.

(1) To comply with the above requirements, field claims personnel must match the user codes on the DD Form 788 to the line items claimed on the DD Form 1844. The DD Form 788 determines which contractors (user codes) caused what damages (condition codes). The DD Form 1844 determines the extent of pecuniary liability against each contractor. A demand can now be made for a sum certain against any third party in the transit chain.

(2) Determining third party liability may be easy. The key is ensuring that the DD Form 1844 serves its intended purpose as a claims analysis chart. This requires well-documented inspections, itemized repair estimates, client control in drafting the DD Form 1844, and adjudicating each element of the claim on a line-by-line basis.

(3) For POV claims that do not fall within the single contractor program, no demand will be asserted if recovery potential is less than $100, except that claims involving loss of items from inside the vehicle (such as theft of tool boxes, infant seats, seat covers, first aid kits, jacks, jumper cables, and radios and other audio equipment) will be pursued regardless of the recovery amount. Also, recovery action will be prioritized, handling claims of $2,000 or more first.

d. Single contractor privately owned vehicle program. On November 1, 1994, the Single Contractor POV Pilot Program began. This program allows claims services and field claims offices to enhance their POV recoveries.

(1) Only POVs shipped to and from the following sites will come under this program: in the United States: (1) St. Louis (Pontoon Beach, Illinois), (2) Dallas, and (3) Baltimore; in Germany: (1) Baumholder, (2) Wiesbaden, (3) Mannheim, (4) Grafenwoehr, (5) Kaiserslautern, (6) Schweinfurt, (7) Boeblingen, and (8) Spangdahlem. Shipments that do not originate and end at any of these sites do not come under this program and any recovery action must be taken under the present system. For example, a POV shipped from Dallas to Mannheim or from Grafenwoehr to Baltimore will come under the single contractor program; however, a POV shipped from St. Louis to Hawaii, or Boeblingen to Oakland, will not. To ensure that a POV shipment is a part of the single contractor program, look at the DD Form 788 to see if both the origin and destination sites are listed above. In the future, this program will be expanded to other ports, destinations and theaters of operation.

(2) At present, the single contractor, American Auto Carriers, uses DD Form 788. The contractor may create a new inspection form; however, before it may be used, the form must be approved by MTMC. At present, the DD Form 788 will be used only twice during the shipment: at the origin vehicle processing station when the owner drops off the POV and a joint inspection is conducted, and again at the destination vehicle processing station when a joint inspection is conducted with the owner before releasing the POV. Additionally, the DD Form 788 will indicate the origin and destination sites so field claims personnel can determine if the POV falls within the program. The contractor will use an internal inspection form to allocate liability among its subcontractors.

(3) The following information will assist field claims offices in asserting recovery demands against the single contractor:

(a) No demand will be asserted if recovery potential is $25 or less.

(b) All field claims offices will assert POV recovery demands. U.S. Army Claims Service, Europe (USACSEUR), will continue to assert POV recoveries for its area of responsibility.

(c) The single contractor is American Auto Carriers, 188 Broadway, Woodcliff Lake, New Jersey 07675-1232. Demands will be sent to this address. The contract is for a two-year period starting from 1 November 1994 with two one-year option periods. (Expect the contract to be extended.)

(d) The demand will consist of DD Form 1843 (be sure to change the number "120 days" found in the bold print instructions just above blocks 10 and 11 to "90 days"), DD Form 788 or commercial equivalent, DD Form 1844, and supporting documentation (such as a repair estimate).

(e) European field claims offices will prioritize assembly of POV recovery files, handling claims for $2,000 or more first, and will forward them to USACSEUR on the thirtieth day after payment to the claimant for recovery action. The USACSEUR will prioritize action on these files; it will handle claims of $2,000 or more first. Action to prioritize recovery files will occur regardless of whether the POV recovery files are under the single contractor program or the old POV program.

(f) A non-European field claims office will prioritize recovery action on the claims, handling claims of $2,000 or more first. Action to prioritize recovery files will occur whether the POV recovery files are under the single contractor program or under the old POV recovery program. See AR 27-20, paragraph 11-31.

(g) When a field claims office determines that the contractor is liable and cannot reach a satisfactory settlement within ninety days, or the contractor does not respond, it will forward the complete claim file, with a transmittal letter requesting offset, through Recovery Branch USARCS, to the contracting officer administering the contract at Military Traffic Management Command Eastern Area (MTMCEA), Contracting Division, Bldg. 42, Room 705A, Military Ocean Terminal, Bayonne, New Jersey 07002-5302. The transmittal letter or memorandum may be "modeled" after the DPM memorandum to the local contracting officer shown at figure 11-26. It will instruct the contracting officer to offset the contractor and make any checks received from the contractor payable to the Treasurer of the United States. Checks, along with the file, must be sent to

USARCS, not to the field claims office. Additionally, in this transmittal letter the field claims office will instruct the contracting officer, if any money is withheld from accounts payable, to forward to USARCS a copy of the collection voucher to verify that the amount was credited to the correct appropriation number. Be sure to include the complete, accurate appropriation number in the transmittal letter, ensuring that the third digit shows the current fiscal year code, and that the "0301" allotment serial number (ASN) is used.

(h) As a preventive law measure, field claims offices should publish in their local bulletins and newspapers the importance of the initial and final inspections of POV shipments.

(i) It is extremely important to enter POV recovery data into the Personnel Claims Management Program claims record. Tracking POV recovery data is necessary, not only to report to the Army Audit Agency, but to determine the success of the single contractor program. A variety of agencies will request POV vehicle recovery data. When recording recovery data for a POV claim under the single contractor program, use the "NON-GBL RECOVERY" data screen group in the claim record. In the "Contractor" field, enter the code "POVAAC" representing the contractor. Enter "N" in the "Ex Cov" field and use the remaining data fields to reflect demands, deposits, and offsets as appropriate. In the "PAYMENT-DENIAL-TRANSFER-RECON" (Transactions) data screen group in the claim record, reflect that you transferred the claim file to the MSC for recovery with the code "TV." Until USARCS creates a new transaction code for this specific type of POV recovery, use this transaction code.

(4) The pertinent claims clauses contained in the contract and vehicle claims instructions are found at figure 11-27.

e. Direct settlement by owner with single contractor. The owner/claimant has the right to settle the claim directly with the contractor.

(1) At the origin turn-in facility, the owner and the contractor will conduct a joint inspection of the POV using DD Form 788 or an approved contractor form. The contractor will provide the owner a legible copy of the inspection form and a copy of the vehicle claims instruction sheet, which explains the owner's rights to file a claim for damage or loss.

(2) The original copy of the inspection form will accompany the POV. The contractor may not use the original copy to record damages incurred at transship points.

(3) The contractor will use the original inspection form and the owner's copy to conduct a final joint inspection at the destination pickup facility. The owner will retain the copy obtained at turn-in and the contractor will retain the original inspection form.

(4) The contractor assumes full liability for all loss and damage, except where the contractor can prove absence of fault or negligence, or where the loss or damage arose from causes beyond the contractor's control (the ship sinks through no fault of the contractor).

(5) The contractor may correct deficiencies that occur while the POV is in its custody, but the contractor must notify the owner and a contracting officer's representative, in writing, of any deficiencies it corrected. "Deficiency" is not defined, but it probably allows the contractor to make repairs to the POV at its own expense.

(6) At the time of the final joint inspection, the owner may choose to settle the claim directly with the contractor. The contractor will provide the owner with another vehicle claims instructions sheet, which the latter will be required to sign. The original signed vehicle claims instructions sheet will be maintained in the contractor's file; a copy will be given to the owner, and a copy will be given the COR.

(7) All other recovery procedures, to the extent they are not changed by this note, remain in effect.

(8) The vehicle claims instructions sheet informs the owner that there are two options: (1) to file a claim against the government, or (2) to file a claim against the contractor. It also tells the owner that, absent some type of fraud, settlement with the contractor is final and the government may deny a claim brought later. However, another pertinent clause in the contract states:

> If the customer chooses not to settle with the Contractor, or finds additional damages not annotated during the final joint inspection, the customer will file the claim with the local field claims office.

This clause indicates that the claimant could not only file an original claim with the contractor, but also file a second claim against the government for later discovered damage not claimed against the contractor when the claimant settled with the contractor. Field claims offices must evaluate such second claims to determine if compensation is warranted or if the claim should be denied. Ask if the later discovered damage should have been discovered at time of the final inspection. If the claimant has settled with the contractor, it will be difficult to seek recovery from the contractor as it will argue that the claim has been settled and that the contractor has no further liability. Field claims offices will have to show that the later discovered damage for which the government compensated the claimant could not have been discovered by the exercise of due diligence on the part of the claimant. Claimants are instructed to notify the field claims office and the contractor, in writing, of later discovered damage as soon as possible. In the letter, the claimant must explain why the damage was not discovered during the final inspection at the pickup point. Nothing precludes the claimant from asking the contractor to reconsider the settlement in light of later discovered damage. Nevertheless, field claims offices should ask claimants if they have an offer from, or have settled, with the contractor.

11–32. Centralized recovery program procedures

a. Centralized recovery actions. Under the Centralized Carrier Recovery Program, claims offices will forward the following types of claims to USARCS for dispatch of demand packets:

(1) Non-increased released valuation shipments (codes 4, 5, 6, 7, 8, J and T picked up before 1 October 1995) when the through Government bill of lading carrier's liability exceeds the field claims office's $300 baseline monetary jurisdiction. On code 5 and T shipments, the 50 percent compromise amount, not the full liability must exceed $300. On code 7, 8 and J shipments, be sure to apply the policies stated in the MOA on carrier liability for loss or damage on unaccompanied baggage shipments, at figure 11-19. REMINDER: Shipments picked up between 1 October 1993 and 30 September 1995 are calculated at $1.80 per pound per article. Prior to 1 October 1993, liability was limited to 60 cents per pound per article.

(2) Increased released valuation shipments when the through Government bill of lading carrier's liability exceeds the field claims office's baseline jurisdiction. For most offices this is $500, although some have been delegated higher authority by the Commander, USARCS. IRV shipments include code 1 and 2 shipments picked up after 1 October 1988, higher IRV (Option 1), full replacement cost (Option 2) shipments, and all code 3, 4, 5, 6, 7, 8, J and T shipments picked up on or after 1 October 1995 at the basic level IRV.

(3) Through Government bill of lading shipments involving liability of more than one third party. This category includes claims involving both a TGBL carrier and a NTS warehouse. It also includes TGBL shipment claims involving more than one carrier—for example, when a TGBL shipment in SIT converts to storage at the owner's expense and is later delivered out under a service order.

(4) Claims involving payment by a private insurer, such as coverage purchased from a warehouse firm or the United Services Automobile Association.

(5) Claims for mobile home shipments, which are identified by "code S" in Block 2 of the GBL.

(6) Claims involving a bankrupt or uncollectible GBL carrier. Recovery from local contractors that have filed for bankruptcy must be pursued through local contracting offices.

(7) Claims involving single incidents that result in damage to more than one shipment (such as defaults, warehouse fires, floods, and break-ins.).

b. File format.

(1) When forwarding a file to USARCS or a command claims

office, affix the following documents to the left inside cover (opposite the side bearing the claimant's complete name and file number) in descending order (see figure 11-28 for a diagram):

- First. The demand packet, consisting of the original DD Form 1843 with dispatcher data blocks (signature, telephone number, and "dispatch date") empty; copies of DD Forms 1840 and 1840-R; copy of DD Form 1844, any statements by member, copies of any estimates, and, if applicable copies of any DD Form 1164 (Service Order for Personal Property) or DD Form 1841 (Government Inspection Report).
- Second. If applicable, an unearned freight packet consisting of the original letter requesting deduction of unearned freight charges (see figure 11-23) with a copy of the GBL, DD Form 1843, DD Form 1844, and supporting documents (estimates) attached thereto.
- Third. Copy of DD Form 1843.
- Fourth. GBL and/or DD Form 1164, and/or local purchase order, if applicable.
- Fifth. Documents of timely notice described in AR 27-20, paragraph 11-28*c*, for example, DD Form 1840/1840-R and any continuation sheets.
- Sixth. DD Form 1844.
- Seventh. DD Form 1841, if applicable.
- Eighth. Repair estimates, paid bills, replacement costs, and appraisals.
- Ninth. Any other documents appropriate to support the claim against the third party, such as personal statements.
- Tenth. Locally approved or adopted chronology sheets will be the last document attached to the left inside cover of the file.

(2) The following documents will be affixed to the right inside cover in descending order:

- First. The paper screen recording entry of all actions taken at the field office on USARCS' Claims Legal Automation Information Management System.
- Second. A copy of the letter to DFAS-IN requesting deduction of unearned freight charges, if applicable (see figure 11-23).
- Third. Certified copy of the voucher from the servicing DAO, showing the amount paid the claimant and the exact appropriation and fiscal year from which payment was deducted.
- Fourth. DD Form 1842.
- Fifth. Private insurance settlement documents, if applicable.
- Sixth. All inventories.
- Seventh. All other documents, such as request for exception sheet, orders, turn-in slips, witness statements, and correspondence.

c. Actions prior to forwarding.

(1) *Ensure database input is correct.* USARCS uses the information contained in the database to provide statistics to several agencies, including the GAO and the MTMC. There are plans to use this data in scoring carriers under a program designed to eventually improve the quality of service to soldiers and employees. Therefore, ensuring timely and accurate data input into the USARCS system is critical. For example, an incorrect SCAC code entry may cause USARCS to provide misinformation about a carrier, or to offset the wrong carrier. Failure to record recovery deposits properly on the automated program may distort carrier recovery performance analysis, as well as the field office recovery program analysis.

(2) *Files forwarded for recovery.* DO NOT stuff the demand packet into an envelope or staple it to the claim. Dispatch dates and signatures will NOT be entered on the DD Form 1843. When appropriate, include an unearned freight packet in the file. Always enter the GBL number and the SCAC from Block 2 of the GBL, but do not enter "demand sent" data into the computer on files forwarded to USARCS for recovery. Enter the "FR" transfer code on the computer, then hold the file 30 days before forwarding it to USARCS. The present automated claims system will not allow data from a field claims office to be uploaded if the disk containing the data reaches USARCS after the file. When a file is received at USARCS, a mailroom date is entered by the clerk at USARCS. The mailroom date blocks any further uploads or changes to the file by field claims offices' monthly disks.

(3) *Files forwarded for retirement.* Enter "FF" the day after you settle the claim or complete local recovery action. Then hold the file 45 days before you forward it to USARCS for retirement (For example, "PF" is entered on 14 December 1995; "FF" is entered on 15 December 1995; file is actually mailed on 29 January 1996). If you enter "FF" on the same day that you settle the claim, the two entries may be reversed during upload into the USARCS database. The database cannot distinguish multiple entries on the same date.

d. Files forwarded to the military sealift command for privately owned vehicle recovery. Demands will not be made against ocean carriers operating under a MSC contract. After payment to a claimant, if there is evidence of ocean carrier liability, the entire claim file will be forwarded directly to MSC for recovery action. Figure 11-25 provides a sample transmittal memorandum. Do not forward POV recovery files to USARCS for recovery action. USARCS will assert recovery demands only on POV claims forwarded for action on requests for reconsideration. There is no need to hold these files after entering the "TV" code. These claims are not received at USARCS until after the MSC has completed recovery (typically, three to six months). Therefore, they do not cause database problems. The POV files that involve the new single contractor POV pilot program should be treated as files held for retirement.

e. Return of files from the United States Army Claims Service. Normally, claims sent to USARCS will be returned to a field claims office only for reconsideration action.

(1) Please inform claimants that, although they have up to 60 days to request reconsideration, they should inform your office as early as possible that they intend to do so, so that you can retain the file. Do not forward those files on which you know you will receive a request for reconsideration until you have received and acted upon the request. However, do not retain files unless it is clear that a claimant seeks reconsideration. Holding files too long will clog the field claims office and delay carrier recovery.

(2) It is not necessary to hold these files after you enter the "TA" code. However, it is necessary to enclose a copy of the transfer diskette in every file forwarded for payment or reconsideration action. This enables the file to be uploaded immediately into the system and reduces the possibility that duplicate files or errors will be entered into the claims database.

(3) Do not send disks with files forwarded for recovery ("FR") or retirement ("FF").

f. Error reports. Each month, after the data is uploaded into the main database, USARCS sends an error report to each submitting office. This report either states, "There were no errors," or lists the errors by claim number and specifies the error field. "Errors" are records that contain incorrect or inconsistent data that could not be uploaded into the system. If your office receives an error report, it is vital to remove the erroneous claims files from your suspense, make the corrections in your database and forward the corrected disk to USARCS. Make new paper screens for the claims files, and hold those files an additional thirty days before you retire them. This will allow the corrected data to be uploaded before USARCS reserves the claim file.

g. Processing overseas demands.

(1) *European centralized recovery processing.* USAREUR field claims offices will separate files with recovery potential into CONUS, European, and POV recovery. They will prepare liability demands in accordance with the terms in the contract or tender of service and forward them to the responsible claims service between 30 and 45 days of the settlement of the claim. One demand packet will be prepared, stapled separately, and inserted in each file folder. Documents must be legible. Do not use original documents. Arrange the packet in the following sequence, top to bottom:

- DD Form 1843. The "send your reply to" block will read: "U.S. Army Claims Service, Europe, Friedrich-Ebert-Str. 89, Gebaeude 488-M, 6800 Mannheim, FRG."
- DD Form 1844.
- DD Form 1841 (if available) (see figures 11-4a and b).
- Inventory (for DPM shipments only).
- DD Form 619-1 or any other transportation documents (see figures 11-9a and b).
- Copies of repair estimates or paid bills.
- All other appropriate supporting documents.

Demand packets prepared by field claims personnel will not include copies of DD Forms 1299 (Application for Shipment and/or Storage), 1701 (Inventory of Household Goods), 1797 (Personal Property Counseling Checklist), or 1842, (Claim for Loss or Damage to Personal Property Incident to Service), PCS orders, payment vouchers, or copies of catalog ads used to adjudicate replacement value.

(2) *European carrier recovery file arrangement.* Arrange the claim file as closely as possible to the sequence outlined in subparagraph *b*, above.

(3) *European carrier recovery file folder.* The following data must be entered on the file folder:

- Name of carrier (not the carrier's address).
- Shipment mode.

(4) *European carrier recovery forwarding of files.* Forward the recovery file directly to the USACSEUR, ATTN: AEUTN-A, Unit 30010, Box 39 (Mannheim), APO AE 09166.

(5) *European privately owned vehicle recovery.* USAREUR field claims offices will prepare demand packets in accordance with AR 27-20, paragraph 11-31. Demands for less than $100 will not be asserted and may be closed. Forward files to USACSEUR for recovery action. USACSEUR will determine whether a basis for liability exists against ocean carriers, stevedores, or other contractors and assert demands as appropriate.

(6) *Korean recovery processing.*

(a) USAFCS-K is the recovery agent for GBL-coded shipments for all U.S. Army area claims offices in the Republic of Korea (ROK). These offices include—

- Eighth Army.
- 2d Infantry Division.
- 19th Theater Army Area Command (TAACOM).
- 501st Support Group.
- Camp Humphreys.

(b) In addition, USAFCS-K receives all coded shipments except local and DPM from—

- U.S. Army Japan/IX Corps Claims Office.
- 10th Area Support Group Claims Processing Office.

These claims offices will arrange files for recovery in accordance with the guidance prescribed by USAFCS-K, and forward them to USAFCS-K.

11–33. Offset actions

a. General. Carriers have 120 days from receipt of demand to pay, deny or make a final written offer on a claim. Field claims offices may extend this period no more than 45 days to complete negotiations or to allow time for receipt of payment. If a carrier fails to respond within 130 days (allow 10 days for receipt by mail), and no extension has been given, the file should be sent as an impasse for potential recovery by administrative offset. An impasse occurs when a carrier fails to respond to a demand or when efforts to negotiate a settlement have reached a standstill and the carrier has no valid basis for its total or partial denial. Before forwarding files for offset, claims personnel must ensure that timely notice has been given, that the file includes all necessary documents, and the demand and any correspondence were mailed to the proper carrier or contractor at the correct address. When applicable, field claims personnel must also ensure that an unearned freight packet is included. Files are forwarded for offset to different offices depending on the shipment mode. See subparagraphs 11-33*b*, *c* and *d*, below.

b. Claim files forwarded to USARCS. All claims involving offset against GBL carriers are forwarded to USARCS for action. The file should be marked "IMPASSE" in the upper left-hand corner. If a carrier does not respond to the demand, mark the file "IMPASSE—NO RESPONSE." USARCS will review the file and, if appropriate, begin offset action. On DPM moves, claim files are forwarded to USARCS for offset action only when the GBL motor freight carrier is found to be liable. Files should be forwarded to Commander, USARCS, ATTN: JACS-PCR, 4411 Llewellyn Avenue, Fort George G. Meade, MD 20755-5360.

c. Claim files forwarded to local contracting offices. Claims forwarded to local contracting offices for offset action include claims involving stevedore contracts, local moves, and DPM shipments in which the origin and/or destination contractor is found liable.

(1) When the contractor fails to reply to a demand within 130 days of dispatch or fails to make an acceptable offer, the file should be marked "IMPASSE" in the front upper left-hand corner and forwarded to the local contracting office with a request for offset action. See figure 11-26 for a sample memorandum used in forwarding claim files to contracting officers.

(2) If the contracting officer agrees and recovers payment through offset, the funds should be placed in the claims deposit account into which all other recovery money is deposited.

(3) Each field claims office should maintain a log of the files it forwards to its contracting office for offsets and should monitor progress on each file until offset is completed. Deposits into the claims account also should be monitored closely and reconciled regularly.

d. Non-temporary storage offset actions.

(1) Forward impasse claims against NTS warehouses to the RSMO responsible for administering the BOA for storage in that geographic area.

(a) The Atlanta RSMO has responsibility for NTS facilities in Alabama, Georgia, Florida, Mississippi, Tennessee, South Carolina, North Carolina and Kentucky. The mailing address for the Atlanta RSMO is: Chief, Atlanta RSMO (MTEA-PPS-A), 5050 N. 24th Street, Forest Park, GA 30050-5226.

(b) The Bayonne RSMO has responsibility for facilities in Virginia, Maryland, Delaware, District of Columbia, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, Vermont, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Minnesota, Iowa, West Virginia and Wisconsin. The mailing address for the Bayonne RSMO is: Chief, Bayonne RSMO (MTEA-PPS-B), Military Ocean Terminal, 42-4 E. 32nd Street, Bayonne, NJ 07002-5302.

(c) The Oakland RSMO has responsibility for facilities in Hawaii, California, Oregon, Washington, Idaho, Nevada, Utah, Arizona and New Mexico. The mailing address for the Oakland RSMO is: Chief, Oakland RSMO, (MTWA-PPS-O), Post 2235, 100 Alaska Street, Oakland, CA 94626-5000.

(d) The Topeka RSMO has responsibility for facilities in Alaska, Montana, Wyoming, Colorado, Texas, South Dakota, North Dakota, Nebraska, Kansas, Oklahoma, Missouri, Arkansas and Louisiana. The mailing address for the Topeka RSMO is: Chief, Topeka RSMO (MTWA- PPS-T), 1 South and H Street, Topeka, Kansas 66620-5000.

(e) Claims offices also should note, on figure 11-20, that the Oakland RSMO has responsibility for NTS facilities located in Hawaii, and the Topeka RSMO has responsibility for NTS facilities located in Alaska.

(2) Claims personnel should change the claims accounting classification referenced in paragraph 4 of figure 11-21 to reflect the current fiscal year accounting classification on 1 October each year.

e. Files with no carrier liability or recovery potential. Files with

no carrier liability or recovery potential should not be treated as impasses. They should be marked "CLOSED" in the upper left-hand corner and forwarded to USARCS for retirement. Enter "no carrier liability" in the note field of the data base, and explain the basis for the determination on the chronology sheet or in a file memorandum.

f. Refunding carrier offset money. Carriers often request refunds of money offset to pay prior government claims. All such requests should be sent to the Recovery Branch, USARCS. Local contracting offices cannot direct defense finance offices to pay refunds from the claims deposit account (21-4360 22-0301 P202099.11-4230 FAJA S99999), using money deposited through offset of DPM contractors. Such refunds are unauthorized. Field claims offices should monitor offset actions to ensure that this practice does not occur.

(1) Only the Commander, USARCS, or the Commander's designee, may refund money from the claims deposit account. Granting unauthorized refunds frustrates the Commander's efforts to determine the account balance available for reissue.

(2) DPM contractors may contest offset, either by requesting the contracting officer to reconsider the decision or by appealing the decision to the Armed Services Board of Contract Appeals (ASBCA). Either the ASBCA or the contracting officer may decide that an offset was improper. Neither may refund money from the claims deposit account, however. Instead, the contracting office must return the claims file, with the later decision, to the claims office, which then must forward the file to the Personnel Claims and Recovery Division, USARCS, for action. Every effort should be made to notify USARCS of these actions within 10 days of notice of the ASBCA's or contracting officer's decision, as the United States has only 30 days to refund the money before interest begins to accrue.

(3) If a contracting office is refunding offsets from the claims deposit account, the CJA or claims attorney should persuade the contracting officer to stop this practice. Also, the CJA or claims attorney should notify the Defense Accounting Office that the claims deposit account may be used only for deposits. If the contracting officer persists in refunding carrier offsets, the CJA or claims attorney should contact the Commander, USARCS.

11–34. Compromise or termination of recovery actions

a. General. The authority to assert a claim includes the authority to reach a compromise settlement and, in appropriate circumstances, to terminate efforts to collect on the claim. A third party may deny liability on all or part of a claim. Claims personnel must evaluate any denial to determine whether the evidence supports the denial. The determination to compromise or terminate recovery is a matter of judgment and it must take into consideration all the facts, including—

(1) The legal merits of the government's claim, including whether there is evidence to substantiate every element of the claim.

(2) Whether the cost of pursuing the claim will exceed the amount recovered.

(3) The debtor's ability to pay.

(4) The impact that compromise or termination will have on other claims with the same debtor or on similar claims with other debtors.

b. Limits on authority. The Federal Claims Collection Act, 31 USC 3711, 3716-3719, and the Federal Claims Collection Standards promulgated pursuant to that Act govern the compromise or termination of recovery claims. See 4 CFR Parts 103 and 104. These standards authorize the heads of executive agencies to compromise or terminate collection efforts on claims that do not exceed $100,000, exclusive of interest and penalties. For claims in excess of $100,000, the DOJ must approve the action. The Commander, USARCS, will make most decisions on GBL recovery claims in excess of $1000 as installation claims offices do not possess the monetary authority to assert such claims. However, on DPM recovery actions, Recovery Judge Advocates (RJA) must ensure that their office procedures alert them to any recovery claim in excess of $15,000, as compromise may exceed their authority. See AR 27-20, paragraph 14-4.

c. Termination before demand.

(1) As discussed above, the Army will not assert recovery claims on GBL shipments when the third party's liability is less than $25. Remember, however, that the $25 limit is based not on what the Army has paid on the claim, but on the third party's total liability. Private insurance may have paid $100 on a lost item, leaving the Army to pay only $10 on a damaged item. But the claim against the carrier would be for $110 and should be asserted.

(2) On POV recovery actions, no demand will be asserted under the present program unless the potential recovery is more than $100 for damage other than loss of an item shipped with the vehicle. Claims arising under the Single Contractor program, however, will be asserted if they exceed $25.

(3) Do not terminate recovery claims against a carrier or warehouse that is no longer in business or has filed an action in bankruptcy. Alert the Recovery Branch, USARCS, at (301) 677-7009, extension 441, to the situation. Normally, the Commander, USARCS, will pursue recovery action on GBL carriers in this situation and will direct field claims offices to forward all claims against the carrier or warehouse to USARCS for further action. On DPM shipments, the contracting officer should be contacted for possible collection by offset against payments still due the contractor or for recovery against performance bonds or cargo insurance.

(4) If, upon reviewing a file before dispatch of demand, it appears that the recovery claim is not supported by sufficient evidence, the claim may be terminated. Fully explain the basis for the determination in the chronology sheet or a memorandum for record in the file.

d. Compromise or termination after issuing a demand.

(1) In those cases where a carrier bases its denial on the Government's failure to prove tender, damage in transit, or the cost of the loss or damage, claims personnel must determine whether additional evidence is needed and if it can be obtained. In some cases, the cost of obtaining the additional evidence may exceed the amount to be recovered. In that event, it may be possible to negotiate a compromise with the carrier. If not, claims personnel may have to accept the denial, but must fully document the basis for the final action in the file.

(2) Whenever possible, claims should be settled by direct payment with a carrier, and claims personnel should be willing to compromise on all or part of a claim if the evidence is in doubt. The cost of pursuing collection by administrative offset may not always be recoverable but claims should not be compromised merely because a carrier makes a counteroffer that is less than the amount demanded. If the carrier does not provide a basis for its failure to pay the full amount of the claim, and the evidence supports the government's demand, the claim should be forwarded as an impasse for potential collection by offset.

(3) USARCS may agree to compromise or terminate collection on any impasse file forwarded for collection by administrative offset. If a field claims office feels strongly that a claim sent to USARCS for offset should not be compromised, it should set forth the reasons in a memorandum in the file.

(4) If DFAS-IN returns a claim as uncollectible, the Recovery Branch will pursue recovery against the carrier's cargo liability insurance. Although several claims may be consolidated into a single demand letter to the insurance company, each claim will be treated as a separate action for purposes of the compromise and termination authority granted in the Federal Claims Collection Act. The Chief, Recovery Branch, will determine whether any claims against insurance policies will be compromised or terminated. If the total amount of the compromise exceeds $15,000, however, the Chief, Recovery Branch, will make a recommendation for final action by the Chief, Personnel Claims and Recovery Division.

11–35. Direct procurement method recovery

a. General. Sometimes, the Government manages a shipment from origin to destination by issuing separate contracts to commercial firms for services such as packing, containerization, local drayage, and storage that are required at each segment of the move. The

"transportation" portion of the move is considered the "middle" portion, and is the only one governed by a GBL contract. This segment transfers the shipment from the origin pickup area to the destination delivery area. Usually, the motor freight carrier picks up the goods from one company (named in block 18 of the GBL) and delivers them to another company (named in block 19 of the GBL). Block 3 of the GBL will contain a two-letter service code to identify the shipment as a DPM move. The first letter will be either A, B, H, or V, followed by either A, B, C, D, E, F, G, H, K, L, M, N, P, R, W, X, or Y. The first position letter code refers to the commodity shipped; for example, "B" means baggage and "H" means household goods. The second position letter code refers to the type of service requested. Refer to DOD 4500.34-R, appendix D, for a detailed explanation of alpha codes used for DPM shipments. Block 27 of the GBL should contain a brief description of the shipment and it usually includes the released valuation, which applies to only the motor freight company named in block 1 of the GBL. The origin and destination contractors' liability is set forth in each local contract and normally is computed based on the net weight of the article, as indicated in the Joint Military-Industry Table of Weights, Table 11-3. Maximum motor freight liability is calculated by multiplying the released valuation of the shipment as stated on the GBL times the net weight of the shipment. A motor freight carrier may be held liable on a DPM shipment when the destination contractor that delivers the goods can prove it was not at fault by taking proper exceptions before accepting custody of the personal property. Any loss or damage for which recovery is to be pursued against the motor freight carrier must be verified by including in the claim a copy of the valid shipping document (such as rider, exception sheet, weight slip, or delivery ticket) prepared when the goods changed custody from one company to another. Do not forward DPM recovery actions to USARCS for centralized recovery unless an impasse is reached against the motor freight carrier or a private insurance payment is involved. If forwarding the claim to USARCS as an impasse with a DPM motor freight carrier, include an unearned freight memorandum, if applicable.

b. Commercial airline shipments. Sometimes a commercial airline may also operate under authority of a GBL for the air transportation segment (the "middle" portion) of a DPM shipment. The GBL should state the liability rate. If it does not reflect the released valuation of the shipment, contact the origin ITO for the appropriate liability statement. For flights that do not both begin and end in the United States, the United States is subject to the terms of the Warsaw Convention, and any contract or agreement to the contrary may be null and void. However, claims personnel must ascertain the specific contractual liability limitations as they may exceed those set forth in the Warsaw Convention. Additionally, the Warsaw Convention's terms may adversely affect the military recovery program because a shorter notice period applies to commercial airlines carrying international shipments. Article 26 of the Warsaw Convention provides that "in case of damage, the person entitled to delivery must notify the carrier forthwith after the discovery of the damage, and at the latest, within three days from the date of receipt in the case of baggage and seven days from the date of receipt in the case of goods. In case of delay, the complaint must be made at the latest within 14 days from the date on which the baggage or goods should have been placed at the passenger's or owner's disposal." This requirement places a heavier burden on both claimants and claims personnel, and the latter should make sure that both ITOs and claimants know about the time limitations for notice of damage or loss arising from international commercial air shipments. The Warsaw Convention also carries a two-year statute of limitations in which to file claims. Claims must be filed against the airline (demands must be dispatched) within two years of the incident or from the date on which the goods ought to have arrived, or from the date on which the transportation stopped. Air waybills are not prepared until goods arrive at the airport, so any signature on that form acknowledges receipt of goods at destination delivery and establishes timely notice. Airlines do not deliver goods, so the claimant, the ITO, or a carrier must pick up the shipment at the airport. If the owner or owner's agent fails to note exceptions on the delivery receipt when picking up the shipment, then timely notice is not established and will normally preclude recovery from the airline.

c. Intra-theater shipments. DPM shipments within both Europe and South Korea will be processed as directed by the respective chiefs of those claims services. Overseas command claims services will dispatch demands directly on overseas DPM and intra-theater shipments and all overseas demands against stevedoring or airline contractors. In addition, USACSEUR will dispatch demands on all unaccompanied baggage shipments to Europe.

(1) *United States Army, Europe intra-theater shipments.* For U.S. Army Europe (USAREUR) shipments, it is critical to identify the shipment modes throughout the management of household goods claims. Notice procedures are jeopardized if claims personnel do not understand which carrier or contractor bears liability under a particular shipment mode. Additionally, different shipment modes carry varying notice periods, and proper claims adjudication requires a determination whether the claimant provided timely notice. Also, because some intra-theater modes allow a short time in which to assert a demand for recovery, claims personnel must identify and hasten such actions. Normally, DD Form 1840 indicates the shipment mode in the "code of service" block. Reviewing the contract order or tender issued by the ITO for each move may help formulate a more precise determination. These modes are summarized below.

(a) Local (intracity).

1. Outside Germany, local moves are performed under the terms of the packing and crating contract. Contractor liability is $1.25 times the net weight of the shipment. Written notice must be dispatched to the contractor within 75 days of delivery. The Government has six years in which to assert a demand. USEUCOM Form 60-7c identifies this shipment mode.

2. Within Germany, local moves are made under tenders of service. Carrier liability is Deutsche Mark (DM) 4000 per five cubic meters. The claimant must note obvious damage and missing items at delivery and notify the field claims office of concealed damage within 10 days of delivery; the field claims office has an additional five days in which to dispatch written notice. The Government must assert a demand within one year of delivery. A GBL identifies this shipment mode. Field claims offices are required to dispatch a demand to the carrier on the day the claim is obligated, usually, the day the CJA or claims attorney signs the document authorizing payment.

(b) Door-to-door container. Carrier liability is date-determinative: for shipments before 1 April 1994, carrier liability is $.60 per pound per article; on or after 1 April 1994, carrier liability is $1.80 per pound per article. The office must dispatch written notice to the carrier within 75 days of delivery. The Government has three years in which to assert a demand. A GBL or AE Form 68B, Military Freight Warrant, identifies this shipment mode.

(c) Furniture van.

1. German line-haul. Carrier liability is DM 4000 per five cubic meters. The claimant must note obvious damage and missing items at delivery and report any concealed damage to the field claims office within ten days of delivery; the field claims office has an additional five days in which to dispatch written notice. The Government must assert a demand within one year of delivery. A GBL identifies this shipment mode. Field claims offices are required to dispatch a demand to the carrier on the day the claim is obligated.

2. Non-German line-haul. Carrier liability is $.60 per pound per article. Written notice must be dispatched to the carrier within 75 days of delivery. The Government has three years in which to assert a demand. A GBL or AE Form 68B, Military Freight Warrant, identifies the shipment mode.

3. United Kingdom tenders. There is a 75-day notice period and the Government has three years to assert a demand. The tender determines the contractor's liability. A GBL or a Military Freight Warrant identifies this shipment mode.

(d) Direct procurement method shipments. DPM deliveries are ordered against the local packing and crating contract. Contractor liability is $.60 per pound per article. If contractor negligence is established, the carrier is liable for the full cost of loss or damage.

Written notice must be provided the contractor within one year of delivery. The Government has six years in which to assert a demand.

(e) One-time rate tenders. There is a 75-day notice period and the Government has three years to assert a demand. The tender determines the carrier's liability. A GBL identifies this shipment mode.

(f) International Through Government Bill of Lading. A small number of intra-theater shipments are transported by American flag carriers on an International Through Government Bill of Lading (ITGBL). Calculate carrier liability in the same manner as in a CONUS recovery action for the applicable shipment code. Notice period is 75 days. The GBL identifies this shipment mode.

(2) *Korean intra-theater shipments.*

(a) Liability for local moves is based on DOD Supplement to the Federal Acquisition Regulations. See 48 CFR 252.247-7016. These contractual provisions also apply to local- and DPM-coded shipments.

(b) Notice of loss or damage is required within one year of delivery.

(c) Contractor indemnity for non-negligent damage is limited to $.60 per pound per article. An "article" is defined in the International Personal Property Rate Solicitation as any shipping piece or package and its contents. Where it is established that the loss or damage is a result of contractor negligence, the contractor is liable for the full repair or depreciated replacement cost.

(d) The contractor must respond to claims brought by the United States or the owner within 30 days by paying the claim, rebutting liability, or requesting an extension.

(e) Prepare files and process claims as directed by the local contracting office or USAFCS-K.

d. Packing and containerization contractors-direct procurement method. A local move is a shipment performed under a local contract that authorizes property to be moved from one residence to another within a specified area (usually from off-post to on-post, or the reverse.) The contract for a local move is the purchase order, which lists the services required of the carrier under the provisions of the Federal Acquisition Regulation (FAR). Prepared by the ITO, the purchase order usually covers packing and picking up the goods at origin residence or from storage, transporting the goods within a designated distance, and delivering and unpacking the goods at destination. All services are performed under the authority of one purchase order and will usually be accomplished on the same day or within a few days of pickup. These are short-term, short-distance moves.

(1) Timely notice is required to pursue carrier recovery, and liability depends on the service provided. If the contract pertains to origin pickup (outbound) or only destination delivery (inbound) services, liability usually is based on a released valuation of sixty cents per pound per article. Be sure to check the contract to confirm the released valuation. The liability for intracity or intraregional moves (Schedule III) is $1.25 times the weight of the shipment.

(2) Field claims offices should obtain a copy of each DPM contract from the local contracting or ITO office to identify each local moving company operating under a DPM contract, to verify the limits under the liability clause, and to learn what performance standards apply. Contractual duties are to be performed within calendar years and the parties may renegotiate contracts, so it is important to match the correct contract to the action. The Joint Military-Industry Table of Weights is used to calculate liability for individual items. In determining a contractor's liability, the term "article" means any shipping piece or package and its contents, minus any exterior crate or shipping carton. The destination contractor must receive timely notice of loss or damage on DD Form 1840/1840-R. Then, claims personnel send a demand to the destination contractor, holding it liable for all loss or damage unless it can prove it was not at fault by having noted the proper exceptions before receiving the personal property. If the inbound/delivering carrier took exceptions, then the motor freight carrier is liable for any damage or loss noted against it during its custody of the goods. Similarly, if the motor freight carrier driver notes exceptions supporting a claim against the origin contractor (or the contractor from which the driver receives the shipment), that carrier is relieved of liability, which is instead charged against the previous contractor. Claims personnel should send those parties demand packets as well. Damage noted against the origin contractor or motor freight carrier must be indicated on a valid shipping or transfer document. Such notice generally involves distinct damage to or loss of containers. All parties involved in the transfer of the goods must sign these documents.

(3) Claims that result from loss or damage caused by a local contractor responsible for the pickup, local transit, and delivery of the shipment are handled entirely by the field claims offices. Field claims offices and command claims services will complete DPM recovery regardless of monetary limits. This duty includes pursuing offset action through the local contracting officer, if necessary (after reaching an impasse against the origin or destination contractor). See figure 11-26 for a sample memorandum requesting offset through a local contracting office.

(4) Although it is not required, some local contractors do maintain cargo liability insurance coverage. If the local contractor is no longer in business or is bankrupt, the file may be closed and retired after verifying with the contracting office that no insurance coverage exists. Note on the chronology sheet the reason for closing a claim without pursuing or completing recovery action. Do not forward local or DPM recovery actions to USARCS unless an impasse is reached against a motor freight carrier or a private insurance payment is involved. If forwarding the claim to USARCS as an impasse with a DPM motor freight carrier, include an unearned freight memorandum, if applicable.

11–36. Special Recovery Actions

a. Storage in transit converted to storage at owner's expense. The ITO may authorize Storage in transit (SIT) for up to 180 days on a GBL shipment, and has authority to extend SIT up to 270 days for a valid reason. Extensions of SIT usually are granted in 90-day increments. The GBL liability continues as long as the extension of SIT is authorized.

(1) If goods remain in SIT beyond the authorized time limit, the shipment converts to storage at the owner's expense, but the owner is usually still entitled to delivery out of storage at Government expense. This delivery may be accomplished on a purchase order authorizing delivery of the goods to a local address or to an address listed on a GBL.

(2) If the owner's claim against the Government is payable, the claims office will pursue liability based on the applicable contract against the delivering contractor as the last handler of the goods, unless the contractor can prove that the loss or damage did not occur while the goods were in its custody. To disclaim liability, the contractor must provide a valid exception sheet or rider.

(3) The field claims office must ensure that timely notice of loss or damage is provided to the destination contractor. On occasion, the destination contractor may not be listed on the GBL. Field claims offices need to ascertain the destination contractor's correct mailing address to ensure proper and timely dispatch.

(4) If a contractor picks up the goods from storage at owner's expense and liability is established against the warehouse by exceptions noted on a valid exception sheet or rider, claims personnel must request a copy of the contract between the owner and the warehouse. This document will state the commercial rate of warehouse liability, which may differ from the usual government rate. In this instance, the property owner must pursue warehouse liability directly against the warehouse. Forward recovery actions involving more than one contractor to USARCS for centralized carrier recovery.

b. Mobile homes. Mobile home claims represent a small percentage of the total claims field claims personnel handle; therefore, claims personnel are often unfamiliar with the requirements for processing these claims. After following procedures set forth in subparagraphs (1) through (7) below, forward all mobile home claims to USARCS for centralized recovery action.

(1) *Agents.* If the primary carrier hires another mobile home

carrier to transport the mobile home, the first carrier will continue to be shown on the GBL and is responsible for the mobile home from pickup to delivery. The GBL carrier is also responsible for damage caused by third parties it engages to perform services such as auxiliary towing and wrecking.

(2) *Storage-in-transit.* SIT is available on mobile home shipments. The extension of SIT beyond 180 days applies only to household goods and hold baggage shipments, not to the shipment of mobile homes. If a mobile home remains in SIT beyond 180 days, storage is at the owner's expense.

(3) *Notice.* Notification to the carrier may be made on any of the documents described in subparagraph 11-14*j*(4). Claims personnel will dispatch DD Form 1840-R in accordance with paragraph 11-21*g*.

(4) *Liability.*

(a) For damage to the mobile home. Generally, carrier liability for damage to a mobile home includes the full cost of repairs for damage incurred during transit. In addition to the exclusions listed in AR 27-20, paragraph 11-26, a mobile home carrier is excused from liability when it can offer substantial proof that a latent structural defect (one not detectable during the carrier's preliminary inspection) caused the loss or damage.

(b) For damage to contents. The carrier's liability for loss or damage to household or personal effects inside the mobile home (such as clothing and furniture or furnishings that were not part of the mobile home when it was manufactured) is limited to $250, unless a greater value is declared in writing on the GBL. The carrier must prepare a legible inventory of all contents on DD Form 1412 in coordination with the owner.

(c) For water damage. Water damage to a double-wide or expansion-type mobile home usually is caused by the carrier's failure to protect it sufficiently against an unexpected rainstorm. Carriers often try to avoid liability by asserting that this damage is due to an "act of God." It is, however, the carrier's responsibility to ensure safe transit of the mobile home from origin to destination. Not only should a carrier be aware of the risk of flash floods and storms in certain locales during certain seasons, but it should also provide protective covering over mobile home parts exposed to the elements. Carrier recovery should be pursued for water damage to these types of mobile homes.

(5) *Waivers.* The carrier may try to escape liability by having the owner sign a waiver of liability. Such waivers are not binding on the United States.

(6) *Demands.* The carrier is liable for the full amount of substantiated damage to the mobile home itself (less estimate fees), plus up to $250 for loss or damage to contents (or more, if the claimant purchased IRV on the contents). Prepare a demand for the total amount. The demand packet should include, in addition to DD Forms 1843 and 1844, and the documents listed in paragraph 11-14*j*(4).

(7) *References.* Chapter 3 and DOD 4500.34-R, appendix E, pertain to mobile home shipment and contain valuable information. Another guide is DA Pamphlet 740-2, *Moving Your Mobile Homes*, which discusses the owner's responsibilities before shipment, is usually provided to the owner during transportation counseling. Also useful is the Mobile Homes Counseling Checklist, which is given to mobile home owners at some installations. Copies of this checklist may be available from the local ITO.

c. Airline shipments.

(1) *Commercial without a GBL.* In these shipments, soldiers purchase their own tickets and check their own baggage. The reverse side of the flight ticket or baggage claim check should state liability terms. If they do not, contact the carrier to obtain its liability terms for the flight. Unlike GBLs, there is no air waybill number.

(2) *Chartered Air Mobility Command.* There is no GBL on this type of shipment. Conditions generating liability are set forth in the airline's contract with Air Mobility Command (AMC). To obtain the contract pertaining to the claim being adjudicated, contact Headquarters, Air Mobility Command, ATTN: DOKAS (for domestic flights) or DOKAI (for international flights), Scott Air Force Base, Illinois 62225-5305. The AMC baggage irregularity report is the delivery document upon which transportation personnel record loss or damage. Study this document to determine whether timely notice exists. Unless loss and damage are recorded on this document, no potential carrier recovery exists and the file may be closed. The flight number prefix that appears in the "mission and date" block of the appropriate form identifies the air carrier. Refer to Table 11-7 for the airlines' mission prefix codes and instructions on how to ascertain the name and address of the appropriate air carrier. The boarding pass, flight ticket, or baggage receipt may also be used to identify the air carrier by referring to the flight number prefix shown on the front and matching the first letter to the same letter shown in the border of the reverse side.

(3) *Commercial on a GBL.* This type of shipment would normally be one portion of a DPM shipment. Recovery of these shipments is discussed at paragraph 11-35*b*.

d. Stevedoring contractors. Claims against stevedores and related service contractors are treated similarly to claims against motor freight carriers and use the standard contractual clause contained in DPM shipments. See AR 27-20, paragraph 11-33.

11–37. Unearned freight claims

a. When the loss or destruction of an item in shipment is attributable to a GBL carrier, that carrier is not entitled to receive transportation charges for that item. Once a recovery claim has been settled with a carrier, and the settlement included payment for items that were lost or destroyed, claims personnel who settled the claim must prepare a letter to DFAS-IN. A sample letter is reproduced at figure 11-23. The letter will identify the GBL number of the shipment and the items that were lost or destroyed. The documents listed in paragraph 11-37*c* will be enclosed with this letter. The Claim and Adjudication Division, DFAS-IN will compute the amount the carrier must refund and attempt to collect from the carrier. An unearned freight packet is required when a mobile home is lost or completely destroyed. Unearned freight packets should not be prepared on claims involving NTS, local, or other contract movers. Generally, an item is deemed to be "destroyed" if it cannot be repaired or if the repair costs more than replacement. If items can be repaired but, even after repair they are "useless for the purposes for which they were intended" or "no longer exist in the form in which they were tendered to the carrier," then they will be deemed to be destroyed. But mere LOV does not automatically qualify as destruction. See *Aalmode Transportation Corporation*, B-231357, January 15, 1991; and B-231357.2, September 9, 1992.

b. Before mailing unearned freight packets to DFAS-IN, be sure to complete local recovery and make appropriate corrections to the DD Forms 1844 for claims in which compromise was reached on certain items. Keep in mind that unearned freight packets are not required on every claim. For files marked, 'IMPASSE,' do not mail the unearned freight packet to DFAS-IN; leave it in the file forwarded to USARCS, USACSEUR, or USAFCS-K.

c. The unearned freight letter to DFAS-IN (sample shown at figure 11-23), will include copies of DD Forms 1843 and 1844 and one copy of the GBL and will identify the line items on the DD Form 1844 for which unearned freight charges should be deducted. Further, copies of repair estimates will be added to the unearned freight packet if the items are not repairable. Each estimate should clearly state that the item in question is either beyond repair, no longer exists in its original form, or is useless for its intended purpose. Estimates written in a foreign language must be translated into English. If there is no estimate of repair to substantiate one of the above conditions, then the field claims office must conduct an inspection to verify the unearned freight charge for the item. A copy of the inspection report will also be included in the unearned freight packet. If substantiation is lacking (for example, there is no estimate of repair or equivalent statement or no inspection could be made), note this information in the chronology sheet and do not assert an unearned freight charge for the item in question. Claims examiners should identify items that qualify for unearned freight charges at the same time they adjudicate the claim and calculate carrier recovery.

Place an asterisk beside the line item, or circle the line number of the corresponding item on the DD Form 1844 in red ink. Do not highlight it because some photocopy machines will darken the highlighted area so it cannot be read. If a field claims office waits until recovery is completed before identifying unearned freight items, it may be too late. For example, an attempted inspection or call to a repair firm to inquire about such an item may reveal that the item is no longer available or that the claimant has been reassigned.

d. DFAS-IN will not attempt to recoup unearned freight charges if the total weight of all lost or destroyed items is less than 42 pounds from an overseas shipment or less than 100 pounds from a domestic shipment. No unearned freight packet is needed on these shipments.

e. The DD Form 1844 is extremely important because DFAS-IN reviews this document to determine if the item is destroyed or missing. Make sure claimants provide sufficient descriptive information in block 7 to determine whether the item is destroyed. Stating that the item is "destroyed" without further descriptive language hinders DFAS-IN in determining if the item is actually destroyed. Additionally, claims examiners must make sure that the adjudication codes used in block 26 are consistent with a destroyed item. "Replacement Cost" ("RC") is consistent with settlement for a destroyed item, and on rare occasions, "fair and reasonable" ("F & R") may be used if the claimant is unable to establish the value for the destroyed item. The chronology sheet should state why "F & R" was used. "Loss of value" ("LOV") and "agreed cost of repair" ("AGC") are inconsistent with a destroyed item. Such notations on a destroyed item would require further explanation on the chronology sheet. "Amount claimed" ("AC") is ambiguous and needs further explanation as well.

31 USC 3721. Claims of personnel of agencies and the District of Columbia government for personal property damage or loss.

(a) In this section--

(1) "agency" does not include a nonappropriated fund activity or a contractor with the United States Government.

(2) "head of an agency" means--

(A) for a military department, the Secretary of the military department;

(B) for the Department of Defense (except the military departments), the Secretary of Defense; and

(C) for another agency, the head of the agency.

(3) "settle" means consider, determine, adjust, and dispose of a claim by disallowance or by complete or partial allowance.

(b) (1) The head of an agency may settle and pay not more than $40,000 for a claim against the Government made by a member of the uniformed services under the jurisdiction of the agency or by an officer or employee of the agency for damage to, or loss of, personal property incident to service. If, however, the claim arose from an emergency evacuation or from extraordinary circumstances, the amount settled and paid under the authority of the preceding sentence may exceed $40,000, but may not exceed $100,000. A claim allowed under this subsection may be paid in money or the personal property replaced in kind.

(2) The Secretary of State may waive the settlement and payment limitation referred to in paragraph (1) for claims for damage or loss by United States Government personnel under the jurisdiction of a chief of mission in a foreign country if such claims arise in circumstances where there is in effect a departure from the country authorized or ordered under circumstances described in section 5522(a) of title 5, if the Secretary determines that there exists exceptional circumstances that warrant such a waiver.

(c) On paying a claim under this section, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against a foreign country for the damage or loss for which the Government made the payment.

(d) The Mayor of the District of Columbia may settle and pay a claim against the District of Columbia government made by an officer or employee of the District of Columbia government to the same extent the head of an agency may settle and pay a claim under this section.

(e) A claim may not be allowed under this section if the personal property damage or loss occurred at quarters occupied by the claimant in a State or the District of Columbia that were not assigned or provided in kind by the United States Government or the District of Columbia government.

(f) A claim may be allowed under this section only if--

(1) the claim is substantiated;

(2) the head of the agency decides that possession of the property was reasonable or useful under the circumstances; and

(3) no part of the loss was caused by any negligent or wrongful act of the claimant or an agent or employee of the claimant.

(g) A claim may be allowed under this section only if it is presented in writing within two years after the claim accrues. However, if a claim under subsection (b) of this section accrues during war or an armed conflict in which an armed force of the United States is involved, or has accrued within two years before war or an armed conflict begins, and for cause shown, the claim must be presented within two years after the cause no longer exists or after the war or armed conflict ends, whichever is earlier. An armed conflict begins and ends as stated in a concurrent resolution of Congress or a decision of the President.

(h) The head of the agency--

(1) may settle and pay a claim made by the surviving spouse, child, parent, or brother or sister of a dead member, officer, or employee if the claim is otherwise payable under this section; and

(2) may settle and pay the claims by the survivors only in the following order:

(A) the spouse's claim.

(B) a child's claim.

(C) a parent's claim.

(D) a brother's or sister's claim.

Figure 11-1. Personnel Claims Act, extract from 31 USC 3721—Continued

(i) Notwithstanding a contract, the representative of a claimant may not receive more than 10 percent of a payment of a claim made under this section for services related to the claim. A person violating this subsection shall be fined not more than $1,000.

(j) The President may prescribe policies to carry out this section (except subsection (b) to the extent that subsection (b) applies to the military departments, the Department of Defense, and the Coast Guard). Subject to those policies, the head of each agency shall prescribe regulations to carry out this section.

(k) Settlement of a claim under this section is final and conclusive.

Figure 11-1. Personnel Claims Act, extract from 31 USC 3721

(Letterhead)

January 31, 1997

Claim No. 96-001-0146

CPT John Smith
335th Ordnance Company
APO AA 09326-5000

Dear Captain Smith:

Your claim, dated August 5, 1996, was approved for payment in the amount of $3,796 under the provisions of Army Regulation 27-20, chapter 11, implementing Title 31, United States Code, Section 3721. The statute is a gratuitous payment statute, which is not intended to provide total insurance coverage. A voucher was forwarded to the finance office for issuance of a check in that amount.

Pursuant to Army Regulation 27-20, paragraph 11-14g, the amount awarded you on every line item was rounded up or down to the nearest whole dollar. You were awarded less than the amount claimed for the following reasons:

a. Normal depreciation was taken on the replacement costs for missing or destroyed items in accordance with the Allowance List-Depreciation Guide to compensate you only for the actual value of these items at the time they were lost or destroyed.

b. The allowance for your leather sofa was limited to $3,000 which is the maximum allowance specified for this type of property in the Allowance List-Depreciation Guide.

c. The allowance for your mattress was limited to the PX replacement cost for substantially similar property, less normal depreciation.

d. Because your washing machine is still useful for its intended purpose and the evidence does not warrant repair or replacement, the allowance was limited to a loss of value of $____.

e. Because the evidence does not substantiate the value claimed, the allowance for your painting was limited to $____, a reasonable amount for the item.

f. Because the evidence does not substantiate the value claimed, the allowance for your brass bed was limited to the purchase price.

g. Salvage value of $___ was deducted on your bicycle.

h. The allowance for repairing your schrank was based on the lowest estimate of repairs submitted.

i. Because the cost of repairing your desk exceeded the value at the time of the loss, the allowance was limited to the value of the item.

j. Because the evidence indicates that some of the damage to your headboard was preexisting, the allowance was limited to the cost of repairing the damage shown to have occurred during shipment.

k. In determining the allowance for reupholstering your loveseat, normal depreciation of 5 percent per year was taken on the cost of fabric and labor costs were allowed in full;

Figure 11-2A. Sample personnel claims letter—Continued

if the estimate did not mention the cost of the labor, this is assumed to be 50 percent of the amount of the estimate.

l. In determining the allowance for repairing your television, normal depreciation was taken on the cost of the picture tube because this part is normally replaced during the useful life of the item.

m. In determining the allowance for your set of dining room chairs, you were allowed the cost of replacing or reupholstering the damaged or missing pieces and an additional amount of $__ for the loss in value of the set as a whole because the evidence did not warrant replacing or reupholstering the entire set.

n. Because the evidence indicates the damage to your videotape recorder was the result of a mechanical defect in the item rather than due to rough handling in shipment, no allowance was made.

o. Because the evidence does not substantiate that your Lladro figurine was lost or damaged in the manner alleged, no allowance was made.

p. No allowance was made for the loss of money in shipment.

q. Because your stock certificate is considered intangible property, which is only representative of value, no allowance was made.

r. Because the statute only authorizes payment for loss of or damage to personal property, no allowance was made for the damage to the door to your residence.

s. The carrier's liability for your shipment was $1.25 times the weight of the shipment. The amount that would have been recovered from the carrier was deducted on those items for which your failure to provide timely notice made it impossible for the Government to recover.

t. The warehouse's liability for damage to your items was $50 per line item. The amount that would have been recovered from the warehouse was deducted on those items for which your failure to provide timely notice made it impossible for the Government to recover.

u. The allowance for obtaining estimates of repair was limited to $___, an amount considered reasonable to establish the cost of repairs in the area.

v. No allowance was made for obtaining estimates of repair. The evidence indicates that the cost of the estimates would be credited upon completion of the repairs.

w. No allowance is made for the transportation charges on your schrank until this expense is actually incurred. When you have the item transported, forward a copy of the bill and we will consider the transportation charges.

x. No allowance is made for the sales tax on your bicycle until this expense is actually incurred. When you buy the item, forward a copy of the bill and we will consider the sales tax.

y. You have been allowed full value for your sewing machine, which still has some salvage value. Before you can be paid, you must turn the property in to the Defense Reutilization and Marketing Office at the nearest military installation and send us a copy of the turn-in slip.

z. You have been allowed full value for your end table, which still has some salvage value. Please retain the item. We intend to recover the full value of the item from the carrier, and in that event the carrier will be entitled to pick up the item if it chooses to do so. If the carrier does not pick it up within ___ days, contact this office and we will arrange for turn-in to DRMO.

aa. You were allowed the full amount authorized, and a demand has been made on your insurer. If you receive payment or an offer of settlement from your insurer, contact this office promptly.

Figure 11-2A. Sample personnel claims letter—Continued

bb. If you are contacted by or receive a check from a carrier or warehouse firm who handled your property, contact this office promptly.

cc. In the event that missing items are found, notify this office promptly, specifying the items recovered.

dd. Title 31, United States Code, Section 3721 provides that no more than 10 percent of the amount paid on a claim shall be paid to an attorney on account of services rendered on that claim.

If you have any questions, contact this office at 677-4240. Please use your claim number in any correspondence.

Sincerely,

R. Peter Masterton
Captain, US Army
Claims Judge Advocate

Figure 11-2A. Sample personnel claims letter

(Letterhead)

September 6, 1996

Claim No. 96-001-0150

Mr. Arthur Miller
23 South Robinson Street
Baltimore, Maryland 21221

Dear Mr. Miller:

Your claim, dated August 9, 1996, was considered under the provisions of Army Regulation 27-20, chapter 11, implementing Title 31, United States Code, Section 3721. The statute is a gratuitous payment statute, which is not intended to provide total insurance coverage.

a. Only soldiers and civilian employees of the Army or the Department of Defense are proper claimants under the statute and its implementing regulation.

b. Only soldiers and civilian employees of the Army or the Department of Defense are proper claimants under the statute and its implementing regulation. AR 27-20, paragraph 11-4e, specifically excludes claims by Red Cross employees, USO personnel, and employees of Government contractors, including technical representatives.

c. The statute provides that no claim may be paid unless it is presented in writing within two years after it accrues. This requirement is mandatory and may not be waived. There is no evidence that your claim was presented to any military installation within two years.

d. The statute provides compensation only for the loss of or damage to personal property. It does not authorize payment of consequential damages or incidental expenses. The expenses you incurred do not constitute a loss of personal property within the meaning of the statute.

e. Subsection (e) of the statute specifically prohibits payment of claims for loss from quarters in the United States that were neither assigned nor otherwise provided in kind by the Government.

f. The evidence in your file indicates that your loss was not caused by fire, flood, hurricane, or other unusual occurrence, which is defined as something beyond the normal risks of day-to-day living and working, or by theft or vandalism, as required by the regulation.

g. The evidence in your file reflects that your loss occurred while your property was in shipment or storage at your expense. Your loss cannot be considered a loss incident to your service.

h. The evidence in your file reflects that the internal damage to your television is due to a mechanical defect in the item, rather than to rough handling in shipment. For this reason, your loss cannot be considered a loss incident to your service.

i. The evidence in your file reflects that your vehicle was not properly registered or insured at the time your loss occurred. Your vehicle was not properly on the installation. For this reason, your loss cannot be considered a loss incident to your service.

j. Damage to a vehicle parked at quarters is only payable as a loss incident to service if

Figure 11-2B. Sample personnel claim disapproval letter—Continued

it results from fire, flood, hurricane, or other unusual occurrence, or by theft or vandalism. Collisions, including hit-and-run incidents, are not considered unusual occurrences.

k. Damage to a vehicle parked on the installation is only payable as a loss incident to service if it results from fire, flood, hurricane, or other unusual occurrence or theft or vandalism. Damage to paint and exterior trim attributable to windblown sand is not considered an unusual occurrence.

l. Loss of or damage to clothing or other items being worn is only payable as a loss incident to service if it results from an "unusual occurrence," which is defined as something beyond the normal risks associated with day-to-day living and working. Your loss was not the result of an unusual occurrence.

m. The evidence in your file reflects that your vehicle was not properly insured at the time of your loss, as required by local law. Under these circumstances, your loss cannot be considered a loss incident to your service.

n. The loss of property acquired or held for sale or for use in a private business or profession is not considered incident to service, and Army Regulation 27-20, paragraph 11-6 prohibits compensation for the loss of such property. The evidence in your file indicates that your property was acquired for use in a business enterprise.

o. The loss of property acquired, possessed, or transported unlawfully or in violation of competent local law, regulations, or directives is not considered incident to service, and Army Regulation 27-20, paragraph 11-6 prohibits compensation for the loss of such property.

p. Subsection (f)(2) of the statute only allows compensation for property that is determined to be reasonable of useful under the circumstances. The U.S. Army Claims Service has determined that a radar detector is neither reasonable nor useful, and we are bound by that determination.

q. Subsection (f)(1) of the statute provides that a claim may only be allowed if it is substantiated. The evidence in your file does not substantiate that your loss occurred as you allege.

r. Subsection (f)(3) of the statute provides that a claim may only be allowed if no part of the loss was caused by any negligent or wrongful act of the claimant. The evidence in your file indicates that your motorcycle helmet was secured to your motorcycle by the chin strap. Because such straps are easily cut, this does not provide adequate security for this type of property. Such items should be secured by a wire run through a hole in the helmet or in some similar manner.

s. Subsection (f)(3) of the statute provides that a claim may only be allowed if no part of the loss was caused by any negligent or wrongful act of the claimant. The evidence in your file indicates that your car stereo was not permanently affixed to your vehicle. Even if locked, the passenger compartment of a vehicle does not provide adequate security for such items that are not permanently affixed.

t. Subsection (f)(3) of the statute provides that a claim may only be allowed if no part of the loss was caused by any negligent or wrongful act of the claimant or any agent or employee of the claimant. The evidence in your file indicates that you failed to secure your bicycle to a fixed object. Measures short of this do not provide adequate security for this type of property.

u. The evidence in your file reflects that you have private insurance covering your loss, and that you have declined to file a claim against your insurer as the regulation requires. The statute is only intended to supplement private insurance coverage. It is not intended to replace such coverage or provide a benefit to private insurers. In the absence of evidence to the contrary, we assume your insurer would have covered your entire loss.

v. The amount you are authorized under the regulation is less than the amount you received from your insurer on each item. The statute is only intended to supplement private insurance coverage. Your insurer has compensated you in full, and no further payment is warranted.

Figure 11-2B. Sample personnel claim disapproval letter—Continued

w. We have determined that your claim is not cognizable under this statute, and that there is no other claims statute or claims regulation under which it can be considered. We have no legal authority to offer you a remedy for your loss.

x. A claim by your insured, CPT Arthur Miller, Policy No. 229-47-1093, for the loss would be cognizable as a loss incident to service under the regulation implementing this statute. Under these circumstances, Army Regulation 27-20, paragraph 11-4d, prohibits consideration of your subrogated interest under any claims statute. See, for example, United States v. United States Automobile Association, 238F.2d 364 (8th Cir. 1956); Preferred Insurance Company v. United States, 222 F.2d 942 (9th Cir. 1955), cert. denied 350 U.S. 837 (1955).

For this reason, your claim is disapproved. Pursuant to Army Regulation 27-20, paragraph 11-20, you may submit a written request for reconsideration of this decision within 1 year. A request should clearly state your factual or legal basis for relief, and you should attach any additional evidence that you want considered.

Sincerely,

John H. Nolan III
Colonel, U.S. Army
Staff Judge Advocate

Figure 11-2B. Sample personnel claim disapproval letter

Table 11–1
Allowance List—Depreciation Guide

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum

Use the Allowance List - Depreciation Guide for claims that have not been adjudicated as of 15 April 1995. Requests for reconsideration prior to 15 April 1995 will use the table in effect at the time the claim was originally adjudicated.

The following rates of depreciation are established as guides and will be used following the principles set forth in AR 27-20, Chapter 11. The rates set forth will apply when the item has been subjected to average usage. In cases where evidence established that the item has been subjected to less than average usage or more than average usage, these rates of depreciation should be reduced or increased in the sound discretion of the approving or settlement authority.

A waiver or non waiver of the maximum payment for a particular claim or item may be granted or denied only by the head of an area claims officer or higher settlement authority. When the table specifies both a maximum payment per item and a maximum payment per claim, the payment for all items in that category will not exceed the maximum payment per claim. The Joint Military-Industry Depreciation Guide (table 11-4) has been added (the three columns to the right side of the chart) to assist a claims examiner in determining carrier recovery amounts. Refer to table 11-4 for items not listed below.

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
1	Air Conditioners	**	**	**		See No. 70, electrical and gas appliances.	10		90
2	Alcoholic Beverages				Include in maximum of No. 78	Alcoholic beverages will be included in the M/A in shipment and quarters			
3	Antiques (other than furniture)				$1,000 per item $5,000 per claim	See Note 1 for adjudication of antiques. Also see No. 79 for antique furniture, but no depreciation should be taken on antiques.			
4	Aquariums	10% 1st year, 5% each succeeding year		75			10% 1st year, 5% each succeeding year		90
5	Artificial flowers and fruits		25					25	
6	Audio recordings (blank and commercially recorded)				$3000 per claim	M/A for CDs from a vehicle is $120. M/A for cassette tapes from a vehicle is $60. In both instances these maximums will be included in M/A per claim of No. 7.			
	-Cassette/reel to reel tapes	10		50				50	
	-CDs		10						
	-Phonograph records	10		50				50	
7	Automobiles and all motor vehicles including, recreational vehicles, trailers, motorcycles, ATV (3 and 4 wheel), go-carts, etc.		varies		$3000 per claim except $20,000 per vehicle during transport	The maximum payment includes property stored in the vehicle. A maximum payment of $20,000 is applicable to motor vehicles, etc., damaged, destroyed, or missing during government authorized shipment. Also see No. 109 for mobile homes.	Use local used car rental value.		

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
8	Automobile batteries	20		75	Include in maximum of No. 7 or No. 14	Compute depreciation based on length of use/ guarantee period ratio, otherwise use 20% per year.	30		75
9	Automobile convertible tops, seat and floor coverings, inside door panels, roof, and other fabric covered interior parts.	20 on vehicles manufactured prior to 1980		75	Include in maximum of No. 7 or No. 14		25		75
		10 on vehicles manufactured after 1980		75					
10	Automobile paint jobs	10		75	$2000 per vehicle. Include in maximum of No. 7	On complete paint jobs, depreciate both labor and material. On minor paint jobs, do not depreciate labor or material. The allowance for pinstriping, special types of paint such as metal flake paint, and special technique painting such as scenic views will be limited to the cost of factory styled pinstriping, decals, and paint jobs.	15		75
11	Automobile radios, tape players, telephones, auto alarms, and accessories	10		75	$750 per claim. Include in maximum of No. 7	Such radios include CB radios, Ham radios, and all types of special frequency receivers and transceivers. Accessory equipment (such as antennas, slide mounts, speakers, head sets, cables, microphones, etc.) is included in the maximum payments. Tapes and CDs left in a vehicle are not included in this category, see No. 6. Also see No. 70 for radios not included in this category.	10		75
12	Automobile tires	30		75	Include in maximum of No. 7 or No. 14	Compute depreciation based on miles used/30, 000 miles or miles used/mileage guarantee ratio if known, otherwise use 30% per year.	30		75
13	Automobile internal and external working parts such as transmission/engine, mufflers, exhaust systems, shocks, etc.	20		75	Include in maximum of No. 7 or No. 14	Only depreciate parts which are normally replaced during the useful life of the vehicle. Do not depreciate parts such as glass, fenders, bumpers, mirrors, wheels, etc.			
14	Automobile spare parts	10		75	$1000 per claim	This category includes parts not mounted on a vehicle which are shipped as household goods or stored at quarters. New spare parts which have not been used should not be depreciated.			
15	Baby bassinets, carriages, child's car seat, play pens, infant carriers, strollers	10		75		Also see No. 79 for infant furniture.	10		75

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
16	Bags, fabric or plastic (clothes, shoes)	20		75		Also see No. 101 for luggage.	20		75
17	Barbecue grills (including Hibachi pots)	10		75			12		90
18	Barber equipment (electric razors, shears, clippers, scissors)	10		75			10		75
19	Baskets: -Metal	10		75			10		75
	-Wicker or plastic	20		75			20		80
20	Bathroom scales	10		75			10		75
21	Bedding -Mattresses (including waterbed mattresses) /Box springs	5		75		Also see No. 98 for linens and Note 3.	5		90
	-Feather Pillows	5		75			5		90
	-Other Pillows	10		75			5		90
	-Mattress cover pads	20		75			20		80
22	Bedspreads	**	**	**		See No. 98, linens	10		90
23	Bicycles	10		75	$750 per item	The maximum payment includes all accessories. Also see No. 147 for tricycles.	10		75
24	Binoculars	5		50	$350 per item $1500 per claim	Also see No. 107 for microscopes and telescopes.	5		50
25	Blankets—Electric	**	**	**		See No. 98, linens	10		75
26	Boats & motors including outbound motors, speed racers, jet skis		varies		$2500 per claim except $15,000 per claim in shipment	Use local used boat retail values. There is no maximum allowance on houseboats in shipment; however, only boats used as living quarters prior to shipment would be considered houseboats.	Use local boat retail value. For outbound motors: 20 10 75 Use depreciation factor only if retail value is not obtainable.		
	-Houseboats		varies						
27	Boating equipment and supplies (exclusive of motors)	20		75	$500 per claim		20		75
28	Bookends		10					10	

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
29	Books				$3000 per claim for all books	This category does not include lecture notes and theses, see No. 145. Medical, dental, legal, and other professional books are included. Consider a lesser rate of depreciation on encyclopedias or texts if these are kept up to date with current supplements. Large sets of bound classics may be considered collections; see No. 51.		25	
	-Bibles and bound classics	5		25				25	
	-Encyclopedias, cookbooks, how-to-books, textbooks and similar works	20		75				25	
	-Other hard-cover nonfiction	10		50				50	
	-Fiction, paperbacks, and magazines		50					50	
30	Boxes (jewelry, cigarette, music, etc.	5		75		Items such as “Russian hand painted” boxes will be considered under the objects of art category.	5		75
31	Bric-a-brac (all types)		10			This category includes inexpensive figurines, sculptures, and ornamental or sentimental items as distinguished from expensive objects of art; also see Nos. 51 and 111. Items such as vases, wall hangings, brassware, candlesticks, and items of a similar nature that exceed $100 may be considered under Nos. 59 or 111, if they are more appropriate.		10	
32	Briefcases	5		75			5		75
33	Brushes (hair, clothes, etc.)	20		75			20		75
34	Calculators (including adding machines)	10		75		Also see No. 112 for office furnishings	10		90
35	Camel saddles (footstools)	5		75			5		75
36	Cameras and photographic equipment	***	***	***		See No. 118, photographic equipment	See No. 118		
37	Camping equipment and supplies (including tents, sleeping bags, back packs, shovels and other tools, lanterns, etc.	10		75	$2500 per claim	Camping cutlery is included in this category. Camping clothing is not included in this category, see No. 49.			

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
38	Candles (decorative)		25		$100 per item $500 per claim				
39	Cards (greeting-including Xmas and other religious cards)		50			If boxes are unopened or unused, take no depreciation		50	
40	Cards (playing)		25			If boxes are unopened or unused, take no depreciation.		25	
41	Card Tables	10		50			10		50
42	Cassette tapes	**	**	**		See No. 6			
43	Ceramic animals		20		$250 per item $750 per claim	This category is intended for floor type items, such as elephants known as buffies.		10	
44	Chandeliers				$1500 per item $3000 per claim				
45	Chess sets	**	**	**		See No. 81, game equipment		25	
46	Chests (ice, picnic, etc.) -Styrofoam		50						
	-Metal or plastic	10		75			10		75
47	China (fine)				$3000 per claim	To be fine china, a five piece place setting must cost at least $70. Also see No. 58 for crockery.	None for five piece place setting $50 or greater 10% FR for five piece place setting under $50.		
48	Clocks								
	Inexpensive ($75 or less)	10		75	$750 per item $3000 per claim	The $3000 maximum per claim includes Grandfather and Grandmother clocks. Also see No. 3 and Note 1 for antique clocks.	10 for clocks $25 or less. 5 for clocks over $255		75
	Expensive (more than $75)	5		75					
	Grandfather and Grandmother	5		50	$1500 per item		5		50

Table 11–1
Allowance List—Depreciation Guide—Continued

		% Depreciation			Maximum		Carrier Recovery % Depreciation		
No.	Item	per year	Flat Rate	Maximum	Payment	Discussion	Per Year	Flat Rate	Maximum
49	Clothing, including shoes and belts (men, women, and children)	30% 1st year, 10% each succeeding year		75	Per person per claim Ages 0 thru 14, $1500 per person Ages 15 and older, $3500 per person	Sports clothing, camping clothing, shoes, belts, etc., are included. Clothing made of expensive material such as wool, leather, suede, i.e., coats, suits, jackets, and overcoats, should normally be depreciated at 10% per year. See Note 11 for wrinkled clothing. See note 10 for military clothing. Also see No. 164 for wedding gowns.	Men's or boy's coats, jackets, suits, slacks, sweater, hats, gloves, etc. 30% first year, 10% each year thereafter. Men's or boys' socks, underwear, pajamas, handkerchiefs, etc., 33% each year. Women's or girls' coats, jackets, suits, dresses, skirts, blouses, etc., 30% first year, 10% each year thereafter. Women's or girls' lingerie, nightclothes, handkerchiefs, etc., 33% each year. Women's or girls' hats, 50% first year, 25% each year thereafter.		75
50	Christening outfit		20		$150 per item $300 per claim				
51	Collections and hobbies.	Use rate indicated for individual, items elsewhere on this chart, otherwise use 10% flat rate.			$4000 per claim for all collections Use per item maximums if indicated elsewhere on this chart	Items that fit into a "collection" are items that traditionally are considered as a collection, such as stamps or coins. Additionally, items manufactured or created to be interrelated—that is, the loss of, or damage to, one decreases the value of the total collection and the value of the individual item—may be considered a collection. For example, a series of sequentially numbered plates, or items designed to represent a historical period may represent a collection of items manufactured or created to be interrelated. The quantity of an item by itself is insufficient to place the items into the "collection" category. Do not place reasonable recreational items in the collection or hobby category unless the quantity clearly indicates a collection or hobby. Example, a set of golf clubs, two tennis rackets, etc., are not quantities which comprise a hobby or collection. If an item is specifically addressed under another category, that other category will be used.	See rate solicitation for coin and stamp collection. See individual listing for other items.		
52	Comforters	**	**	**		See No. 98, linens.	10		75
53	Compact discs	**	**	**		See No. 6			

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
54	Compasses	5		50			5		50
55	Computers (CPU monitor; keyboard; computer peripherals, including mouse, modem, printer; word processor; fax machine when part of computer hardware; and accessory equipment)	10		75	$4000 per claim	Software (including 5.25" and 3.5" floppy disks and CD-ROMs), and accessory equipment for the computer such as the printer, etc., are included in the 10%/75% depreciation and the maximum per claim. See No. 56 and 73.			
56	Copy machine	10		75	$750 per item				
57	Cosmetics (including perfume, toilet articles, medicines, soaps, etc.)		50			If boxes are unopened or unused, take no depreciation		50 If unopened, no depreciation	
58	Crockery -Dishes, pottery, glassware, plasticware		20			Do not include fine china, crystal, or expensive cut glass in this category. Also see Nos. 47,59, and 93.	10		75
59	Crystal				$4000 per claim	Crystal items such as lamps and chandeliers will be considered under their respective specific categories and will not be counted in the maximum per claim for crystal. Expensive cut glass will be considered under this category. Also see Nos. 44, 58, 65, and 83.	100% of actual cash value		
60	Curtains	10		75		Also see No. 68 for depreciation on curtain rods.	20		75
61	Decorations (Christmas, birthday, etc.)		25					25	
62	Dental equipment and instruments		10		$1500 per claim	Dental books are not included, see No. 29		10	
63	Dentures					Take no depreciation	5		75
64	Desk and writing equipment (pen & pencil desk sets, fountain pens, etc.)	10		75	$100 per claim	If made of precious metal, take no depreciation.	10		75
65	Dishes	**	**	**		See No. 58, crockery	10		75

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
66	Dolls (decorator)	5		75	$500 per item $4000 per claim if a collection. If not a collection include in No. 147, $1500 per claim maximum	See No. 51 and No. 147			
67	Drafting, mapping and sketching equipment	5		50	$500 per claim		5		50
68	Drapes	10		75	$3000 per claim	The curtain rods category includes related hardware.	10		75
	Drapery & curtain rods, venetian blinds	5		75		Include cornices in this category.	5		75
69	Dryers	**	**	**		See No. 70, electrical and gas appliances.			
70	Electrical and gas appliances				$1500 per item except $2500 per claim for satellite dishes, projection televisions, spas, hot tubs	Also see No. 137 for Hi-Fi and stereo systems and for tape recorders. Also see No. 155 for video recorders.	Minor Major Attic Fans Dehumidifiers, freezers, vacuum cleaners		10/75 7/25 7/75
	Minor—$200 or less	10		75		See Note 2 for internal damage.			
	Major—over $200, except listed below	5		75		Depreciate television picture tubes 10% per year for the first three years and 5% per year thereafter up to a maximum of 75%.	Clothes dryer Floor polisher, sewing machine		10/90 5/75
	Televisions, washers, dryers, hot tubs, satellite dishes, pinball machines, dishwashers, spas	10		75			Refrigerator Stereos Stoves Washers TV picture tube TV sets Other major items		7/80 7/75 7/90 12/75 25/75 10/75 10/75
71	Elephants, ceramic	**	**	**		See No. 43, ceramic animals.			
72	Eyeglasses (including contact lenses)	5		75			10		75
73	Fax machine	10		75	$750 per item	When this item is not part of a computer (as a keyboard is) and stands alone, it falls under this category.			
74	Fencing	**	**	**		See No. 113, outdoor structures.			
75	Figurines	**	**	**		See Nos. 31 and 111.		10	
76	Firearms	5		50	$2000 per claim	Take no depreciation if the firearm is of a type which would normally increase in value.	5		50
77	Flashlights	20		75			20		75

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
78	Foodstuffs (includes alcoholic beverages)	varies			$500 per claim	The maximum payment applies only to non-perishable foodstuffs lost or destroyed in shipment and to foodstuffs lost or destroyed at quarters due to power outage. See No. 2 also. A reasonable maximum allowable for foodstuffs shipped to a remote area or for foodstuff destroyed at quarters in a natural disaster may be established by the Claims Chief of each Service based on the facts of each incident.	Replacement cost.		
79	Furniture, (including brass furniture, cement furniture, water beds, and shelving)	5		50	$3000 per item	This category includes antique furniture. Take no depreciation on antique furniture or expensive solid wood furniture, such as cherry, walnut, teak, rosewood, oak, etc., except for replacement of fabric.	Solid Wood (Expensive) 2		75
					A sectional sofa, dining room table and chair set or schrank is considered one item regardless of the number of pieces.	Do not confuse wood with finishes, stains, veneers, etc. The $3000 per item limit includes water bed frames and parts. Consider each wall unit under this category as one item. For furniture containing marble see No. 102.	Ordinary Wood (includes all other natural woods and man-made woods and wood veneers, such as pressed wood particle board), Plastic, Chrome, etc.		
	-Particle board furniture	10		75		See Notes 1, 3, and 12.	7		75
	-Work benches and infant, lawn, plastic, wicker, rattan, and patio furniture	10		75		Infant furniture includes such items as cribs, youth beds, etc.	Upholstered 10		75
							Infant 20		80
							Lawn/Patio Aluminum 15		90
							Fabric 20		90
							Redwood 10		75
							Steel or Iron 10		75
80	Furs	5		40	$1500 per item $3000 per claim		30 1st year, 10 each succeeding year		75
81	Game equipment (poker chips, checker sets, backgammon sets, chess, etc.)		25		$500 per claim	This category includes backgammon and similar sets, as distinguished from children's toys and games.		25	

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
82	Garden equipment (all implements to keep up lawns and yards including lawn mowers)	10		75		Also see No. 79 for lawn furniture.	Garden tools and wheelbarrows 10		75
							Lawn Mower— -Power 15		75
							-Roller 10		75
							Umbrella 33		90
83	Glassware (including Pyrex)	**	**	**		See Nos. 47, 58, and 59.	10		75
84	Hairpieces	**	**	**		See No. 165, wigs.			
85	Hampers (wicker or plastic)	10		75					
86	Handbags and purses (leather or fabric)	20		75	$1000 claim				
87	Hearing aids	5		75					
88	Hi-Fi/Stereo systems	**	**	**		See No. 137, stereo items.			
89	Hobbies or collections	**	**	**		See No. 51, collections and hobbies.			
90	House-keeping items (mops, brooms, ironing boards, pails, closet racks, etc.)	10		75		This category includes common household items which do not fit into other, more specific categories.			
91	Irons (electric or steam)	**	**	**		See No. 70, electrical and gas appliances.			
92	Jewelry	10		75	$1000 per item $4000 per claim	Expensive jewelry is jewelry made substantially of gold, silver, precious stones, diamonds, pearls, or other precious metals or gems and should not be depreciated.	10		75
	Costume								
	Expensive						See rate solicitation (items over $50)		
93	Kitchen utensils (pots, pans, knives, etc.)					All long lasting kitchen tools should be considered in the 5%/50% category.			
	-Heavy aluminum, copper, corning ware, cast iron, stainless steel, etc.	5		50		Items such as potato peelers, cake cooling racks, ice picks, bowl scrapers, or other items described in advertisement as kitchen gadgets should be considered in the 20%/75% category.	5		50

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
	-Small metal kitchen step ladder	5		75					
	-Other items	20		75			20		75
94	Ladders (does not include kitchen step ladders)	5		75	$250 per item				
95	Lamps (including sunlamps) -Lamps	5		75	$500 per item	The higher rate applies when shades are claimed separately. However, if shades are made of glass of any type, apply 5% depreciation.	7		75
	-Lampshade	10		75		For lamps with marble bases, see No. 102.	20		75
96	Laser discs	**	**	**		See No. 156.			
97	Lawn mowers	**	**	**		See No. 82., garden equipment.	15		75
98	Linens -Fine, expensive	5		50	$400 per item $2000 per claim	Consider hand-woven, crocheted, or heirloom items as expensive linens. Apply these maximums when value is established for hand-sewn items.	5		75
	-Quilts, comforters, blankets	5		75		Otherwise award reasonable replacement for other fine linens.	Cotton 10 Wool 5 Comforters 10 Quilts 5		75 75 75 75
99	Lighters (cigar, cigarette, etc.)	20		75			20		75
100	Lighting supplies (globe domes, electric candlesticks or candelabra, etc.)	5		75		These items are payable only when they belong to the claimant and have not lost their character as personal property by being affixed to real property.	5		50
101	Luggage (all types including footlockers)	5		75		See Note 12 for replacement of sets.	5		75
102	Marble (lamps, tabletops, etc.)				For per item and per claim maximums, see specific categories	The amount of depreciation on marble contained in furniture may be varied from other types of furniture, based on its quality, etc. Under appropriate circumstances, it may be determined that no depreciation be taken on the marble. Examination will indicate whether the item is imitation marble, alabaster, soapstone, or other material.	7		75
103	Material (including yard goods and yarn)		10						
104	Mattresses (including boxsprings)	**	**	**		See No. 21, bedding.	5		90

Table 11–1
Allowance List—Depreciation Guide—Continued

		% Depreciation			Maximum		Carrier Recovery % Depreciation		
No.	Item	per year	Flat Rate	Maximum	Payment	Discussion	Per Year	Flat Rate	Maximum
105	Medical equipment and instruments		10		$1500 per claim	Medical books are not included, see No. 29.		10	
106	Memorabilia (including snapshots, snapshot albums, baby albums, scrapbooks, souvenir album, emblems, award plaques, trophies, movie film, photographic slides, etc.)				$1000 per claim	Exclude scenic slides and wedding albums from this category. Use $.50 per slide or print as a rule of thumb cost. Also see No. 51 if quantity indicates a hobby or collection. Also see No. 163 for wedding albums.	Materials only/see rate solicitation.		
107	Microscopes, telescopes				$500 per item $1500 per claim	Also see No. 24 for binoculars.			
	-Inexpensive—$100 or less	10		75					
	-Expensive—more than $100	5		75					
108	Mirrors (including frames)	5		75		Mirrors which are integral parts of furniture items are depreciated at the same rate as those items.	5		75
109	Mobile Homes	varies				Value the item based on comparable values in the area.			
110	Musical instruments				$5000 per claim	This category includes amplifiers and accessories	5 over $250		75
	-Pianos, organs, player pianos, harps	5		75					
	-Other musical instruments under $100	20		75	$1500 per claim		20 Under $50		75
	-Other musical instruments over $100-$250	10		75			10 $50-$250		75
	-Other musical instruments over $250	5		75			5 over $250		75
111	Objects of art (sculptures, figurines, etc.)				$1000 per item $4000 per claim	This category does not include paintings; see No. 114. As a rule of thumb, figurines less than $100 should be considered bric-a-brac, unless the quality of the figurine (i.e., Hummel or Kaiser) indicates otherwise.	Commercial value		

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
112	Office furnishings	10		75	$75 per item $200 per claim	This category includes calculators, radios, paintings, plants, etc., lost from the workplace	10		75
113	Outdoor structures	10		75	$500 per claim	This category includes fences and storage sheds.			
114	Paintings and pictures including frames, photographic portraits, etchings, hand reproduced pictures, lithographic prints, etc.)		10		$1000 per item $3000 per claim	Take no depreciation on paintings having a value in excess of $1000 each.	Commercial value for oil paintings. Lithographs and prints. 10		
	-Posters (framed or unframed)		25		$250 per item $1000 per claim				
115	Pen and pencil sets	**	**	**		See No. 64, desk and writing equipment	10		75
116	Pets (including tropical fish) -Pet supplies (e.g., food/water dish, kennel, cage, leash, collar, etc.)	20		75	$250 per pet $750 per claim (which includes supplies)	This category is primarily intended for quarters losses. Do not pay claims for pets lost or injured in shipment. Do not depreciate pets.			
117	Phonograph records -Records	**	**	**		See No. 6.		50	
	-Compact discs								
	-Tapes							50	
118	Photographic equipment (cameras, screens, lenses, projectors, etc.) -Inexpensive—$100 or less	10		75	$2000 per claim for all photography equipment and accessories	Also see No. 155 for video cameras and accessories.	Inexpensive ($50 or less)		75
	-Expensive—more than $100	10		75			Expensive (over $50) 5		75
119	Pillows	**	**	**		See No. 21, bedding	5		90
120	Pipes, smoking (including pouches)	20		75			20		75
121	Pool Tables	5		50	$1500 per item	Take no depreciation on expensive solid wood pool tables	7		75
122	Pots and pan	**	**	**		See No. 93, kitchen utensils	5		50

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
123	Professional equipment	5		75	$1500 per claim	Also see Nos. 62 and 105 for dental and medical equipment and instruments.			
124	Quilts	**	**	**		See No. 98, linens.	5		75
125	Radios	**	**	**		See No. 70, electrical and gas appliances.			
126	Razors (others than electric)	5		75		Also see No. 70 for electric razors			
127	Refrigerators	**	**	**		See No. 70, electrical and gas appliances.	7		80
128	Rugs				$2000 per item		Under $50 or $5 per yard 20		90
	-Under 500	10		75	$4000 per claim		$50-100 or $5-10 per yard 10		90
							Over $100 or over $10 per yard 7		75
							Oriental (genuine) 2		50
	$500-$999	5		50			7		75
	$1000-or more	2		25			2		50
129	Screens, fireplace and accessories (room dividers, folding screens, etc.)	5		75	$500 per item $1000 per claim	Also see Nos. 111 and 114 for items considered to be more artistic than functional.			
130	Scissors, shears (other than electric)	5		75		Also see No. 70 for electric clippers, etc.			
131	Sewing machines (other than electric)	5		75		Also see No. 70 for electric sewing machines, etc.	5		75
132	Silver and metal flatware and hollowware					Take no depreciation on sterling silver. For sterling silver flatware, apply a $75 per item maximum.			
	-Silverplate , goldplate, pewter, stainless steel, copperware, bronzeware		20		$2000 per claim	For sterling silver serving pieces, apply a $200 per item maximum. Consider fine pewter as sterling silver.	5		75
	-Sterling silver and fine pewter				$5000 per claim			10	

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
133	Slip covers	10		75			20		80
134	Sporting equipment and supplies	10		75	$2500 per claim	Take no depreciation on unopened or unused boxes of golf balls or canisters of tennis balls.	Equipment 10		75
	(including basketball, baseball, football, croquet, bowling, badminton, volleyball, skiing, tennis, scuba, golf equipment, fishing equipment, sky diving parachutes, hang glider saddles and equestrian accessories, etc.)					Also see No. 37 for camping equipment.	Supplies	50	
135	Stationery		50			If boxes are unopened or unused, take no depreciation		50	
136	Stenotype machines	5		75					
137	Stereo items and accessories	10		75	$1000 per item $4000 per claim	The maximum per claim includes styli, dust covers, tape recorders, speakers, amplifiers, turntables, etc. See Note 2 for internal damage and Note 12 for replacement of sets. Also see No. 6 for tapes and compact discs, and No. 155 for video recorders.	7		75
138	Storage sheds	**	**	**		See No. 113, outdoor structures			
139	Stuffed animals	10		50					
140	Swing sets	**	**	**		See No. 113, outdoor structures.			
141	Tapes	**	**	**		See No. 6 and 156.		50	
142	Taxidermy items		25		$500 per claim	This category includes mounted deer heads, fish, etc.			
143	Television sets	**	**	**		See No. 70, electrical and gas appliances.	10		75
144	Telephones and telephone answering machines, telecommunication devices for the deaf	10		75	$500 per claim		10		75
145	Theses and lecture notes					Compensation is limited to the cost of materials only.			
146	Tools, tool chests and toolboxes					See No. 94 for ladders. Emergency tools are those types of tools generally locked in a vehicle trunk which are reasonable or useful for emergency road repair.			

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
	-Manual tools, not in a vehicle	5		50	$1500 per claim	Related emergency equipment such as flares, tow ropes, fire extinguishers, first aid kits, trouble lights, battery jumper cables, etc., are considered as emergency tools.	5 for manual		50
	-Power tools, including air tools, not in a vehicle	5		75	$1500 per claim	A toolbox appropriate for shipment or storage in a vehicle is a small portable toolbox as distinguished from a tool chest.	5 for power		75
	-Tool chests and toolboxes, not in a vehicle	5		75	$500 per claim	The maximum per claim for emergency tools and tool boxes in vehicles is included in the maximum for No. 7.			
	-Emergency tools and toolboxes shipped in a vehicle- Emergency tools and toolboxes otherwise in a vehicle	see above		see above	$200 per claim	Exceptions may be made as to the amounts and types of tools considered as emergency tools in overseas areas where POV tools are not readily available or if the claimant is not authorized a household goods shipment. See Note 9 for lifetime guarantees.			
	-Emergency tools and toolboxes otherwise in a vehicle	see above		see above	$400 per claim	See Note 9 for lifetime guarantees.			
147	Toys—radio controlled cars, planes, boats, etc.; tricycles; wagons; electronic games this includes Nintendo. Atari, Sega Genesis game systems and cartridges, and handheld Gameboys)	20		75	$1500 per claim	Also see No. 23 for bicycles, No. 81 for checker sets and game equipment, No. 139 for stuffed animals, and No. 149 for electric trains. Dolls that are considered as a decoration rather than a toy to be played with (e.g., porcelain dolls) will be depreciated 5% a year (see No. 66 for M/A).			
	-Other children's games and toys (including play dolls)		50					50	
148	Trailers (house, boat)	**	**	**		See No. 7, 27, and 109			
149	Trains (electric)	**	**	**		See No. 70, electrical and gas appliances.	10		75
150	Tricycles	**	**	**		See No. 147, toys	20		75
151	TV trays	10		75			10		75
152	Typewriters	5		75	$750 per item	See No. 55 for computers and word processors	5		75
153	Umbrellas	20		75			20		75
154	Vacuum cleaners	**	**	**		See No. 70, electrical and gas appliances. See Note 9 for lifetime guarantees.	7		75

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum
155	Video recorders, video cameras and accessory equipment	10		75	$1000 per item $2500 per claim	Also see No. 156 for video tapes. See No. 147 for software game systems and cartridges. Accessory equipment for video recorders and cameras are included in the maximum per claim	5		75
156	Video recordings (blank and commercial) - Video tapes	10		50	$3000 per claim				
	- Laser discs		10						
157	Wagons (children's)	**	**	**		See No. 147, toys.			
158	Wall units	**	**	**		See No. 79, furniture	7		75
159	Washers	**	**	**		See No. 70, electric and gas appliances	12		75
160	Wastebaskets -Metal	10		75			10		75
	-Plastic	20		75			20		75
161	Watches -Inexpensive—$100 or less	10		75	$500 per item		$50 or less 10		75
	-Expensive—more than $100	5		75			More than $50 5		75
162	Waterbeds	***	***	***		See Nos. 79 and 21.			
163	Wedding albums				$750 per claim	Take no depreciation.			
164	Wedding gowns		10		$1000 per claim		30% first year, 75 10% each year thereafter		
165	Wigs (including hairpieces) -Under $100	20		75	$500 per claim		20		75
	-$100-$250	10		75			10		75
	-$250 or more	5		75			5		75

Notes.
1. Antiques. Since there is usually a wide variance of opinion as to the value of antiques, clear and convincing evidence of the same must be presented to justify payment. In order to qualify, prima facie, as an antique, an item must be, according to the U.S. Customs Service, at least 100 years old. For items newer than that, independent evidence will have to be presented or be available to prove that the item so qualifies. In respect to those items which qualify as antiques, the claimant may be compensated up to the generally recognized value of the items. In such instances, the claimant will be required to prove that the item possesses a demonstrably inherent value regardless of its purchase price, the place where it was purchased, the prestige of the label it bears, or its sentimental or personal attraction. The mere fact that an isolated appraiser might be found who could assign a value to it in excess of its purchase price does not meet this burden of proof. In the absence of credible evidence of value, reimbursement should be limited to out-of-pocket loss, or the reasonable replacement price of a substantially similar substitute item.

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum

2. Internal Damage to Appliances When no External Damage to Cabinet or Transportation Container is Evident. In these circumstances consideration is given to paying for such damage if there is evidence of rough handling of other items in the shipment; that the item is relatively new in comparison to its useful life; that the claimant is apparently honest based upon an examination of the entire claim; or the opinions of qualified repairmen as to whether or not the damage was as a result of transit handling. In cases such as this the evidence is viewed in the light most favorable to the claimant. With respect to color TV sets, for which color realignment is claimed, consider the charge for color realignment payable only when it is part of the cost to repair internal damage to the television set or when the cabinet of the set has external damage that was not present at the time of pickup, thereby indicating rough handling. Inspection of electrical items allegedly during PCS shipment to a remote site may be made by first sergeants of the claimants to verify that external damage did or did not occur and that the member did or did not have a rough shipment. To the extent that such an inspection conducted upon property physically located at a remote site can determine that an item cannot be repaired, the inspection may be used in adjudicating a claim. When rough handling of a shipment cannot be determined and the damage is either not external or it is unknown if the damage is repairable, the costs of shipping the item to and from the closest repair firm may be included as part of the repair estimate, payable under the same rules as other repair estimates.

3. Reupholstering. In the event partial damage to a matching set requires reupholstering of the entire set because matching material to reupholster the damaged portion is not available, the cost to reupholster the entire set, less depreciation, may be paid. This includes replacing chair seats. However, there must be a measurable decrease in the value of the complete set due to the inability to match the materials before this rule is employed. Consider a loss in value of the damaged items if the damage is merely minor. An example of this is a 3-inch tear in the back of a sofa which can be repaired by reweaving, but the repair is visible to the casual observer. This is not applicable to recovering mattresses, box springs, etc., which do not lose their intended use merely because the coverings do not match. It is not appropriate to recover both pieces because damage necessitates recovering one. In considering the award to be made for the cost of reupholstering, use the per year rate of depreciation indicated for the furniture for the fabric with a 50% maximum.

4. Legend of Abbreviations. In order to maintain uniformity, the following list of abbreviations should be indicated in the “Remarks” section of the claim form to describe the intention of the examiner.
AC - Amount claimed.
AGC - Agreed cost of repairs in lieu of estimate.
BX-PX or PACX-EES or AAFES - Replacement price through local exchange retail store (rate of depreciation, if applicable, to be included).
CR - Amount paid by carrier prior to settlement of this claim entered on this line and deducted from total amount allowed.
D - Depreciation computed, preceded by appropriate percentage, i.e. 20%D.
DV - Depreciated value awarded - cost of repairs exceeds depreciated value of item (e.g., DV, BX $100, 75%D).
ER - Estimate of Repair (add exhibit number of repair estimate, ER, EX 5).
EX - Exhibit (include appropriate exhibit designation, e.g. Ex 5).
FR - Flat rate depreciation, preceded by appropriate percentage, i.e., 25%FR.
F&R - Fair and reasonable award.
LOV - A loss of value was awarded in lieu of or in addition to the cost of repairs (e.g., $25 LOV).
M/A - Maximum allowable.
N/P - Not payable (appropriate rule for basing denial should be included).
N/R - Not repairable.
OBS - Deduction made for obsolescence (e.g., 15% D + 25% OBS).
PCR - Potential carrier recovery deduction made (failure of claimant to notify authorities in a timely manner).
PED - Preexisting damage (percentage to be included, e.g., 30% PED)
PP - Purchase price.
RC - Reasonable replacement cost applied (rate of depreciation, if applicable, to be included in block).
SV/N - Salvage value-beyond economical/reasonable repair; no salvage value, turn in not required.
SV/R - Salvage value - beyond economical/reasonable repair; some salvage value, claimant elected to retain item (e.g. 75%D, $35 SV/R).
SV/T - Salvage value turn-in required (amount of salvage value to be entered).

5. Depreciation While in Storage. Normally no depreciation is to be charged against goods during periods of Government authorized storage either for the PCS which generated the current claim, or for previous periods of Government authorized storage. However, this does not mean that deductions cannot be made for other reasons such as reduction in the market value of an item because of style or obsolescence.

Table 11–1
Allowance List—Depreciation Guide—Continued

No.	Item	% Depreciation per year	% Depreciation Flat Rate	% Depreciation Maximum	Maximum Payment	Discussion	Carrier Recovery % Depreciation Per Year	Carrier Recovery % Depreciation Flat Rate	Carrier Recovery % Depreciation Maximum

6. Depreciation. To compute yearly depreciation, the following yardstick should be used:
6-17 months = 1 year
18-29 months = 2 year, etc.
(Increments of 12 months will be counted as one year, up to 173 months. In determining whether an item is six months old, do not count purchase month and pick up month). For example items 174 months or over in age, maximum depreciation has been reached when applying 5% depreciation per year. When dates of purchase are listed, for example as “between 1966 and 1970”, use the median date, i.e., 1968 to compute depreciation. No depreciation should be taken on parts, accessories, etc., which are not normally expected to be replaced during the lifetime of the item. When month of purchase is not shown, use June. No depreciation of any kind will be applied if the item is less than 6 months old.

7. Repairable Items. The amount allowable for repairs may not exceed the depreciated replacement value of an item.

8. Expensive Items. Reasonable Substitute Prices. This does not relate to items of extraordinary value. It pertains to items of everyday use, household furnishings, wearing apparel, and the like, which serve a utilitarian purpose, even though the items are expensive. A fixed award cannot be set, as the amount allowed will vary with the type of article. The award should be just and not arrived at by considering only low priced or popular price substitutes.

9. Lifetime Guaranteed Tools and Other Personal Property With Such Guarantees. Do not deduct for depreciation on tools and other property which are covered by such guarantees. Catalogs reflect items covered by such guarantees.

10. Uniforms. No depreciation on military uniforms. Uniforms will not be included in the clothing maximum payment.l
11. Claims for Wrinkled Clothing. Payment for the cost of pressing clothing is not allowable unless the wrinkling was so severe as to amount to the actual damage of personal property. Some wrinkling of clothing (much of which will fall out when the item is hung up) is to be expected in a shipment of household goods and is not considered to be damaged personal property within the meaning of the Act. Necessary cleaning costs because of soiling, staining or contamination will be considered.

12. Replacement of Sets. When component parts of any set of articles, (lamps, glasses, china, dining room sets, stereo speakers, or any items claimed to comprise a set) are damaged beyond repair or missing, the claimant should only be reimbursed for the missing or damaged pieces as a general rule. An exception may be made when the claimant provides proof that the component pieces cannot be replaced, and as a result, the integrity of the set has been destroyed. In such cases, either a diminution is value award or replacement of the set should be considered. When the entire set is replaced, except in unusual cases, turn in to government salvage of the delivered property is required. For some types of shipments the carrier may exercise salvage rights.

13. When the replacement cost of an item exceeds $100.00 and the item is not carried in a military exchange or a commercial sales catalog, a statement from a reliable, disinterested concern must be submitted attesting to the replacement price of the same or a substantially similar item.

Explanation of entries on DD Form 1844 (figure 11-3B)

Line 1. Painting, 38- by 27-inch, "The Gladiator," missing. The inventory lists "paintings," and the claimant can prove ownership and value with a purchase receipt and a replacement estimate marked as exhibit 1. No depreciation is taken on paintings with a value in excess of $1,000 (ALDG, item 114). The claimant is entitled to the replacement cost, subject to the per item maximum allowance of $1,000. The value of $1,500 is entered in the "Amount Allowed" column with an asterisk, the maximum allowance of $1,000 is entered in the "Remarks" column, and the balance of $500 is subtracted at the bottom on DD Form 1844. Additionally, the carrier is liable for the full adjudicated amount $1,500.

Line 2. Two sets battle dress uniforms, missing. The claimant would not be expected to provide a purchase receipt for such items. The replacement cost can readily be obtained from the local clothing sales store. No depreciation is taken on uniforms (ALDG, note 10). Accordingly, the claimant is allowed the replacement cost rounded to the nearest dollar, which is the amount claimed. Note that socks and underwear would not be considered uniform items and would be depreciated. (See TAL Jun 90).

Line 3. Dresden porcelain dancer figurine, broken into pieces. Claimants should be directed to bring such items in for inspection. Inspection of this item would show that it has no salvage value. The item is more than six months old (29 months, Sep 92-Jan 95) (ALDG, note 6, do not count purchase month or pick up month) and is considered bric-a-brac (ALDG, item 31). Accordingly, a 10-percent flat rate depreciation is applicable.

Line 4. Mikasa "Diatom" stoneware eight place setting set, broken bowl and plate. The claimant is requesting replacement of the 40-piece set, alleging that he cannot replace the individual pieces although a firm specializing in providing replacement pieces for discontinued patterns could probably provide them. This is not an appropriate measure of his loss. Because only one place setting is no longer usable, the value of the set as a whole has not been destroyed. Consequently, the claimant is only entitled to the value of the destroyed pieces and an LOV on the set as a whole (ALDG, note 12). The value of an average piece is deemed to be $8, and an additional 10 percent of the replacement cost of the set is awarded.

Line 5. Sanyo eight-track tape player, smashed. This item is six years old (74 months, Dec 88-Jan 95) (ALDG, note 6, do not count purchase month or pick up month) and is depreciated at a rate of 10 percent per year (ALDG, item 137). Eight-track technology has been superseded, however, and eight-track players are almost worthless. For this reason, and additional deduction of 25 percent for obsolescence is taken. ($225 minus 60%D = $90 minus 25% OBS = $67.50, rounded off to $68).

Line 6. Duck painting, frame broken and picture ripped. This item was made by the claimant from a commercial kit, and has been destroyed. The claimant is entitled to the fair market value of a finished duck painting similar in quality to his duck painting. He is entitled to more than the cost of materials (the cost of the kit); he is not entitled to the cost of a duck painted by a professional unless the claimant's work is of professional caliber. An award may not be based on the time the claimant spent making such an item. Because the value of the claimant's painting is not readily ascertainable, the claimant is awarded $50 fair and reasonable.

Line 7. Zenith 19-inch color television, no color and top scratched. The problem with color alignment is not related to the scratch and is not due to rough handling in shipment. This is actually a normal consequence of shipping many brands of color televisions and is not payable. This claimant is willing to accept a $25 AGC for the scratch; if the claimant were unwilling to accept this, an LOV would be appropriate in the absence of an estimate of repair.

Line 8. Panasonic microwave oven, side cracked. This item is damaged so much that it is not economical to repair. It still works, however. The PX replacement cost for a comparable microwave is $193. The item is almost four years old (46 months, Apr 91-Jan 95) (ALDG, note 6, do not count purchase month or pick up month). It is an electrical appliance costing less than $200 and is depreciated at a rate of 10 percent per year (ALDG, item 70). It has salvage value and the claimant wishes to keep it, so salvage value of $50 is deducted. ($193 minus 40%D = $115.80 -- $50 SV/R=$65.80, rounded off to $66).

Figure 11-3A. Instructions for DD Form 1844

1. NAME OF CLAIMANT (Last, First, Middle Initial): Adams, Martha J.
2. CLAIMANT'S INSURANCE COMPANY (If applicable)
a. NAME: N/A
b. POLICY NO.
3. PICK UP DATE (MMDDYY): Feb 22,1995
4. DELIVERY DATE (MMDDYY): Apr 30,1995

LIST OF PROPERTY AND CLAIMS ANALYSIS CHART

ITEMS 14 THROUGH 33 TO BE FILLED OUT BY CLAIMS OFFICE

14. ORIGIN CONTRACTOR: Number One Van Lines
17. 2ND CONTRACTOR:
21. CLAIM NUMBER: 95-XXX-0002
22. NET WT/MAX CAR LIABLE: 20001b x $1.25= $2,500
15. INVENTORY DATE (MMDDYY): Feb 22, 1995
18. EXCEPTION SHEET DATE (MMDDYY):
23. GBL NUMBER: JH-456,789
24. LOT NUMBER:

5. LINE NO.	6. QTY	7. LOST OR DAMAGED ITEMS (Describe the item fully, including brand name, model and size. List the nature and extent of damage. If missing, state "MISSING.")	8. INV NO.	9. ORIGINAL COST / 10. MM/YY PURCHASED	11. AMOUNT CLAIMED a. REPAIR COST / b. (OR) REPL COST	16. EXCEPTIONS	19. INV NO.	20. EXCEPTIONS	25. AMOUNT ALLOWED	26. ADJUDICATOR'S REMARKS	27. ITEM WT	28. WARE-HOUSE LIABILITY	29. CARRIER LIABILITY
1	1	Painting, 38"x27" Silk Screen "The Gladitor" - missing	7	600.00 / Aug 82	1500.00	Paintings			1500*	EX 1, $1000 M/A			1500
2	2	Battledress Uniforms, shirts pants, field jackets - missing	5	120.90 / Sep 93	120.90	Uniforms			121	AC			121
3	1	Figurine, Dresden Porcelain Dancer - broken into pieces	13	15.00 / Aug 92	45.00	Figurines			41	10% FR			41
4	1	Mikasa Stoneware "Diatom", set of eight 1 Bowl, 1 plate broken	5	250.00 / Aug 91	320.00	Stoneware			48	$16 for 2 pieces + 10% LOV on set			48
5	1	8 track tape player, Sanyo - smashed	4	Gift / Nov 88	225.00	Tape Player			68	60% D 25% OBS SV/N			68
6	1	Duck Painting - frame broken and picture ripped	7	Kit 29.95 / Dec 92	100.00	Paintings			50	F&R			50
7	1	Zenith 19" Color TV - no color, top scratched	4	295.00 / Sep 92	37.50 +25.00	19" Color TV			25	NP - Color alignment $25 AGC on top			25
8	1	Panasonic Microwave - side cracked, still works	11	195.00 / Mar 91	150.00	Microwave			66	PX $193 DV 40% D & SV/R $50			66

12. REMARKS

13. TOTAL AMOUNT CLAIMED: $ 2523.40

30. TOTAL AMOUNT ALLOWED: $ 1919 -500MA 1419 EXCESS

31. THIRD PARTY LIABILITY: $ $ 1919

DD Form 1844, FEB 89

Previous editions may be used until exhausted.

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Figure 11-3B. Completed DD Form 1844

Line 1. Sony black and white television, 13-inch, missing. The item is two years old (25 months, Dec 93-Dec 95) (ALDG, note 6, do not count purchase month or pick up month), and is depreciated by the Government at a rate of 10 percent per year (ALDG, item 70). The claimant is entitled to either the amount paid by the insurer or the amount authorized under AR 27-20, whichever is greater. In this instance, the insurer paid more ($121.36), so the insurance payment is entered in the "Amount Allowed" column in parentheses. The Government adjudicated amount ($120) is the lesser amount and is shown in block 26.

Line 2. Rug with pad, 8 x 10 foot, wet and mildewed. This item is badly infested with mildew and must be discarded. The item is one year old (Aug 94-Dec 95 = 17 months; under the ALDG, note 6, do not count purchase month or pick up month) and is depreciated by the Government at a rate of five percent per year (ALDG, item 128). The claimant is authorized more under AR 27-20 ($903) than his insurer paid ($768.64). The Government adjudicated amount is "higher" so this amount is entered in the "Amount Allowed" column. The insurance amount is entered in the "Adjudicators Remarks" column in parenthesis. The total amount the insurer actually paid ($890) is subtracted at the bottom of the form from the "Total Amounts Allowed" (BLOCK 30). The claimant obtained an estimate for cleaning the rug stating that the rug could not be successfully cleaned. Because the claimant acted reasonably in obtaining the estimates and the fee cannot be credited because the work cannot be done, this fee is payable as claimed.

Line 3. Glass lampshade, shattered. This item is clearly irreparably damaged and has no salvage value. It is six years old (77 months, Aug 89-Dec 95) (ALDG, note 6 - do not count purchase month or pick up month) and is depreciated at a rate of five percent per year (ALDG, item 95).

Line 4. Thomasville sofa, 12-inch rip and missing cushion. This item is good-quality upholstered furniture with no PED. It is too badly damaged for a LOV to be appropriate. The repairman states that the fabric cannot be matched, and the item must be reupholstered in his estimate. Using the estimate, the labor (including the cost of a new cushion) is allowed as claimed, but fabric is something that is normally replaced during the useful life of the item. Thus, the cost of the fabric is depreciated. The fabric on the sofa is four years old (43 months, Jun 92-Dec 95) (ALDG, note 6 - do not count purchase month or pick up month) and is depreciated at a rate of five percent per year (ALDG, item 79 and note 3).

Line 5. Schrank, one section gouged and scratched in front. The item is clearly repairable. The claimant's repair estimate (referenced as exhibit 1) is for repair of all the damage to the front of the item, not just for the new damage. The inventory lists scratches on the right front edge and the left front corner. Accordingly, 10 percent of the damage estimated is deemed to be preexisting.

Line 6. Washing machine, dented casing. The washer cannot be economically repaired. The dent cannot be removed, and the casing would be very expensive to replace. The washer is, however, still useful for its intended purpose of washing clothes. Accordingly, a LOV is appropriate.

Line 7. Carton of paperback books, 1.5-cubic-foot, missing. The books are deemed to be 12 years old, the average year between 1979 and 1989 is 1984 (138 months, Jul 84-Dec 95) (ALDG, note 6 - do not count purchase month or pick up month), and are depreciated at a rate of 10 percent per year (ALDG, item 29). However, the ALDG prescribes that the maximum depreciation on such books is 50 percent.

Line 8. Desk, leg broken and left front top scratched. This item is clearly repairable. The claimant's repair estimate (referenced as exhibit 1) is for repairing damage to the top left front of the item and for replacing the leg. The inventory lists scratches to the right front leg. Because the estimate is only for repair of the new damage, no deduction for PED is appropriate.

Figure 11-3C. Explanation of entries on DD Form 1844 involving insurance payment

LIST OF PROPERTY AND CLAIMS ANALYSIS CHART

ITEMS 14 THROUGH 31 TO BE FILLED OUT BY CLAIMS OFFICE

1. NAME OF CLAIMANT (Last, First, Middle Initial): Dudley, Donna J.
2. CLAIMANT'S INSURANCE COMPANY (If applicable)
a. NAME: USAA
b. POLICY NO: 111 22 33
3. PICK UP DATE (MMDDYY): Jan 5, 1996
4. DELIVERY DATE (MMDDYY): May 6, 1996
14. ORIGIN CONTRACTOR: Jones Whse.
15. INVENTORY DATE (MMDDYY): Jan 5, 1996
17. 2ND CONTRACTOR: Smith Van Lines
18. EXCEPTION SHEET DATE (MMDDYY): May 1, 1996
21. CLAIM NUMBER: 96-XXX-0001
23. GBL NUMBER: VP-123,456
22. NET WT/MAX CAR LIABLE: 1800 x $1.25 = $2250
24. LOT NUMBER: 001

5. LINE NO	6. QTY	7. LOST OR DAMAGED ITEMS (Describe the item fully, including brand name, model and size. List the nature and extent of damage. If missing, state "MISSING")	8. INV NO	9. ORIGINAL COST / 10. MM/YY PURCHASED	11. AMOUNT CLAIMED a. REPAIR COST / b. (OR) REPL COST	16. EXCEPTIONS	19. INV NO	20. EXCEPTIONS	25. AMOUNT ALLOWED	26. ADJUDICATOR'S REMARKS	27. ITEM WT	28. WAREHOUSE LIABILITY	29. CARRIER LIABILITY
1	1	Small B&W TV, Sony 13" - missing	26	110.00 / Nov 93	150.00	B&W Port, TV 13" Sony	26	Sc-10	(121.36)	Ins. Pd. Gov't $120 Less 20% D			121.36
2	1	Rug with pad - 8' x 10' can't be cleaned, wet and mildewed, includes $25 estimate fee	20	750.00 / Jul 94	25.00 / 950.00	Rug with pad 8' x 10'			903 / 25	(768.64 Ins. Pd.) Gov't Pd. 5%D SV/N Est Fee			903
3	1	Glass Lampshade - shattered	21	60.00 / Jul 89	65.00	5.2 Ctn. Lampshade CP	21	5.2 Ctn. Crushed Glass Br	46	30% D SV/N		46	0 PED
4	1	Sofa, Thomasville 12" Rip, cushion missing	11	1400.00 / May 92	800.00	NE	11	Arm-SO	700	$300 Labor AC Fabric $500 Less 20% D			700
5	1	Schrank, 1 section gouged and scratched in front	3	1600.00 / Aug 85	250.00	Sc-4-8-12, SC 5-4-3	3	G-4-10	225	ER, Ex 1 Less 10% PED		50 (G)	0 PED
6	1	Washer - large dent in side	1	495.00 / Aug 88	350.00	M-4-5-9 10-8-3			50	LOV			50 new dmg
7	57	Paperback books - missing	22	.95 to 3.95 ea / 79-89	199.50	1.5 Ctn. Books CP			100	AVG 12 yrs 50% D MAX			100
8	1	Desk - leg broken, front left top scratched	32	295.00 / Sep 94	135.00	R-4-8-6	32	SC-10	135	ER, Ex.1		50 (Top Sc)	85 (Leg Br)

12. REMARKS

13. TOTAL AMOUNT CLAIMED: $ 2899.50

30. TOTAL AMOUNT ALLOWED: $ 2305.36 -890.00 Ins. Pd. 1415.36 1415

31. THIRD PARTY LIABILITY: $ 146

$ 1959.36

DD Form 1844, FEB 89

Previous editions may be used until exhausted

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Figure 11-3D. Completed DD Form 1844 (involving insurance payment)

Table 11–2
1997 TABLE OF ADJUSTED DOLLAR VALUE

This table updates the 1996 Table of Adjusted Dollar Value (ADV) previously printed in The Army Lawyer, May 1997, at page 80. In accordance with Army Regulation 27-20, paragraph 11-14c, and Department of Army Pamphlet 27-162, paragraph 2-39e, claims personnel should use this table ONLY when no better means of valuing property exists.

Year Purchased	Multiplier for 1997 Losses	Multiplier for 1996 Losses	Multiplier for 1995 Losses	Multiplier for 1994 Losses	Multiplier for 1993 Losses
1996	1.02				
1995	1.05	1.03			
1994	1.08	1.06	1.03		
1993	1.11	1.09	1.05	1.03	
1992	1.14	1.12	1.09	1.06	1.03
1991	1.18	1.15	1.12	1.09	1.06
1990	1.23	1.20	1.17	1.13	1.11
1989	1.29	1.26	1.23	1.20	1.17
1988	1.36	1.33	1.29	1.25	1.22
1987	1.41	1.38	1.34	1.30	1.27
1986	1.46	1.43	1.39	1.35	1.32
1985	1.49	1.46	1.42	1.38	1.34
1984	1.55	1.51	1.47	1.43	1.39
1983	1.61	1.57	1.53	1.49	1.45
1982	1.66	1.63	1.58	1.54	1.50
1981	1.77	1.73	1.68	1.63	1.59
1980	1.95	1.90	1.85	1.80	1.75
1979	2.21	2.16	2.10	2.04	1.99
1978	2.46	2.41	2.34	2.27	2.22
1977	2.65	2.59	2.51	2.45	2.38
1976	2.82	2.76	2.68	2.60	2.54
1975	2.93	2.92	2.83	2.75	2.69
1974	2.26	3.18	3.09	3.01	2.93
1973	3.61	3.53	3.43	3.34	3.26
1972	3.84	3.75	3.65	3.55	3.46
1971	3.96	3.87	3.76	3.66	3.57

Notes:

Do not use this table when a claimant cannot substantiate a purchase price. Additionally, do not use it to value ordinary household items when the value can be determined by using average catalog prices.

To determine an item's value using the ADV table, find the column for the calendar year the loss occurred. Then multiply the purchase price of the item by the "multiplier" in that column for the year the item was purchased. Depreciate the resulting "adjusted cost" using the Allowance List-Depreciation Guide (ALDG). For example, the adjudicated value for a comforter purchased in 1990 for $250, and destroyed in 1995, is $219. To determine this figure, multiply $250 times the 1990 "year purchased" multiplier of 1.17 in the "1995 losses" column for an "adjusted cost" of $292.50 Then depreciate the comforter as expensive linen (item number 88, ALDG) for five years at a five-percent yearly rate to arrive at the item's value of $219 (i.e., $250 x 1.17 ADV = $292.50 @ 25% depreciation = $219).

The Labor Department calculates the cost of living at the end of a year. For losses occurring in 1998, use the "1997 losses" column.
lThis year's ADV table only covers the past 25 years. To determine the ADV for items purchased prior to 1971 or for any other questions concerning this table, contact Personnel Claims and Recovery Division, (301) 677-7009, ext. 313.

GOVERNMENT INSPECTION REPORT

PREPARING INSTALLATION
Transportation Office
Fort Bland, Colorado 54321

NAME OF PROPERTY OWNER
Dudley, Donna J.

MODE OF SHIPMENT
Code 1

DESTINATION ADDRESS *(Street, City, State and ZIP Code)*
327 Wide Street
Denver, Colorado 54321

PROPERTY SHIPPED

FROM: *(Include ZIP Code)*
Baltimore, MD 21225

TO: *(Include ZIP Code)*
Denver, Colorado 54321

DATE OF DELIVERY TO OWNER
6 May 96

WT OF SHIPMENT
1800

NO. OF PIECES

NAME AND ADDRESS OF GOVERNMENT BILL OF LADING CARRIER *(Include ZIP Code)*
Smith Van Lines
300 Villa Drive
Elkhart, Indiana 47101

GBL NUMBER
VP 123,456

AIRWAY BILL NUMBER

CARRIER'S BILL OF LADING NUMBER

NAME AND ADDRESS OF WAREHOUSE *(If shipment from nontemporary storage) (Include ZIP Code)*
Jones Warehouse
2 Storage Drive
Baltimore, Maryland 21225

LOT NUMBER
001

SERVICE ORDER NUMBER
96-0001

NAME AND ADDRESS OF DELIVERING CARRIER *(If not agent of Government bill of lading carrier) (Include ZIP Code)*
Smith Van Lines
300 Villa Drive
Elkhart, Indiana 47101

CONTRACT NUMBER

DISCREPANCIES NOTED BY INSPECTOR
(Use supplemental sheets if necessary)

CARRIER'S INV. NUMBER *(Carton No. if packed item)*	ARTICLE	DESCRIBE LOCATION, NATURE AND EXTENT OF NEW DAMAGE AND APPARENT CAUSE OF DAMAGE *(State "MISSING" if applicable)*	WEIGHT *(Lbs)* OF ARTICLE OR CARTON IF PACKED ITEM
26	Sm 13" B&W TV	Missing	
20	Rug w/pad	Runner 22' x 4', wet and mildewed	
21	Glass lampshade	Shattered	
11	Sofa, Thomasville	12 inch rip on arm of sofa, cushion missing	
03	Schrank 360 cm	One section gouged and scratched in front near bottom right corner	
01	Washer	Large dent in side	
22	Paperback books	1.5 ctn books missing	
32	Desk	Leg broken front left, top scratched in center	

DD FORM 1 SEP 77 1841 REPLACES DD FORM 1841, 1 JAN 72, WHICH CAN BE USED.

Figure 11-4A. Completed DD Form 1841, front

INVENTORY NUMBERS OF CARTONS OR CONTAINERS WITH VISIBLE EXTERNAL DAMAGE *(Describe damage to each and apparent cause of damage)*

PACKING VIOLATIONS NOTED *(Describe in detail) (See MIL-STD-212c)*

CERTIFICATE OF INSPECTOR

I personally made the above inspection on the date shown and certify that the conditions as shown on this report of 2 pages accurately reflect the loss and/or damage incurred during shipment and/or storage.

DATE OF INSPECTION	TYPED NAME AND GRADE OF INSPECTOR	SIGNATURE
9 May 1996	Janice M. Turner	/s/ Janice M. Turner

CERTIFICATE OF PROPERTY OWNER

I have examined this report of 2 pages and the conditions shown accurately and completely set forth the entire loss and/or damage to my property incurred during shipment and/or storage.

DATE	SIGNATURE
9 May 1996	/s/ Donna J. Dudley

CERTIFICATE OF TRANSPORTATION OFFICER

I certify that the information on this report of _____ pages is accurate and complete to the best of my knowledge.

"NOTICE OF LOSS OR DAMAGE" DISPATCHED

DATE	ADDRESSEE
10 May 1996	Smith Van Lines

DATE	ADDRESSEE

DATE OF REPORT	TYPED NAME OF INSTALLATION TRANSPORTATION OFFICER	SIGNATURE
9 May 1996	LTC John H. Nolan III	/s/ John H. Nolan III

☆ U.S. G.P.O. 1985-461-033/27149

Figure 11-4B. Completed DD Form 1841, reverse

To establish the fact that loss or new transit damage to household goods owned by members of the military was present when the household goods were delivered at destination by the carrier.

I. Notice of Loss and Damage.

(A) Upon delivery of the household goods, it is the responsibility of the carrier to provide the member with three copies of the DD Form 1840/1840R and to obtain a receipt therefor in the space provided on the DD Form 1840. It is the joint responsibility of the carrier and the member to record all loss and transit damage on the DD Form 1840 at delivery. Later discovered loss or transit damage, including that involving packed items for which unpacking has been waived in writing on the DD Form 1840, shall be listed on the DD Form 1840R. The carrier shall accept written documentation on the DD Form 1840R, dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840, as overcoming the presumption of correctness of the delivery receipt. (1)

(B) Loss of or damage to household goods discovered and reported by the member to the claims office more than 75 calendar days after delivery will be presumed not to have occurred while the goods were in the possession of the carrier unless good cause for the delay is shown, such as officially recognized absence or hospitalization of the service member during all or a portion of the period of 75 calendar days from the date of delivery. In case of recognized official absences, the appropriate claims office will provide the carrier with proof of the officially recognized absence with the demand on carrier.

(C) The carrier's failure to provide the DD Form 1840/1840R to the military member and to have proof thereof will eliminate any requirement for notification to the carrier. Written notice, using DD Forms 1840/1840R, is not required by the carrier in the case of major incidents described by Paragraph 33 of the Tender of Service which requires the carrier to notify Headquarters, Military Traffic Management Command and appropriate PPSO's of the details of fires, pilferage, vandalism, and similar incidents which produce significant loss, damage or delay.

II. Inspection by the Carrier.

(A) The carrier shall have 45 calendar days from delivery of shipment or dispatch of each DD Form 1840R, whichever is later, to inspect the shipment for loss and/or transit damage.

(B) If the member refuses to permit the carrier to inspect, the carrier must contact the appropriate claims office which shall facilitate an inspection of the goods. It is agreed that if the member causes a delay by refusing inspection, the carrier shall be provided with an equal number of days to perform the inspection/estimate (45 days plus delay days caused by member).

III. Repair Estimate Submitted by the Carrier.

(A) Subject to the procedures in this Memorandum of Understanding, the military services shall evaluate itemized repair estimates submitted by a carrier from a qualified and responsible firm in the same manner as any estimate submitted by a claimant from a repair firm not associated with or retained by the carrier.

(B) Carrier estimates:

(1) If the appropriate claims office receives an itemized repair estimate from the carrier within 45 calendar days of delivery, the claims office will use that estimate if it is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based upon the repair firm's reputation for timely and satisfactory performance. If the carrier's estimate is the lowest overall estimate and is not used, the claims office will advise the carrier in writing of the reason the lowest overall estimate was not used in determining the carrier's liability.

(2) The claims office will also use an itemized carrier estimate received more than 45 calendar days after delivery if the claim has not already been adjudicated and that estimate is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based upon the repair firm's reputation for timely and satisfactory performance. If the carrier's estimate is the lowest overall estimate and is not used, the claims office will advise the carrier in writing of the reason the lowest overall estimate was not used in determining the carrier's liability.

Figure 11-5. Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules—Continued

(3) If the carrier provides the appropriate claims office with a low repair estimate after the Demand on Carrier has been dispatched to the carrier's home office, it will be considered in the carrier's recovery rebuttal or appeal process if lower than the estimate used by the claims office and if it establishes that the estimate submitted by the member was unreasonable in comparison with the market price in the area or that the price was unreasonable in relation to the value of the goods prior to being damaged.

(4) If a carrier has made an inspection/estimate based upon a DD Form 1840, and a DD Form 1840R is received, the carrier is authorized to make an additional inspection/estimate. The carrier will contact the claims office to determine if they will authorize a deduction of $50.00 from the carrier's liability for performing the second inspection/estimate.

(5) When a carrier makes an estimate, copies will be provided in a reasonable time to the military claims office and to the member, if requested. The carrier agrees to do the repairs in a reasonable time if requested by the member or the military claims office. Carrier and member estimates provided by firms that do not perform repairs will not be accepted.

(C) No claim shall be denied solely because of the carrier's lack of opportunity to inspect prior to repair, an essential item that is not in operating condition such as a refrigerator, washer, dryer, or television requiring immediate repair. In such cases, the carrier will be provided with copies of the repair estimate/receipt attached to the demand.

IV. Carrier Settlement of claims by the Government.

(A) The Carrier shall pay, deny, or make a firm settlement offer in writing within 120 calendar days of receipt of a formal claim from the Government. If a carrier makes an offer within 90 calendar days of receipt of a formal claim which is not accepted by the Government, a written response to the offer will be made prior to offset action.

(B) It is agreed that the claim will be limited to item(s) indicated on the DD Form 1840 and 1840R, except as indicated in paragraphs I (B) and I (C) above. The claims for loss and/or damage shall not be limited to the general description of loss or damage to those items noted on the DD Form 1840 and 1840R.

V. Effective Date. This Memorandum of Understanding will be effective on January 1, 1992 and will apply to shipments picked up/loaded on or after that date. It supersedes the Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules of April 20, 1984, except that the Memorandum, of April 20, 1984, will apply to shipments picked up and loaded prior to January 1, 1992.

VI. Filing. The original of this Memorandum of Understanding shall be retained by the American Movers Conference, which shall provide conformed copies to all signatories and other interested parties.

NOTE: Although the carrier shall accept written documentation on the DD Form 1840R as overcoming the presumption of correctness of the delivery receipt, the inventory prepared at origin is valid evidence which the military claims services shall consider in determining whether or not a claimant has sustained loss and/or damage in shipment. If for example, a claimant wrote on the DD Form 1840R that a kitchen table not listed on the inventory was missing in shipment, that claimant would have to prove by convincing evidence that he or she owned and tendered to the carrier for shipment a kitchen table. An item like a kitchen table would normally be listed on the inventory. Note, however, that if a kitchen table not listed on the inventory was delivered in a damaged condition and noted on the DD Form 1840/1840R, the fact that the carrier delivered the kitchen table would establish the claimant owned and tendered to the carrier a kitchen table.

For: Household Goods Forwarders
Association of America, Inc.
Donald H. Mensch
President

Department of the Army
Joseph C. Fowler, Jr.
Colonel, U.S. Army
Commander
U.S. Army Claims Service

Figure 11-5. Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules—Continued

American Movers Conference
Joseph M. Harrison
President

Household Goods Carriers' Bureau
Joseph M. Harrison
President

Independent Government Movers
John T. McBrayer
Executive Director

Independent Government Movers
James P. Coleman
President

National Moving and Storage Association
Gary Frank Petty
President

Department of the Navy
Milton D. Finch
Captain, U.S. Navy
Deputy Assistant JAG (Claims)

Department of the Air Force
Robert G. Douglass
Colonel, U.S. Air ForceAgency
Chief, Claims and Tort Litigation Division
Air Force Legal Services

U.S. Coast Guard
William B. Thomas
Captain, U.S. Coast Guard
Chief, Claims and Litigation Division
Office of Chief Counsel

Figure 11-5. Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules

This memorandum does not affect the carrier's claims settlement process, appeals process, or inspection rights. This memorandum establishes agreement between the Military and Industry pertaining to salvage rights.

It is agreed that:

a. In domestic household goods shipments released at a value of $1.25 per pound, or higher, the carrier is entitled to all items on which it has paid, or agrees to pay, a claim for the total depreciated replacement value of the item, or which are offered as salvage by the military.

b. In instances where the carrier chooses to exercise salvage rights, the carrier will take possession of salvage items, at the service member's residence, or other location acceptable to the member and carrier, not later than 30 days after receipt of the Government's claims against the carrier. However, in no case will the 30-day period for carriers to take possession end until after the period for the carrier's right to inspect the property has terminated. The 30-day pick up period can be extended by an agreement between the carrier, the service member, and claims office. Refusal by the service member to cooperate with the carrier in its exercise of salvage rights should be referred to the claims office for prompt resolution. Acceptance of an item by a carrier when offered as salvage under the memorandum does not establish value of the item, nor liability for the item's damage.

c. Notwithstanding the provisions of paragraphs "a" and "b" above, it is agreed that the carrier will not exercise its salvage rights:

(1) When the depreciated replacement value of all salvageable items in a shipment totals less than $100.00, or a single item of less than $50.00. If a shipment has more than one salvageable item, one of which has a value of $50.00 or more, yet the total of all salvageable items is $100.00 or less, the carrier may exercise its salvage rights.

(2) When the item involved is hazardous or dangerous to the health and safety of the military member's family (e.g., broken mirrors, spoiled food stuffs, broken glass, moldy mattresses). However, antiques, figurines, and crystal with a single item value of $50.00 or more will be retained for exercise of salvage rights by the carrier.

d. In the event a carrier is unable to exercise its salvage rights due to the disposal of an item(s) by the military member, the carrier's liability shall be reduced based upon the following method of determining the salvage value of the item(s):

(1) For an individual item which has a depreciated replacement value of less than $50.00, the carrier will receive no credit for salvage.

(2) For any claim containing a salvageable item of $50.00 or more, or multiple salvageable items which have a combined total or $100.00 or more, the item's (items') salvage value credited to the carrier will be 25 percent of the item's (items') depreciated replacement value based upon the Joint Military/Industry Depreciation Guide.

e. This document does not affect the inspection rights presently afforded to the carrier industry.

f. This Memorandum of Understanding will be effective on 1 April 1989, for all shipments delivered on or after that date, and will be subject to annual review. If not reviewed, the Memorandum will remain in effect.

For: American Movers Conference
Charles C. Irions
President

Household Goods Carriers' Bureau
Joseph M. Harrison
President

Department of the Army
Jack F. Lane, Jr.
Colonel, USA
Commander, USA Claims Service

Department of the Navy
John J. Geer
Captain, USN
Deputy Assistant JAG (Claims)

Figure 11-6. Joint Military-Industry Memorandum of Understanding on Salvage—Continued

Household Goods Forwarders
Donald H. Mensch
Executive Director

Independent Government
Movers Association
James P. Coleman
President

Movers and Warehouseman's
Association
John T. McBrayer
Executive Director

National Moving and Storage
Association
Gary Frank Petty
President

Department of the Air Force
Edwin F. Hornbrook,
Colonel, USAF
Chief, Claims and Tort
Litigation Staff

Commandant of the Marine Corps
N.H. Grosz, Jr.
Colonel, USMC
Director, Human Resources
Division

U.S. Coast Guard
C. Josephson
Captain, U.S. Coast Guard
Chief, Claims and Litigation Division
Office of the Chief Counsel

EXAMPLES

SITUATION 1. A carrier receives a Demand on Carrier where there is one (1) item for salvage which has a salvage value on the DD Form 1844 as $60 and there are two (2) other items with a value of $10 and $15, included in the recovery claim. The carrier goes out in inspect the salvage items. Is he authorized to "pick up" all items, (the $60, $10 and the $15 items)? Paragraph 1c of the Memo.

ANSWER: (Situation 1). The carrier is entitled to all of the items. If, however, none of the items are available for transfer to the carrier, the carrier is entitled to a credit for only the $60 item, as the total of all salvaged items did not exceed $100.

SITUATION 2. Carrier *agrees* to the amount of the Demand on the DD Form 1844 and has not paid the Government anything on the Demand. Subsequently, the carrier goes to the residence and the items are not there because the member has disposed of them. How do we get credit on the recovery action? What are the procedures?

ANSWER (Situation 2). Each service will develop procedures through which the credit will be applied. At a minimum, the carriers are expected to contact the Claims Office for assistance (paragraph b of memorandum) and to document when the attempted pickup was made.

SITUATION 3. The member will not cooperate with the carrier in inspection and/or picking up the items which the carrier has AGREED and PAID the claim. The carrier has called the member twice and set up an appointment to pick up the items but, when the carrier arrived, the member was not home. Carrier calls the Base for assistance and the response is "Keep Calling,." Carrier asked for the money back and the Demand to be lowered. An alternative the carrier offers is for him to be allowed to charge for going to the member's house.

ANSWER (Situation 3). The services will not reimburse carriers for the costs involved in attempted salvage pickups. However, the services will provide assistance to the carriers when members are not available for salvage

Figure 11-6. Joint Military-Industry Memorandum of Understanding on Salvage—Continued

pickup. This assistance will be more than advising the carrier to "Keep Calling." If it is not possible to make arrangements for carrier's pickup, the credit will be provided in return.

SITUATION 4. The member has a salvage item worth $110. When the carrier goes to the house to pick up the salvage item, the member wants to keep it and the carrier and the member agree upon its worth to be $50. The carrier gets a statement to the effect that the member wants the item and its agreed value to the member is $50. The member can either pay the carrier the $50 or the carrier can reduce his payment to the Claims Office by $50 and attach the member's statement to his check when he sends it to the Claims Office. In this latter situation, the Claims Office would then go to the member and collect the $50. Do you agree with the procedures?

ANSWER (Situation 4). Carriers may negotiate with members for members' retention of certain items. However, no additional credit will be provided by the services. Each service has its own procedures through which members may keep property for which they would ordinarily be paid full depreciated value. If such arrangements are made, carriers will not be charged for the full replacement value by the services.

Figure 11-6. Joint Military-Industry Memorandum of Understanding on Salvage

CLAIM FOR LOSS OF OR DAMAGE TO PERSONAL PROPERTY INCIDENT TO SERVICE

PART I - TO BE COMPLETED BY CLAIMANT *(See reverse side for Privacy Act Statement and Instructions.)*

1. NAME OF CLAIMANT *(Last, First, Middle Initial)*	2. BRANCH OF SERVICE	3. RANK OR GRADE	4. SOCIAL SECURITY NUMBER
Dudley, Donna J.	Army	LTC	987-65-4321

5. HOME ADDRESS *(Street, City, State and Zip Code)*	6. CURRENT MILITARY DUTY ADDRESS *(If applicable) (Street, City, State and Zip Code)*
365 High Street Denver, Colorado 80043	HQ, 356th Air Defense Artillery Battalion Fort Bland, Colorado 80040

7. HOME TELEPHONE NO. *(Include area code)*	8. DUTY TELEPHONE NO. *(Include area code)*	9. AMOUNT CLAIMED
(303) 361-2222	(303) 361-3333	$2,899.50

10. CIRCUMSTANCES OF LOSS OR DAMAGE *(Explain in detail. Include date, place, and all relevant facts. Use additional sheets if necessary.)*

Pursuant to orders, my household goods were picked up on 5 Jan 96 in Baltimore, MD and delivered on 6 May 1996 to my residence in Denver, Colorado. Loss and damage were incurred in shipment.

	YES	NO
11. **DID YOU HAVE PRIVATE INSURANCE COVERING YOUR PROPERTY?** *(E.g., say "Yes" on a shipment or quarters claim if you had transit, renter's or homeowner's insurance; say "Yes" on a vehicle claim if you had vehicle insurance. Attach a copy of your policy.)*	X	
12. **HAVE YOU MADE A CLAIM AGAINST YOUR PRIVATE INSURER?** *(If "Yes," attach a copy of your correspondence. If you have insurance covering your loss, you must submit a demand before you submit a claim against the Government.)*	X	
13. **HAS A CARRIER OR WAREHOUSE FIRM INVOLVED PAID YOU OR REPAIRED ANY OF YOUR PROPERTY?** *(If "Yes," attach a copy of your correspondence with the carrier or warehouse firm.)*		X
14. **DID ANY OF THE CLAIMED ITEMS BELONG TO THE GOVERNMENT OR TO SOMEONE OTHER THAN YOU OR YOUR FAMILY MEMBER?** *(If "Yes," indicate this on your "List of Property and Claims Analysis Chart," DD Form 1844.)*		X
15. **WERE ANY OF THE CLAIMED ITEMS ACQUIRED OR HELD FOR SALE, OR ACQUIRED OR USED IN A PRIVATE PROFESSION OR BUSINESS?** *(If "Yes," indicate this on your "List of Property and Claims Analysis Chart," DD Form 1844.)*		X

16. UNDER PENALTY OF LAW, I DECLARE THE FOLLOWING AS PART OF SUBMITTING MY CLAIM:

If any missing items for which I am claiming are recovered, I will notify the office paying this claim. *(For shipment claims.)* Missing items were packed by the carrier; they were owned prior to shipment but not delivered at destination; after my property was packed, I/my agent checked all rooms in my dwelling to make sure nothing was left behind.

I assign to the United States any right or interest I have against a carrier, insurer, or other person for the incident for which I am claiming. I authorize my insurance company to release information concerning my insurance coverage.

I authorize the United States to withhold from my pay or accounts for any payments made to me by a carrier, insurer, or other person to the extent I am paid on this claim, and for any payment made on this claim in reliance on information which is determined to be incorrect or untrue. I have not made any other claim against the United States for the incident for which I am claiming. I understand that if any information I provide as part of my claim is false, I can be prosecuted.

17. SIGNATURE OF CLAIMANT *(or designated agent)*	18. DATE SIGNED *(MMDDYY)*
/s/ Donna J. Dudley By: Donald X. Dudley, Attorney in Fact	Aug 9, 1996

PART II - CLAIMS APPROVAL *(To be completed by Claims Office)*

19. PROCEDURE *(X one)*	20. AMOUNT AWARDED. The claim is cognizable and meritorious under 31 U.S.C. 3721; the claimant is a proper claimant; the property is reasonable and useful; the loss has been verified in accordance with applicable procedures as prescribed by the controlling departmental regulation; and the following award is substantiated:	
a. SMALL CLAIMS b. REGULAR CLAIMS		$1415

21. SIGNATURES *(Signatures at a and c not required if small claims procedure is utilized.)*

a. CLAIMS EXAMINER	b. DATE SIGNED *(MMDDYY)*	c. REVIEWING AUTHORITY	d. DATE SIGNED *(MMDDYY)*
/s/ Paul D. Metrey	Aug 16, 1996		

e. TYPED NAME AND GRADE OF APPROVING AUTHORITY	f. SIGNATURE OF APPROVING AUTHORITY	g. DATE SIGNED *(MMDDYY)*
R. Peter Masterton, MAJ	/s/ R. Peter Masterton	Aug 16, 1996

DD Form 1842, DEC 88 *Previous editions may be used until exhausted.* 1191/450

Figure 11-7A. Completed DD Form 1842, front

Privacy Act Statement

AUTHORITY: 31 U.S.C. 3721, and EO 9397, November 1943 (SSN).

PRINCIPAL PURPOSE: Filing, investigation, processing and settlement of claims for losses incident to service.

ROUTINE USES:

a. Information is principally used to provide a legal basis for the administrative payment of claims against the Government. Information is also used in connection with:

(1) Recovery from common carriers, warehouse firms, insurers and other third parties.

(2) Collection from claimants of improper payments or overpayments.

(3) Investigation of possible fraudulent claims.

(4) Possible criminal prosecution by the Department of Justice or other agencies if fraud is established.

b. Social Security Numbers are used to assure correct identification of claimants in order to assure payment to the proper claimant and avoid duplication of claims.

DISCLOSURE: Voluntary; however, failure to supply information will cause delay in settlement and may result in denial of a portion or all of the claim.

INSTRUCTIONS TO CLAIMANTS

1. You must submit your claim in writing within two years of the date of the incident giving rise to the claim. This two year time limitation may not be waived.

2. The claimant or an authorized agent must complete and sign Part I of this form, answering all questions. If the claim is signed by an agent *(such as a spouse)* or a survivor of a deceased proper claimant, that person must have a document showing his or her authority to present the claim, such as a power of attorney, etc.

3. If the claim is for property lost or damaged while being shipped or stored pursuant to travel orders, submit copies of your orders and all shipping documents, including your inventory and your "Joint Statement of Loss or Damage at Delivery/Notice of Loss or Damage," DD Forms 1840/1840R. If you notice damage after delivery, you must complete the DD Form 1840R and get it to the Claims Office within 70 days after delivery.

4. You may obtain further information from a Claims Office.

5. You are entitled to claim the following:

a. Reasonable local repair cost, if an item can be economically repaired. *(You may claim small amounts without an estimate. Otherwise, submit an estimate of repair from a repair firm or, if repairs have been completed, your receipt. The claims office may waive this in appropriate cases.)*

b. Reasonable local replacement cost if an item is missing, destroyed, or not economic to repair. *(Replacement costs may be obtained from commercial catalogs or a military exchange. If you cannot find the item in a catalog or the exchange and the cost is more then $100.00, obtain a statement from a commercial firm for the cost of a similar item. If you have purchase receipts, bring these to the Claims Office as well.)*

c. Reasonable cost of obtaining local estimates of repair, if the cost of such estimates will not be credited if repair work is done. *(Normally, you may not claim appraisal fees.)*

PART III - DENIAL OR SUPPLEMENTAL PAYMENT *(To be completed by Claims Office)*

☐ **23. DENIAL** *(X if applicable)* The claim is not cognizable or meritorious under 31 U.S.C. 3721 and the applicable provisions of the controlling departmental regulation, and is denied	☐ **24. SUPPLEMENTAL PAYMENT** *(X and complete if applicable)* The claim is cognizable and meritorious under 31 U.S.C. 3721, and the following additional award is substantiated. $

25. SIGNATURES

a. CLAIMS EXAMINER	b. DATE SIGNED *(MMDDYY)*	c. REVIEWING AUTHORITY	d. DATE SIGNED *(MMDDYY)*

26. APPROVING/SETTLEMENT AUTHORITY *(Settlement Authority is required for denial.)*

a. TYPED NAME AND GRADE	b. SIGNATURE	c. DATE SIGNED *(MMDDYY)*

DD Form 1842 Reverse, DEC 88

Figure 11-7B. Completed DD Form 1842, reverse

JOINT STATEMENT OF LOSS OR DAMAGE AT DELIVERY

Privacy Act Statement

AUTHORITY: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 31 U.S.C. 3721 et seq., 31 U.S.C. 3711 et seq., and EO 9397, November 1943 (SSN).

PRINCIPLE PURPOSE(S): The information requested is to be used in evaluating claims.

ROUTINE USE(S): The information requested is used in the settlement of claims for loss, damage or destruction of personal property and recovery from liable third parties.

DISCLOSURE: Voluntary; however, failure to supply the requested information or to execute the form may delay or otherwise hinder the payment of your claim.

GENERAL INSTRUCTIONS: The carrier's/contractor's representative will complete and sign DD Form 1840 and obtain the signature of the member or member's agent. The member or member's agent will not, under any circumstances, sign a blank or partially completed DD Form 1840. Three completed copies of DD Form 1840 and blank DD Forms 1840R will be provided the member or member's agent by the carrier's/contractor's representative for each shipment. If no loss or damage is involved, write "NONE" in description column.

SECTION A - GENERAL *(To be completed by carrier/contractor)*

1. NAME OF OWNER *(Last, First, Middle Initial)*	2. SOCIAL SECURITY NO.	3. RANK OR GRADE	4. NET WT OF SHIPMENT
Dudley, Donna J.	987-65-4321	LTC	

5. ORIGIN OF SHIPMENT *(City and State/Country)*	6. DESTINATION OF SHIPMENT *(City and State/Country)*
Baltimore, Maryland TMO: Ft. Meade, MD	Denver, Colorado TMO: Ft. Bland

7. PPGBL/ORDER NUMBER	8. PICKUP DATE	9. NAME AND ADDRESS OF CARRIER/CONTRACTOR
VP 123,456	5 Jan 96	Smith Van Lines

10. CODE OF SERVICE	11. SCAC	12. CARRIER/CONTR REF. NO.
One	SVLI	W21321

SECTION B - RECORD OF LOSS OR DAMAGE *(To be completed jointly by member and carrier's/contractor's representative)*

13. Notice is hereby given to the carrier/contractor to whom this statement is surrendered that the shipment was received in condition as shown below and the claim, if any, will be made for such loss or damage as indicated subject to further inspection and notification to the claims office within 70 days by DD Form 1840R found on the reverse side hereof. **THE VALUE INDICATED IN BLOCK 14c IS TO BE USED FOR QUALITY CONTROL ONLY.**

a. Inv. No.	b. Name of item	c. Description of loss or damage *(If missing, so indicate)*
#26	13" Sony B&W TV	Missing
#20	Rug with pad	Wet, Mildewed
#3	Schrank Section	Gouged & Scratched in Front
#11	Sofa	12" Rip, Cushion Missing
#32	Desk	Left Leg Broken, Front Left Top Scratched
#22	1.5 CTN Books	Missing

14. ACKNOWLEDGMENT BY MEMBER OR AGENT *(X and complete as applicable and sign below)*

a. I received my property in apparently good condition except as indicated above. A continuation sheet [ ] was [X] was not used.

b. Unpacking and removal of packing material, boxes, cartons, and other debris [X] is [ ] is not waived.

c. I estimate the amount of my loss and/or damage at $ 2500.00

d. I have received three copies of this form. **I understand that I have 70 days to list any further loss and/or damages on the back of this form and give this to the nearest claims office, and that failure to do so may result in my being paid a smaller amount on a claim.**

e. Telephone Number: 361-2222

f. Date Signed: 05/06/96

g. Signature: /s/ David Dudley

15. ACKNOWLEDGMENT BY CARRIER'S/CONTRACTOR'S REPRESENTATIVE *(X and complete as applicable and sign below)*

[ ] a. Property was delivered in apparently good condition except as otherwise noted above.

[X] b. I will initiate tracer action for missing items.

c. Name of delivering carrier/agent/contractor: Miller 823-22, ABC Transfer & Storage

d. Storage in transit? [X] Yes [ ] No

e. Signature: /s/ Bill Miller

f. Date Signed: 05/06/96

DD Form 1840, JAN 88 *Previous editions are obsolete.* PAGE OF PAGES

S/013

Figure 11-8A. Completed DD Form 1840

BEFORE USING REVERSE CARBONS

NOTICE OF LOSS OR DAMAGE

INSTRUCTIONS TO MEMBER: You have up to 70 days to inspect your property and note all loss or damage. Should you find any loss or damage not reported on DD Form 1840 at the time of delivery, complete Section A below. Use only ball-point pen or typewriter. **THE COMPLETED FORM MUST BE DELIVERED TO YOUR LOCAL CLAIMS OFFICE NOT LATER THAN 70 DAYS FROM DATE OF DELIVERY. FAILURE TO DO SO MAY RESULT IN A REDUCTION OF THE AMOUNT PAYABLE ON YOUR CLAIM.** Keep a copy of this form for your records, receipted and dated by the claims office. If more than one page is needed, please number the pages.

SECTION A - *(To be completed by member)*

1. STATEMENT OF PROPERTY LOSS OR DAMAGE: You are hereby notified of the loss or damage in the following shipment of personal property

a. Name of Member *(Last, First, Middle Initial)*	b. PPGBL/Order Number	c. Date of Delivery
Dudley, Donna J.	VP 123,456	6 May 1996

d. Origin of Shipment *(City and State/Country)*	e. Destination of Shipment *(City and State/Country)*
Baltimore, Maryland	Denver, Colorado

f. You are further notified that property owner intends to present a claim for this loss and/or damage. You are hereby extended an opportunity to inspect the property.

2. LIST OF PROPERTY LOSS / DAMAGE *(NOTE: Tracer action is requested for items listed as missing)*

a. Inv. No.	b. Name of Item	c. General Description of Loss or Damage *(If missing, so indicate)*
#21	Glass Lampshade	Shattered
# 1	Washer	Large Dent in front panel near middle

SECTION B - *(To be completed by claims office)*
(NOTE: Mail original to home office of carrier/contractor listed in item 9 on DD Form 1840)

3. TO *(Home Office of Carrier/Contractor)*

a. Name and Address *(Street Address, City, State, and ZIP Code)*	b. Date of Dispatch
Smith Van Lines 300 Villa Drive Elkhart, IN 47101-0000	17 June 1996

4. YOUR REPRESENTATIVE MAY CONTACT THIS CLAIMS OFFICE FOR ASSISTANCE

a. Name and Address of Claims Officer	b. Signature	
Kelley Nelson, Claims Examiner 7th Armored Div & Fort Bland, ATTN: OSJA-Cl Fort Bland, CO 80040-5000	/s/ Kelley Nelson	
	c. Date Signed 17 June 1996	d. Telephone Number (719) 888-8888

DD Form 1840R, JAN 88 — *Previous editions are obsolete* — PAGE ___ OF ___

Figure 11-8B. Completed DD Form 1840R

STATEMENT OF ACCESSORIAL SERVICES PERFORMED
(SIT DELIVERY & REWEIGH)

DISTRIBUTION:
1. ORIGINAL COPY TO CARRIER
2. COPY TO PROPERTY OWNER
3. ADDITIONAL COPIES MAY BE MADE FOR CARRIER'S USE.

GOVERNMENT BILL OF LADING NO.: VP 243,172
DATE OF PICK-UP AT POINT OF ORIGIN: 6-17-96
NAME OF OWNER: Johnson, Terry
SSN/SERVICE NO.: 000-00-0000
RANK OR GRADE:
ORIGIN OF SHIPMENT: El Paso, Texas
DESTINATION OF SHIPMENT: 4506-Wofford Ct., Ft. Riley, Kansas
ORDERING ACTIVITY/INSTALLATION *(Name & Location)*: Ft. Riley, Kansas
NAME OF CARRIER AND AGENT: AERO MAYFLOWER TRANSIT CO., INC.
SIGNATURE OF CARRIER'S REPRESENTATIVE: /s/ JR
DATE: 7/10/96
CARRIER'S SHIPMENT REF. NO.:
CARRIER'S AGENT OR DRIVER'S CODE NUMBER:

REMARKS:
All items reassembled to my satisfaction.
All items deserviced to my satisfaction.
/s/ Terry Johnson

STORAGE-IN-TRANSIT

STORED AT *(City & State)*: Richardson Trf Salina, Kansas
SIT SERVICES WERE PROVIDED AT *(Check as applicable.)*: [X] DESTINATION [ ] OTHER

DATE IN	DATE OUT	NO. DAYS	NET WEIGHT
06-17-96	7-9-96	23	6450

THIS SHIPMENT WAS ORDERED INTO AND OUT OF STORAGE-IN-TRANSIT ON DATES INDICATED HEREON AND AUTHORIZED BY SIT CONTROL NUMBER 6-153-004
SIT IN EXCESS OF 90 DAYS WAS AUTHORIZED [ ] YES [X] NO
TRANSPORTATION OFFICER'S SIGNATURE:
DATE:

REWEIGH CERTIFICATION

ORIGINAL GROSS	REWEIGH GROSS
ORIGINAL TARE	REWEIGH TARE
ORIGINAL NET	REWEIGH NET

THIS SHIPMENT WAS ORDERED FOR REWEIGH AND SERVICES WERE ACCOMPLISHED AS SHOWN ABOVE.
TRANSPORTATION OFFICER'S SIGNATURE:
DATE:

ADDITIONAL SERVICES	NUMBER	UNIT PRICE	CHARGE
LABOR-NUMBER OF MAN-HOURS *(Describe services in "REMARKS" Section.)*			
PIANO/ORGAN OR EXCESS CARRY SERVICES			
OTHER *(Describe in "REMARKS" Section.)*			

CONSIGNEE'S STATEMENT OF DELIVERY AND LOSS OR DAMAGE

NOTICE IS HEREBY GIVEN TO THE CARRIER TO WHOM THIS STATEMENT OF ACCESSORIAL SERVICES PERFORMED IS SURRENDERED, THAT THE SHIPMENT WAS RECEIVED IN CONDITION AS SHOWN BELOW AND THAT CLAIM, IF ANY, WILL BE MADE FOR THE VALUE OF SUCH LOSS AND/OR DAMAGE AS INDICATED.

DESCRIPTION OF LOSS AND/OR DAMAGE:

Used only when SIT is authorized or when shipment is re-weighed
(Claimants and carriers should not use this form in place of DD Forms 1840/1840R)

NOTE: This is an obsolete form. See next page to see the form currently being used.

ACTUAL OR ESTIMATED WEIGHT

UNPACKING AND REMOVAL OF PACKING MATERIAL, BOXES/CARTONS AND OTHER DEBRIS IS HEREBY WAIVED.
All items unpacked to my satisfaction
INVENTORY NOS.
SIGNATURE: /s/ Terry Johnson

I HAVE RECEIVED FROM Aero Mayflower Transit Co., Inc. *(Name of Transportation Company)* AT 4506-Wofford Ct., Ft. Riley, KS *(Actual Point of Delivery)*
THE PROPERTY DESCRIBED ON THIS FORM, IN APPARENT GOOD ORDER & CONDITION EXCEPT AS NOTED ABOVE.
SIGNATURE OF CONSIGNEE OR AUTHORIZED AGENT: /s/ Terry Johnson
DATE OF DELIVERY: 7/10/96

DD FORM 619-1 PREVIOUS EDITION WILL BE USED

Figure 11-9A. Completed DD Form 619-1 (obsolete form)
FOR ILLUSTRATION PURPOSES ONLY—DO NOT USE

STATEMENT OF ACCESSORIAL SERVICES PERFORMED

(This form will not be used for SIT Delivery)

GOVERNMENT BILL OF LADING NO. QP-123,456	DATE OF PICK-UP AT POINT OF ORIGIN 6/7/97
NAME OF OWNER DUCK, MARTHA	
SSN/SERVICE NO. 789-96-1042	RANK OR GRADE SFC E7
ORIGIN OF SHIPMENT FORT GEORGE G MEADE, MD.	
DESTINATION OF SHIPMENT FRIENDSVILLE, TX.	
ORDERING ACTIVITY/INSTALLATION *(Name & Location)* FORT GEORGE G. MEADE, MD.	
NAMES OF CARRIER AND AGENT BIG MAMA VAN LINES BEST DAUGHTER MOVING & STORAGE	
SIGNATURE OF CARRIER'S REPRESENTATIVE Donna Dowight	DATE 6/7/97
CARRIER'S SHIPMENT REF. NO. 88211F	CARRIER'S AGENT OR DRIVER'S CODE NO.
UNPACKING OF _____ BOXES/CARTONS IS HEREBY WAIVED. INVENTORY NO. _____	
SIGNATURE	

PROFESSIONAL BOOKS, PAPERS AND EQUIPMENT

NONE _____ LBS. PBP & E INCLUDED IN SHIPMENT

(If PBP & E not included, write "NONE" on the line above)

APPLIANCE SERVICE

SPECIFY ARTICLES SERVICED AND MAKE OR MANUFACTURER'S NAME *(If washer, show if wringer or automatic type) NOTE: Each entry must be separately initialed by owner OR HIS AGENT.*

AUTOMATIC MAYTAG WASHER MD

STATEMENT OF OWNER MILITARY INSPECTOR/TRANSPORTATION OFFICER

MATERIALS WERE FURNISHED/ACCESSORIAL SERVICES WERE PERFORMED BY NAMED CARRIER AS INDICATED HEREON. *(Check as Appropriate)*

☒ AT ORIGIN ☐ AT DESTINATION ☐ OTHER *(Explain)*

SIGNATURE Martha Duck

Do not sign until carrier has completed "NUMBER" column.

TITLE	DATE
OWNER	6/7/97

PACKING MATERIALS/SERVICES	NUMBER	UNIT PRICE	CHARGE
DRUM/DISH-PACK/BARREL	15	21.15	317.25
CARTONS LESS THAN 1½ CU. FT.	none		
1½ CU. FT.	62	5.00	310.00
3 CU. FT.	49	7.50	367.50
4½ CU. FT.	14	9.25	129.50
6 CU. FT.	3	10.55	31.65
6½ CU. FT.	none		
SPECIAL DESIGNED MIRROR/PICTURE CARTONS NO. SUBJ. TO MIN. CHG _____	13	17.50	227.50
OTHERS ENTER GROSS CU. FT. _____	none		
MATTRESS CARTONS *(Not Exceeding 54"X75")*	2	8.00	16.00
MATTRESS CARTONS *(Exceeding 54"X75")*	2	14.50	29.00
MATTRESS CARTON. CRIB	1	5.35	5.35
WARDROBE CARTONS	5	9.95	49.75
ABOVE ITEMS SUBJECT TO MAXIMUM PACKING CHARGE AT $ 14.00 PER CWT.			
BOXES. WOODEN OR CRATES NOT OVER 5 CU. FT. _____	none		
OVER 5. NOT OVER 8 CU. FT.	none		
OVER 8 CU. FT ENTER GROSS CU. FT.	none		
ADDITIONAL SERVICES			
LABOR-NUMBER OF MAN HOURS *(Describe service in "REMARKS" section)*	none		
(Check as Appropriate) ☐ EXTRA PICK-UP ☐ EXTRA DELIVERY ☐ EXCESS DISTANCE	none		
PIANO/ORGAN OR EXCESS CARRY SERVICE	none		
SERVICING APPLIANCES/OTHER ARTICLES *(As itemized & initialed)*	1		11.30
OTHER *(Describe in "REMARKS" section)*	none		
TOTAL ACCESSORIAL SERVICES LISTED			

REMARKS:

NOTE: This form is required only when accessorial services performed are chargeable to the Government, Carrier will enter complete information or "NONE in columns at the right except that unit price and charge columns may be omitted when charges itemized on SF 1113.

DD FORM 1 APR 73 619 REPLACES EDITION OF 1 JAN 72. WHICH IS OBSOLETE.

☆U.S. GOVERNMENT PRINTING OFFICE: 1984-453-130

Figure 11-9B. Completed DD Form 619 (current form), front

Table 11–3
Joint military industry table of weights

Weight (lbs)	Item
120	Air conditioner, window
20	Antennae, TV, outside
2	Antennae, TV, inside (rabbit ears)
25	Aquarium
35	Aquarium stand
10	Archery set, complete
150	Armoire (large wardrobe or movable cupboard)
10	Auto creeper
50	Auto jack, rolling floor type
10	Auto jack stands—10 lbs. per pair
30	Auto ramps—30 lbs. per pair
10	Baby swing
5	Backpack
25	Bar, globe
120	Bar, portable
20	Bar stool
30	Barbecue stand
50	Barbecue wagon
5	Basket
10	Bassinet/cradle
10	Bathinette
20	Bathroom cabinet
40	Battery, auto
	Beds
	Box springs
30	Bunk each
50	Twin
60	Double
80	Queen
100	King
	Mattress
30	Bunk each
50	Twin
60	Double
80	Queen
100	King
	Bedstead (headboard, foot board, rails, and slats)
80	Bunk (includes ladder)
50	Twin
60	Double
70	Queen
90	King
50	Canopy
115	Captain/mate
50	Rollaway, with mattress
175	Trundle
210	Water (complete)
50	Liner and bag
70	Platform
90	Side rails, headboard, and foot board
20	Bench (fireside, piano, vanity, dresser, picnic, deacon's)
70	Bench, work
60	Bench saw
40	Bicycle

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
40	Bicycle exerciser
20	Bird bath
10	Bird cage, with stand
10	Blinds, venetian, roll-up (bundle)
5	Board, bulletin
30	Bookcase or section
15	Bowling ball
10	Box, toy
180	Breakfront china cabinet closet (single item)
2	Broom
2	Bucket
20	Buffer, floor
140	Buffet/credenza/sideboard
5	Bulletin board
100	Bumper pool table
	Bundle
5	Small (less than .5 cu. ft.)
10	Medium (over .5 cu. ft. but less than 1.0 cu. ft.)
15	Large (over 1.0 cu. ft.)
90	Bureau/dresser/chest of drawers
	Cabinets
20	Bathroom
90	Corner
75	Curio
75	Etagere
20	Filing (per drawer)
50	Gun
40	Kitchen
75	Korean
20	Record
40	Stereo
75	Trophy
40	Utility
10	Camel saddle
10	Car seat, child's
10	Card table
5	Card table chairs, each
4	Carpet (per square yard)
	4 X 6 = 12
	8 X 10 = 36
	9 X 12 = 48
	10 X 12 = 56
	12 X 15 = 80
	15 X 18 = 120
3	Carpet padding (per square yard)
	4 X 6 = 9
	8 X 10 = 9
	9 X 12 = 36
	10 X 12 = 42
	12 X 15 = 60
	15 X 18 = 90

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
30	Carriage, baby
20	Carrier, auto top (rack)
20	Carrier, auto top (box)
20	Cart, microwave oven
40	Cedar chest
20	Ceiling fan
20	Chain saw
	Chairs
20	Arm, wood/metal
50	Arm, upholstered
20	Beanbag
20	Boudoir
10	Breakfast
5	Card table
60	Chaise, upholstered
20	Desk
20	Dining
10	High (child's)
10	Kitchen
30	Occasional
50	Overstuffed
30	Papasan
30	Peacock
60	Platform rocker, upholstered
90	Recliner
30	Rocking
10	Rocking, child's
20	Straight
60	Swivel
50	Upholstered
20	Valet
	Outdoor
5	Aluminum lawn chair
20	Chaise lounge, redwood
20	Iron chair
15	Wood chair, including redwood
90	Chest of drawers/dresser/bureau
40	Chest of drawers, child's
40	Chest, cedar
50	Chest, tool
10	Chest, toy
80	Chifforobe/wardrobe
180	China cabinet/closet or breakfront (single item)
90	China cabinet, base
90	China cabinet, top
80	Clock, hall or grandfather/grandmother
5	Clothes basket
10	Clothes hamper
150	Compactor, trash Containers, packed (See notes 1 and 4 at end of table.)
60	Wardrobe (stand-up type, used in domestic shipments)
50	Wardrobe (flat type, used in NTS and overseas shipments)
50	Crate, wood (mirror, marble, etc.)
60	Barrel, dish pack, drum
50	Mattress/box spring (not exceeding 39" X 75") (single)
60	Mattress/box spring (not exceeding 54" X 75") (double)
80/100	Mattress/box spring (exceeding 54" X 75") (queen/king)
30	Mattress/box spring (bunk)
15	Crib mattress carton

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
60	Mirror carton, glass pack
25	Picture carton
25	Less than 3 cubic feet carton (small)
30	3 to less than 4½ cubic feet carton
35	4½ to less than 6 cubic feet carton (medium)
45	6 to less than 6½ cubic feet carton (large)
	6½ cubic ft. cartons and over—based on 7 lbs. per cubic foot
10	Cooler/ice chest
90	Corner cabinet
10	Cot, folding
120	Couch/davenport/divan/sofa (if length unknown, assume 6')
20	(per linear foot)
140	Credenza/buffet/sideboard
30	Crib, without mattress
15	Croquet set
75	Curio cabinet
5	Curtain rods (bundle)
120	Davenport/couch/sofa/divan (if length unknown, assume 6')
20	(per linear foot)
90	Day bed
20	Deacon's bench
50	Dehumidifier
150	Desk, office size
100	Desk, roll top
110	Desk, secretary
70	Desk, small or Winthrop
2	Diaper pail/bucket
150	Dishwasher
	Dog house
25	Small
40	Medium
55	Large
30	Doll house
90	Dresser/bureau/chest of drawers
40	Dresser, child's
110	Dresser, double
150	Dresser, triple
20	Dresser bench
120	Drill press, bench model
170	Drill press, floor model
45	Drum set
150	Dryer
10	Dryer rack
60	Duffel bag, with contents

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
10	Electric broom
40	Entertainment center
75	Etagere
5	Exercise mat
2	Extension ladder (pounds per foot)
	Fan
20	Attic
20	Ceiling
10	Table
15	Window
20	Filing cabinet (per drawer)
50	Fireplace, artificial
	Fireplace accessories
10	Andirons
10	Fire, artificial
10	Grate
10	Logs, ceramic
10	Screen
10	Tool set (stand, tongs, poker, brush)
10	Wood basket
200	Fireplace insert
20	Fireside bench
5	Fishing rod, with reel
10	Fishing tackle box (full)
10	Floor/pole lamp
10	Flower/plant stand
10	Footlocker, empty
60	Footlocker, with contents
10	Footstool/ottoman/hassock
	Freezers
100	Up to 10 cubic feet
200	Over 10 to 15 cubic feet
250	Over 15 to 20 cubic feet
300	Over 20 cubic feet
	Garden tools: See Tools
50	Glider/settee
10	Golf bag, without clubs
30	Golf bag pull cart
	Golf cart (riding) based upon manufacturer's weight
80	Grandfather/hall clock
50	Gun cabinet
10	Gun rack
15	Hair dryer, sit under hood type
10	Hall tree
15	Hammock
2	Hand saw
	Hand tools: See Tools
10	Hassock/footstool/ottoman

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
10	Heater, portable
20	Hibachi, pot
210	Hideabed
90	Highboy (chest)
20	Hobby horse
40	Hope chest
10	Hose, garden (50')
50	Humidifier
80	Hutch, base
40	Hutch, top
90	Ice box (antique)
10	Ice chest/cooler
10	Incinerator
10	Ironing board
60	Jig saw, bench
90	Jig saw, floor model
40	Kitchen cabinet
75	Korean cabinet
2	Ladder, extension (pounds per foot)
20	Ladder, step (6 foot)
10	Lamp, pole or floor
80	Lathe, wood, bench model
120	Lathe, wood, floor model
	Lawn mower
30	Hand
60	Power
5	Lawn sprinkler
40	Leaf sweeper
80	Love seat
5	Luggage/suitcase (empty)
40	Luggage/suitcase (with contents)
10	Magazine rack
70	Microwave oven
20	Microwave oven cart
2	Mop
	Moped—based on manufacturer's weight
	Motorcycle—based on manufacturer's weight
10	Movie projector
10	Movie screen
	Musical instruments (excluding bass, cello, percussion, tuba, French horn, etc.)
15	Horns
15	Reeds
15	Strings

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
	Organs
150	Chord or spinet
425	Large
10	Ottoman/footstool/hassock
20	Photo enlarger
20	Piano bench
	Pianos
350	Spinet
500	Baby grand or upright (add 100 lbs. for a player)
20	Picnic bench
40	Pie safe (antique)
130	Ping pong table
10	Plant/flower stand
10	Planter/window box
20	Play pen
10	Pole/floor lamp
	Pool table
150	3' X 6'
250	3½'X 7'
300	4' X 8'
500	(with slate bed)
100	Bumper pool table
180	Power saw
150	Radial arm saw
50	Radio, antique floor model
10	Radio, table
100	Range/stove, apartment or small
250	Range/stove, double oven
200	Range/stove, regular
20	Record cabinet
20	Record player
	Refrigerators
100	Up to 10 cubic feet
200	Over 10 to 16 cubic feet
250	Over 16 to 20 cubic feet
300	Over 20 cubic feet
	Refrigerator-freezer combination, side-by-side, based on manufacturer's weight
20	Rice dispenser
10	Rifle/shotgun
20	Roaster
25	Room divider/screen, free standing
4	Rug (per square yard)
	4X 6 = 12
	8 X 10 = 36
	9 X 12 = 48
	10 X 12 = 56
	12 X 15 = 80
	15 X 18 = 120

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
3	Rug padding (per square yard)
	4 X 6 = 9
	8 X 10 = 27
	9 X 12 = 36
	10 X 12 = 42
	12 X 15 = 60
	15 X 18 = 90
40	Saddle
20	Sand box
50	Sander, bench
80	Sander, floor model
	Saws
60	Bench
20	Chain
60	Jig, bench model
90	Jig, floor model
150	Radial arm
150	Table
5	Scale, bathroom, kitchen
50	Schrank (European closet, movable)—per linear foot
250	If width unknown, assume 5'
25	Screen/room divider, free standing
50	Sectional sofa/playpen/pit grouping (each section)
50	Settee/glider
40	Sewing machine, portable (with carrying case)
100	Sewing machine, with cabinet although head has been detached for shipment
10	Shadow box
10	Shelves/shelving (each)
10	Shotgun/rifle
140	Sideboard/buffet/credenza
5	Ski poles
10	Skis
10	Sled
5	Sleeping bag
50	Slide, child's
	Smoking stand
	Snow blower, based on manufacturer's weight
120	Sofa/couch/davenport/divan (if length unknown, assume 6')
20	per linear foot
20	Spinning wheel
50	Speakers/stereo, large, not packed or containerized (all other stereo components should be containerized)
10	Spreader, lawn
	Stands
10	Flower
40	Night

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
10	Plant
5	Smoking
20	Speaker
20	Stereo
15	Television
40	Wash
20	Step ladder (6')
50	Stereo speakers, large, not packed or containerized (all other stereo components should be containerized)
50	Stereo, portable
150	Stereo, console
40	Stereo cabinet
15	Stereo components, each (amplifiers, small speakers, tape decks, turntables) (If containerized, see container note 1 at end of table.)
10	Stool
20	Stool, bar
190	Stove/range, apartment or small
250	Stove/range, double oven
200	Stove/range, regular
10	Stroller
80	Studio couch
5	Suitcase (empty)
40	Suitcase (with contents)
40	Swimming pool, plastic (wading pool, 5 lbs.)
10	Swing, baby
120	Swing set (gym)
150	Table saw
	Tables
40	Breakfast
55	Butcher block
10	Card
10	Child's
40	Coffee
40	Commode
110	Dining/refectory/extension
25	Dressing (baby)
40	Drop leaf
40	Drum
40	Dry sink
40	End
110	Extension/dining/refectory
15	Folding
40	Kitchen
40	Lamp
60	Library
80	Marble top
40	Nest (set)
40	Night
40	Occasional
40	Patio, wood
20	Patio, metal aluminum
40	Pedestal
70	Picnic
130	Ping pong
5	Plastic, small
40	Powder
110	Refectory/dining/extension
70	Server
40	Sewing, not used with machine
35	Tea

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
10	Utility
40	Vanity
35	Tape recorder, reel-to-reel
30	Tea cart
	Televisions
	12" or less
20	Black and white
30	Color
	13" or 16"
30	Black and white
50	Color
	17" or 19"
50	Black and white
70	Color
	20" or 24"
100	Black and white
150	Color
200	Television, theater with stereo
2	Tennis racket
	Tents
5	Pup (approx. 5" X 7", 7" X 7")
25	Medium (approx. 8" X 10", 9" X 9")
35	Large (approx. 10" X 12", 10" X 16")
20	Tires, auto (each)
30	Toboggan (10 feet)
10	Tool box, empty (must be shown as such on inventory or weight with contents will be used)
70	Tool box, with contents
20	Tool chest with drawers, empty (Must be shown as such on inventory or weight with contents will be used)
100	Tool chest with drawers, with contents
80	Tool cabinet (professional type on casters), empty (must be shown as such on inventory or weight with contents will be used)
200	Tool cabinet (professional type with casters, with contents
5	Tools garden (rake, shovel, hoe, etc. (each)
	Tools, power (large tools, check individual item, such as drill press)
5	Circular saw
5	Clipper
5	Drill
5	Hedge trimmer
5	Sabre saw
5	Sander
10	Toy chest/box
10	Trash can, metal
5	Trash can, plastic
150	Trash compactor
5	Traverse rod
10	Tricycle
75	Trophy cabinet
30	Trunk, empty
60	Trunk, full
15	TV stand

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
2	TV trays or holder, each
30	Typewriter
20	Umbrella (outdoor, patio)
40	Utility cabinet
20	Vacuum cleaner
20	Valet chair
20	Vanity bench
40	Vanity dresser/table
10	Venetian blinds (bundle)
40	Victrola
30	Videocassette recorder (VCR)
5	Wading pool, plastic
10	Wagon, child's
30	Wall clock, antique Wall unit (See documentation for proper classification.)
80	Wardrobe/chifforobe (furniture)
40	Wash stand
200	Washer
5	Weed eater, electric
20	Weed eater, gas
20	Weight bench
30	Wheelbarrow
45	Wheelchair
10	Window box/planter
10	Wine rack (empty)
160	Wood burning stove, free standing
70	Work bench (shop)

Table 11–3
Joint military industry table of weights—Continued

Weight (lbs)	Item
15	Yo (Korean mattress)

Notes:

[A] This table has been developed by the Military-Industry Claims Panel at the request of the military to minimize the costly and time-consuming administrative procedures so often experienced in claims actions where the weight of a lost or damaged item has been subject to question.

[B] This table, which has been authenticated by the military Services, shall be mandatory for use in adjusting claims for all military shipments inventoried as household goods moving under a Government Bill of Lading.

[C] This table is for claims adjusting purposes only and is not approved for estimating, transportation charges, or any other carrier operation.

[D] This table will determine maximum carrier liability when such is based upon the weight of the item. However, actual liability may be less, depending upon market values, depreciation, or repair costs involved.

[E] It is understood and agreed between the military Services and the industry representatives that this table will not be changed, once adopted, without notice and consultation between military Services and industry representatives.

[F] Where the items were in cartons at the time of loss or damage, the weight of the carton will apply. (The Military Rate Tender states that each shipping piece or package and contents thereof shall constitute one article. Any article taken apart or knocked down for handling or loading in vehicles shall constitute one article.)

[1] Weights of packed items will be determined by the description or the size of the container as reflected on the inventory. Weights are assigned by container size description as follows:

Weight (in lbs)	Containers
60	Wardrobe (stand-up type; used in domestic shipments)
50	Wardrobe (flat, used in NTS and overseas shipments)
50	Crate, wood (mirror, marble, etc.)
60	Barrel, dish pack, drum
60	Mirror carton, glass pack
25	Picture carton
25	Less than 3 cubic feet carton (small)
30	3 to less than 4½ cubic feet carton
35	4½ to less than 6 cubic feet carton (medium)
45	6 to less than 6½ cubic feet carton (large)
	6½ cubic feet cartons and over— based on 7 lbs = + per cubic foot.

[2] Cartons containing books or phonograph records will be deemed to weigh 50 pounds.

[3] a. Cartons containing only lamp shades will be deemed to weigh 10 pounds.
b. Cartons containing only artificial flower arrangements will be deemed to weigh 5 pounds.

[4] Cartons that are not identified as to size on the inventory will be deemed to weigh at least 25 pounds. Weight assigned will be determined by the contents.

[5] If the inventory does not properly identify the item where size, description, or dimension affects weight (such as, dresser, headboard, mattress, TV, etc.) the item will be assigned a median weight if no other identification is provided.

[6] A sewing machine cabinet listed on the inventory must be assigned the weight of a sewing machine with cabinet. (Logic: A sewing machine cabinet usually contains a sewing machine that has been removed from the cabinet and packed separately for shipping. Normally, a cabinet is not shipped without a machine. Thus, an individual weight for a cabinet is not appropriate since the cabinet and machine constitute one article.)

[7] Wicker furniture will be considered to weigh half that prescribed for like items in this table.

Blocks 1-11 and 13. These blocks are completed by the claimant prior to adjudication of the claim and are self-explanatory except: (For Block 12, see Blocks 12, 25, 26, and 30.)

a. *Block 2 a &b*. Enter the name of the claimant's insurance company and the policy number only if the claimant has private/commercial insurance coverage.

b. *Blocks 3 and 4*. Show the dates that goods were picked up at origin and delivered to destination.

c. *Block 5*. Show consecutive line numbers for items claimed.

d. *Block 6*. Indicate the quantity of such items claimed on a particular line (e.g., "57 books").

e. *Block 7*. Enter a complete description of the items claimed and the nature and extent of loss or damage This description should match the item and damage entered on DD 1840/1840R.

f. *Block 8*. Write the inventory number of each item claimed, as shown on the origin inventory.

g. *Block 9*. Enter the amount paid to purchase the item.

h. *Block 10*. Enter the month and year the item was purchased, originally manufactured, or received by the owner.

i. *Block 11a*. Show the amount claimed to repair the item, usually based on an estimate.

j. *Block 11b*. Show the amount claimed for replacement.

k. *Block 13*. Enter the total amount claimed by adding the amounts in column 11 for each line used.

Blocks 14-16. These blocks should be completed during the adjudication process to ensure that the proper consideration is given to PED listed on the inventory. All blocks must be completed before a demand is asserted against the carrier. All damages or comments listed on the origin inventory must be copied onto the DD Form 1844 in block #16 for each item claimed.

a. *Block 14*. This is the origin contractor. If block 13 on the GBL (fig 11-13) is blank and block 19 on the GBL reflects pickup from the claimant's residence, enter here the name of the carrier listed in block 1 of the GBL. If either block 13 or 19 on the GBL contains a contractor's name and address, this contractor's name should be entered in block 14 of DD Form 1844.

b. *Block 15*. This is the date the origin inventory was prepared by the contractor listed in block 14.

c. *Block 16*. This block lists exceptions noted by the origin contractor. From the origin inventory (fig 11-15) copy all information for the inventory line number claimed. The inventory should describe items, including their size. For example, a dresser should be listed as "single", "double," or "triple"; the size of a schrank should be entered; and the description of a television should indicate screen size, whether the item was portable or console, and whether it was color or black and white. Note any PED found and its location. Carton sizes and contents should also be listed.

Blocks 17-20. These blocks are completed if either block 13 or block 19 on the GBL (fig 11-13) contain a contractor's name, indicating that the shipment went into NTS and was picked up from the NTS warehouse and delivered by the carrier listed in block 1 of the GBL. The carrier noted in block 1 is referred to as the "second contractor." When picking up the shipment from the NTS warehouse, the carrier is required to check each item in the storage lot. If the condition of the item differs from what the origin inventory reflects, the carrier must prepare an exception sheet/rider (see fig 11-16) noting the difference. A valid exception sheet/rider must be signed and dated by both the NTS warehouse firm releasing the goods and the carrier accepting them. However, if a carrier cannot deliver the goods on the date they are picked up from the warehouse, the carrier places them into SIT in a warehouse belonging to one of its agents. At that time, the SIT agent will sometimes prepare a rider showing the condition of the goods when they entered into the agent's custody. *Because a SIT warehouse firm is merely an agent of the GBL carrier, this rider is just an internal document between the carrier and its agent and cannot be used to relieve the carrier of liability*. SIT

Figure 11-10A. Instructions for completing DD Form 1844—Continued

riders are not valid exception sheets for use in determining NTS liability. To verify that a rider is a SIT rider, compare the date the rider was signed with the dates on the Statement of Accessorial Services Performed (fig. 11-9). The Statement of Accessorial Services Performed should reflect the SIT agent's name and the dates when the goods were placed into and removed from SIT.

a. *Block 17*. Name of carrier (second contractor).

b. *Block 18*. Exception sheet date. When a second contractor has prepared a valid exception sheet, enter the date it was prepared here. This exception sheet should reference the original inventory numbers.

c. *Block 19*. Inventory number. If the exception sheet does not reference the original inventory numbers because the second contractor reinventoried the shipment, enter the new inventory numbers here.

d. *Block 20*. Exceptions (by the second contractor). If the second contractor took exceptions on a valid exception sheet for items claimed, enter these in this column.

Blocks 21-24. Enter the claim number assigned to the claim (block 22), the net weight of the shipment and maximum carrier liability (block 23) if the shipment was an IRV shipment, and the storage lot number is applicable (block 24). For shipments picked up from NTS, the lot number is found in block 19 on the GBL (see fig 11-13).

Blocks 12, 25, 26, and 30. The amount allowed (block 25), the adjudicator's remarks (block 26), and the total amount allowed (block 30) are completed during the adjudication of the claim. Relevant comments by the adjudicator that do not fit block 26 may also be inserted into block 12, remarks.

Block 27. This block contains an item's weight and is not completed for claims involving direct deliveries from NTS or IRV shipments.

a. *IRV Shipments*. IRV shipments are: code 1 and 2 shipments picked up on or after 1 April 1987 (intrastate moves) or 1 May 1987 (interstate moves) and code 3,4,5,6,7,8,J and T shipments picked up on or after 1 October 1995.

b. *Code 3,4,5,6,7,8 and T Shipments Picked Up Prior to 1 October 1995*. On shipments picked up prior to 1 October 1995 the liability is computed based on the weight of the individual item as shown in the Joint Military-Industry Table of Weights. If the item was packed in a carton, the listed weight of the carton is used instead. Note that the Table of Weights authorizes higher weights than normal for cartons packed with items like books and lower weights than normal for cartons packed with items like lampshades. Shipments picked up prior to 1 October 1993 are calculated using $.60 per pound per article. Shipments picked up between 1 October 1993 and 30 September 1995 are calculated using $1.80 per pound per article. Shipments picked up on or after 1 October 1995 are calculated as IRV shipments and no weights should be entered, as stated above.

c. DPM Shipments. Liability is computed based on the weight of the individual item as shown in the Joint Military-Industry Table of Weights, times $.60 per pound per article. If the item was packed in a carton, the listed weight of the carton is used instead. Note that the Table of Weights authorizes higher weights than normal for cartons packed with items like books and lower weights than normal for cartons packed with items like lampshades. Full repair cost or replacement value is pursued for negligent damage; such as when the carrier's driver is speeding and crashes; when a packer is smoking and his ash starts fire; or when movers drop boxes out of a window instead of using the stairs.

Block 28. If an NTS warehouse firm is found liable for damage to the item, either because the firm was the last handler operating under the BOA or a service order, or because another handler took valid exceptions against the warehouse firm, make an entry in this column. Note that the warehouse firm's maximum liability is $50 per inventory line item and that a schrank is considered one line item. Do not charge the warehouse for estimate fees. Several items claimed may involve the same inventory line number. If the total amount adjudicated for one inventory line item exceeds $50 enter $50. If the total amount adjudicated does not exceed $50, enter the amount(s) adjudicated. NTS liability for Loss/Damage to HHG lots "booked" on/after 1 Jan 97 will be increased from $50 per line item to $1.25 times the net weight of the shipment. Calculations of NTS liability for such lots will mirror the method used to calculate carrier liability under IRV.

Block 29. If a carrier is determined to be liable for damage to the item, either because the carrier was the last handler or because another handler took valid exceptions against the carrier, make an entry in this column. Do not charge the carrier for estimate fees. Note that when IRV or insurance is

Figure 11-10A. Instructions for completing DD Form 1844—Continued

involved, the amount reflected in the "Amount Allowed" column and the amount demanded from the carrier may exceed that amount the soldier was paid by the government on that item.

a. *IRV shipments*. Simply enter the amount adjudicated for every item for which the carrier is liable. Continue to enter amounts in this column even if the total exceeds the carrier's maximum liability for the shipment entered in block 22.

b. *Code 3,4,5,6,7,8,J, and T, non-IRV shipments*. Several items claimed may involve the same inventory line number. The carrier is only liable for the maximum liability of each inventory line item. To determine the carrier's maximum liability for the inventory line item, multiply the weight in block 27 times $.60 or $1.80 as applicable. If the total amount adjudicated for items involving this inventory line item exceeds this amount calculated by weight, enter the amount calculated by weight. If the total amount adjudicated does not exceed the amount calculated by weight, enter the amount(s) adjudicated.

c. *DPM shipments*. The origin or destination contractor's maximum liability for each container or inventory line item is $.60 per pound. To determine the carrier's maximum liability for the container or inventory line item, multiply the weight in block 26 times $.60. (If a different released valuation is applicable, as is the case with freight forwarders, use this valuation instead of $.60.) If the total amount adjudicated for items involving this container or inventory line item exceeds the amount calculated by weight, enter the amount calculated by weight. If the total amount adjudicated does not exceed the amount calculated by weight, enter the amount(s) adjudicated.

d. *Local moves*. The carrier's maximum liability for each container or inventory line item for shipments booked on or after 1 Jan 93 is $1.25 times Net Weight of Shipment. The carrier's maximum liability for each container or inventory line item for shipments booked prior to 1 Jan 93 is $.60 per pound per item. Several items claimed may involve the same container or inventory line number. To determine the carrier's maximum liability for the container or inventory line item, multiply the weight in block 27 times $.60. If the total amount adjudicated for items in one container or inventory line item exceeds this amount calculated by weight, enter the amount calculated by weight. If the total amount adjudicated does not exceed the amount calculated by weight, enter the amount(s) adjudicated.

e. *Mobile homes*. Enter the amount adjudicated for damage to the mobile home. Also enter $250 or the total adjudicated value of loss or damage to the contents, whichever is less.

Block 31. For third-party liability, add up the "Warehouse Liability" and "Carrier Liability" columns and enter this total. *If the shipment is a code 5 or code T shipment and if the time and place of the loss cannot be clearly established, multiply the carrier liability by 50 percent and also enter this sum as the compromise demand on the carrier*. Note that if the carrier fails to accept the 50-percent compromise, offset action will be initiated for the full amount (see fig 11-18).

Figure 11-10A. Instructions for completing DD Form 1844

LIST OF PROPERTY AND CLAIMS ANALYSIS CHART

ITEMS 14 THROUGH 31 TO BE FILLED OUT BY CLAIMS OFFICE

1. NAME OF CLAIMANT (Last, First, Middle Initial): Dudley, Donna J.

2. CLAIMANT'S INSURANCE COMPANY (If applicable): a. NAME: N/A; b. POLICY NO:

3. PICK-UP DATE (MMDDYY): Oct 5, 1994

4. DELIVERY DATE (MMDDYY): May 6, 1996

14. ORIGIN CONTRACTOR: Jones Whse.

17. 2ND CONTRACTOR: Smith Van Lines

21. CLAIM NUMBER: 96-XXX-0001

22. NET WT MAX CAR LIABLE: $1.80 per lb.

15. INVENTORY DATE (MMDDYY):

18. EXCEPTION SHEET DATE (MMDDYY):

23. GBL NUMBER:

24. LOT NUMBER: 001

5. LINE NO.	6. QTY	7. LOST OR DAMAGED ITEMS (Describe the item fully, including brand name, model and size. List the nature and extent of damage. If missing, state "MISSING.")	8. INV NO.	9. ORIGINAL COST	10. MM/YY PURCHASED	11. AMOUNT CLAIMED a. REPAIR COST	b. (OR) REPL COST	16. EXCEPTIONS	19. INV NO	20. EXCEPTIONS	25. AMOUNT ALLOWED	26. ADJUDICATOR'S REMARKS	27. ITEM WT	28. WAREHOUSE LIABILITY	29. CARRIER LIABILITY
1	1	Small B&W TV, Sony 13" missing	26	110.00	Nov 92		150.00	Port, TV (B&W) Sony 13"	26	SC-10	120	20% D	30		54
2	1	Rug with pad, 8' x 10' can't be cleaned, wet and mildewed	20	750.00	Jul 93		950.00	8' x 10' Rug with pad			903	5% D SV/N	36 Rug 27 Pad		64.80 48.60
3	1	Glass Lampshade - shattered	21	60.00	Jul 88		65.00	5.2 Ctn. Glass Lampshade BR	46	5.2 Ctn. - Crushed Glass Shade - BR	46	30% D SV/N	35	46	
4	1	Sofa, Thomasville - 12" rip, cushion missing	11	1400.00	May 91		800.00		11	Arm - SO	200	$300 Labor AC 20% D on Fabric	120		216
5	1	Schrank, 1 section gouged and scratched in front	3	1500.00	Aug 85		250.00	SC-4-8-12 SC-5-4-3	3	G-4-10	225	ER. EX.1 Less 10% PED	600	50	
6	1	Washer - large dent in side	1	495.00	Aug 87		350.00	M-4-5-9 10-8-3			50	LOV	200		50
7	1	Paperback books - missing	22	.95 to 3.95	78-88		199.50	1.5 Ctn. Books CP			100	AVG 12 yrs 50% D MAX	50		90
8	1	Desk - left front leg broken top scratched	32	295.00	Sep 93		135.00	R-4-8-6	32	10-SC	135	ER EX.1	110	SC 60	leg 85

12. REMARKS: Do not round off carrier liability

13. TOTAL AMOUNT CLAIMED: $ 2,899.50

30. TOTAL AMOUNT ALLOWED: $ 2279

31. THIRD PARTY LIABILITY: $ 146 $ 608.40

DD Form 1844, FEB 89

Previous editions may be used until exhausted.

Page of Pages

Figure 11-10B. Completed DD Form 1844

In an effort to reduce administrative costs, both to the industry and the Government, in settling claims against carriers for loss or damage to household goods, wherein the claim by the Government or the request for a reimbursement by an industry member is for $25 or less, it is hereby agreed as follows:

The Military Services will not pursue a claim against a carrier for loss or damage to household goods for $25 or less; nor will a carrier request reimbursement for such claims from Military Services for an amount of $25 or less.

This agreement is effective as of 1 May 1987, and shall apply to all actions taken on and after that date.

The original of this Memorandum of Understanding shall be retained by the American Movers Conference, which shall provide conformed copies to all signatories and other interested parties.

Instructions for Claims Personnel: As a result of the above joint military-industry agreement, it is not necessary to prepare "Demands" where the amount owed is $25 or less, or to send refunds for $25 or less. This standard applies to carriers, warehouse facilities, and all other contractors. Forward these claims to the U.S. Army Claims Service marked "Closed" after the proper computer data is recorded in the Personnel Claims database.

Figure 11-11. Joint Military Industry Agreement on Claims of $25 or Less

(a) Generally, the maximum amount that can be paid for any loss or damage to personal property arising from a single incident is $40,000.

(b) Within this $40,000 limitation, there are maximum amounts allowable for certain items. For example, if you own a stereo system worth $5,000 and it is lost in shipment, the maximum amount that can be paid by the claims office is $4,000. Please consider such limitations in deciding if you need to purchase extra liability insurance coverage for your personal property. The ITO outbound shipping counselor can advise you on Option 1 and Option 2 coverage (counselor should have separate worksheets for these coverages), or you can decide to purchase private insurance. Read the "It's Your Move" pamphlet, if available. It contains a table listing the maximum amounts allowable for certain items. If the pamphlet is unavailable, or if you have additional questions, consult your ITO outbound shipping counselor or local military claims office.

(c) Pay attention to the inventory. It will be completed before departure from your quarters by the carrier's representative, usually the carrier's driver. It will contain a listing of your personal property and you will sign it before the driver leaves. The inventory should be an accurate, legible, detailed list describing your household goods. Items not packed in cartons should reflect the condition of the property by use of exception and location symbols. These symbols are found at the top of each inventory page. Read the inventory carefully to make sure that your property is accurately described. If you disagree with a particular item, note your disagreement on the exception part of the inventory next to the item in question or in the "Remarks/ Exceptions" section usually found at the bottom of the inventory page (be sure to identify the inventory line number and item that you are commenting on) before the driver leaves your quarters. Be specific as to why you disagree. If the carrier's representative fails to list a general description of the contents of a carton listed on your inventory, request that it be done. Accurate completion of this form is vital if a claim results.

(d) Ensure high value items (such as stereo components, television, cameras, video recorders, jewelry, comic books, baseball cards) are named, described in detail (quantity/type) and/or identified by serial number, make and model, as appropriate, on the inventory. Failure to do so makes it difficult to prove that you actually gave it to the carrier to be shipped. Hand-carry your jewelry and other small expensive items with you. If you must ship your jewelry, you must note each piece on the inventory.

(e) Do not ship your proof of ownership documents (purchase receipts, prior appraisals, photographs, etc.) of your personal property with your household goods. Hand carry these important documents.

(f) Some carriers will prepare, in addition to the normal inventory, a "Hi-Val" inventory to reflect expensive items. This is permissible. Make sure it adequately identifies your expensive items. At delivery, you may be requested to verify delivery of these items by signing this separate inventory. Before you sign this inventory, open each carton to visually verify receipt of each item. Failure to verify receipt at delivery could preclude a later claim for such an item if it is missing. Some carriers may ask you to open these cartons even if you waive unpacking by the carrier of other goods. Please cooperate with this request. It is in your best interest.

(g) If you own a collection or large number of items such as expensive comic books, baseball cards or compact disks (CDs), make sure you prepare your own list of each item before shipment. This list will help you account for these items if some or all of them are lost in shipment. If these items are extremely valuable, you should consider purchasing private insurance to protect them against loss or damage . You will have the burden of proving ownership and value. For example, if, before shipment, you cannot prove you own a particular comic book or baseball card in mint condition, you should consider some type of professional appraisal to substantiate ownership and value. It will be extremely difficult to prove ownership and value for an item after it is lost if you do not have such proof. An appraisal made after the item is missing, based on your verbal description, will have little value. It is a good idea to review your personal property, especially your expensive property, to see if you have some form of proof of ownership and/or value. If you do not, an appraisal is one method to determine value. Another way to substantiate ownership and proof of the purchase price--if too much time has not passed--is to contact the store where you made the purchase to see if it still has a copy of your purchase receipt. Any additional steps you can take before shipment of your personal property to substantiate ownership and value of your property are in your best interest. More valuable items have a higher evidentiary standard.

Figure 11-12. Counseling checklist—Continued

(h) If you ship CDs, audio or video cassettes, baseball cards, comics, records etc., be sure the number of items as well as a description appears on your inventory prepared by the carrier (for example, 165 compact discs in a 1.5 carton).

(i) At destination, the driver will offload and place your property in your new quarters. Take care to accurately check off each item on your inventory as it is offloaded. When offloading is completed, the driver should ask you to sign a pink five page DD Form 1840/1840R (DD Form 1840R is the reverse side of DD Form 1840). If you discover damage or loss to your property at time of delivery, list those damaged or missing items on the DD Form 1840 side of this form before the driver leaves your quarters. If you need extra space, use a separate piece of paper and continue listing damaged or missing items. Be sure to write on the bottom of DD Form 1840 that there is a continuation sheet. DO NOT USE THE DD FORM 1840R (reverse side of DD Form 1840) TO CONTINUE LISTING ITEMS. The DD Form 1840 is used to grade the carrier's performance (how well the carrier moved your personal property). It is important to completely and accurately fill out DD Form 1840 to ensure the carrier is properly graded. If you find no damage at delivery, you should write the word "NONE" on the DD Form 1840. The driver should leave you with three of the five pink copies of the DD Form 1840/1840R. The driver keeps the original DD Form 1840.

(j) You will use DD Form 1840R to list later discovered lost or damaged items. Remember, you have seventy days to list such damaged items and turn in DD Form 1840R to the nearest military claims office. READ THE DIRECTIONS ON DD FORMS 1840/1840R CAREFULLY. Failure to list all lost and/or damaged items not listed on DD Form 1840 or failure to turn in DD Form 1840R to a military claims office within the 70-day period could result in no payment or a reduced payment for items not timely noted.

(k) You will have **2 years** from the **day of delivery** to file your claim with a military claims office. The 2 years is a statutory limit and may not be waived.

Figure 11-12. Counseling checklist

Block 1.

a. This is the full business name of the carrier (or forwarder) to which the shipment was tendered. The name of the carrier's booking agent (when applicable) is entered in parentheses after or immediately below it. For shipments other than DPM, the carrier accepts responsibility for the shipment from origin to destination, regardless both of how many agents handle it and of any internal waivers by the carrier to its agents to bill and be paid for performance.

b. The only document that alters the liability of the carrier reflected on the GBL is a GBL correction notice. However, if the installation transportation officer made a correction before a carrier accepted the GBL, this block may have the name of the original carrier crossed out and a new one inserted. If a carrier returns a demand as "shipment not ours" contact your local ITO for assistance in verifying the proper company responsible for the shipment. DD Form 870 (Request for Fiscal Information Concerning Transportation Requests, Bills of Lading, and Meal Tickets) (fig. 11-14) may be used to request a copy of the GBL and attendant documents to indicate which carrier was actually issued the GBL if other attempts fail.

Block 2. The Standard Carrier Alpha Code (SCAC) is a unique four-letter alpha code assigned to each carrier by the National Motor Freight Traffic Association. The SCAC identifies the exact carrier named in block 1. DA Pams 55-1 and 55-2 published semiannually by Headquarters MTMC alphabetically list all companies currently approved to participate in the DOD Personal Property Shipment and Storage Program.

Block 3. The service code is vital to determine proper liability.

a. For TGBL and international through Government bill of lading (ITGBL) shipments, this block shows a code 1,2,3,4,5,6,7,8,J or T. "Codes of Service" appear under "Definitions in the DOD 4500.34-R."

b. For DPM shipments, this block lists a two-letter alpha code (such as BA, BG, or HE). DPM alpha codes are explained in DOD 4500.34-R, appendix D.

c. For mobile home shipments, code S appears.

d. For POV shipments, code C appears.

Block 4. When more than one shipment is made for a Service member, the GBLs are numbered in the same sequence as the application for shipment or storage (DD Form 1299 (Application for Shipment and/or Storage of Personal Property))--for example, "1 of 3, "2 of 3," "3 of 3," etc. When only one shipment is made, "1 of 1" is entered.

Block 5. The calendar date (day, month, and year) on which the origin ITO made the first entry in preparing the GBL.

Block 6. The calendar date on which the carrier is scheduled to begin packing the shipment.

Block 7. The date the carrier has agreed to pick up the shipment.

Block 8. This is the date the shipment is required to be at the destination listed in block 18.

Block 10. In addition to the property owner's name, social security number, rank, and pay grade, this block includes the owner's status (permanent change of station (PCS) or TDY), the unit or activity to which he or she is assigned, and, if appropriate, whether he or she is being retired or separated.

a. For both military and civilian personnel, this block lists WD (with dependents) or WOD (without dependents).

b. For deceased soldiers or civilian employees, the word "bluebark" appears immediately following

Figure 11-13A. Government Bill of Lading explanation—Continued

the name. In these shipments, POVs may be shipped with household goods and would be listed on the inventory.

Block 11. This is the order number, paragraph number, and issuing agency for the shipment.

Block 12. This is the date the order for shipment was issued.

Block 13. This indicates a request for either an extra pickup or an extra delivery. If an extra pickup is requested, the word "delivery" is crossed out. If an extra delivery is requested, the word "pickup" is crossed out. For the extra pickup or delivery residence, the full address is listed; if the extra pickup or delivery is from an NTS facility, the full business name of the facility, address, lot number, and service order number are listed.

Block 14. This is the sponsoring military service or agency.

Block 15. This is the transportation control number assigned to shipments moved in the defense transportation system. Such shipments are required to have a transportation control and movements documents.

Block 17. This is the full name of the military installation or activity originating the shipment-- for example, "ITO/Fort Bragg, North Carolina 28307-5060."

Block 18. This is the name of the receiver of the shipment and the destination delivery address.

a. *TGBL shipments*. For a TGBL shipment consigned to the owner, this block lists the member's last name, first name, and middle initial; rank; and destination address or activity to which the member is assigned. If the shipment is consigned to the owner's agent, the full name or the designated agent is followed by the word "agent" and the full delivery address. If the shipment is consigned to a commercial NTS facility, the block lists the full business name and address of the commercial storage contractor. For consolidated shipments, in which separate GBLs are issued for lots belonging to several different owners, each individual GBL includes, as a cross-reference, the following statement in block 27: "This is a consolidated shipment comprised of GBL numbers _____ _____-_____." Block 27 will also list all other GBL numbers involved in the shipment.

b. *DPM shipments*. For DPM shipments moved under the defense transportation system, this block notes the CONUS or aerial port of embarkation and the desired delivery date. The final overseas destination is entered in block 20. DPM consolidated shipments are cross-referenced in block 27.

c. Mobile homes. For mobile home shipments, the member's last name, first name, and middle initial (or the full name of the member's agent followed by the word "agent"), and the complete delivery address appear here.

d. *POVs*. For POV shipments, the member's last name, first name, and middle initial (or full name of member's agent followed by the word "agent"), and the complete delivery address or, if shipment will terminate at an MTMC facility, the applicable facility appear here.

Block 19. Shipments from a residence reflect the exact location of the property to be shipped. Shipments from a storage or contractor's facility include the name and complete address of the commercial or Government warehouse facility. Shipments from NTS also include the lot number and service order number.

Block 20. This is the GBL office code of the destination personal property shipping office (PPSO).

a. *Through GBL and DPM shipments*. The name of the responsible destination PPSO, State, ZIP Code, country, APO/Fleet Post Office (FPO) number, and commercial telephone number are listed (for DPM shipments, this notes the final overseas destination.)

b. *Consolidated DPM shipments*. For consolidated DPM shipments, the responsible destination GBL office code of the PPSO receiving the largest shipment by weight is entered here.

Block 21. For Army shipments, this states, "Defense Finance and Accounting Service, Indianapolis Center, ATTN: Transportation Operations, Indianapolis, IN 46249-0621."

Block 22. For TGBL shipments, this block is left blank. For International/Air/Commerical DPM

Figure 11-13A. Government Bill of Lading explanation—Continued

shipments, this block notes the complete routing from origin to destination as provided by the initial carrier. For other DPM shipments and for POV shipments, this block notes the name of the originating carrier only if it is to the Government's advantage to specify the connecting carriers to ensure a more cost-effective move. For mobile homes, this block notes the method of movement.

Block 24. This block notes which appropriation is billed for the move, i.e., Army, Navy, Air Force.

Block 25. This block is provided for—

a. *IRV shipments*. When the member has requested Option 1 (Higher IRV) or Option 2 (Full Replacement Protection), which are only available on code 1 or 2 shipments this is occasionally noted in this block. However, Option 1 or 2 should instead be indicated in block 27.

b. *Storage in transit (SIT)*. On a TGBL shipment, this block should note how much SIT is authorized at destination. If SIT was not used at origin, this block states, "SIT not to exceed 90 days is authorized." If SIT was used at origin, it states, "SIT not to exceed _____days is authorized, ____ days were used at origin."

c. *DPM shipments from NTS*. This block states, ____ number of days temporary storage was used at origin.

d. *TGBL notification*. If the owner arranges in advance with the origin PPSO for direct delivery to a residence, the statement "Direct Delivery Authorized" appears. If direct delivery was not requested, the following statement may appear instead: "Before effecting delivery to residence or placing in storage, the carrier shall notify the PPSO specified in block 20."

e. *Mobile homes*. Normally, this block states, "Necessary repairs and services are authorized, not to exceed $150, total (tire and tube replacement is excluded) without prior approval of origin PPSO or member." Amounts paid by origin ITO or local contractor for accessorial services not performed by the member or the carrier are also listed here.

f. *NTS*. When a shipment is consigned to an NTS facility, "For NTS" appears.

g. *Shipments containing firearms*. If a shipment contains firearms, it is stated in this block.

h. *POVs*. This block lists the year, make, serial number, and license number of the POV, as well as any other information necessary to identify it.

Block 27. This section indicates property classifications such as "Household Goods," "Unaccompanied Baggage," "Personal Effects," and "Mobile Home with Personal Effects as Indicated on the Inventory." POVs reflect property classification and appropriate numbers.

a. *Shipment valuation*. The preprinted statement on the GBL is the only reference to the valuation of a shipment unless a higher valuation is declared.

(1) *IRV*. If the owner purchases Option 1 (Higher IRV) or Option 2 (Full Replacement Protection), this fact and the amount should be reflected here. For code 1 and 2 domestic shipments picked up after 1 April 1987 (intrastate) and after 1 May 1987 (interstate), if the owner chooses Basic coverage instead of Option 1 or Option 2, although the shipment has an IRV of $1.25 times the net weight of shipment, no statement to this effect appears.

(2) *DPM shipments valuatio*n. DPM GBLs often state: "Released Valuation not exceeding 10 cents per pound." This valuation only applies to the motor freight carrier's liability. It does not affect origin or destination contractors.

b. *TGBL containerized shipments*. For such shipments, this block notes the total number of containers and total cube along with dimensions as required.

c. *DPM shipments*. For such shipments, this block contains the words "Household Goods" or "Personal Effects" and the aggregate weight and cube for each different type of container shown in block 26, as well as the number of such containers.

d. *Mobile homes*. For such shipments, this block states: "Mobile Home with Personal Effects as Indicated on the Inventory," and shows the length, width, and heights of the mobile home in feet and inches. If the mobile home is the "Expando" type, this block contains the word "Expandable" and notes whether the mobile home is single, double, or triple room. The block also lists the make,

Figure 11-13A. Government Bill of Lading explanation—Continued

model, year, and serial number of the mobile home, as well as the current license number and the state and year of the license.

e. *Consolidated shipments (DPMs or POVs)*. On such shipments, a single GBL is issued with a continuation sheet. Each individual lot is identified on the continuation sheet with the member's name, rank, social security number, delivery address, and authority for shipment.

Block 28. This block reflects the gross, tare, and net weights.

Block 33. This block is helpful in resolving disputes concerning the validity of a rider. A valid rider should note the carrier or a pickup agent as reflected in block 33a and same pickup date as reflected in block 33b. If needed information is not listed on the copy of the GBL received, a completed copy should be requested on DD Form 870 (fig 11-14).

a. *Block 33a*. This is the name of the carrier holding the GBL. Immediately below it is the name of the company who performed as the carrier's pickup agent.

b. *Block 33b*. This is the actual date the shipment was picked up. It is entered by the carrier.

c. *Block 33c*. The carrier's agent or driver's signature is required to acknowledge receipt.

d. *Block 33d*. When the agent's name has been signed by the agent's authorized representative, the initials of the representative are shown in this block.

Figure 11-13A. Government Bill of Lading explanation

U.S. GOVERNMENT BILL OF LADING — PRIVATELY OWNED PERSONAL PROPERTY

MEMORANDUM COPY B/L NO. QP-023451

1 TRANSPORTATION COMPANY (& agent) TENDERED TO: Alpine Forwarders (American Movers, Inc.)

2 SCAC: APFW | 3 SERVICE CODE: Code 4 | 4 SHIPMENT NO: 1 OF 2 | 5 DATE B/L ISSUED: 10 Jun 96

6 REQUESTED PACKING DATE | 7 REQUESTED PICKUP DATE: 17 Jun 96 | 8 REQUIRED DELIVERY DATE: 2 Aug 96

9 **IMPORTANT** This copy to be furnished to consignee (property owner) at time of pickup of the shipment.

10 PROPERTY OWNER'S NAME, SOCIAL SECURITY NO., RANK AND PAY GRADE
Smith, Ernestine Maj/04 000-00-0000
PCS: Med Cntr El Paso, TX 79920

13 EXTRA PICKUP/DELIVERY (Complete address)

11 AUTHORITY FOR SHIPMENT (Order No., Par. No., HQ): 96-7 HQ TAMC, HI | 12 DATE OF ORDER: 3 May 96

14 DEPARTMENT/AGENCY: USA | 15 TRANSPORTATION CONTROL NO.

16 Received by the transportation company named above, subject to conditions named on reverse of SF 1203, the property hereinafter described, in apparent good order and condition (contents and value unknown), to be forwarded to destination by the said company and connecting lines, there to be delivered in like good order and condition to said consignee.

17 FULL NAME OF SHIPPER
MLNQ/N00604 JPPSO-HAWAII (Code 600) MSC
Box 300 Pearl Harbor, Hawaii 96860

18 CONSIGNEE (Name and destination delivery address) (See block 13.)
Smith, Ernestine Maj//Spouse
Med Co. B. William Beaumont Army Med Ctr
El Paso (EL PASO) TX 79920

19 FROM (Complete address of point of pickup) (See block 13.)
403 C Cocos Place
1st Floor
Honolulu, HI 96818

20 RESPONSIBLE DESTINATION INSTALLATION/OFFICE | GBLOC: HAAE
W45QQ0 Co. USA AIR DEFENSE ARTILLERY
ATTN: ATZC-DIT-N-PP FT. BLISS, TX 79916
PH# (915) 558-5400

21 BILL CHARGES TO (Dept./Agcy., Bur./Off., and complete mailing address)
Defense Finance & Accounting Service - IN
Transportation Operations
Indianapolis, Indiana 46249

22 VIA (Names of intervening carriers)

23 FOR CARRIER USE ONLY—WAYBILL/FREIGHT BILL NO.

24 APPROPRIATION CHARGEABLE
MSC: 4P07 TAC AM76 AH76

25 REMARKS
SIT NOT TO EXCEED 90 DAYS IS AUTHORIZED. BEFORE DELIVERY TO RESIDENCE OR PLACING IN STG, CARRIER WILL NOTIFY PPSO IN BLOCK 20. SHIPMENTS WEIGHING 2001 POUNDS OR MORE WILL BE REWEIGHED PRIOR TO DELIVERY. INTEREST SHALL ACCRUE FROM THE VOUCHER PAYMENT DATE ON OVERCHARGES MADE HERE UNDER AND SHALL BE PAID AT THE SAME RATE IN EFFECT ON THAT DATE AS PUBLISHED BY THE SECRETARY OF THE TREASURY PURSUANT TO THE DEBT COLLECTION ACT OF 1982.

26 PACKAGES NO.	KIND	27 DESCRIPTION OF SHIPMENT* (Specify)	28 WEIGHT†	FOR USE OF DESTINATION CARRIER ONLY: SERVICES	29 RATE	30 CHARGES
1	LOT	HOUSEHOLD GOODS	GROSS	LINE-HAUL TRANSPORTATION		
			TARE	PACKING/UNPACKING		
			NET	OTHER ACCESSORIAL SERVICES		
			† Incl. professional books, papers, and equipment weighing:	TOTAL		

31 TARIFF OR SPECIAL RATE AUTHORITIES
VOL 54 $78.50

* Issued at lowest valuation cited in appropriate tender or tariff unless otherwise stated hereon.

B/L NO. QP-023,451

CERTIFICATE FOR RECEIPT OF SHIPMENT AND ORIGINAL BILL OF LADING

33a NAME OF TRANSPORTATION COMPANY: ALPINE FORWARDERS (AMERICAN MOVERS, INC)

33b DATE OF RECEIPT OF SHIPMENT

33c SIGNATURE OF AGENT/DRIVER

33d PER

FOR USE OF ISSUING OFFICE

32a ISSUING OFFICER (Name and title): M.S. Barnes, LCDA, SC, USN TO

32b ISSUING OFFICE (Name and complete address): JPPSO HAWAII (CODE 600) BOX 300 PEARL HARBOR, HAWAII 96860 | GBLOC

34 FOR USE OF PAYING OFFICER (Does not affect carrier charges): UNAUTHORIZED ITEMS | EXCESS DISTANCE | EXCESS VALUATION | EXCESS WEIGHT | Other (Explain under remarks)

MEMORANDUM COPY—CONSIGNEE (PROPERTY OWNER)

(See instructions to consignee on reverse)

THIS CONSIGNMENT DELIVERED TO: ☐ STORAGE IN TRANSIT ☐ RESIDENCE

COMPLETE AND IN APPARENT GOOD ORDER EXCEPT AS MAY BE INDICATED HEREAFTER: ☐ SHORTAGE ☐ DAMAGE ☐ CARRIER OS&D REPORT ATTACHED

Carrier to execute and attach Certificate of Storage and Liability for shipment placed in storage in transit.

EXCEPTION TO STANDARD FORM 1203 APPROVED BY ADTS 5-82

1203-106-01

STANDARD FORM 12038 (7-87) PRESCRIBED BY GSA, FPMR (41 CFR) 101-41.3

Figure 11-13B. Completed SF 12038 (Government Bill of Lading)

REQUEST FOR FISCAL INFORMATION CONCERNING TRANSPORTATION REQUESTS, BILLS OF LADING, AND MEAL TICKETS

DATE: 14 October 96

SECTION A - DOCUMENT DESCRIPTION

1. DO VOUCHER NUMBER	2. DO OR ACCOUNTING DATE	3. TRANSPORTATION REQUEST NUMBER *(Include Prefix)*
4. BILL OF LADING NUMBER *(Include Prefix)* VP-388,605 (1996)	5. MEAL TICKET NUMBER *(Include Prefix)*	6. AMOUNT
7. TO Defense Finance & Accounting Service Transportation Operations Data Research & Reduction Division ATTN: DFAS-I-TGC Indianapolis, IN 46249-0631		8. ACCOUNTING CLASSIFICATION *(Include Station Number))*
9. FISCAL OFFICER		

a. TYPED NAME	b. GRADE	c. SIGNATURE
NOLA SHOLLENBERGER	GS-11	Nola Shollenberger

SECTION B - INFORMATION REQUESTED ON DOCUMENT DESCRIBED ABOVE *(X appropriate box(es) below)*

10. ☐ COMPLETE NAME AND ADDRESS OF ISSUING OFFICE AND/OR OFFICER *(Include Prefix)*	11. ☐ ACCOUNTING CLASSIFICATION *(Include Station Number)*
12. Above GBL refers to the shipment of goods belonging to: Cpt John D. Simon Army Claim Number: 96-221-0001	13. ☐ TRAVELER OR ITEMS SHIPPED

14. ☐ AUTHORITY FOR SHIPMENT OR TRAVEL *(Special Order No., Contract No., etc.)*	15. [X] OTHER PLEASE FURNISH COMPLETE FILE	16. FILM NUMBER

17. ACCOUNTING OFFICER, USAFC

a. TYPED NAME	b. SIGNATURE	c. DATE FORWARDED

18. TRANSPORTATION OFFICER

a. TYPED NAME	b. SIGNATURE	c. DATE FORWARDED

19.
U.S. ARMY CLAIMS SERVICE
OFFICE OF THE JUDGE ADVOCATE GENERAL
ATTN: JACS-PCR
FORT MEADE, MD 20755-5360 DSN 923-7009 x 401

DD Form 870, FEB 87 *Previous editions are obsolete.*

Figure 11-14. Completed DD Form 870

The following numbers correspond to the numbered areas on the sample inventory.

Section 1. Contains the name and address of the carrier/contractor preparing the inventory: the name of carrier's pickup agent; and the shipper's name, origin, and destination address.

Section 2. Notes the page number and the total number of pages used. It also lists, when applicable, the carrier's reference number, the GBL number or Basic Ordering Agreement (BOA) number, the Government Service Order number, and the van number.

Section 3. Includes "Description", "Exception", and "Location" symbols. These are standard symbols used by the carrier industry. They must be understood to read an inventory accurately. It is suggested they be memorized for speedy claims processing.

Section 4. The column of numbers found on the left side of the inventory under "Item No." are the inventory numbers used to identify items in the shipment. These numbers will be used to reflect loss and damage on DD Forms 1840, 1840R, 1841, and 1844. Sometimes colors are used with the number of identify items. The same numbers may be used more than once with a different color--for example, "green 2", "red 2", etc. The color is usually written or stamped on the page, and the first letter of the color is used with the number to identify the item--for example, "G2," "R2," etc. The column titled "CR.Ref." is usually left blank.

Section 5. The "Articles" column lists the name and size of the article such as a "triple dresser" or a "king-size bed", or it lists the size and contents of a packed carton. Size is often a factor in calculating carrier and contractor liability.

Section 6. The "Condition" or "Condition at Origin" column reflects the condition of the property when the carrier or contractor took possession of it. The carrier or contractor must deliver the property in the same condition it was in when it was picked up for storage or shipment. The exception and location symbols listed in section 3 are used to describe the condition of the property—for example, "marred bottom left" (m,2,5), "scratched on top right" (sc,10,8), "soiled back" (so,7), "badly worn cushion", etc. Omission of these symbols indicates good condition except for normal wear. If the damage claimed on DD Form 1844 is noted on the inventory, absent evidence to suggest that the damage claimed is not PED, a carrier or contractor cannot be held liable.

Section 7. The "Exceptions (If Any) at Destination" column is left blank on most inventories. For DOD personnel, this column is not the proper place to record delivery exceptions; those should be listed on DD Form 1840.

Section 8. At the bottom of the inventory, the words "At Origin" and "At Destination" are found. At origin, the carrier or contractor and the owner (or the owner's agents) sign and date each page of the inventory. On most inventories, the space for dates and signatures at destination are left blank.

Figure 11-15A. Explanation of entries on household goods descriptive inventory

CONTRACTOR OR CARRIER

Jones Warehouse
2 Storage Drive, Baltimore, MD

HOUSEHOLD GOODS DESCRIPTIVE INVENTORY

PAGE NO. 1 (2) NO. OF PAGES 1

(1) AGENT: Fast Moving Company

CARRIER'S REFERENCE NO

OWNER'S GRADE OR RATING AND NAME: Donna J. Dudley

CONTRACT OR GBL NO: PF-123,456

ORIGIN LOADING ADDRESS: 11 Eutaw Street — CITY: Baltimore — STATE: Maryland

GOVT SERVICE ORDER NO

DESTINATION: Munich, Germany

VAN NUMBER: 1

(3)

DESCRIPTIVE SYMBOLS

B/W - BLACK & WHITE TV
C - COLOR TV
CP - CARRIER PACKED
PBO - PACKED BY OWNER
CD - CARRIER DISASSEMBLED
DBO - DISASSEMBLED BY OWNER
PB - PROFESSIONAL BOOKS
PE - PROFESSIONAL EQUIPMENT
PP - PROFESSIONAL PAPERS
MCU - MECHANICAL CONDITION UNKNOWN

EXCEPTION SYMBOLS

BE - BENT
BR - BROKEN
BU - BURNED
CH - CHIPPED
CU - CONTENTS & CONDITION UNKNOWN
D - DENTED
F - FADED
G - GOUGED
L - LOOSE
M - MARRED
MI - MILDEW
MO - MOTH EATEN
P - PEELING
R - RUBBED
RU - RUSTED
SC - SCRATCHED
SH - SHORT
SO - SOILED
T - TORN
W - BADLY WORN
Z - CRACKED

LOCATION SYMBOLS

1. ARM
2. BOTTOM
3. CORNER
4. FRONT
5. LEFT
6. LEGS
7. REAR
8. RIGHT
9. SIDE
10. TOP
11. VENEER
12. EDGE
13. CENTER
14. INSIDE
15. SEAT
16. DRAWER
17. DOOR
18. SHELF

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

(4)

ITEM NO.	CR. REF.	ARTICLES (5)	CONDITION AT ORIGIN (6)	EXCEPTIONS (IF ANY) AT DESTINATION (7)
1		Washer	M-4-5-9, 10-8-3	
2		Dryer	Sc-4, Ch-9s	
3		Schrank Section	CD, Sc-4-8-12, 5-4-3	
4		Schrank Section	CD	
5		Schrank Section	CD	
6		Schrank Section	CD	
7		Dining Table	Sc, Ch, R-12-11	
8		Dining Table Leaf	Sc-4	
9		Upright Piano	Sc, R, F-6-10-9-4, MCU	
0		Piano Bench	R-6	
1		Sofa		
2		Dining Room Chair	Sc, Ch, R, M, So, W-6-7-10-4	
3		Dining Room Chair	Sc, Ch, R, Mo, W-6-7-10-4	
4		Dining Room Chair	Sc, Ch-6	
5		Dining Room Chair	Sc, Ch-6	
6		Dishpack	Dishes, CP	
7		4.0 Carton	Figurines, CP	
8		Schrank Section	CD, R-8-4-2-3	
9		Schrank Section	CD, Sc-8-9	
0		Rug w/Pad	22' x 4' runner	
1		5.2 Carton	Glass Lampshade, CP	
2		1.5 Carton	Books, CP	
3		1.5 Carton	PBO, CU	
4		Wardrobe	Clothes, CP	
5		3.0 Carton	Clothes, CP	
6		Portable TV	13" Sony, B&W	
7		Bedrails on 2	Sc, R	
8		Headboard	Sc, Ch, R-6-4-9	
9		Footboard	R	
0		Dresser	Ch-12s	

ITEM NO. — REMARKS/EXCEPTIONS

"WE HAVE CHECKED ALL THE ITEMS LISTED AND NUMBERED 1 TO INCLUSIVE AND ACKNOWLEDGE THAT THIS IS A TRUE AND COMPLETE LIST OF THE GOODS TENDERED AND OF THE STATE OF THE GOODS RECEIVED"

TAPE LOT NO. — TAPE COLOR: Red

WARNING → *BEFORE SIGNING CHECK SHIPMENT, COUNT ITEMS AND DESCRIBE LOSS OR DAMAGE IN SPACE ON THE RIGHT ABOVE.*

NOS. FROM 1 THRU 40

(8)

AT ORIGIN	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)	DATE	AT DESTINATION	CONTRACTOR, CARRIER OR AUTHORIZED AGENT (DRIVER)	DATE
	(SIGNATURE) /s/ Morris Pearson	5/6/96		(SIGNATURE)	
	OWNER OR AUTHORIZED AGENT	DATE		OWNER OR AUTHORIZED AGENT	DATE
	(SIGNATURE) /s/ Donna J. Dudley	5/6/96		(SIGNATURE)	

Figure 11-15B. Sample inventory

Smith Van Lines
300 Villa Drive
Elkhart, Indiana 47101

EXCEPTIONS TO ORIGINAL INVENTORY OF ARTICLES SHIPPED OR STORED

NOTE: THIS FORM IS FOR USE ONLY WITHIN OUR ORGANIZATION AND SHOULD NOT BE SHOWN NOR DELIVERED TO THE CUSTOMER

CUSTOMER'S NAME Donna J. Dudley

ORDER NUMBER 555 SHEET NO. 1 OF 1 SHEETS

ORIGIN Baltimore, Maryland DESTINATION Munich, Germany

EXCEPTION SYMBOLS

BE BENT	D DENTED	MO MOTHEATEN	R RUBBED	SO SOILED
BR BROKEN	F FADED	CP PACKED BY CARRIER	RU RUSTED	T TORN
BU BURNED	G GOUGED	PBO PACKED BY OWNER	SC SCRATCHED	W BADLY WORN
CH CHIPPED	L LOOSE	M MARRED	SH SHORT	Z CRACKED
CU CONTENTS & CONDITIONS UNKNOWN		MI MILDEW		

NOTE: THE OMISSION OF THESE SYMBOLS INDICATES GOOD CONDITION EXCEPT FOR NORMAL WEAR.

LOCATION SYMBOLS

1. ARM	7. REAR
2. BOTTOM	8. RIGHT
3. CORNER	9. SIDE
4. FRONT	10. TOP
5. LEFT	11. VENEER
6. LEG	12. EDGE

ITEM NO.	NAME OF ARTICLE	ADDITIONAL EXCEPTIONS
21	5.2 Carton	Crushed, glass shade broken
35	Recliner	Soiled
26	13" TV	Scratched top
38	End Table	Gouged and Scratched
23	1.5 Carton	Open
32	Desk	Top Scratched
11	Sofa	Arm Soiled

EXCEPTIONS LISTED ABOVE WHEN GOODS WERE RELEASED ARE ACKNOWLEDGED BY UNDERSIGNED

RECEIVED BY:

NAME OF WAREHOUSE AGENT OR DRIVER Jones Warehouse

BY William Jones May 1, 1996 DATE

RECEIVED FROM:

NAME OF WAREHOUSE AGENT OR DRIVER Smith Van Lines

BY Arthur Andrews May 1, 1996 DATE

Figure 11-16. Sample exceptions sheet/rider

The following paragraphs provide standard rebuttal language that may be used to refute third party denials of liability or offer helpful information about certain claims issues that may be applied to similar fact situations in claims undergoing recovery processing. Some paragraphs may be used exactly as they appear; others require tailoring to suit particular circumstances. Topics/issues are listed in alphabetic order.

ACT OF GOD

As a legal phrase, an act of God means an event that could not have been prevented by human prudence. It is generally seen as an occurrence in which human skill or watchfulness could not have foreseen or avoided the disaster. A tornado is a classic example. If, without any advance warning, a tornado touches down upon the road a carrier's truck is traveling to transport goods, whirls the truck in the air and scatters a soldier's property over many miles, damaging them, then the carrier may be able to escape liability under the act of God exception. The burden of proof is on the carrier to establish that an act of God existed and that it was the sole cause of the damage claimed. Since the carrier can rarely establish this burden of proof, denial due to an act of God is generally not acceptable. Further investigation into the incident is usually necessary. The carrier cannot avoid liability if it has negligently exposed the goods to potential danger or if it has failed to take reasonable steps to reduce the extent of damage once the danger was discovered.

ATMOSPHERIC/CLIMATIC CHANGES—MILDEW, MOLD, RUST, WARPING, OR PACKING MATERIAL STUCK TO FURNITURE

The carrier contends that mildew damage occurred in NTS and not during the carrier's transport of the shipment. Mildew formation may be more likely to occur in NTS than in transport; however, an allegation that such damage is more likely to occur during nontemporary storage than in transport, unsupported by evidence, does not rebut a prima facie case of carrier liability. A carrier is not relieved of liability unless the carrier offers substantial evidence to show that the damage resulted solely from unusual circumstances beyond its control. (For example an act of God or t occurred while the property was in the hands of another contractor, as noted on a valid NTS exception sheet.). Carriers must inspect the items and must prepare an exception sheet and note any mold, mildew, rust, warping, or related damage when items are picked up from NTS. See *In re Stevens Transportation Co., Inc.*, B-243750, Aug 28, 1991 (Comptroller General Decision); and *In re Interstate Int'l, Inc.*, Z-2727878(109), Jan 10, 1989 (Gen. Accounting Office Claims Group). A general statement that items in the shipment were wet will not relieve the carrier of liability. Similarly, the carrier cannot escape liability simply be arguing that the damage must have occurred while in NTS because the GBL carrier had custody of the shipment for only a few days or weeks and the NTS warehouse had custody for years. The burden of proof is on the carrier to show the cause of damage, to establish that the damage was not due to its own negligence, and that the damage was due solely to the mildew, mold, rust, etc. Because carriers can rarely establish this, denial due to climatic changes is rarely acceptable. Proper precautions should be taken by storage contractors and carriers to avoid damage which results from atmospheric changes. An appropriate response might be:

> Your denial of liability for the mildew/mold damage is not acceptable without substantiating evidence to prove that it occurred during the period of nontemporary storage. Substantiating evidence is an exception sheet prepared at pickup from nontemporary storage that describes the mildew/mold damage, gives appropriate inventory numbers and is signed by a representative of the nontemporary storage facility as well as your agent. Please forward a copy of such an exception sheet, if you have one. If you do not possess a valid exception sheet, your company is fully liable for the damage claimed.

BUNDLES

The items listed on the inventory as being part of a bundle were not appropriate items to include in a bundle. These items should have been packed in appropriate cartons. Only items such as

Figure 11-17. Standard responses to third-party denials—Continued

brooms, rakes, shovels, fishing poles, and similar items are appropriate to pack in bundles. Accordingly, liability is pursued based on the weight of an appropriate size carton.

CARTON—CAPACITY FOR COMPACT DISCS

Carrier industry personnel determined that a maximum of 165 compact discs fit in a 1.5 cubic foot carton. If the carton contains record albums as well as compact discs, a maximum of 65 compact discs and 60 record albums fit when the record albums are placed flat in the bottom of the carton. If the record albums are standing on end, 30 record albums and a maximum of 65 compact discs will fit in a 1.5 cubic foot carton.

CARTON—NO SIZE ON INVENTORY

Carriers may not automatically assign a weight of 25 pounds to determine proper liability for cartons without cubic foot size on the inventory. An appropriate response would be:

> Note 4 in the Joint Military-Industry Table of Weights states that "Cartons which are not identified as to size on the inventory will be deemed to weigh at least 25 pounds. Weight assigned will be determined by the contents." (underscoring added) The carton in question was assigned a weight and liability appropriate to its contents.

CONCEALED DAMAGE

The carrier is liable for "concealed" damage to packed items unless this damage is reflected on a valid rider. Noting damage to the outside of a carton will not relieve the carrier of liability for damage to the carton's contents, unless the carrier opens the carton and records damage to these items on an exception sheet/rider. See *In re American Van Services*, B-249834, Feb 11, 1993 (Comptroller General Decision). If, after delivery, the carrier alleges that the NTS warehouse firm packed the items improperly, the carrier must prove that faulty packing was the sole cause of the damage. See In re Cartwright International Van Lines, Inc., B-252430, Jun 10, 1993; In re Interstate Van Lines, B-197911, Nov 24, 1981 (Comptroller General Decisions).

DD FORM 1840R—DISPATCH DATE vs POSTMARK vs DATE OF RECEIPT.

The Military-Industry Memorandum of Understanding (MOU) on Loss and Damage Rules states that the carrier shall accept written documentation on the DD Form 1840R, dispatched to the carrier within 75 calendar days of delivery, as overcoming the presumption of correctness of the delivery receipt. The date of dispatch shown on the 1840R determines timely notice - not the postmark date, nor the date the 1840R was received by the carrier. It is a well-settled principle of administrative transportation law that the date of dispatch on the form controls. The Comptroller General has consistently upheld this approach. See In re National Forwarding Co., Inc., B-238982.6, Feb 11, 1993; In re Senate Forwarding, Inc., B-249840, March 1, 1993; In re Suddath Van Lines, B-246907, Sept 28, 1992; and In re Lift Forwarders, Inc., B-249479, Oct 19, 1992.

DD FORM 1840R—NOT RECEIVED

Denial of liability because you say you did not receive DD Form 1840R is unacceptable. Our records reflect that DD Form 1840R dated _____ was timely dispatched as required by the Military-Industry Memorandum of Understanding on Loss and Damage Rules. It was not returned by the USPS as undeliverable; therefore, delivery is presumed. Liability stands.

DEPRECIATION - CARRIER RATE DIFFERS

When paying claimants, depreciation rates from the Allowance List/Depreciation Guide (ALDG - fig. 11-3) are used. However, in determining carrier liability, the Joint Military-Industry Depreciation Guide (fig 11-23) is used. The depreciation rates are usually the same in both guides, and claims personnel are not required to consult the Joint Military-Industry Depreciation Guide or alter the depreciation taken on items prior to dispatching demands or forwarding files for centralized recovery. If, however, a carrier objects to the depreciation rate used to calculate liability for certain items, consult the Joint Military-Industry Depreciation Guide and use the rates found in it if they differ from those set forth in the ALDG. (If NTS was involved, it may be appropriate to apply depreciation during the period of storage.)

DEPRECIATION—DURING NTS

When paying claimants, the Allowance List/Depreciation Guide (ALDG) is used, which provides that normally there will be no depreciation during periods of nontemporary storage. The reason is that the goods, supposedly, are not subjected to wear and tear by every day usage and are properly protected from the elements of potential harm. This same premise was enforced when pursuing third party recovery. However, carriers objected and this issue was appealed to the Comptroller General.

Figure 11-17. Standard responses to third-party denials—Continued

The final decision stated that (a) in appropriate circumstances household goods need not be depreciated for time in nontemporary storage; and (b) the case did not stand for the proposition that there should never be depreciation during storage. Rather, agencies are required by common law and agreements with the industry to consider the possibility of depreciation during NTS when settling claims against carriers. In accordance with this decision of the Comptroller General, USARCS published a Nontemporary Storage (NTS) Depreciation Table on 30 June 1994 (table 11-5) which should be used to determine proper recovery amounts against carriers.

DEPRECIATION—ON MISSING PIECES OF ITEMS

The whole item is not missing, only a part of it. The missing part is not a piece that is normally replaced during the useful life of an item (example: missing pedestal parts to a bed), and is not available to buy separately. It is not considered appropriate to apply depreciation to just the part needed to fix an item to make it whole when the part alone cannot be purchased.

DEPRECIATION—ON REPAIRED ITEMS

It is not considered proper to apply depreciation to repair costs. A fair deduction for any pre-existing damage might be appropriate if any PED was repaired. However, PED should have been accounted for prior to paying the claimant. Depreciation would be proper only if the whole item were replaced.

DEPRECIATION—TAKEN TWICE

Depreciation was appropriately applied before the claims office paid the member for his damage/loss. It is not proper to further apply recovery depreciation to the already depreciated value of an item. Depreciation must be applied to the replacement cost - not to the amount paid the claimant - because depreciation may not be compounded. Your liability stands.

ESTIMATE—CARRIER'S vs. CLAIMANT'S

The member has the right to select his own repair firm, if it is a reputable company and if repair costs are reasonable for the locale. The Memorandum of Understanding on Loss and Damage Rules requires the carrier to submit its estimate to the claims office within 45 days after delivery (or before that office pays the member) so that it can be considered in the adjudication process.

ESTIMATE—cceptable. Please note that normally, an estimate of repair is required only when more than $100 is claimed for an item. In any case, the inventory you prepared shows that the damage claimed did not exist at origin, but it is noted at destination. You have not furnished evidence to refute that the amount paid was reasonable to repair the damage claimed in that locale. Therefore, a prima facie case is established and now the burden of proof is on the carrier to prove that damage did not occur while the goods were in your possession. The delivering carrier must inspect the household goods or accept the consequences of its failure to inspect. Timely notice invited your inspection, which you did not perform. Even without estimates, liability stands.

ESTIMATE—TOO HIGH

The carrier contends that the claimant's repair estimate is excessive and that its own repair firm can do the job less expensively. A claimant has the right to select any repair firm provided the cost is reasonable and does not exceed the item's value. The claimant's estimate was considered reasonable, and the firm providing the estimate is a reputable one. The carrier is liable for the reasonable cost of repairing damaged items, including labor, material, overhead and other incidental expenses incurred in reconditioning or putting the goods into salable condition. You have provided no proof that the costs are unreasonable compared with the local market price of the repair service or the value of the damaged item. If the carrier did not provide an acceptable, lower estimate to use in adjudicating the claim, the carrier is liable for the amount paid the claimant.

GAO DECISION—DENIAL BASED ON

Denial of liability based on a GAO Decision is unacceptable. A GAO Decision refers to a specific case and is not relevant to any claim other than the one to which it applies.

HARDWARE—BRACKETS/SCREWS/NUTS/BOLTS MISSING

Paragraph 43d of the Tender of Service in DoD 4500.34-R states: "All nuts, bolts, and screws removed from household goods in preparation for drayage or storage shall be placed in a suitable bag, properly labeled and securely attached to the article from which removed." If the warehouse took the item apart, the warehouse was supposed to tape the brackets, screws, nuts, bolts, etc. securely to the article. Carriers should be aware of that requirement and should note on a rider that hardware was missing. Since this was not noted on your rider (or since you provided no rider), you are liable. See In re American World Forwarders, Inc., B-247770, Jul 17, 1992 (Comptroller General

Figure 11-17. Standard responses to third-party denials—Continued

Decision); In re Stevens Worldwide Van Lines, Z-1348910-38-347, Dec 17, 1991 (General Accounting Office Claims Group).

INHERENT VICE

A mere allegation of "inherent vice" is insufficient to relieve liability. Inherent vice is damage to an item that would have occurred whether the item was moved or not (the operation of natural laws must actually cause the damage). The burden of proof is on the carrier to establish that such a condition existed and that it was the sole cause of the damage claimed. Absent such proof, the carrier is fully liable for this item.

INSPECTION—RIGHTS DENIED

Lack of opportunity to inspect is not an acceptable basis for denial. See In re American Vanpac Van Lines, B-239199.4, Sep 29, 1992 (Comptroller General Decision). If the claimant does not allow an inspection (or does not keep inspection appointments), the proper procedure is to promptly contact the claims office for assistance. Claims personnel should document in the file a carrier's efforts to inspect. The carrier must aggressively pursue his rights. See In re Stevens Worldwide Van Lines, Inc., B-251343, Apr 19, 1993 (Comptroller General Decision). However, lack of opportunity to inspect, alone, is insufficient basis to deny liability. The delivering carrier must inspect, or accept the consequences of its failure to inspect, unless the carrier had a substantial defense involving facts discoverable by inspection. (For instance, the claimant discarded an item and facts indicate that damage claimed as new damage was identical to the pre-existing damage at origin.

INSPECTION—ITEM ALREADY FIXED OR DISPOSED OF

It is unfortunate that the carrier could not inspect some of the damaged items due to premature repair/disposal. Nevertheless, this does not waive your liability. Lack of an inspection, alone, is insufficient basis to rebut a well-established prima facie case of liability. Damage claimed is new damage, not PED, as is verified by the fact that exceptions noted on the inventory are not the same as the damage claimed. Given that the repair bills correspond with the damage claimed, your liability stands.

LAST HANDLER IS LIABLE

Damage to goods that pass through the hands of several custodians is presumed at common law to occur in the custody of the last custodian unless that custodian notes that the same damage exists upon receipt of the goods.

MISSING ITEMS—CHECKED OFF AT DELIVERY

Denial because the member checked off this missing item at delivery on the inventory is unacceptable. Comptroller General Decision B-238982 dated June 22, 1990 is our basis for pursuing liability. It states: "There is no evidence that the member (as opposed to the driver, for example) was the one who annotated the listing, and the military/industry loss or damage agreement specifies that proper post-delivery notice to the carrier overcomes the presumption of the delivery receipt's correctness." See also In re National Forwarding Co., Inc. - Reconsideration, B-238982.2, June 3,1991.

MISSING ITEMS—FROM SEALED CARTONS

The carrier denies liability for damaged items packed in cartons because it did not pack the shipment and the cartons did not show external damage. When a carrier accepts a shipment in an apparent good order, it is responsible for damage to packed items unless it can prove that the packing was improper and was the sole cause of the damage. Proof would usually be a rider noting missing items. The carrier is liable for items missing from cartons, including sealed cartons, unless it indicates on a rider that the items are missing. See In re Air Land Forwarders, B-247425, Jun 26, 1992 (Comptroller General Decision); and In re Stevens Van Lines, Z-1348910(17), Feb 19, 1991 (Gen. Accounting Office Claims Group). As is true with any claim, if the item was missing from a carton in which it normally would not be packed—for example, when a fur coat is allegedly missing from a carton marked "linens"—the carrier is not liable unless the evidence indicates that the claimant actually owned the item and tendered it for shipment.

Or, the carrier denies liability because cartons were delivered in the same sealed condition as when received. Evidence of the carrier's failure to deliver the same goods at destination as it received at origin, and the amount of damage, establishes a prima facie case of liability. The burden is then on the carrier to rebut that liability. The goods were tendered at origin but were not received at destination, and the amount of damages is shown on DD Form 1844. You acknowledged the items being in the cartons when you packed them and signed the origin descriptive inventory. The Comptroller General has consistently held that a carrier may be held liable for items missing from allegedly sealed cartons where the circumstances tend to establish tender. See In re Aalamode Transportation Corp, B-240350, Dec 18, 1990 (Comptroller General Decision). See also In re Paul Arpin Van Lines, B-213784, dated May 22, 1984 (Comptroller General Decision), which stated that,

Figure 11-17. Standard responses to third-party denials—Continued

to escape liability, the carrier must show that the items were not removed from the cartons while in its custody.

MISSING ITEMS—NOT ON DD FORM 1840 or CLEAR DELIVERY RECEIPT The Memorandum of Understanding on Loss and Damage Rules states: "...For later discovered loss or damage, including that involving packed items for which unpacking has been waived, in writing, written documentation on DD Form 1840R advising the carrier of later discovered loss or damage, dispatched not later than 75 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt." (See Comp Gen. Decision B-238982 dated June 22, 1990.)

MISSING ITEMS—NOT TENDERED TO CARRIER

The carrier denies liability for missing items because they do not appear on the new inventory made at pickup from the NTS facility. When a carrier picks up a shipment from NTS and chooses to prepare a new inventory, it must use identical or cross-referenced numbers. If an article such as a chair or a lawnmower is missing, it must be indicated as "missing" on the new inventory. Whether or not the carrier makes a new inventory, it must prepare an exception sheet/rider and note any missing articles. To relieve the carrier of liability, both the new inventory and the exception sheet must be signed by representatives of the NTS facility and the carrier.

Denial of missing items because they were not tendered is unacceptable. The Comptroller General has held that each household good need not be listed on an inventory in order for a carrier to be held liable for loss so long as there is some substantive evidence of tender. The evidence should be on the order of a statement by the member that reflects some personal knowledge of the circumstances of tender. The member provided a personally handwritten statement which listed, by inventory number, all missing items. He gave a personal account of where the items were located in the house before pickup, what happened during the packing process of his household goods, and stated that all items claimed were owned and used prior to his move. He further stated that after his household goods were packed at origin, he checked all rooms in his house to make sure nothing was left behind. All items were packed by the carrier and timely notice of the loss was furnished. Liability stands.

PACKED BY NTS or PACKING IMPROPER

The fact that you did not pack the shipment, or that the cartons did not show outside damage, is irrelevant. The carrier is liable for concealed damage. The Tender of Service states: "The carrier is liable and responsible for all packing. The carrier has the responsibility to inspect all prepacked goods to ascertain the contents, condition of the contents, and that only articles not otherwise prohibited...are contained in the shipment. Furthermore, when it is determined by the carrier that goods require repacking, such packing will be performed by the carrier."

PAD MARKS ON FURNITURE

Denial of liability for pads damaging the finish on furniture due to changes in temperature during a move is unacceptable. The moving industry transports furniture all over the world using such packing material - without complaints of pad marks. You failed to properly protect the furniture to allow delivery of it in the same condition as it was when you received it. Thus, the damage is considered a result of your own negligence, and liability stands.

PED—DENIAL

Damage claimed is much more extensive than the PED listed on the inventory. Complete denial can not be accepted; liability is pursued for the additional damage.

PED—REDUCED LIABILITY

A reasonable reduction for PED was already applied to the member's payment for damage claimed to this item. It is not considered appropriate to further reduce liability due to PED unless you can furnish evidence that more of the damage claimed was clearly present at origin, as verified on the inventory. Please note that if no PED was repaired, then no reduction of liability for PED is proper.

PRIMA FACIE CASE OF CARRIER LIABILITY

The Government contends that the burden shifts to the carrier to show that this loss or damage did not result from the carrier's failure to exercise reasonable care to protect the goods once it has established a prima facie case by proving—

(1) Goods were tendered to a carrier in a certain condition.

(2)Property was not delivered by the carrier or was delivered by the carrier in a more damaged condition.

Figure 11-17. Standard responses to third-party denials—Continued

(3) Amount of the loss or damage.

PURCHASE RECEIPTS—NONE PROVIDED TO CARRIER

The fact that the shipper did not retain the purchase receipt for this item does not relieve the carrier of liability. You offer no reason for your denial other than the mere fact that no purchase receipt was provided, but you have not furnished proof that the amount of liability is unreasonable in any way. Your denial does not meet the burden of proof requirement to show that damage did not occur while the goods were in your custody.

RIDER—CARTON CRUSHED or HOLE IN SIDE NOTED

The rider provided states that the carton was crushed when you picked up this shipment from the NTS warehouse. External damage to the container indicates the possibility of internal damage to contents. When you saw that the carton was damaged, you should have examined the contents of that carton to see if there was any damage and noted it on the rider. You failed to do so; therefore, as last handler, you are liable.

RIDER—VALID

The carrier alleges that it made valid exceptions at the time of pickup from the NTS facility. An exception sheet made at the time of transfer must bear the signature of a representative of the NTS facility and should be dated. Without a signed exception sheet, there is no evidence that the NTS facility was made aware of these exceptions and given the opportunity to confirm or deny the alleged condition of the items in question. The burden of proof is on the carrier to provide the valid exception sheet and establish its freedom from liability.

RIDER—WAREHOUSE REFUSED TO SIGN

First, ask the warehouse for a copy of what the carrier signed when the goods were picked up. Then, compare the signatures on the warehouse's document with those on what the carrier sends. If the carrier signed the warehouse's origin inventory, the carrier assumes liability. If the carrier did not sign the warehouse's original inventory, but the warehouse signed the carrier's rider, then the rider is considered valid and the warehouse is liable for those items. If you get this far and still cannot determine who is liable for what, then calculate all liability against the carrier as the last handler and forward the file to USARCS for centralized recovery with a note to signal special review should be done before dispatching the third party demand.

SALVAGE—MOU

The Memorandum of Understanding on Salvage states that the carrier "will take possession of salvage items" for which the carrier pays replacement costs. This is to take place within 45 days after dispatch of the last DD Form 1840R or not later than 30 days after receipt of the Demand on Carrier, whichever is greater. However, in no case will the 30 day period for carriers to take possession end until after the period for the carrier's right to inspect the property has terminated (which is up to 75 days after delivery). You failed to take possession of the items within the allotted time frame, therefore, no salvage is due you. See In re Stevens Worldwide Van Lines, Inc., Z-1348910(110), Feb 17, 1995 (Gen. Accounting Office Claims Group).

SETS—PIECES REUPHOLSTERED

When parts of a set of furniture are damaged and the whole set needs to be reupholstered, liability is pursued for the cost of the entire set. If the fabric can not be matched, the member is paid to reupholster the entire set. Fabric is normally replaced during the useful life of upholstered furniture. When upholstered furniture is reupholstered because the damage is too severe to be repaired, the cost of the new fabric is depreciated. Labor costs are allowed as claimed. Our position is that you damaged the set by damaging its parts. Liability for the set stands.

TIMELY FILED CLAIM

The member has two years to file a claim with the Government. This claim was filed within that period, as is verified by the attached copy of DD Form 1842. (The Government has six years to file claims against third parties.) Liability stands.

WEIGHT - OF LOWEST CARTON

Your offer based upon the lowest weight of each carton is not accepted. The Military-Industry Table of Weights notes in paragraph 4 that cartons that are not identified as to size on the inventory will be deemed to weigh at least 25 pounds. Carton weights assigned were determined by contents.

WEIGHT—LOWEST ITEM

Your offer based upon the lowest weight of each item is not accepted. The Military-Industry Table of Weights notes in paragraph 5 that if the inventory does not properly identify the item where size, description, or dimension affects weight (i.e., dresser, headboard, mattress, TV, etc.), the item will be assigned a median weight if no other identification is provided.

Figure 11-17. Standard responses to third-party denials

Under the Military Basic Tender, carriers are relieved from liability for loss or damage on Code 5 and Code T shipments when the carrier can reasonably establish that the loss or damage occurred while the shipment was in the custody and control of the Government. Many times the time and place of loss or damage to Code 5 and Code T shipments cannot be clearly established and this problem has led to protracted correspondence.

In an effort to reduce administrative costs both to the Industry and the Government in settling claims against carriers for loss or damage to Code 5 and Code T shipments, the following Joint Military-Industry Agreement on Carrier Recovery on Code 5 and Code T shipments will be effective 1 May 1975:

> In situations in which an accurate determination cannot readily be made whether loss or damage to a Code 5 or Code T shipment occurred while in the custody and control of the carrier, the Government (Army) will offer to accept a compromise of 50% of the amount the Government (Army) determines to be due. The Government (Army) will endeavor to correctly assess liability based on correct weights and values of items and costs of repairs. The offer of compromise is predicated upon prompt acceptance and payment of the Government (Army) offer.
>
> In the event the carrier does not desire to accept the Government's (Army's) adjudication of a particular claim falling within this category, then normal negotiating procedures will apply and the 50% compromise agreement will not be applicable.
>
> The compromise will not apply to those claims where it is evident that the loss or damage occurred while the property was in the possession of the carrier, as in those cases the carrier will be responsible to the full extent of its liability. In such cases the Government (Army) will not make a 50% compromise offer.
>
> No claim will be asserted against the carrier when it is evident that the damage or loss occurred while the shipment was in the possession of the Government.

Figure 11-18. Joint Military-Industry Agreement on Code 5 and T Shipments

Table 11–4
Depreciation Rates

Item	Depreciation 1st year (%)	Depreciation subsequent years (%)	Maximum depreciation (%)	Flat rate (%)	Notes

The rates of depreciation below are published as a guide to indicate the rates that the household goods carrier industry will generally apply for purposes of settling loss and damage claims. The rates and maximum depreciation set forth below are applied where the items have been subjected to average care and/or usage, and may be adjusted upward or downward by the carrier when it is shown by inventory annotation, inspection of the goods, or other evidence, that the care of usage was greater or less than average. Normally, base value is considered to be current replacement cost at owner's destination area of residence. Dollar amounts computed under this guideline cannot exceed the "limitation of carrier liability" as published in applicable rate tariffs.

Antique value is compensable; however, since there is usually a wide variance of opinion as to such value, unassailable evidence of the same must be presented to justify payment. In order to qualify prima facie as an antique, an item must be, according to the U.S. Customs Service, at least 100 years old. Items newer than that will only be considered antiques where substantial independent evidence is presented or is available that the item so qualifies. In respect to those items which qualify as antiques, the claimant may be compensated up to the generally recognized value of the items. In such instances the claimant will be required to prove that the item possesses a demonstrably inherent value regardless of its purchase price, the place where it was purchased, the prestige of the label it bears, or its sentimental or personal attraction. The mere fact that an isolated appraiser might be found who could assign a value to it in excess of its purchase price does not meet this burden of proof. In the absence of credible evidence of value, reimbursement should be limited to out-of-pocket loss, or the reasonable replacement price of a substantially similar substitute item.

Item	Depreciation 1st year (%)	Depreciation subsequent years (%)	Maximum depreciation (%)	Flat rate (%)	Notes
Adding machines	10	10	90		
Air conditioners	10	10	90		
Antiques (see note above)					
Aquariums	10	5	90		
Artificial flowers and fruits				25	
Automobiles					Use local used car retail value
Automobile batteries	30	30	75		
Automobile convertible tops and seat and floor coverings	25	25	75		
Automobile paint jobs	15	15	75		
Automobile radios and accessories	10	10	75		
Automobile tires*	30	30	75		
Baby bassinets and carriages	10	10	75		
Bags (plastic or fabric for clothes and shoes)	20	20	75		
Barbeque grills/sets	12	12	90		
Barber equipment	10	10	75		
Baskets and hampers					
- Wicker or plastic	20	20	80		
- Metal	10	10	75		
Bathroom scales	10	10	75		
Bedding					
• Blankets					
- Cotton	10	10	75		
- Wool	5	5	75		
- Electric	10	10	75		
• Box Springs					
- Coil-double	5	5	90		
- Box-single	5	5	90		
- Box-double	5	5	90		
- Box-king	5	5	90		
- Comforters	10	10	75		
• Mattresses					
- Single	5	5	90		
- Double	5	5	90		
- King	5	5	90		
- Mattress covers or pads	20	20	80		
- Pillow cases	20	20	80		
- Quilts	5	5	75		
- Sheets	20	20	80		
- Spreads	10	10	90		

Table 11–4
Depreciation Rates—Continued

Item	Depreciation 1st year (%)	Depreciation subsequent years (%)	Maximum depreciation (%)	Flat rate (%)	Notes
Bicycles	10	10	75		
Binoculars	5	5	50		
Blinds (venetian)	5	5	75		
Boats					Use local boat retail value
Boating equipment and supplies (exclusive of outboard motors)	20	20	75		
Bookends				10	
Books					
Fiction/nonfiction				50	
Professional, reference, etc.				25	
Paperback				50	
Boxes (jewelry, cigarette, music, etc.)	5	5	75		
Bric-a-brac				10	
Brief cases	5	5	75		
Brushes (hair, clothes, etc.)	20	20	75		
Camel saddles (footstools)	5	5	75		
Cameras					
- Under $50	10	10	75		
- Over $50	5	5	75		
Cards					
- Greeting				50	
- Playing				25	
Card tables	10	10	50		
Chess sets				25	
Chests (ice, picnic, etc.)	10	10	75		
China (fine)					China: settlement will be based on 90% of current cost for 5-piece setting under $50, 100% for 5-piece setting costing more than $50.
Clothing (men's and boys')					
- Coats, jackets, suits	30	10	75		
- Slacks, sweaters, hats, etc.	30	10	75		
- Gloves	30	10	75		
- Socks, underwear, shirts, pajamas, handkerchiefs, etc.	33	33	75		
Clothing (womens' and girls')					
- Coats, jackets, suits	30	10	75		
- Dresses, skirts, blouses, etc.	30	10	75		
- Hats	50	25	75		
- Lingerie nightclothes, handkerchiefs, etc.	33	33	75		
Clocks					
- Inexpensive ($25 or less)	10	10	75		
- Expensive (over $25)	5	5	75		
- Grandfather type	5	5	50		
Collections (coin and stamp)					See tariff exclusion.
Compasses	5	5	50		
Cosmetics				50	If claimant indicates "unused or unopened," no depreciation.
Crockery (includes dishes glassware, pottery, plastic, etc.)	10	10	75		

Table 11–4
Depreciation Rates—Continued

Item	Depreciation 1st year (%)	Depreciation subsequent years (%)	Maximum depreciation (%)	Flat rate (%)	Notes
Crystal (including cut glass)					Crystal: settlement will be based upon 100% of actual case value.
Curtains	20	20	75		
Decorations (Christmas, birthday, etc.)				25	
Dental equipment and instruments				10	
Dentures	5	5	75		
Desk and writing implements	10	10	75		
Drapes	10	10	75		
Drapery (traverse) rods	5	5	75		
Drawing, mapping, sketching and professional equipment	5	5	50		
Electrical appliances					
• Minor					
- Blenders	10	10	75		
- Can openers	10	10	75		
- Fans	10	10	75		
- Frying pans	10	10	75		
- Hair dryers	10	10	75		
- Heaters	10	10	75		
- Heating pads	10	10	75		
- Irons	10	10	75		
- Knife sharpeners	10	10	75		
- Phonographs (small/portable	10	10	75		
- Radios, small/table	10	10	75		
- Roasters	10	10	75		
- Shavers	10	10	75		
- Toasters	10	10	75		
- Waffle irons	10	10	75		
Electrical appliances					
• Major					
- Attic fans	7	7	25		
- Dehumidifiers	7	7	75		
- Dishwashers	10	10	75		
- Dryers, clothes	10	10	90		
-Floor polishers	5	5	75		
- Freezers	7	7	75		
-Irons or mangles	10	10	75		
- Phonographs, console (includes stereos and hi-fi)	7	7	75		
- Refrigerators	7	7	80		
- Sewing machines	5	5	75		
- Stoves or ranges	7	7	90		
- TV sets	10	10	75		
- TV (picture tube only)	25	25	75		
- Vacuum cleaners	7	7	75		
- Vibrator chairs	10	10	75		
- Washers	12	12	75		
Eyeglasses	10	10	75		
Figurines				10	
Firearms	5	5	50		
Flashlights	20	20	75		
Foodstuffs					Replacement cost.

Table 11–4
Depreciation Rates—Continued

Item	Depreciation 1st year (%)	Depreciation subsequent years (%)	Maximum depreciation (%)	Flat rate (%)	Notes
Furniture					
- Solid wood (expensive)	2	2	75		
- Ordinary wood (chrome, plastic, etc.)	7	7	75		
- Children's	20	20	80		
- Upholstered	10	10	75		
• Lawn and patio:					
- Aluminum	15	15	90		
- Fabric	20	20	90		
- Redwood	10	10	75		
- Steel	10	10	75		
- Wrought iron	10	10	75		
Furs	30	10	75		
Game equipment (Poker, chips, chess, checkers, sets, etc.)				25	
Garden equipment					
- Garden tools	10	10	75		
• Lawn mower					
- Power	15	15	75		
- Roller	10	10	75		
• Umbrella	33	33	90		
• Wheelbarrow	10	10	75		
Jewelry,					See tariff exclusion.
- Costume $50 or less per item	10	10	75		
- Expensive (over $50 per item)					
Kitchen utensils (stainless steel, copper, cast iron, heavy aluminum, etc.)	5	5	50		
-Other Items	20	20	75		
Lamps, table and floor type	7	7	75		
Lamp shades	20	20	75		
Linens					
Fine (expensive)	5	5	75		
Other	20	20	75		
Lighters (cigar, cigarette, etc.)	20	20	75		
Lighting supplies (chandeliers, etc.)	5	5	50		
Lithograph prints				10	
Luggage (all types)	5	5	75		
Memorabilia (snapshots, albums, scrapbooks, etc.)					Materials only. See tariff exclusion.
Mirrors (incl. Frames)	5	5	75		
Motors (outboard)	20	10	75		Use depreciation factor only if local retail value is not obtainable.
Musical instruments					
- Pianos (over $250)	5	5	75		
- Organs (over $250)	5	5	75		
• Other instruments:					
- Under $50	20	20	75		
- $50 to $250 (includes pianos and organs)	10	10	75		
- Over $250	5	5	75		
Objects of (including oil painting)					Commercial value.
Phonograph records or recorded tapes				50	
Photographic equipment (cameras, projectors, lenses, screens, etc.)					
- $50 or less	10	10	75		
- Expensive (more than $50)	5	5	75		

Table 11–4
Depreciation Rates—Continued

Item	Depreciation 1st year (%)	Depreciation subsequent years (%)	Maximum depreciation (%)	Flat rate (%)	Notes
Photographic supplies					
- $50 or less	10	10	75		
- More than $50	5	5	75		
Pipes (smoking)	20	20	75		
Rugs					
- Under $50 or under $ 5 per yd.	20	20	90		
- $50 to $100 or $5 to $10 per yd.	10	10	90		
- Over $100, over $10 per yd.	7	7	75		
- Oriental (genuine)	2	2	50		
Silverware					Sterling: Settlement will be based upon 90% of replacement cost.
- Plated	5	5	75		
- Sterling					
- Stainless steel	5	5	75		
Slipcovers	20	20	80		
Sporting equipment	10	10	75		
Sporting supplies (baseballs, footballs, golf balls, etc.)				50	
Stationery				50	
Tools					
- Manual	5	5	50		
- Power	5	5	75		
Toys					
- Games				50	
- Electric trains	10	10	75		
- Bicycles	10	10	75		
- Tricycles	20	20	75		
Typewriters	5	5	75		
Umbrellas	20	20	75		
Vases	5	5	75		
Wastebaskets					
- Metal	10	10	75		
- Plastic	20	20	75		
- Leather	20	20	75		
Watches					
- $50 or less	10	10	75		
- More than $50	5	5	75		
Wigs (incl. Hairpieces):					
- Under $100	20	20	75		
- $100-$250	10	10	75		
- Over-$250	5	5	75		

Notes:

* Compute applicable depreciation on basis of "miles used/30,000 miles" (or mileage guaranteed period, ratio, if known; otherwise, use 30%).

This Memorandum of Agreement is entered into by the United States Army Claims Service and the Household Goods Forwarders' Associations of America, Inc. to provide standards to determine the weight to be used in computing carrier liability on unaccompanied baggage shipments. The effective date of this Memorandum of Agreement is August 1, 1993. The standards set forth below will apply to Army liability calculations for unaccompanied baggage shipments where the demand is dispatched on or after the effective date of this MOA.

1. For item(s) packed in internal cartons whose size is not properly noted on the inventory, the weight of that item will be determined by referring to the Joint Military/Industry Table of Weights (hereinafter "Table of Weights").

2. For item(s) packed in internal cartons whose size is not properly noted on the inventory, the weight of that item will be determined by referring to the notes in the table of weights. These notes provide that unidentified cartons will have weight assigned according to contents, but that in no event shall a weight of less than 25 pounds be assigned.

3. For item(s) not packed in internal cartons, but which have an assigned weight in the Table of Weights, the weight of that item will be determined by referring to the Table of Weights, including the notes for items whose dimensions are not properly specified.

4. For item(s) required to be packed in internal cartons under the tender of service or other appropriate MTMC guidance, but not listed on the inventory as packed in a carton, the weight will be determined by applying the most likely carton size that would contain these items (for example, dishes in a dishpack).

5. For single item(s) not required to be packed in internal cartons and not listed separately in the Table of Weights, or for bundles of items such as brooms, rakes, tools, or fishing poles, the weight of the item(s) will be determined by using the stated or appropriate bundle size weight listed in the Table of Weights.

6. Army claims offices will make every attempt to use the inventory to establish appropriate weights using the standards set forth above. Liability will not be assessed on the basis of gross weight of the shipping container unless it cannot be determined under the standards set forth above and the inventory significantly fails to identify how the items were packed (all items are listed horizontally as having been packed in a shipping container with no further subdivision of individually packed items or internal cartons).

SUPPLEMENTAL AGREEMENT

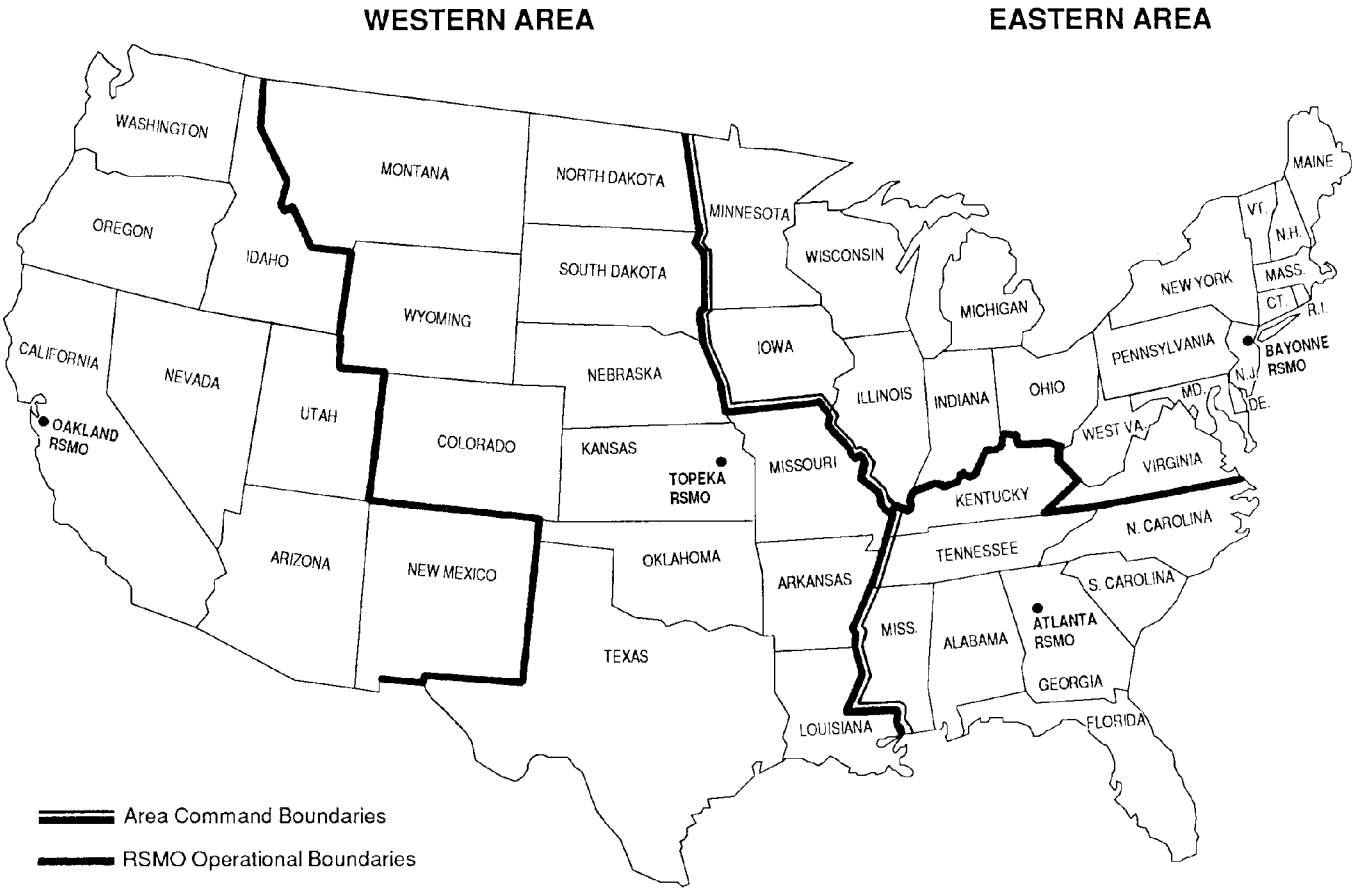
It is further agreed that those standards for calculating liability for unaccompanied baggage shipments will be applied to claims presently pending at the U.S. Army Claims Service (USARCS) which have not been settled or offset, and to refund requests received by USARCS prior to March 1, 1993.

Dated this 13th day of July 1993.

HOUSEHOLD GOODS FORWARDERS
ASSOCIATION OF AMERICA, INC.
By Donald H. Mensch
President

U.S. ARMY CLAIMS SERVICE
By Brian X. Bush
Colonel, U.S. Army
Chief, Personnel Claims and Recovery Division

Figure 11-19. Memorandum of agreement on carrier liability for loss or damage on unaccompanied baggage shipments



Oakland RSMO
Director of Personal Property
Oakland Army Base
Oakland, CA 94626-5000
DSN 859-3244
Commercial (415) 466-3244

Bayonne RSMO
Directorate of Personal Property
HQ, MTMCEA
Bayonne, NJ 07002-5302
DSN 247-6335/6//
Commercial (201) 823-6337

Topeka RSMO
Director of Personal Property
P.O. Box 19255
Topeka, KS 66619-0225
DSN 720-4524
Commercial (913) 862-4524

Atlanta RSMO
Directorate of Personal Property
5050 N. 24th
Forest Park, GA 30050-5226
DSN 797-5923/4
Commercial (404) 363-5923

Topeka RSMO handles warehouses in Alaska

Oakland RSMO handles warehouses in Hawaii

Figure 11-20. Map of military traffic management command regional storage management offices

(Letterhead)

(OFFICE SYMBOL) (27-20) ***(Date)***

MEMORANDUM FOR COMMANDER, HQ, EASTERN AREA MTMC, REGIONAL STORAGE MANAGEMENT OFFICE, ATTN: MTE-PSS, 82 32ND STREET, BAYONNE, NJ 07002-5302

SUBJECT: Claim of (*name of claimant*), Claim Number (*number*), SSN: (*number*)

1. The household goods of (*name of claimant*) were placed in the control of (*name of contractor*) on (*date*). The claimant filed a claim with the U.S. Government under 31 USC 3721 and was paid $(*amount paid*). A determination has been made that (*name of contractor*) is liable to the United States in the amount of $(*contractor's liability*).

2. Demands against the contractor have not been honored. It appears that a satisfactory settlement cannot be reached. Accordingly, subject claim file is forwarded with recommendation that appropriate recovery action be initiated against the contractor.

3. The following documents are included:

a. DD Form 1840 (Joint Statement of Loss or Damage at Delivery).

b. DD Form 1840R (Notice of Loss or Damage).

c. DD Form 1841 (Government Inspection Report), if prepared.

c. DD Form 1842 (Claims for Personal Property Against the United States).

e. DD Form 1843 (Demand on Carrier/Contractor).

f. DD Form 1844 (List of Property and Claims Analysis Chart).

g. DD Form 1164 (Service Order for Personal Property), if NTS is involved. A copy of the initial DD Form 1164 placing the property into storage and a copy of the DD Form 1164 terminating the storage is required.

h. SF 1034 (Public Voucher for Purchases and Services Other Than Personal).

i. Household Goods Descriptive Inventory or Itemized Receipt of Property Stored.

j. Estimates for repair or replacement of lost/damaged property.

k. Contractor correspondence and other pertinent documents that relate to the claim.

4. Request check payable to Treasurer of the United States be returned with the file to us upon completion of action. If money is withheld from accounts payable, then request a copy of the voucher crediting appropriation number 21_2020 22-0301 P436099.11-4230 FAJA S99999.

(*Encl Listing*)

(*SIGNATURE BLOCK*)
Claims Judge Advocate

Figure 11-21. Sample memorandum to regional storage management office requesting non-temporary storage offset action

Blocks 1-2. Complete block 1 for carriers or contractors other than NTS warehouse firms. Complete block 2 for demands against NTS warehouse firms. Complete both blocks for demands against both a carrier and a NTS warehouse firm.

a. *Blocks 1a and 2a*. Enter the full name and business address of the liable third party. (For TGBL shipments, this is the third party listed in block 1 on the TGBL; for DPM shipments refer to para 11-35) For TGBL carriers, the business address is the home office listed in the ITGBL Personal Property Carrier Approvals or the Domestic and Mobile Homes Personal Property Carrier Approvals, which are published by the MTMC and sent to area claims offices semiannually by USARCS. Note that when a shipment in SIT converts to storage at the owner's expense and is later delivered out, the TGBL carrier often is not the liable third party to whom the demand should be sent (see para 11-36a). For NTS warehouse firms, this address may be found on DD Form 1164, on the GBL, or on the inventory.

b. *Blocks 1b and 2b*. Enter the amount of the third party's liability. For code 5 or T shipments in which the time and place the loss or damage occurred cannot be determined, enter in block 1b both 50 percent of full liability and the full liability if the claim goes to offset--for example, "Code 5: $100, if offset $200" (see para 11-27c(4)).

c. *Blocks 1c through 1e*. Enter the GBL number for TGBL shipments (block 1c), the AMC flight number for AMC chartered flights, or the airway bill number for GBL airline shipments (block 1d), or the contact number for DPM shipments (block 1e). The DPM contract number may be obtained from the transportation office or the contracting office.

d. *Blocks 2c through 2e*. Enter the date NTS storage began and the date the property was released from NTS storage (block 2c). Enter the service order number (block 2d), which the transportation office assigned to the property for identification and which can be found on DD Form 1164 and on the inventory. Enter the lot number the warehouse firm assigned to the shipment (block 2e). This number can also be found on DD Form 1164 and on the inventory.

Block 3. Place an "X" in the applicable block. If "other," specify the type of shipment, such as "mobile home shipment" or "AMC flight."

Blocks 4-7.

a. *Block 4*. Enter where the shipment was originally picked up and where it was finally delivered.

b. *Block 5*. Enter the name of the carrier or contractor who originally packed the shipment and the date it was packed.

c. *Block 6*. If applicable, enter the name of the warehouse firm storing the property and the dates of storage.

d. *Block 7*. Enter the name of the carrier or contractor who delivered the shipment and the date of delivery.

Block 8. Place an "X" beside each document enclosed in the demand packet. If any document is enclosed, such as a memorandum for record or a chronology sheet, place an "X" in block 9f and list the name of this document.

Block 9. Enter comments by claims personnel concerning anything unusual about the claim here.

Block 10-13. Enter the claim number and the claimant's name in blocks 11c and 11d. Complete blocks 10 and 13 as follows:

a. *Local recovery*. Field claims offices should enter their own complete mailing address and telephone number (including area code) for demands sent locally, including deliveries from NTS storage, CONUS DPM shipments, CONUS local moves, and demands within the monetary jurisdiction of CONUS field claims offices. The person dispatching the demand will sign in block 13a and will enter the office telephone number and the date the demand is sent in blocks 13b and 13c. Block 13a need not be signed by the CJA.

b. *Claims forwarded to a command claims service for recovery*. For files forwarded to a command claims service for recovery, enter the address and telephone number of the command claims service in block 10. Leave blocks 13a and 13c blank, and enter the telephone number of the command claims service in block 13b.

c. *Claims forwarded to USARCS for centralized recovery*. Enter "U.S. Army Claims Service, ATTN: JACS-PCR, Building 4411, Llewellyn Avenue, Fort George G. Meade, MD 20755-5360" in block 10 for files forwarded to USARCS, for centralized recovery, including claims involving mobile home shipments, bankrupt carriers, and private insurance payments. Personnel in the claims office will not sign block 13a. Block 13c is left blank. The field claims offices will enter the telephone number (301) 677-7009 in block 11b.

Figure 11-22A. Instructions for completing DD Form 1843

DEMAND ON CARRIER / CONTRACTOR

1. TO CARRIER / CONTRACTOR

a. COMPANY NAME AND COMPLETE ADDRESS *(Include Zip Code)*	b. AMOUNT OF GOVERNMENT CLAIM	c. GOVERNMENT BILL OF LADING NO.
Smith Van Lines 300 Villa Drive Elkhart, Indiana 47101	$ 1958.00	VP 123,456
	d. MAC / AIRWAY BILL NO.	e. CONTRACT NO.

2. TO NONTEMPORARY STORAGE (NTS) WAREHOUSEMAN

a. COMPANY NAME AND COMPLETE ADDRESS *(Include Zip Code)*	b. AMOUNT OF GOVERNMENT CLAIM	c. DATES IN NTS STORAGE *(MMDDYY)*
Jones Warehouse 2 Storage Drive Baltimore, Maryland 21225	$ 146.00	(1) From 01-05-96 (2) To 05-05-96
	d. SERVICE ORDER NO. 96-0001	e. LOT NO. 001

3. CLAIM PRESENTED IN CONJUNCTION WITH SHIPMENT OF *(X and complete as applicable)*

X	a. HOUSEHOLD GOODS		b. HOLDBAGGAGE		c. OTHER *(Specify)*

4. SHIPMENT MOVED	a. FROM *(City and State)* Baltimore, Maryland 21225	b. TO *(City and State)* Denver, Colorado 54321
5. SHIPMENT PACKED	a. BY *(Carrier/Contractor Name)* Jones Warehouse	b. DATE *(MMDDYY)* 01-05-96
6. SHIPMENT STORED	a. BY *(Carrier/Contractor Name)*	b. FROM *(MMDDYY)* c. TO *(MMDDYY)*
7. SHIPMENT DELIVERED	a. BY *(Carrier/Contractor Name)* Smith Van Lines	b. DATE *(MMDDYY)* 06-05-96

8. ENCLOSURES *(X all that apply)*

X	a. DD Form 1844		d. Government Bill of Lading
X	b. DD Forms 1840/1840R	X	e. Estimates
X	c. DD Form 1841	X	f. Other *(Specify)*

9. REMARKS

The truck was involved in an accident before reaching the delivery address.

When appropriate, if a reply is not received within 120 days from the date on which you receive this notice, offset action will be initiated without further notice. When appropriate, unearned freight charges will be collected without further notice.

10. SEND YOUR REPLY TO *(Street, City, State and Zip Code)*	11. ALL CORRESPONDENCE MUST REFERENCE
U.S. Army Claims Service ATTN: JACS-PCR Building 4411, Llewellyn Avenue Fort Meade, MD 20755-5360	a. CLAIM NO. 96-XXX-0001 b. CLAIMANT NAME Dudley, Donna J.
	12. MAKE YOUR CHECK PAYABLE TO Treasurer of the United States

13. DISPATCHER

a. SIGNATURE	b. TELEPHONE NUMBER *(Include area code)*	c. DATE DISPATCHED *(MMDDYY)*
/s/ Louise Sampson		06-02-96

DD Form 1843, DEC 88 *Previous editions may be used until exhausted.* 250-350

Figure 11-22B. Completed DD Form 1843

(Letterhead)

(Office Symbol) (27-20) 31 January 1997

MEMORANDUM FOR: DEFENSE FINANCE AND ACCOUNTING SERVICE INDIANAPOLIS CENTER,
ATTN: DFAS-IN-FTFB, INDIANAPOLIS, INDIANA 46249-0652

SUBJECT: Request for Deduction of Unearned Freight Charges

1. Enclosed is a copy of DD Form 1843, DD Form 1844, and GBL showing the loss and /or damage beyond repair to the personal property of (name of claimant). Liability for unearned freight charge is pursued against (name of GBL carrier). Copies of estimates/ inspections have been included for destroyed items.

2. The claimant's personal property loss and damage claim has been resolved/settled between the Government and the carrier. Unearned freight should be recovered for the following items from DD Form 1844:

End Table, line 4
Stool, line 7
Dresser mirror, line 24
Laundry basket, line 39
Glass table top, line 56
Floor lamp, line 80.

4 Encls
1. DD Form 1843
2. DD Form 1844
3. GBL
4. Estimates of Repair

(SIGNATURE BLOCK)
Claims Judge Advocate

Figure 11-23. Sample letter to Defense Finance and Accounting Service on unearned freight

Table 11–5
Nontemporary storage depreciation guide

	Depreciation rates		
Item	JMIDG Per Year	NTS Per Year	Discussion
Adding machines	10%	2%	See electrical appliances
Air conditioners	10%	2%	See electrical appliances
Antiques	None	None	If an item is truly an antique (see ALDG), then it will not depreciate. Rather, it should appreciate over time. Nevertheless, the guidance found in the ALDG for such items should be followed.
Aquariums	10% first year	None 5% thereafter	This item would not suffer from the water pressure inherent in its intended use. Absent the cause for its wear, there would be none and no depreciation is warranted.
Artificial fruits & flowers	25% Flat rate		In the JMIDG, we've agreed to a one time, (use and age immaterial), flat rate of depreciation. No further depreciation is warranted while the items are in NTS.
Automobile batteries	30%	5%	A stored battery will lose its charge and may lose its ability to function. The proposed rate fairly addresses this occurrence while also allowing for the lack of wear and tear the battery is saved from when not in use.
Automobile: Convertible tops, seat covers and carpeting.	25%	2%	See explanation for bedding.
Automobile paint jobs	15%	None	If properly stored, the paint job will not be exposed and thus will not deteriorate. Because the paint job will not fade when properly stored, there should be no depreciation allowed.
Automobile radios and accessories	10%	2%	See electrical appliances
Automobile tires	30%	2%	Like cloth, rubber may deteriorate over time, even when not in use. These items are not exposed to sun, heat, moisture, or filth, therefore, any deterioration will be minor. A fair depreciation rate to reflect this minor degradation in the life of the tire is warranted.
Automobile spare parts	10%, if used	2%	Like the automobile battery, these items are not subject to the stresses of daily use. However, used parts have been exposed to wear and tear. Although the parts may well have been prepared for long-term storage, they may nonetheless still deteriorate as a result of their prior use. The reduced depreciation rate accounts for the additional protection afforded by long-term storage and the lack of exposure to corrosive elements.
Baby bassinets and carriages	10%	2%	See bedding.
Bags (plastic)	20%	None	When these goods are in NTS, they are not subject to normal wear and tear. They are not exposed to sunlight, dust, moisture, heat, or other corrosives that cause an item to deteriorate. Hence, depreciation on these goods is not in order except through obsolescence.
Bags (cloth)	20%	2%	See bedding.
Barbecue grills	12%	None	See bags, plastic
Barber equipment	10%	2%	See electrical equipment.
Baskets/Hampers:			
Wicker	20%	2%	See bedding.
Metal	10%	None	See bags, plastic.
Plastic	20%	None	See bags, plastic.
Bathroom scales	10%	None	See bags, plastic.
Bedding -Blankets -Cotton -Wool -Electric	 10% 5% 10%	 2% 2% 2%	Upholstered furniture, mattresses, and rugs shall be wrapped, covered, and otherwise protected from dust, sun, and water. Items manufactured from durable materials, such as plastic, metal, or glass, would not depreciate measurably while in NTS when they are no longer subject to the stresses normally associated with daily wear and tear.
Box springs -Coil-double -Box-single -Box-double -Box-king	 5% 5% 5% 5%	 2% 2% 2% 2%	Items manufactured from fibers, such as clothing, upholstery, and drapes may depreciate. Although not subject to the daily stresses of normal wear and tear, the fibers in clothing and upholstery may nonetheless succumb to inherent deterioration of the fibers themselves.

Table 11–5
Nontemporary storage depreciation guide—Continued

Item	Depreciation rates JMIDG Per Year	NTS Per Year	Discussion
Comforters	10%	2%	These items are not subject to dust, sunlight, water, heat, or other corrosive forces, therefore, the depreciation these items are subject to is markedly reduced while in storage as compared to those rates found in the JMIDG.
Mattresses			
-Single	5%	2%	
-Double	5%	2%	
-King	5%	2%	
Mattress covers/pads	20%	2%	
Pillows/Pillow cases	20%	2%	
Quilts	5%	2%	
Sheets	20%	2%	
Spreads	10%	2%	
Bicycles	10%	2%	See automobile spare parts.
Tricycles	20%	2%	
Binoculars	5%	None	See bags, plastic.
Blinds	5%	2%, if cloth	See bedding.
Boats	Commercial value - if not readily available, then 2%.		See automobile spare parts.
Boating equipment and supplies	20%	2%, if cloth	See bedding.
Bookends	10% Flat rate		See artificial fruits and flowers.
Books			See artificial fruits and flowers.
-Fiction/nonfiction	50% Flat rate		
-Professional	25% Flat rate		
-Paperbacks	50% Flat rate		
Boxes (jewelry, music, etc.)	20%	None	See bags, plastic.
Bric a brac	10% Flat rate		
Brief cases	5%	None	See bags, plastic
Brushes	20%	None	See bags, plastic
Camel saddles (footstools)	5%	2%	See bedding
Cameras	10% or 5%	None	See bags, plastic
Camping Equipment	10%	2%, if cloth	See boating supplies and equipment
Cards			See artificial fruits and flowers
-Greeting	50% Flat rate		
-Playing	10% Flat rate		
Card tables	10%	None	See furniture
Chess sets	25% Flat Rate		See artificial fruits and flowers
Chests (ice, picnic, etc.)	10%	None	See bags, plastic
China (fine)	see JMIDG note		
Clothing	30% the first year 10% subsequent years		See bedding
Clocks			See electric appliances.
-Inexpensive	10%	2%	Although these clocks may also be considered as an electric appliance,
-Expensive	5%	2%	the craftsmanship inherit in these clocks mitigates against a significant
-Grandfather type	5%	2%	loss of value while the item is stored. See above.
Collections	Depreciate according to the items that make up the collection		
Compasses	5%	None	See bags, plastic.
Cosmetics	50% Flat Rate		See artificial fruits and flowers

Table 11–5
Nontemporary storage depreciation guide—Continued

Item	Depreciation rates: JMIDG Per Year	Depreciation rates: NTS Per Year	Discussion
Crockery	10%	None	See bags, plastic
Crystal/cut glass	See note in JMIDG		
Curtains	20%	2%	See bedding
Decorations	25% Flat rate		
Dental/medical equipment	10% Flat Rate		
Dentures	5%	None	See bags, plastic, but probably obsolete
Desk items/writing implements	10%	None	See bags, plastic
Drapes	10%	2%	See bedding
Drapery rods	5%	None	See bags, plastic
Drawing, mapping, drafting, and other professional equipment	5%	None	See bags, plastic
Electric appliances -Minor -Major	 10% 10%, 7%, or 5%	 2% 2%	Although the factors which normally cause these items to depreciate are not present, the electrical connections may nevertheless corrode over time and cause the item to fail. See above
Eyeglasses	10%	None	See bags, plastic, but probably obsolete
Figurines	10% Flat Rate		
Firearms	5%	None	See bags, plastic
Flashlights	20%	2%	See electric appliances
Foodstuffs	Not stored		
Furniture -Solid wood or expensive -Ordinary wood, chrome, plastic, etc. Lawn -Aluminum -Redwood -Steel -Wrought iron -Children's -Upholstered -Lawn, fabric	 2% 7% 10% 10% 10% 10% 10% 20% 10% 20%	 None None None None None None None None, if not upholstered 2% 2%	If properly stored, the furniture will not be exposed to normal wear and tear. It will be be protected from heat, sunlight, dampness, dirt, scratching, marring, or rubbing: the factors which cause furniture to deteriorate and depreciate over time. Absent measurable deterioration, no depreciation is warranted. The material from which these items are constructed will not deteriorate on its own, at least not so as to warrant depreciation. If the furniture is properly stored, then no depreciation is warranted. For upholstered furniture see bedding discussion. Use 2% as a depreciation factor for upholstered furniture. See bedding See bedding
Furs	30%	5%	If properly stored and cared for, then fine items such as this should not measurably depreciate while stored. This item will not be subject to heat, damp, dirt, sunlight, vermin or other factors which may allow it to deteriorate. Cold storage is preferable.
Games	25% Flat Rate		See artificial fruits and flowers
Garden equipment	varies	None	See bags, plastic
Jewelry -Inexpensive -Expensive	 10%	 None	See bags, plastic See JMIDG note
Kitchen utensils	5%	None	See bags, plastic
others	20%	2%	See electric appliances and bedding
Lamps	7%	2%	See electric appliances
Lamp shades	20%	2%	See bedding
Linens -Fine -Others	 5% 20%	 2% 2%	Items such as silk, linen, lace, may not depreciate noticeably while stored. For example, a piece of lace hung in a window for display will deteriorate quickly from exposure to the sun, while the same piece of lace, when properly cared for, may well last several lifetimes. Because these items are not exposed to corrosive elements, such as the sun, the rate of depreciation is fair and adequate. See bedding.
Lighters	5%	None	See bags, plastic

Table 11–5
Nontemporary storage depreciation guide—Continued

Item	Depreciation rates JMIDG Per Year	NTS Per Year	Discussion
Lighting supplies	5%	2%	See electric appliances.
Lithographic prints	10% Flat Rate		See artificial fruits and flowers
Luggage	5%	None	See bags, plastic
Memorabilia	See note in JMIDG		
Mirrors	5%	None	See bags, plastic
Motors	20% if local retail value is not available. See automobile spare parts for depreciation while in storage.		
Musical instruments			See bedding/electric appliances.
Pianos/organs	5%	2%	Although these items are not exposed to the normal factors which would cause them to wear, it is a documented fact that musical instruments that are not used may become stiff and brittle and deteriorate. Thus a fair rate to allow for this phenomena is provided.
Others	varies	2%	
Objects of art	These items do not depreciate		See antiques
Phonograph records	50% Flat Rate		See artificial fruits and flowers
tapes, VCR, tapes, etc. Compact and laser discs	None		If properly cared for and stored, these items don't wear
Photographic equipment	10% or 5%	2%	See electronic appliances
Pipes, smoking	20%	5%	See musical instruments, others
Pool tables		2%	See furniture
Professional equipment	See dental/medical equipment or drafting supplies		
Rugs	varies	2%	See bedding
Sewing machines		2%	See electric appliances
Silverware			Although these items are protected from sunlight, dust, heat, and moisture, and are wrapped in acid free, nontarnish paper, they may yet tarnish over long term storage and deteriorate.
-Plated	5%	2%	
-Sterling	See note in JMIDG		
-Stainless steel	5%	None	See bags, plastic
Slipcovers	20%	2%	See bedding
Sporting equipment	10%	2%, if cloth	See boating, supplies and equipment
Sporting supplies	50% Flat Rate		See artificial fruits and flowers
Stationery	50% Flat Rate		
Tools			
Manual	5%	None	See bags, plastic
Power	5%	2%	See electronic appliances
Toys			
Games	50% Flat Rate		
Electric	10%	2%	See electronic appliances
Typewriters			
-Manual	5%	2%	See musical instruments, others
-Powered	5%	2%	See electronic appliances
Umbrellas	20%	2%	See bedding
Vases	5%	None	See bags, plastic
Wastebaskets			
-Metal	10%	2%	See automobile spare parts
-Plastic	20%	2%	
-Leather	20%	2%	See linens

Table 11–5
Nontemporary storage depreciation guide—Continued

	Depreciation rates		
Item	JMIDG Per Year	NTS Per Year	Discussion
Watches			
-Inexpensive	10%	None	See bags, plastic
-Expensive	5%	None	See bags, plastic
Wigs	varies	2%	See furs

Notes:

Depreciation rates are subject to the maximum depreciation rates established in the Allowance List-Depreciation Guide when adjudicating the claim and the Joint Military-Industry Depreciation Guide when determining the carrier's liability.

(Letterhead)

October 8, 1996

Personnel Claims Branch
Claim Number: 96-E06-9087

Mr. Lee Evans
135 Braxfield Drive
Colorado Springs, Colorado 80910

Dear Mr. Evans:

On November 27, 1992, you filed a claim for $1,005.00 with the United States Army for a dishpack which was missing at the time of delivery as a result of a Government sponsored move. You were paid $1,005.00 for this missing dishpack on January 13, 1993. The dishpack was actually delivered to you on December 15, 1992. You did not take action to withdraw your claim nor did you notify the Government that you had accepted delivery of the dishpack. You are not entitled to keep the $1,005.00 you were paid for the dishpack.

If you do not provide payment of this debt ($1,005.00) or provide evidence that this debt is not owed, this Service will request, under the provisions of Title 31, United States Code, Section 3720A, that the Internal Revenue Service (IRS) offset the amount of this debt from any income tax refunds that may be due to you in the future. You will have 60 days from the date that you receive this letter to pay this debt in full or present evidence that all or part of it is not due to the Government. No action will be taken until any response you make is considered or the 60 days have elapsed without any response from you.

You can forward a check payable to the "Treasurer of the United States" for $1,005.00 to: The United States Army Claims Service, ATTN: JACS-PCR, Building 4411, Fort Meade, Maryland 20755-5360.

Sincerely,

Tracy Johnson
Major, U.S. Army
Deputy Chief, Personnel Claims
and Recovery Division

Figure 11-24. Sample letter to debtor concerning IRS offset

(Letterhead)

(OFFICE SYMBOL) (27-20) (Date)

MEMORANDUM FOR COMMANDER, HEADQUARTERS, MILITARY TRAFFIC MANAGEMENT COMMAND,
ATTN: MTTM–C, 5611 COLUMBIA PIKE, FALLS CHURCH, VA 22041–5050

SUBJECT: Claim of (name of claimant) SSN: (number)

1. Enclosed is the subject claim, which has been adjudicated by the Department of the Army, involving (damage to/loss of) claimant's (year, make, body type) occurring aboard the (name of ship), which sailed from (port of embarkation) on (date of departure) and discharged at (port of debarkation).

2. Request recovery action be initiated against the ocean carrier in the amount of $(amount).

3. Upon completion of your action, request the file and any amount recovered be transmitted directly to the Commander, U.S. Army Claims Service, ATTN: JACS-PCR, 4411 Llewellyn Avenue, Fort Meade, MD 20755-5360, with information concerning the results of the action taken.

Encl

(SIGNATURE BLOCK)
Claims Judge Advocate

Figure 11-25. Sample memorandum for ocean carrier claim

Table 11–6
Military ocean terminals and telephone numbers

Port Designation Code/Location	Port Phone Number	Length of Time DD 788's are Held
3DK Oakland, CA	DSN: 859-2311/3365	Current calendar year in office. 2 additional calendar years in storage.
3H2 Compton, CA	DSN: 833-3835 COM: 310-763-5620	Keeps current calendar year + 1 calendar year in office. 1 calendar year in storage. Total up to 3 years.
1R1 Cape Canaveral, FL (Cape Canaveral, Terminal)	1-800-862-9471 DSN: 467-7713	Current calendar year + 1 calendar year in office.
2GC Granite City, IL (MTMC POV Processing Center)	1-800-275-3706 DSN: 892-4650/4651	1 week in office + current calendar year + 1 full additional calendar year in storage.
2DC New Orleans, LA (MTMC Gulf Outport)	DSN: 678-1218	Current calendar year in office + 2 calendar years in storage. (Ex: Del May 92 = Destroyed Jan 95. Active until Dec 92, Storage Jan 93 - Jan 95)
1LA Baltimore, MD (Dundalk Marine Terminal)	1-800-892-9267 FAX: 301-282-6431	Current Month in office + 2 years in storage
1GC Bayonne, N.J. (Military Ocean Terminal)	DSN: 247-6606/6079 DSN: 274-6456 FAX: DSN: 274-5913	Usually keeps 6 months in office. Then to storage. (Destroyed 3 years from date of POV p/u by claimant). MTMC Information Service Support Center): Records Holding
1P2 Charleston, S.C. (MTMC South Atlantic Outport)	DSN: 563-5472/5470	Current calendar year in Office + 2 calendar years in storage.
1MJ Norfolk, VA (Navy Supply Ctr)	1-800-358-4326 DSN: 564-4505/4636	Current calendar year in office 2 calendar years in storage
4DL Seattle, WA	DSN: 744-3109/3460 COM: 206-764-6537	Current calendar year + one additional calendar year in office + 1 calendar year in storage.
Balboa, Panama (MTMC Terminal Battalion)	DSN: 313-282-4642/4641 4306/4303) FAX: 011-507-62-2546	2 years in office + 2 years in storage
San Juan, P.R. (MTMC Terminal Detachment).	COM: 809-749-4327 COM: 809-723-1199	Current calendar year in office + 5 additional calendar years in storage

Notes:
For other terminals and telephone numbers, contact MTMC HQ Bayonne, N.J. DSN: 247-5904/5907

Calendar year = January - December
Fiscal year (FY) = October - September
Records Holding Area is same as storage

(Letterhead)

(OFFICE SYMBOL) (27-20)

MEMORANDUM FOR *Commander (Local Contracting Officer)*

SUBJECT: Claim of (*name of claimant*), Claim Number (*number*), SSN: (*number*)

1. The household goods of (*name of claimant*) were placed in the control of (*name of contractor*) on (*date*). The household goods were not delivered in the same condition as received by this contractor. The claimant filed a claim with the U.S. Government under 31 USC 3721 and was paid $(*amount paid*). A determination has been made that (*name of warehouse contractor*) is liable to the United States in the amount of $(*contractor's liability*).

2. Demands against the contractor have not been honored. It appears that a satisfactory settlement cannot be reached. Accordingly, subject claim file is forwarded with recommendation that appropriate recovery action be initiated against the contractor.

3. The following documents are included:

a. DD Form 1840 (Joint Statement of Loss or Damage at Delivery).

b. DD Form 1840R (Notice of Loss or Damage).

c. DD Form 1841 (Government Inspection Report), if prepared.

d. DD Form 1842 (Claims for Personal Property Against the United States).

e. DD Form 1843 (Demand on Carrier/Contractor).

f. DD Form 1844 (List of Property and Claims Analysis Chart).

g. DD Form 1164 (Service Order for Personal Property). A copy of the initial DD Form 1164 placing the property into storage and a copy of the DD Form 1164 terminating the storage is required.

h. SF 1034 (Public Voucher for Purchases and Services Other than Personal).

i. Descriptive Inventory or Itemized Receipt of Property Stored.

j. Estimates for repair or replacement of lost/damaged property.

k. Contractor correspondence and other pertinent documents that relate to the claim.

4. Request money be withheld from accounts payable and a copy of the voucher crediting appropriation number 2162020 22-0301 P436099.11-4230 FAJA S99999, be returned with the file to this office upon completion of action.

(Encl Listing)

(SIGNATURE BLOCK)
Claims Judge Advocate

Figure 11-26. Sample letter to local contracting officer requesting offset

C.6. CONTRACTOR LIABILITY/CLAIMS

C.6.1. The Contractor is responsible for and will not hold the Government liable for any loss of or damage to POVs or their accessories while the vehicle is in the Contractor's care, custody and control. The Contractor shall, at its own cost and expense, defend any suits, demands, claims or actions in which the United States might be named as co-defender of the Contractor, arising out of or as a result of the Contractor's performance of work under this contract, whether or not such suit, demand, claim or action arose out of or was the result of Contractor's negligence. This shall not prejudice the right of the Government to appear in such suit, participate in a defense, and take such actions as may be necessary to protect the interest of the United States. Nothing in the above provisions shall in any way limit other remedies available to the Government as provided by law, or in any way waive any of the rights of the Government as provided by law.

C.6.1.1. For vehicles shipped between the three (3) CONUS service sites and Germany, the Contractor is liable for any and all damages, expenses and/or loss of the vehicle from the time the vehicle is turned in by the customer until the vehicle is delivered to the customer at destination.

C.6.1.2. For all other POVs, the Contractor is fully liable for loss, damage, and/or expenses incurred from the time of turn-in by the customer till pickup by the carrier or from time of delivery by a carrier till receipt by the customer.

C.6.1.3. For Germany, POVs not in the movement program between the three(3) CONUS service sites and Germany, the Contractor is fully liable for the POV loss/damage during the off-load from the loading onto the carrier, and during transportation of the POV on the carrier. Contractor liability for inbound POVs shall include all Contractor operation of the POV and extend until the POV is accepted by the customer. Contractor liability for outbound POVs shall include all Contractor operation of the POV and extend until the POV has been parked in the Government provided storage area at POE/POD (Bremerhaven), with the engine off, emergency brake engaged, and all doors locked.

C.6.2. CLAIMS

C.6.2.1. The Contractor shall be responsible for correcting any deficiencies occurring while the POV is in the custody of the Contractor. The Contractor will notify in writing the customer and Government COR of any corrected deficiencies made to the POV. Any claims for loss, damage, or destruction to a POV or loss or damage to its accessories, for which there is liability against the contractor under the provisions of the contract, will be processed against the contractor as described below:

C.6.2.1.1. At turn-in facility the customer and Contractor will conduct joint inspection of vehicle using DD Form 788 or Contractor provided and U.S. Government approved equivalent form.

C.6.2.1.2. If during the joint inspection a dispute occurs, the Contractor will immediately notify the Government COR for verification.

C.6.2.1.3. The Contractor will provide the customer a legible copy of the annotated form used during the inspection (1st copy). In addition, the Contractor will provide the customer a copy of the Vehicle Instruction explaining the customer's rights to file for damages and/or loss.

C.6.2.1.4. The Contractor will place original copy of inspection form along with other shipping documents into a shipping envelope in the glove compartment of the POV. Motorcycles will have the shipping envelope firmly attached to the seat.

C.6.2.1.5. The Contractor will not use the original copy of the joint inspection form to record damages incurred at transship points.

C.6.2.1.6. The Contractor will use the original joint inspection form and the customer's 2nd copy to conduct final joint inspection with customer at destination pick up point. The original copy of the inspection form will be maintained by the contractor as part of his official files and the 2nd copy returned to the service member upon completion of the joint inspection.

C.6.2.1.7. Contractor liability under this conduct will be in accordance with the FAR clause 52.247.22

Figure 11-27. Privately owned vehicle contract provisions—Continued

for Transportation Contractors (freight, other than HHG). The Contractor assumes full liability for all loss and damage, except where the Contractor can prove absence of fault or negligence, or that loss or damage arises out of causes beyond the Contractor's control. The measures of liability are: (1) for loss, the depreciated replacement cost (blue book retail cost); and (2) for damages, the full value of repair.

C.6.2.1.8. If during the final joint inspection a dispute occurs between the Contractor and customer, the Contractor will immediately notify the COR for verification.

C.6.2.1.9. Discrepancies annotated between the original and final joint inspection will be annotated on the DD Form 788 or approved commercial form and a copy provided to the COR by the Contractor.

C.6.21.10. At the time of the final joint inspection the customer may, at his discretion and option, choose to settle the claim directly with the Contractor. The service member will be provided another Vehicle Claims Instructions, explaining his rights under the contract. At this time the customer will be required to sign the Vehicle Claims Instructions signifying he understands his rights and chooses to settle the claim with the Contractor. A copy of the signed Vehicle Claims Instructions will be maintained in the contractor's files, a copy provided to the customer, and a copy provided to the COR. The contractor shall provide a monthly report annotating monies settled with the customer for claims and submit a report to the COR.

C.6.2.1.11. If the customer chooses not to settle with the Contractor, or finds additional damages not annotated during the joint final inspection, the customer will file claim with the local field claims office.

C.6.2.1.12. The customer will submit for claims processing the 2nd copy of DD Form 788 or approved commercial inspection form, and copies of all documents used in settling his previous claim with the Contractor to the local field claims office.

C.6.2.1.13. The local claims office will file a demand directly with the Single POV Contractor for claims paid by the U.S. Government. The initial demand will consist of a DD Form 1843 (Demand on Carrier/Contractor ATT#16 or Commercial Equivalent), the DD Form 788 or Commercial Equivalent, a DD Form 1844 (Claims Analysis Chart ATT#17 or Commercial Equivalent) and supporting documentation.

C.6.2.1.14. The Contractor will have 90 days from date of demand request in which to respond to the claims office.

C.6.2.1.15. The Contractor will provide to the COR a copy of the reply to the claims office along with a copy of the initial claims demand request package.

C.6.2.1.16. Upon receipt of a Contractor's reply disputing the demand request, the Claims Office may submit a request to the MTMC Contracting Officer to recovery funds under terms of the contract.

C.6.2.2. A complete package of the claims demand will be forwarded to the MTMC Contracting Office.

Figure 11-27. Privately owned vehicle contract provisions

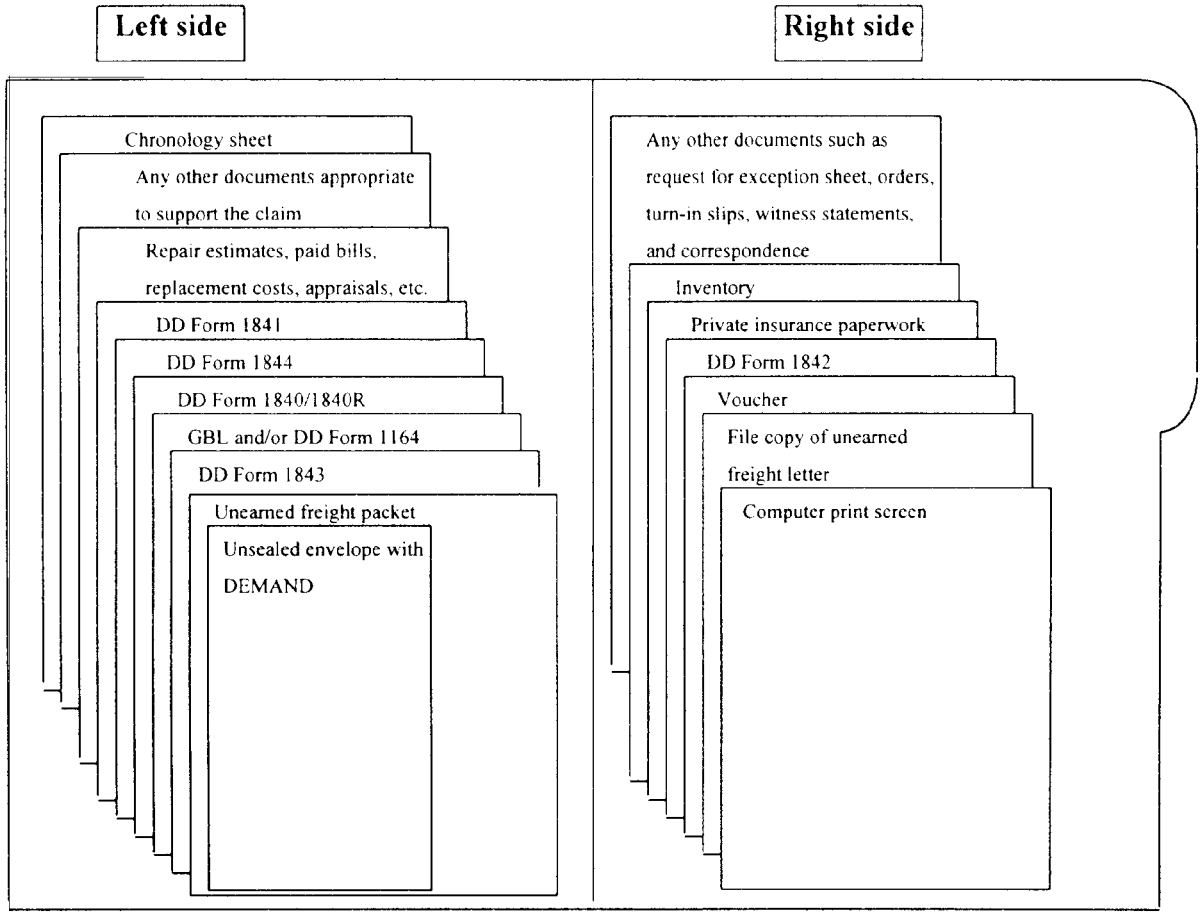


Figure 11-28. Assembly of records

Table 11–7
Airline codes

Airline Code	Carrier Address
B	Continental Airlines ATTN: Steve Cossette 1225 Jefferson Davis Hwy Suite 1110 Arlington, VA 22202
D	Delta Airlines, Inc. ATTN: Ed Maloney 1030 Delta Blvd. 5th Floor Admin, Bldg. Harsfield-Atlanta Int'l Airport Atlanta, GA 30320-2538
E	Rich International P.O. Box 522067 Miami, FL 33152
F	Sun Country ATTN: Larry Tighe 7701 26th Avenue South Minneapolis, MN 55450
G	Hawaiian Airlines, Inc. ATTN: Michael Burke Charter Department 1164 Bishop Street, Suite 800 Honolulu, HI 96813
H	Federal Express Aircraft Charters ATTN: Mary Yeager 2007 Corporate Plaza-Third Floor Memphis, TN 38132
J	Air Transport Int'l Inc. ATTN: Wade Johnson 3800 North Rodney Parham Rd. Little Rock, AR 7212
K	Evergreen Int'l Airlines, Inc. ATTN: Allen Edinger 3850 Three Mile Lane McMinnville, OR 97128-9496
L	Arrow Air, Inc. ATTN: John Kempster P.O. Box 026062 Miami, FL 33102-6062
N	Northwest Airlines, Inc. Central Baggage Service P.O. Box 11139 St. Paul, MN 55111
O	Connie Kalitta Services 842 Willow Run Airport Ypslanti, MI 48198
P	*Miami Air ATTN: Patrick Serville P.O. Box 660880 Miami Springs, FL 33266-0880
Q	Reeve Aleutian Airways, Inc. 4700 W. International Airport Rd. Anchorage, AK 99502-1091
T	Trans World Airlines, Inc. Customer Relations--Baggage 1415 Olive St. Suite 100 St. Louis, MO 63103 (FOR DAMAGE CLAIMS ONLY)

Table 11–7
Airline codes—Continued

Airline Code	Carrier Address
U	United Airlines, Inc. ATTN: Larry Dunne P.O. Box 66100 O'Hare Int'l Airport Chicago, IL 6066-0100
W	World Airways, Inc. ATTN: Jacqueline Gauger 13873 Park Center Rd. Suite 490 Herndon, VA 22071-3229
X	American Trans Air ATTN: Bill Doherty P.O. Box 51609 Indianapolis, IN 46251-0609
Y	United Parcel Service ATTN: Greg Treitz 1554 Williamsburg Plaza
Z	Tower Air, Inc. ATTN: Mark Hays Hanger 6/JFK Int'l Airport Jamaica, NY 11430 (FOR CLAIMS INQUIRIES)
0	Emery World Wide ATTN: Donald W. McGuire One Emery Plaza Dayton Int'l Airport Vandalia, OH 45377
2	American Airlines ATTN: David Maxwell P.O. Box 619617, Mail Drop 5134 4200 American Blvd. Dallas-Ft. Worth Airport Dallas, TX 75261-9617
4	Aloha ATTN: Jim King Box 30028 Honolulu, HI 96820
5	Private Jet Expeditions 6520 Piedmont Rd. N.E. Suite 300 Atlanta, GA 30305-1514
6	Buffalo Airways ATTN: Russ Ahrmon 700 S. University Park Dr. Waco, TX 76706
8	Alaskan Airlines Baggage Claims Center P.O. Box 68900 Seattle, WA 98168

Table 11–7
Airline codes—Continued

Airline Code	Carrier Address
9	Northern Air Cargo, Inc. 3900 W. International Airport Rd. Anchorage, AK 99502-1009
	Pam American World Airways, Inc. ATTN: Bob Pryor 200 Park Avenue New York, NY 10166
	Key Airlines ATTN: Beth Sheffield P.O. Box 7709 Savannah, GA 31418
	Florida West Airlines ATTN: Joseph McClenahan 1642 NW 62nd Ave. Bldg. 2169 P.O. Box 523970 Miami, FL 33152
	Rosenbalm Airlines ATTN: Joe Hrezo 934 Willow Run Airport Ypslanti, MI 48198
	Southern Air Transport, Inc. ATTN: John Palo Miami Int'l Airport P.O. Box 52-4093 Miami, FL 33152-4093
	American West Airlines ATTN: David Tietgen Phoenix Sky Harbor Int'l Airport Rd. 4000 E. Sky Harbor Blvd. Phoenix, AZ 85034
	Int'l Charter Xpress Limited Liability Co. ATTN: Eric Kort 3800 Rodney Praham Rd. Little Rock, AR 72212-2439

Notes:
The code is the commercial operator fourth character. They identify the operator. Some airlines do not have codes listed.

Chapter 12
Nonappropriated Fund Claims

Section I
Claims Against Nonappropriated Fund Activities

12–1. General

See AR 215-1, Nonappropriated Fund Instrumentalities (NAFI) and Morale, Welfare, and Recreation Activities (figure 12-1).

a. Claims involving nonappropriated fund activities fall into two broad categories:

(1) The first category covers claims arising from the negligent or wrongful acts or omissions of employees of a NAFI while within the scope of employment. These claims are processed under the appropriate chapter of AR 27-20 in the same way as any other tort claim against the Army except that the claim is paid with nonappropriated funds rather than appropriated funds. Accordingly, if a NAFI employee causes injury, death, or property damage while operating a NAFI vehicle within the United States, claims arising from the incident would be paid under AR 27-20, chapter 4. However, if the incident occurred outside the United States, claims arising would be paid under chapter 3 or 10, depending upon whether the claimant was a soldier's family member or a foreign inhabitant.

(2) The second category consists of claims that NAFIs pay as a matter of policy to encourage the use of their sports activities as well as the quarters-based family child care (FCC) program established under AR 608-10, Child Development Services. No statute imposes liability on the United States for this category of claim as the tortfeasor either is not a United States employee or, if a U.S. employee, is not acting within the scope of employment. Claims arising out of sports activities are cognizable when an authorized user of sports property uses the property in an authorized manner. FCC claims are cognizable if the injury or death of a child is caused by the negligent or wrongful act or omission of a child-care provider.

(3) In certain instances, proportionate payment of the same claim out of both nonappropriated funds and appropriated funds may be necessary, when it is determined that both NAFI and appropriated fund employees are liable. In such instances, the amount payable must be pro-rated according to the degree of liability attributable to each category of employee. The claims file must show whether each involved tortfeasor is paid from APF or NAF funds.

(4) Where either an authorized user or a FCC provider is insured by a personal liability policy, the insured is considered primarily liable and the Army is secondarily liable. When the NAFI activity, such as a flying or parachute club, is insured, that insurance is the primary source of recovery. Additionally, in certain foreign countries, NAFI vehicles are covered by liability insurance.

b. A close working relationship with the NAFI and AAFES management at the installation will help claims personnel identify and process tort claims, under chapter 12 and AR 215-1. At some installations, NAFI or AAFES personnel settle small claims themselves without referring them to the field claims office since they use the local accounts to pay small claims. Avoid this practice.

c. Both AR 27-20 and AR 215-1 require the CJA or claims attorney to settle tort claims. NAFI or AAFES managers have authority to adjust many customer complaints in regard to property purchased or services obtained at the facility.

- For example, a customer complains that an AAFES service station failed to perform proper service on a vehicle or that a product purchased at the PX or NAFI resale store is defective. Refer a customer who tries to file a claim about such matters to the exchange manager for AAFES complaints, or to the supervisor of the NAFI activity for resolution. Before referring the customer back to the activity, the CJA or claims attorney should discuss the referral with the exchange manager or NAFI supervisor, with the goal of helping the claimant resolve the complaint.
- For complaints and claims arising from exchange activities including concessionaires, see Exchange Service Manual 57-2.
- For claims arising from other NAFIs, see AR 215- 1, chapter 3.
- For claims arising from APF laundry and dry cleaning operations, see AR 210-130, chapter 2.
- For claims for refunds of sales proceeds, see AR 37-103, chapter 16.

Use and exhaust these procedures before considering the claim under AR 27-20.

d. NAFI or AAFES claims are identified by the status of the person responsible for the act or omission that gives rise to liability. These claims may involve loss or injury due to defectively maintained property. Investigate the issue of responsibility carefully to determine who owns the property or is responsible for its maintenance. If a claim concerns a structure or plant, determine whether the building was built or modified with nonappropriated funds and learn its design. Even if it was built or modified with appropriated funds, the NAFI or AAFES is likely to be responsible for its maintenance, which it pays for with nonappropriated funds. If that is the case, the claim will be paid with nonappropriated funds. If the NAFI is responsible but the identity of the negligent person cannot be determined, the claim is still paid with nonappropriated funds. For cases in which the NAFI manager was aware of a hazard but failed to take adequate steps to safeguard the public (such as marking broken steps), a claim for injury caused by that defect is payable with nonappropriated funds. In contrast, if the NAFI manager has placed work orders with the local engineers (part of an appropriated fund activity) for repair of a facility constructed with appropriated funds and if these orders have not yet been completed through no fault of the NAFI, the claim is payable with appropriated funds. Claims in which there is a basis for payment from either fund are paid ratably from each fund source.

e. A NAFI claim may be payable in part by appropriated funds when an appropriated fund activity is partially liable. For example, a local agency failed to maintain a building facility in which someone has fallen or failed to adjust the water temperature in a FCC quarters in which a child is burned by hot water.

f. Identify NAFI or AAFES claims according to these guidelines:

(1) NAFI claims must be distinguished from those arising from the activities of a private association, such as a post stable or golf course, thrift shop, spouses' or wives' clubs or activities created especially for a fund drive. The Army is not responsible for private association claims except to the extent of its participation in the activity. See FTCA Handbook, section II, paragraph B2i. As a matter of good practice, private associations and activities that are required to maintain liability insurance coverage should include the United States as a named insured to preclude the insurer's claim for indemnity or contribution.

(2) AAFES claims arising on an Army post are the Army's responsibility and those that arise on an Air Force base are the Air Force's responsibility. Off post or off base claims arising from the shipment of AAFES merchandise or supplies in an AAFES vehicle usually involve shipments originating from a DOD depot; for this reason, the Army usually assumes responsibility for the claim. When the Air Force assumes responsibility, the ACO or CPO should fully cooperate with its sister service.

12–2. Claims by employees for losses incident to employment

Adjudicate these claims in accordance with chapter 11. Pay approved claims pursuant to paragraph 2-100h.

12–3. Claims generated by acts or omissions of employees

Investigate claims generated by acts or omissions of employees as tort claims in accordance with the procedures set forth in chapter 2.

12–4. Persons generating liability

See AR 27-20, paragraph 2-2*c*(4), and paragraph 2-2*b* of this publication.

12–5. Claims payable from appropriated funds

See chapter 2, section V, of this publication. NAFI claims may involve losses due to defectively maintained property. Investigate carefully to determine who owns the property or is responsible for its maintenance.

12–6. Settlement authority

See chapter 2, section IX.

12–7. Payment

See paragraph 2-100*h*.

Section II
Claims Involving Persons Other Than NAF Employees

12–8. Claims arising from activities of NAF contractors

See paragraphs 2-22, 2-23, and 2-29.

12–9. Non NAFI RIMP claims

a. Under certain conditions, claims caused by authorized users of NAFI property are deemed payable pursuant to the Army's policy of encouraging the use of NAFI sports activities. These claims may be filed against NAFIs when an authorized user of NAFI property has caused property damage or injury to a third person (who may also be an authorized user). These claims are investigated as fully as FTCA or MCA claims. Accordingly, the authorized user must be found to have acted negligently in causing the damage or injury that is the subject of the claim—strict liability is not a basis for compensation. Soldiers or authorized NAFI users are not considered employees or agents of the United States.

b. Claims against participants in NAFI sports activities who use NAFI personal property in the manner authorized and cause personal injury, death or property loss or damage to others may be payable as non NAFI RIMP claims. While the participant may be a U.S. soldier or employee, there is no scope of employment requirement. Thus, a soldier who takes flying lessons during leisure time is not acting within scope of employment and, of course, a flight instructor who is an independent contractor is not considered within scope. Similarly, claims based upon the operation of a golf cart, water equipment, or other sports equipment by a participant are non NAFI RIMP claims. See FTCA Handbook, section II, paragraphs B2k and B3.

c. The following elements are necessary for a finding of liability:

(1) The property involved must be NAFI property as defined in the current MWR Update glossary. Real property is not included.

(2) The activity involved must be a NAFI. Certain types of activities, such as parachute clubs or flying clubs, may be organized as NAFIs or as private organizations. If the organization involved is not a NAFI, the claim is not payable as an authorized user claim with nonappropriated funds.

(3) The activity involved must be a NAFI whose specific purpose is the performance of sports activities. Specifically excluded from this category are theaters, exchanges and snack bars.

(4) The claim must arise from the use of NAFI property by a soldier or an authorized user. Defined in the MWR Update glossary, "authorized users" include guests who meet the requirements for extension of guest privileges. For example, if the NAFI requires a guest to sign in, check the sign-in sheet to be certain that the person was a proper guest.

d. A claim is excluded from coverage if it would not be payable under the FTCA (aside from scope of employment issues or because the tortfeasor is not a U.S. employee). Among the more common types of excluded incidents are claims barred by the Feres doctrine. For example, two active duty soldiers are golfing together at a NAFI golf course. One player negligently operates the golf cart, striking the other player. The claim is Feres-barred. A similar exclusion may arise under FECA, which covers certain sports injuries.

e. Always check for alternative bases of liability. For example, the NAFI property may be negligently maintained or NAFI employees may have failed to properly supervise the activity causing the harm. Where alternative bases for liability exist, the claim will be paid as an "authorized user" claim if the tortfeasor's authorized user status is one of the theories of liability.

f. Another frequently encountered claim is that involving FCC providers. See FTCA Handbook, section II, paragraph B2k.

(1) *General.* AR 608-10, section III, figure 12-2 and AR 215-1 describe the quarters-based FCC program. Care provided by child-care centers or chaplain cooperative nurseries is not covered. It is important to recognize that FCC providers are not U.S. employees but private persons whose activities are regulated by the installation commander.

(a) To encourage their participation in the program, the Army has adopted the policy of paying for personal injury or wrongful death claims arising from certain negligent acts or omissions committed by these child-care providers. The claim or action must be based on a negligent act or omission, however. FCC providers are not covered under RIMP for injury or death occurring to their own child, step-child, or foster child, to any other child who resides in the provider's household on a permanent basis (more than 60 days), or to any child not eligible for child care at a Child Development Services (CDS) center. Also excluded are any claims or actions for property that may have been lost or damaged during the course of providing child care. Finally, claims for injuries or other losses caused by the operation of a motor vehicle, regardless of the degree of negligence, if any, displayed on the part of the FCC provider, are not payable.

(b) Settlements are limited to $500,000 per claims incident. Coverage overseas is limited to children and providers authorized logistical support and protection under a status of forces agreement (SOFA).

(c) Personnel who review FCC programs should carefully scrutinize local procedures to ensure that CDS maintains adequate supervision over FCC providers. A memorandum of understanding should be executed between the ACO or CPO and the CDS coordinator on processing FCC claims, setting forth both the legal support provided to the FCC program and the requirements for investigating potential claims incidents that occur in a FCC home. The MOU should state that the FCC director must report immediately to the ACO or CPO any event creating potential liability; it should also outline procedures for the ACO or CPO to investigate all such incidents with the help of CDS personnel. In addition, it should require legal review of the local FCC program, including any changes made thereafter.

(2) *The role of the ACO or CPO.*

(a) Investigation. Investigate potential claims arising in FCC homes the same way any other incident is investigated. An individual's designation as a FCC provider requires that person to execute an agreement allowing claims personnel to investigate all potential claims. This agreement grants the provider's consent to inspect quarters and is specifically intended to facilitate claims investigation, the nature of which is set forth at paragraph 2-54. At some installations, the Administrative Law Section of OSJA, rather than the claims office, provides formal legal review and advice to the FCC program. The Administrative Law Section and claims office should cooperate in reviewing actions taken and advice provided to the FCC program. Any training conducted for FCC providers should be coordinated with the CJA.

(b) Suits against FCC providers individually.

1. Occasionally, a party will file a lawsuit against a FCC provider individually without filing a claim and without naming the United States as a defendant. Approach this situation with caution. Remember that the FCC provider is not an employee of the United States. An action against the FCC provider individually is not governed by the FTCA or the MCA; accordingly, State law controls the action. State civil procedure applies, as does State substantive tort law. Certain situations are excluded, such as willful torts and automobile accidents while the FCC provider is engaged in transporting children. In addition, payments are limited to $500,000.

2. Representation by a private attorney increases the cost to the

provider and complicates the claim's resolution. However, the FCC provider must not be subjected to a default judgment, which may result when there is delay in resolving questions of representation. Accordingly, when a FCC provider seeks advice from the claims office, give the matter prompt attention and contact an AAO immediately. Close coordination with the Army Litigation Center is also necessary.

3. The AAO will seek to have the court dismiss the legal action against the FCC provider and the plaintiff file an administrative claim. The plaintiff's attorney must be contacted immediately and informed that the FCC provider is not a Federal employee and that an administrative claim should be filed and the suit dismissed. In most States, a voluntary dismissal without prejudice does not prevent a suit from being filed later if the claim cannot be resolved. Most States toll the SOL for the plaintiff's minority.

4. Many Army installations maintain golf courses surrounded or intersected by roads that carry the general public. Often, claims are filed after a golf ball strikes a car that someone is driving on such a road. While not cognizable under AR 27-20, chapter 11, these claims may be payable in tort if there is some basis for negligence on the part of the United States. It may be negligent to construct a golf course next to a road or to construct a road through or around a golf course, without taking reasonable measures to prevent golf balls from leaving the course. For example, if a green is situated next to a road, some measures (such as a fence) may be necessary to prevent golf drives to the green from striking a car. Similarly, if a tee and fairway are situated next to a main road, the activity should take some measures (such as a screen of trees) to prevent golf balls from striking vehicles on the road. Determine whether local law recognizes liability on the part of the golfer. In this connection, be sure to examine whether the golfer was negligent or merely unlucky. The negligent golfer should be required to pay for the damage or share liability with the United States. If the golfer cannot be identified, as is often the case, no assumption can be made about the golfer's negligence. When, however, the course's design or layout presents issues of negligence, a compromise settlement for out-of-pocket expenses may be negotiated. Payment should be made from appropriated funds unless responsibility for the negligent act is that of the NAFI. It is not appropriate to deny liability simply because future claims may result. Claims personnel and NAF personnel should work together to identify the risks of future liability and institute measures to reduce it.

12–10. Claims payable

See paragraph 12-7.

12–11. Procedures

See chapter 2, sections I, IV and X.

12–12. Settlement authority

See chapter 2, section IX.

Section IV.
Claims against NAF Activities-Tort Program

14-14. Types of claims and approval procedures

a. Claims covered by this section include—

(1) Claims against NAFI. (tort claims) due to acts or omissions of the NAFI, or its employees.

(2) Claims by employees of NAFIs for loss, damage, or destruction of personal property incident to their employment.

(3) Claims arising out of the activities of members or authorized users of NAF property.

(4) Claims arising out of the activities of FCC providers (para 14-20).

b. Workers compensation claims procedures are prescribed in Section XV.

c. Procedures for settling and paying tort claims are set forth in AR 27-20, chapter 12. The ACIF acts as a disbursing agent for the payment of claims settled by claims approval and settlement authorities under the provisions of AR 27-20, or by the Department of Defense.

14-15. Tort claims

a. Claims against NAFIs as described in paragraph 14-14 are investigated, processed, and settled by claims approval and settlement authorities using the procedures described in AR 27-20 and this regulation. Procedures for claims arising out of activities of FCC providers are outlined in AR 27-20 and paragraph 14-20 of this chapter. Separate procedures for claims arising from flying activities are outlined in paragraph 14.61.

b. Generally, NAFIs may not procure or pay for public liability insurance. Exceptions may be requested through channels to the Director, Resource Management, USACFSC.

c. Claims may arise from the activities of—

(1) NAF civilian employees of NAF activities.

(2) Active duty military personnel while performing off-duty, part-time work compensated from NAFs.

(3) Members of recreational NAFIs or authorized users of NAF recreational property, while using such property, except real property, in the manner and for the purposes authorized by DA regulations and/or the charter, constitution, or bylaws of the particular NAF membership activity.

(4) FCC providers, members of their households, and substitute providers as prescribed in paragraph 14-20 of this chapter.

d. Litigation:

(1) Civil action brought against a NAFI, its officials, or employees, based on acts or omissions committed within the scope of their duties or employment, is reported per AR 27-40, chapter 2. Actions normally are defended by the Department of Justice, and legal representation is obtained as prescribed in AR 27-40, chapter 3.

(2) If a soldier, employee, or other authorized user of NAF property is sued individually because of an alleged act or omission committed while using NAF property, and if TJAG or designee determines the property was being used in the manner and for the purpose authorized, NAFs may be used to pay expenses incident to the suit, judgments, and compromise settlements.

(3) The filing of such suits are reported per AR 27-40. The report may include a request for authority to employ civilian counsel. Instructions are issued that provide guidance to persons who might be sued individually in connection with the use of fund property. The instructions will direct the person, upon being served, to deliver the summons immediately to the responsible NAFI fund manager, to cooperate fully with the NAFI representative to defend against suit, and to refrain from making any statement except as permitted by this regulation.

(4) Only TJAG or a designee may authorize employing civilian counsel.

(5) If authority to employ civilian counsel is granted, TJAG or a designee will—

(a) Issue instructions to attorneys who are employed pursuant to this authority.

(b) Determine whether a compromise offer should be accepted and paid.

(c) Determine whether satisfaction of the judgment rendered against the individual sued is properly the responsibility of the NAFI involved.

(6) Upon certification by TJAG or designee that payment of attorney fees, litigation expenses, compromises, and judgments is proper, payment is made per AR 27-20, chapter 12. Expenses incident to suits arising out of the operations of NAFIs, other than those of the AAFES, are paid by the ACIF.

14-16. Investigation of claims-fund manager's role

a. Any incident involving personal injury or property damage can result in a claim. Even where no

Figure 12-1. Extract from AR 215-1—Continued

injury or damage is apparent, established claims procedures are followed in the event a claim is filed at some future date. Any incident which may potentially cause a claim requires the guidance of the local staff judge advocate.

b. Fund managers should establish local procedures to ensure—

(1) All incidents are reported to the fund manager.

(2) Employees understand the importance of recording relevant information such as date, time, and place of incident; injured person's name, address and phone number; names of witnesses; condition of premises; nature of injury or damage to property; and any statements made by persons involved.

c. Upon learning of any incident that may result in a claim, the fund manager must-

(1) Notify the appropriate claims judge advocate (CJA).

(2) Provide the CJA with all relevant information recorded as the time the incident occurred. The fund manager should also report other information which may have a bearing on the incident, such as specific instructions or warnings provided to patrons; documented efforts to repair known defects; and agreements with patrons, such as rental agreements, waivers, and hold harmless agreements used with recreational equipment and facilities or in conjunction with particular activities.

(3) Notify the ACIF (CFSC-RM-I) within 3 days, in writing, of claims known to exceed $5,000, or of any claim involving death or serious personal injury. Per AR 27-20, paragraph 12-3c, the CJA will notify the ACIF of claims against NAFIs that are filed in excess of $15,000.

(4) Direct all communication and correspondence regarding the incident or claim to the appropriate CJA. Fund managers have no authority to pay bills or expenses related to a claim or to attempt to settle a claim.

(5) Follow procedures for payment of claims set forth in paragraph 14-19.

d. Separate procedures apply for incidents and claims arising from flying and parachute activities. Guidance is located in paragraph 14-61.

14-17. Claims by employees

Claims by employees of NAFIs for loss, damage, or destruction of personal property incident to their employment are investigated and processed per AR 27-20, chapters 2, 11, and 12. Claims are paid from NAFs.

14-18. Contract claims

The SJA will be consulted when it is unclear whether a case should be processed as a contract claim under AR 215-4 or as a tort claims under AR 27-20.

14-19. Payment of claims

a. The settlement or approving authority responsible for adjudicating the claim determines whether a claim is payable or not, what amount is to be paid, and whether payment is to be made from NAFs or APFs.

b. Procedures for payment are outlined in AR 27-20, paragraph 12-7.

(1) Valid claims of $100,000 or less are paid by the NAFI sustaining the loss.

(2) Valid claims in excess of $100,00 are sent by the CJA to the ACIF for payment in full if approved by the settlement authority. Payment is not made by the NAFI.

Section V
Claims Against FCC Providers

14-20. Establishment of FCC Claims Program activities

Effective 1 October 1985, RIMP established a program to provide payment of certain claims arising from the activities of FCC providers. To be cognizable, claims must arise from child care activities provided as part of the quarters-based system of child care authorized by AR 608-10.

14-21. Claims

a. The processing of claims arising from the activities of FCC providers while providing care under the FCC program is set forth in AR 27-20, chapter 12. Such claims are generally limited to injuries or death of children receiving care under the FCC program due to the negligence of the FCC provider, authorized members of that provider's household, and approved substitute providers. Claims arising from the transportation of such children in motor vehicles and claims involving loss or damage of property are not cognizable. The total payment for all claims (including derivative claims) arising as a result of injury to or death of any one person is limited to $500,000 for each incident. Continuous or repeated exposure to substantially similar general harmful activity or conditions is treated as one incident for purposes of determining the limit of liability.

b. The claims settlement or approving authority determines the liability and the amount of the award. If a decision has to be made whether to pay from NAFs or APRs, the matter should be referred to Commander, U.S. Army Claims Service (USARCS), ATTN: JACS-TCD, Fort Meade, MD 20755, for

Figure 12-1. Extract from AR 215-1—Continued

resolution. If a claim is found meritorious and payable from NAFs, payment is made by RIMP per paragraph 14-14 and AR 27-20, chapter 12. Upon certification that costs are proper, payment is made by RIMP.

c. Claims authorities in the field may ask, through the Commander, USARCS, for an advisory opinion from the USACFSC, prior to settling any claim arising under paragraph a above, where it is not clear that the injured or deceased child was receiving care within the scope of the FCC program.

14-22. Reporting requirements

a. All incidents of personal injury and death to children under the care of a FCC provider are reported by the FCC provider to the FCC director, who immediately reports to the local CJA. The Child Development Services (CDS) coordinator must cooperate with the CJA in investigating and resolving all claims. CDS coordinators will inform RIMP (CFSC-RM-I), by letter within 3 days, of any claim arising from the activities of FCC providers while providing care under the FCC program (exempt report, AR 335-15.)

b. The CDS coordinator reports the name, social security number, and date of certification for each fully or provisionally certified FCC provider at each installation or community and provides a copy to the MWR fund manger or APF contracting office as appropriate to RIMP as of 1 October of each year. This information is used in a database of providers and assists in determining authorized NAF claims costs to be billed to the installation or community. The authorized USACFSC NAF claims costs associated with the FCC program is determined by the Commander, USACFSC, or his designee. Throughout the year, additional providers certified after 1 October are reported to RIMP. Certified providers who transfer to another installation or community need not be reported by the new installation or community until 1 October of the next year.

c. All certified FCC providers as of 1 October each year are billed for the period 1 October through 30 September. Providers who are certified from 1 April through 30 September, or 1 July through 30 September pay a pro-rated amount determined annually. This amount covers the fiscal year, even if the provider moves to another installation or community. Therefore, there will be no refund from RIMP.

d. APFs are used to pay FCC claims fund cost, per the Military Child Care Act (MCCA).

14-23. Private Insurance

The RIMP program is intended to provide certain limited claims relief as described in AR 27-20, chapter 12. It is not a substitute for private liability insurance. Whether or not to carry private liability insurance is an independent business decision made by the FCC provider.

Figure 12-1. Extract from AR 215-1

6-19. Claims Arising from the Activities of FCC Providers.

a. Effective 1 October 85, the Army Risk Management Program (RIMP) established a program to provide for the payment of certain claims arising f the activities of FCC providers. To be cognizable, claims must arise from child care provided as part of the quarter based system of care authorized by this regulation. See AR 27-20, Chapter 12 and AR 215-1, Chapter 14 for details regarding this claims program.

b. A Provider Statement of Understanding Regarding Family Child Care (fig 6-3) will be reproduced locally and will be signed by each fully certified and provisionally certified FCC provider as part of the certification process. A copy of the signed Statement of Understanding will e retained on file within the FCC system.

c. A Parental Statement of Understanding Regarding Family Child Care (fig 6-4), with optional permission/waiver regarding transportation of children in private vehicles, must be signed by the parent/guardian of the child for whom care is provided.

d. Authorized NAF claims costs associated with the FCC program will be determined by the Commander, USACFSC, or his designee. Once so determined, the local morale, welfare, and recreation fund will be assessed its share of these costs by the individual FCC provider prior to provisional certification and annually thereafter. tion Financial Management Division will issue duplicate prenumbered receipts. A copy of this receipt will be kept in the FCC provider's file and the provider will keep the other copy. There are no refunds when a provider leaves the program. However, if a provider transfers to a new installation during the fiscal year, the provider should show the receipt at the new installation.

e. The claims program established by RIMP is intended to provide certain limited claims relief as described in AR 27-20, Chapter 12 and AR 215-1, Chapter 14. It is not a substitute for private liability insurance. Whether to carry private liability insurance is an independent business decision to be made by the FCC provider. Regardless of the decision to carry private insurance, any payment due the local MWR fund as described above is preconditioned to participation in the FCC program.

f. FCC director/outreach workers will provide each fully certified and provisionally certified FCC provider a summary of all regulatory guidance and local SOPs that govern the provision of FCC on the installation. A copy of the regulation will be available for FCC provider review upon request.

Figure 12-2. Extract from AR 608-10

Chapter 13
Claims Office Administration

Section I
Records and File Management

13–1. Records

a. DA Form 1667, Claims Journal for (Personnel) (Tort) (Affirmative) Claims. Each event requiring entry in the journal will be recorded immediately upon receipt of information regarding that event.

b. Automated claims data base.

(1) *Purpose.* The USARCS Claims Legal Automated Information Management System (CLAIMS) provides SJAs, supervising attorneys, and field claims officers, as well as the Commander, USARCS, with timely and accurate data, claims management reports, and budget information for better claims office management.

(2) *Software requirements.* USARCS provides four claims management programs: Tort Claims, Personnel Claims, Affirmative Claims, and Affirmative Claims/Potentials. USARCS continually refines and improves the software. Revised versions will be numbered sequentially and sent to each field claims office as they become available. Each new version is cumulative, containing the refinements present in all previous versions. Additionally, each new version will accept the claims data already in the system. Thus, there will be no need to reenter the claims data as new programs are brought on-line.

(3) *Documentation.* Each of the four claims data management programs includes a documentation book describing, in detail, how the program is organized and how it operates. Written for claims personnel who use the CLAIMS system, this is the operator's manual for the software. USARCS updates and distributes these books to explain major changes and improvements in the software.

(4) *Office codes.* Each field claims office and foreign claims commission (FCC) is identified by an automated office code assigned by the Information Management Office, USARCS. This code consists of three letters and/or digits, depending on the type and location of the claims office. A complete list of all office codes is contained in the claims management program user manuals.

(5) *Claim numbers.* When each claim is recorded, the claims program assigns it a nine-digit claim number. This claim number does not change; it remains the same even if the claim is transferred to USARCS or another claims office. The only exception to this rule occurs when a claim is opened as a tort claim and claims office personnel later decide to pay it as a personnel claim, or vice-versa. Because the CLAIMS applications separate personnel and tort claims, the old claim must be closed out and a new claim opened on the appropriate CLAIMS application. The nine-character claim number consists of the last two digits of the fiscal year, the three-digit office code, and a four-character claim sequence number. Personnel claims are numbered from the start of the fiscal year with a four-digit claims sequence number that begins with "0001." Tort and special claims are identified with a "T" and a three-digit sequence number. Affirmative claims are identified with an "A" and a four-digit sequence number. For example, "97-281-0029" identifies the 29th personnel claim filed at the Fort Gordon claims office in FY 97; "97-344-T005" identifies the fifth tort claim filed at Walter Reed Army Medical Center, Washington, DC, in FY 97; and "97-011-A0055" identifies the 55th affirmative claim opened at Fort Lewis in FY 97. The CLAIMS software automatically assigns the next consecutive claims sequence number to each new claim entered into the database.

(6) *Claims office automation procedures.*

(a) Daily entry of data. Daily entry of data into the system is essential for successful operation. Do not wait several days and then attempt to backdate claims data. Many of the system's functions, including the recording of obligation data, are designed to register the current date.

(b) Computer problems. Claims personnel should follow the instructions carefully. Problems arise when computer-literate claims personnel try to skip steps and second-guess the system. Both the program and documentation have been carefully considered; each step is necessary.

(c) Review of claims data. The claims officer, CJA, or claims attorney must be personally involved in reviewing the claims data for accuracy and in selecting proper category codes. Unless these codes are carefully selected, the system will be unable to provide accurate data for trend analysis.

(d) Backup claims data. Backup of claims data is critical. Duplication allows offices to recover data when computers malfunction; the unacceptable alternative is to re-key the lost data manually. Claims personnel will back up the data files daily and rotate backup diskettes so they have five sets of backups (that is, one for each day of the week).

(e) Claims of other Services. Do not enter into the personnel claims database claims from Air Force or Navy personnel. Forward any such claims received to the appropriate service. The claimant code ("S") should be used for only those claims from other service personnel erroneously entered into the database (for example, when a soldier fails to make known his status at the time the claim is filed). When this happens, use the "TS" transaction code to show that the claim was forwarded to the appropriate service and move the claim record to the desired database. Keep a record of Navy and Air Force claims received and forwarded in the back of the claims journal as a paper-trail, should a statute of limitations question arise later. However, some claims may require action by both the Army and another service. For example, a claim filed by a member of another service which alleges Army negligence may be cognizable under the Personnel Claims Act against the claimant's own service, but also cognizable against the Army under the Military Claims Act. Another example is a claim alleging negligence by more than one service, such as a claim of medical malpractice in an Army medical treatment facility as well as in that of one or more other services. In such instances, the file will remain open in the torts database, but no entry should be made in the personnel database. All tort claims against the services will be date-stamped and entered into the Claims database. Filing a claim against any service satisfies the FTCA requirement of filing with the correct agency.

(f) Nonappropriated fund claims. Nonappropriated fund (NAF) claims brought under AR 27-20, chapter 12, are processed in the same manner as other claims. Once the claim is adjudicated, the amount that the nonappropriated fund instrumentality (NAFI) was directed to pay will be entered into the claims record. The computer program is designed not to subtract the approved amount from the claims office's Claims Expenditure Allowance if the correct transaction code "NF" (nonappropriated fund) is used. The claim file is then forwarded to the NAFI for payment. A settled NAF claim will be transferred to the retired database, as are other claims records.

(g) Foreign claims commission databases. Note that, for OCONUS command claims services and claims offices with active FCCs, each FCC has a separate office code and is considered a separate "office" for purposes of data entry and claims reporting. Each FCC must have a database separate from that of the command claims service or field claims office. See the Tort and Special Claims Management Program User's Manual for further explanation.

(h) Converting a personnel claim from, or to, a tort claim. Occasionally, when a claim is opened under one chapter of AR 27-20, claims office personnel later decide to process the claim under another chapter. Because the CLAIMS system has separate programs for personnel claims and tort claims, the old claim must be closed out under the former system and a new claim opened in the latter. Detailed instructions are provided in the program documentation.

(i) Field carrier recovery entries. USARCS requires certain carrier recovery information be completed in the "GBL Recovery" and "Non-GBL Recovery" block(s) of the computer claim record. See the Personnel Claims Management Program User's Manual for exact procedures.

(j) Recording refunds from claimants. When a claimant refunds money on a personnel claim that the claims office has already paid, use the screen called "Non-GBL Recovery."

(k) Archiving retired claims files. The archive program will be executed at the end of the fiscal year. Before archiving records, ensure the current data transfer to USARCS has been executed successfully and any errors have been corrected. Two backup copies of the current database will be made before starting the archive process. File one copy in a safe location at the claims office; send the second copy electronically to USARCS and verify that it has been received. Affirmative claims data need not be forwarded to USARCS. See the appropriate user's manual for instructions to reopen this archive disk.

c. Investigative files. The investigative file will be merged into a claims file when a claim is filed or asserted. Investigative files not otherwise merged into a claims file will be retained until transferred to another Army claims office or until the time for filing a claim has expired.

13–2. Arrangement of claims files

a. General file order. Every file for a claim against the United States must contain, in addition to the requirements of paragraph 12-14, the following:

(1) For files that have been processed under the automated claims data management system, the claims summary report printout of the data pertaining to that claim.

(2) For claims that have been paid, in whole or in part, a copy of the settlement agreement, if any, and the certified copy of the paid voucher (comeback copy from the Defense Accounting Office).

(3) The action or recommendation.

(4) The claim (initial and any amendment).

(5) The report of the CJA or claims attorney, with exhibits.

b. Assembling files for centralized recovery action. When a file is forwarded to USARCS or a command claims office, it is prepared in accordance with paragraph 11-32 and figure 11-35 of this publication.

13–3. Disposition of claims files

a. Transfer of claims files between claims offices. When it is necessary to transfer an open claim to USARCS or another Army claims office, transfer the claims file with an accompanying diskette containing the computerized record of that claim. The file will retain the claim number assigned to it by the original office and all the original claims office data will remain valid. Transferring the diskette in this manner will relieve the gaining office of having to enter the data into its database manually; more importantly, it will reduce erroneous data entry. Each claims program allows copying of individual records to a floppy disk. This capability was provided to allow transfer of both the paper file and the computer record when responsibility for further action has been transferred to another field claims office. When the gaining office adds the record to its database, the record retains its original claim number without affecting the numbering sequence of the gaining office.

b. Transfer of files (except for affirmative claims) to a claims service. When transferring claims files to USARCS or a command claims service, a diskette may be necessary; the decision to use it will depend on the type of claims file and the reason for its transfer. When transferring a file to USARCS for recovery or retirement, there is no need to send a diskette with the paper file. USARCS will receive the computer records when the field claims office forwards its monthly data containing all their claims records. Observe the following rules when forwarding claims files to USARCS or a command claims service:

(1) For tort claim files forwarded for settlement action, include a diskette containing the pertinent claims data.

(2) For tort claims forwarded to USARCS for retirement, do not send a diskette. Instead, insert a paper screen (a printout of the individual claim file) at the beginning of the claims file. USARCS will use the paper screen as an interim case summary, as well as for internal routing purposes, until the automated data files arrive as part of the monthly input.

(3) For personnel claims files forwarded for settlement or reconsideration action, include a diskette containing the record of that claim.

(4) For personnel claims files forwarded for recovery or retirement action, do not send a diskette. Follow the procedures for holding and forwarding files described in paragraph 11-32. USARCS will receive the computer records on these claims when the monthly data upload is forwarded.

(5) For all personnel claims files forwarded to USARCS, mark the file folder on the outside in the manner described in paragraph 11-32. The automation of files has not changed this long-standing requirement.

(6) OCONUS claims offices will follow the instructions of their supervising command claims services when sending records to them.

(7) Claims offices will ensure that the last transaction recorded in the electronic claim record specifies the reason for forwarding the claim. See the appropriate user manual for the correct transaction code.

c. Forwarding claims files for retirement. It is not necessary to enter a destination office code when closing out files and sending them to USARCS for retirement. The transaction code "forwarded to USARCS for retirement, all action completed (FF)" is sufficient to indicate the forwarding destination.

d. Forwarding claim files for offset action. See instructions relating to offset actions in paragraph 11-33.

e. Transfer of files.

(1) The file of a claim transferred for action to USARCS or another Army claims office will be closed-out at the sending office, upon transfer. All companion claims will be simultaneously transferred; those received at a later date will be transferred to the same office upon receipt. If the transferring office will continue to play a role in processing, investigating, or settling the case, it will duplicate and retain as much of the file as necessary until all claims are closed. The retained file thereafter will be handled and disposed of as an organizational record.

(2) When responsibility for processing the claim is transferred to another Federal agency, the file will be closed and a skeleton file (such as one containing the SF 95 with its attachments and basic correspondence) will be retained and disposed of as an organizational record. If primary jurisdiction cannot be determined, a complete file will be kept until final action is taken or primary jurisdiction is determined.

(3) When a tort claimant files suit, the file will be closed and coordination will be made with the USARCS AAO by telephone, concerning the disposition of the field claims file. The file will be kept by the local claims office, which will prepare the litigation report, and the USARCS mirror file will be forwarded to the Litigation Division, OTJAG. All quality assurance information (as defined in AR 40-68) will be removed from the file.

f. Closing abandoned or withdrawn files.

(1) *Personnel claims.*

(a) Personnel claims arising under chapter 11 will be administratively closed in the following situations:

1. The claimant cannot be located.

2. The claimant affirmatively withdraws or abandons the claim prior to adjudication. Such files will contain evidence of the claimant's intention to abandon, such as a letter from the claimant or a memorandum of a telephone conversation with the claimant.

3. Other reasons which preclude settlement of the claim.

(b) However, when claimants have neither affirmatively abandoned nor fully substantiated a claim cognizable under chapter 11, they will be directed by certified mail to provide the required substantiation within a specified period, usually 10 days. If correspondence is returned as undeliverable, and the claimant is an active duty soldier, a current military address can usually be obtained from the Commander, U.S. Army Enlisted Records and Evaluation Center, Army Worldwide Locator Service, ATTN: PCRE-RF, Fort Benjamin Harrison, IN 46249-5301. If the claimant fails to respond, the

claim will be paid if it is meritorious and can be substantiated; otherwise, it will be disapproved.

(2) Tort claims. Each file will contain evidence of claimant's intention to withdraw or abandon the claim, such as a letter or a memorandum for record of a telephone conversation with claimant. Before apparently abandoned claims are forwarded to USARCS, a certified letter will be sent to the claimant requesting a statement of intentions be provided within a specified period, usually 30 days. For further discussion, see paragraph 2-95*a*. If no reply is received within this time, the files may be closed and forwarded to USARCS, except as follows:

(a) Tort claims arising under chapter 4. The certified letter will include a paragraph stating that failure to respond will result in the presumption that the claim is abandoned; furthermore, it will state that if the claimant is dissatisfied with the action taken, the claimant may file suit in an appropriate U.S. District Court no later than six months from the date of mailing the letter or be forever barred from remedy.

(b) Tort claims arising under chapter 3. The letter's last paragraph will advise the claimant that failure to respond will result in the presumption that the claim is abandoned. This paragraph will also state that a claimant who is dissatisfied with the action taken has a right to appeal the action for a review and final decision. The paragraph will clearly state that the claimant has 60 days in which to submit an appeal.

(c) Only after each of the above actions has been completed may a tort claim be considered to have been abandoned, and only then will it be forwarded to USARCS for retirement. If correspondence to a claimant is returned as undelivered, and the claimant is an active duty soldier, a current military address can usually be obtained from the Commander, U.S. Army Enlisted Records and Evaluation Center, Army Worldwide Locator Service, ATTN: PCRE-RF, Fort Benjamin Harrison, IN 46249-5301.

13–4. Retrieval of claims files

a. Field claims office personnel occasionally need to review files that have been sent to USARCS for centralized recovery or retirement (for example: action on a "late" reconsideration request). When requesting the return of a file from USARCS (either in writing or by telephone), the requesting office must provide the following:

(1) Claim number.

(2) Claimant's name.

(3) Date the file was forwarded to USARCS.

(4) Name of the Government Bill of Lading (GBL) carrier (if the claim was a household goods or hold baggage shipment claim).

(5) Whether the file was forwarded for retirement or centralized recovery.

(6) The reason the file is requested.

b. If USARCS has already acted on a request for reconsideration on a personnel claim, the file will not be returned to a field claims office for action on a second request for reconsideration. In such cases, the request will be sent to USARCS.

13–5. Certified and registered mail

With the exception of final actions on personnel claims, use certified or registered mail (return receipt requested) for all denials, final offers, and other final actions sent to claimants. By Memorandum dated 1 June 1987, Subject: Use of Special Mail Services, TJAG authorized the use of certified or registered mail (return receipt requested) to notify claimants before administratively closing any claim file as "abandoned."

13–6. Maintenance of claims files

a. Except as required by paragraph 2-14, the contents of each file containing a claim against the United States will be placed in a standard 9-1/4 inch by 11-3/4 inch manila folder. The claimant's name will be placed on the top-left portion of the file folder exactly as it has been entered into the automated claims management data base. The complete nine-digit computer-generated claim number displayed in the automated database will be placed on the top right-hand side of the folder. The fiscal year, office code, and claim sequence number will be separated by a dash mark (for example: "94-011-0079"). Print both name and claim file number entries legibly in blue or black ink on the manila file folder. The claim file will be stapled together before its insertion in the file folder. The file will be placed in, not stapled to, the folder.

b. Investigative files will also be maintained in manila folders. The date of the incident and general descriptive data (for example: "1 Jul 97/auto accident (Choctaw and Lombard Streets, Springfield)" or "24 Sep 96/cardiac surgery (Compson, Quentin)" will be placed in the top-left corner of the file folder.

c. AR 25-400-2 requires labeling file folders and containers with specific information. The following guidance is provided:

(1) For files that have a common disposition, only the "dummy" or "lead" folder will contain the disposition instructions required by AR 25-400-2.

(2) When labeling individual file folders, only the information required by AR 25-400-2 will be typed on the label. The label will be placed on the top center portion of the folder. Under no circumstances will the information concerning the claim be placed on this label (see subparagraph *a*, above).

Section II
Monthly Claims Reporting System

13–7. General

The CLAIMS system is designed to produce meaningful management reports for claims officers, SJAs, USACE District Counsel, chiefs of OCONUS command claims services and the Commander, USARCS. The primary report produced by the Personnel Claims Management Program and the Tort and Special Claims Management Program is the SJA report. Claims office personnel may obtain this report at any time. Each SJA report consists of general information such as numbers and types of open claims, status of unsettled claims, Claims Expenditure Allowance (CEA) budget information, and analysis of settled claims. At a minimum, SJA reports must be produced monthly and included as a part of the tort claims monthly report sent to USARCS. SJAs, USACE District Counsel, and other supervisory claims personnel may request SJA reports as needed.

13–8. Reporting requirements

In accordance with AR 27-20, paragraph 13-7, each CONUS area claims office and OCONUS claims processing office with approval authority must submit a monthly claims data upload to USARCS (see AR 27-20, chapter 14, and paragraph 13-10 of this publication concerning affirmative claims reports). In accordance with the supervising command claims service procedures, each OCONUS area claims office, claims processing office with approval authority, and FCC must submit the data upload through its respective command claims service to USARCS.

a. The monthly data upload for each claims office (except USACE claims offices) consists of data extracted from the tort or personnel claims programs electronically transmitted to USARCS. A copy of the two-page SJA report from the tort claims program is submitted directly to the Tort Claims Division, USARCS. For USACE claims offices, which process neither personnel nor affirmative claims, the monthly upload consists of only tort claims data.

b. The tort claims monthly data upload will be prepared by each claims office at close of business on the last business day of the month. The personnel claims monthly data upload will be prepared by each claims office on the first working day of the month. In accordance with local directives, both data uploads will be transmitted to USARCS or the appropriate OCONUS command claims service on the first working day of the month.

c. Claims offices are not required to send a claims management monthly upload if there were no data changes since the previous month's upload. However, a written negative report will be submitted to enable USARCS to account for each claims office on a monthly basis. A short letter, memorandum, or electronic mail (e-

mail) message will suffice. For affirmative claims, see paragraph 13-10.

13–9. Error reports

When USARCS receives the data discussed in paragraph 13-8, it will be converted and added to the USARCS claims database. The conversion program is designed to quickly inspect each automated claim record and to reject those that are incomplete or contain inconsistent data. For those records that are rejected, the program automatically produces a printout of the claim number and a brief description of the defect in the claim record. USARCS returns the error report to each claims office monthly. Claims offices must correct the identified defects. Corrected records will not be returned to USARCS separately but will be routinely included in the next monthly report. Once the defects have been corrected, the records will be converted and added to the database.

Section III
Affirmative Claims Report

13–10. Preparation

a. Reporting. Monthly, each command claims service or office authorized to assert affirmative claims will submit a DA Form 2938-R (see reproducible copy at the end of this publication) or copy of the report generated by the Affirmative Claims Management Program to USARCS, ATTN: JACS-PCA. Command claims services and field claims offices will identify these reports by month and fiscal year (for example: October, FY 93) and forward them so that they arrive not later than the seventh calendar day of every month. Field claims offices authorized to assert affirmative claims that have had no affirmative claims activity in a given month will forward negative reports.

b. Routing. Area claims offices and claims processing offices will forward these reports directly to USARCS through the senior judge advocate in the office. Claims processing offices will forward an additional copy to their area claims offices.

c. Property and lost pay recovery. Claims personnel will indicate on the reports the amounts deposited locally for real property damage recovery and cost of pay recovery by noting at the bottom of the report the recovered dollars deposited locally for both categories. Submit a negative report if no amount was deposited locally.

d. Special preparation instructions. Offices may manually correct any errors in the computer-generated report using the following guidelines:

(1) Claims asserted in an indefinite amount will be reported in the first period in which a reasonably accurate figure can be determined.

(2) When reporting the number of claims collected during the reporting period, only the first collection amount will be counted for claims in which payments are received in installments.

(3) When reporting the total dollar amount collected during the reporting period, include any installments. The dollar value of any replacement or repair will be included in the total with the replacement or repair value portion noted.

Section IV
Management of Claims Open Allotment and the Claims Expenditure Allowance

13–11. General

a. The Claims Open Allotment is the fund from which personnel, torts and foreign tort claims are paid. Following the annual Congressional appropriation to the DOD, funds are allotted to HQDA Operating Agency 22 (OA22), an office of Resource Services-Washington (RS-W). OA22 provides USARCS with Open Allotment funds each month. Centrally managed by the USARCS Budget Office, the allotment provides the flexibility essential for the worldwide administration of claims funds that by law are paid from 15 separate accounts, including civilian personnel, marine casualty, Federal and foreign tort claims. USARCS' management of this allotment allows it to move funds quickly in order to pay claims around the world without unnecessary delay.

b. Each claims settlement or approval authority is furnished a CEA by the USARCS Budget Office, and is responsible for managing its CEA. The CEA is often referred to as " the target" within the Army Claims community. As part of its management responsibilities, each field claims office must know at all times the monthly target it has been authorized by the USARCS Budget Office, how much of the target has been obligated, and the remaining balance. Claims offices are not authorized to exceed their CEA/target. When emergencies warrant additional funds, the field claims office will call the open allotment budget analyst, (301) 677-7009 ext. 332, to request an increase in the CEA/target.

c. Current and historical financial data contained in monthly reports are used to forecast claims open allotment expenditures for each fiscal year. Budget estimates are based upon such factors as projected Army strength, the number of expected permanent change of station moves, planned major maneuvers, exercises, and deployments, base and unit realignment, and other information from field claims offices.

13–12. Claims expenditure allowance reporting requirement

a. Each month, USARCS issues a CEA letter to each field claims office containing financial targets and instructions for obtaining additional funds. Field claims offices will use the Personnel Claims Management Program to automatically track on-hand and disbursement data against the assigned target.

b. Charges against the claims open allotment may be made by authorized claims personnel from field claims offices worldwide. Authorized claims personnel are U.S. Army Judge Advocates and DA civilian attorneys specifically assigned to a claims attorney position and properly designated under the provisions of AR 27-20, chapter 1.

c. Not later than the seventh calendar day of each month, all CONUS field claims offices and command claims services having a CEA will submit a CEA Status of Funds Report (a sample is shown at figure 13-2) by e-mail transmission to the USARCS Budget Office. The report will contain the following information:

(1) The reporting office's code.

(2) Dollars obligated for personnel and tort claims during the prior month.

(3) Number of personnel and tort claims paid.

(4) Dollars obligated for personnel and tort claims during fiscal year through the end of the prior month.

(5) Total number of personnel and tort claims paid fiscal year through the end of the prior month.

(6) Dollars deposited during the prior month and the number of personnel claims recoveries.

Note. Ensure that the report of dollars deposited for the month and fiscal year to date includes only funds deposited in the claims appropriation accounts. Do not include money recovered through the affirmative claims program (medical care, personal property, and lost wages) that have been deposited into accounts other than claims accounts.

(7) Dollars deposited in the current fiscal year through the end of the prior month, and the total number of personnel claims recoveries in the same period.

d. Reports are no longer transmitted by facsimile unless the field claims office's electronic mail system is inoperative.

e. Following completion of all claims payments at the close of the fiscal year, each field claims office will submit a " close-out report"" in the same format as the monthly report. Unless otherwise notified, the report will be transmitted by e-mail no later than 22 September. USARCS will reserve funds to pay emergency claims until approximately 27 September.

f. A portion of the claims open allotment is held in reserve to assist field claims offices that receive an unexpected increase in the number of payable claims filed. Requests for additional open allotment funds may be made at any time by telephoning the USARCS Budget Office (DSN 923-7009, extension 332).

g. The Command Expenditure Report (CER) is prepared by the Defense Finance and Accounting Service-Indianapolis (DFAS-IN) and examined by the USARCS Budget Office to ascertain whether collections and disbursements have been transacted in accordance with AR 27-20 and are appropriate for the claims open allotment. Field claims offices will be notified of discrepancies, make corrections, and return revised statistics to USARCS within five working days.

h. USARCS produces a consolidated financial report for OTJAG and OA22, based on the data received from field claims offices and the CER.

13–13. Solatium payments

a. Solatium payments are made from the unit's operation and maintenance funds pursuant to directives established by the appropriate commander of the foreign jurisdiction in question. Solatium is not disbursed from claims funds. Although solatium programs may be administered under the supervision of a command claims service, they are essentially a theater command function whose propriety is based on a local finding that solatium payments are consistent with prevailing customs.

b. A solatium payment may not be used in lieu of an advance payment, if such is warranted and authorized under the provisions of 10 USC 2736 and AR 27-20, chapter 2. Normally, a nominal solatium payment is not set off from a subsequent award that is based on statutory liability. However, when a solatium payment amount is high in relation to the claim's value, the adjudicating authority may consider the amount of the claim payment in determining the claim award.

c. For further discussion, see paragraph 10-10, which addresses the Foreign Claims Act.

MONTHLY REPORTING SHEET FOR THE MONTH OF December 96

OFFICE CODE C00

a. Personnel Claims
paid for reporting month: 74
paid fiscal year to date: 246
$ paid for reporting month: $85,754
$ paid fiscal year to date: $232,808

b. Tort Claims
paid for reporting month: 14
paid fiscal year to date: 52
$ paid for reporting month: $6,881.35
$ paid fiscal year to date: $30,871.33

c. Recovery Actions
for reporting month: 18
for fiscal year to date: 58
$ collected for reporting month: $13,310.07
$ collected fiscal year to date: $31,176.60

Figure 13-1. Sample claims expenditure report

MONTHLY REPORTING SHEET FOR THE MONTH OF December 96

[ONLY FOR OFFICES PAYING FCA (CHAP 10) CLAIMS]

OFFICE CODE C11

a. Personnel Claims

paid for reporting month: 202
paid fiscal year to date: 717
$ paid for reporting month: $87,870
$ paid fiscal year to date: $285,366

b. Tort Claims

paid for reporting month: 7
paid fiscal year to date: 20
$ paid for reporting month: $2,832.86
$ paid fiscal year to date: $14,930.25

c. FCC Claims

paid for reporting month: 4
paid fiscal year to date: 16
$ paid for reporting month: $2,688.41
$ paid fiscal year to date: $11,060.50

d. Recovery Actions

for reporting month 68
for fiscal year to date 283
$ collected for reporting month $13,401.74
$ collected fiscal year to date $57,739.80

Figure 13-2. Sample claims expenditure report

Chapter 14
Affirmative Claims

Section I
General

14–1. Authority

Depending on the type of claim and the facts of the case, Federal agencies must choose between several theories of recovery to assert and collect the Government's claim for damaged property, costs of medical care, or soldiers' wages (basic pay, incentive and special pay) when the soldiers are injured by the negligent actions of another.

a. The Federal Claims Collection Act (FCCA) (31 USC 3711), as amended by the Debt Collection Act of 1982, PL 97-365, 96 Stat. 1749 (25 October 1982) and PL 101-552, 104 Stat. 2736 (15 November 1990), provides a basis for agencies to recover for damage to, or loss of, Government property.

b. The Federal Medical Care Recovery Act (FMCRA) (42 USC 2651-53) and 10 USC 1095 provide primary authority for agencies to recover the reasonable value of medical care and pay furnished by the United States in certain circumstances. The FMCRA permits recovery for medical expenses or in cases where an individual is injured in circumstances creating tort liability upon some third person. In such cases, agencies may recover costs from the tortfeasor or his or her insurance carrier. The FMCRA is the primary theory used to recover the costs of medical care paid for by the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

c. 10 USC 1095 permits recovery from certain third party payers, namely health benefits insurers and automobile insurance carriers. Claims personnel may use this statute to recover costs for medical care provided by or through a medical treatment facility (MTF). Claims personnel may recover from the underinsured, uninsured, medical payments or personal injury protection coverage of the injured party's own insurance or from the tortfeasor's liability coverage, as well as through a state worker's compensation program or fund.

d. It is sometimes necessary to look beyond the FMCRA and 10 USC 1095 to satisfy a claim. Eligible beneficiaries may have received medical care for an injury incurred while working for civilian employers. In such instances, for care provided through CHAMPUS, the existence of a remedy may hinge upon the particular wording of a State workers' compensation statute. Here, the United States stands in the position of a lien claimant for services rendered. Case law in this area is still emerging. Finding no statutory basis for the Government's claim, some courts have denied recovery on the lienor theory, *Nat'l Mut. Casualty Co. v. Barnett*, 445 F.2d 573 (5th Cir. 1971); *Texas Employees Ins. Assn v. United States*, 390 F.Supp. 142 (N.D. Tex.1975); *United States v. Commercial Union Ins. Group*, 294 F.Supp. 768 (S.D. N.Y. 1969). However, in addition to recovery from worker's compensation funds under 10 USC 1095, recovery under a State workers' compensation statute is also a viable theory of recovery in many states, and the RJA or recovery attorney should aggressively assert workers' compensation claims. To recover under a State's workers' compensation statute, claims personnel must comply with the State's procedural requirements. Office policy and precedent files, including reference to the most current authorities under applicable law, are especially important if claims personnel are to keep abreast of developments concerning this additional source of recovery.

e. The Government may also seek recovery as a third-party beneficiary under the terms of a specific insurance policy. The Government has been very successful in pursuing claims under this theory:

- *United States v. Gov't Employees Ins. Corp.* 440 F.2d 1338 (5th Cir. 1971).
- *Gov't Employees Ins. Co. v. United States*, 376 F.2d 836 (4th Cir. 1967).
- *United States v. Leonard*, 448 F. Supp. 99 (W.D. N.Y. 1978).
- *United States v. United Services Auto Ass'n*, 312 F. Supp. 1314 (D. Conn. 1970).
- *United States v. Commercial Union Ins. Group*, 294 F. Supp. 768 (S.D.N.Y. 1969).

With the enactment of 10 USC 1095, the importance of this theory of recovery has diminished. However, there may be cases where this theory provides the only source of recovery such as cases where the injured party was at fault and CHAMPUS paid for the medical care. Since there is no legally recognized tortfeasor, the FMCRA will not apply, and 10 USC 1095 will not apply because the care is not provided by, or through, an MTF. One problem in this area is that the Government must comply with State procedural law when asserting a claim as a third-party beneficiary, *United States v. Hartford Accident & Indem. Co.*, 460 F.2d 17 (9th Cir. 1972), cert. denied 409 U.S. 979 (1972). Since the Government's right to recovery hinges on the particular wording of an insurance contract, insurance companies may successfully thwart Government recovery by specifically excluding the United States from the terms of the contract:

- *Gov't Employees Ins. Co. v. United States*, 400 F. 2d 172 (10th Cir. 1968).
- *United States v. Allstate Ins. Co.*, 606 F. Supp. 588 (D. Haw. 1985).
- *United States v. Allstate Ins. Co.*, 306 F. Supp. 1214 (N.D. Fla. 1969).

However, the Government has often been successful in voiding such exclusionary amendments to insurance policies:

- *United States v. Gov't Employees Ins. Co.*, 461 F.2d 58 (4th Cir. 1972).
- *Southern Farm Bureau Casualty Ins. Co. v. United States* 395 F. 2d 176 (8th Cir. 1968).
- *United States v. Nat'l Ins. Underwriters*, 266 F. Supp. 636 (D. Minn. 1967).
- *Engle v. United States*, 261 F.Supp. 93 (W.D. Ark. 1966).

(1) Historically, in States that have adopted no-fault automobile insurance laws, the Government has often succeeded in recovering as a third-party beneficiary under the terms of either the insurance contract or the State no-fault statute itself:

- *Gov't Employees Ins. Co. v. Rozmyslowciz*, 449 F.Supp. 68 (E.D. N.Y. 1978), aff'd sub. nom.
- *United States v. Gov't Employees Ins. Co.*, 605 F.2d 669 (2d Cir. 1979).
- *Gov't Employees Ins. Co. v. United States*, 376 F.2d 836 (4th Cir. 1967).
- *United States v. Leonard*, 448 F.Supp. 99 (W.D.N.Y. 1978).
- *United States v. United Services Auto. Assn., supra; United States v. Commercial Union Ins. Group*, 294 F.Supp. 768 (S.D.N.Y. 1969).
- *United States v. Criterion Ins. Co.*, 596 P.2d 1203 (Colo. 1979).
- *United Services Auto Assn. v. Holland*, 283 So.2d 381 (Fla. Dist. Ct. App. 1973).
- *Transnational Ins. Co. v. Simmons*, 507 P.2d 693 (Ariz. Ct. App. 1973).

However, the recent amendments to the FMCRA have diminished the importance of this theory of recovery.

(2) RJAs or recovery attorneys should become familiar with the automobile insurance laws of the States within their areas of responsibility so they can more effectively assert claims for medical care provided by the United States. Within jurisdictions that have established a State-administered fund to satisfy uninsured liability claims, RJAs or recovery attorneys should make every effort to recover from these State-administered funds, when circumstances warrant.

This will depend on the nature of the funds and on relevant State statutes.

14–2. Recovery judge advocate or recovery attorney

Each office handling affirmative claims may appoint a recovery judge advocate (RJA) or recovery attorney, who is defined by AR 27-20 as any CJA or claims attorney who has been assigned responsibility for asserting affirmative claims under that regulation for a specific geographic area.

14–3. Purpose and policy

This chapter provides guidance to claims personnel on identifying, asserting, pursuing, and settling claims in favor of the United States for damage to, loss or destruction of Government property and for the recovery of the costs of medical care and soldiers' wages furnished, or to be furnished, at the Government's expense. The Affirmative Claims Program includes 54 CONUS claims offices in 24 States and 10 OCONUS claims offices or claims services. A list of the CONUS claims offices and their jurisdictional responsibilities is at figure 2-1. The DA has single-service responsibility for processing and settling all claims arising under the FCCA and the FMCRA in Austria, Belgium, France, Switzerland and Germany, among other countries. USACSEUR and claims offices in Mons, Belgium, and in Hoensbroek, The Netherlands, process affirmative claims arising in these countries. Similarly, the USAFCS-K has single-service responsibility for affirmative claims arising in the ROK. Finally, USARCS manages the Affirmative Claims Program through the Affirmative Claims Branch, Personnel Claims and Recovery Division.

14–4. Delegation of authority

Claims offices may recover the full amount asserted on any claim; no authorization from USARCS is needed in such instances. However, the heads of ACOs have certain limitations on compromising, waiving, and terminating claims. These limitations apply even in cases where there is no available insurance coverage or only limited coverage. To settle claims beyond their authority, claims personnel must complete a Medical Care Recovery Worksheet or Property Damage Recovery Worksheet and forward it to the Affirmative Claims Branch, USARCS. See paragraph 14-16*c*.

14–5. Basic considerations

a. Researching State law. The RJA or recovery attorney must determine the prospective defendant's liability in accordance with the law of the place in which the damage or injury occurred with respect to local rules of the road, elements of tort, and possible defenses. In some instances, there may be no prospective defendant, as in cases where the injured party is the one who caused the accident. This information will determine which theory or theories claims personnel will use to assert the Government's claim.

b. Computing the statute of limitations (SOL). Failure to take appropriate action before the SOL runs can result in the loss of thousands of dollars in recoveries for MTFs, installations and the U.S. Treasury. Consequently, claims personnel must monitor the SOL closely in every case.

(1) To recover its costs for damaged or lost property, medical care or lost wages, the Government must bring an action founded on a tort within three years after the right of action first accrues or the action will be barred (28 USC 2415(b)). The SOL applies to most affirmative claims, such as those arising from automobile accidents; however, other claims may have different SOLs. For example, claims based on contracts have a six-year SOL (28 USC 2415(a)). SOLs for workers' compensation actions vary from State to State.

(2) A Government claim normally accrues on the date that the property was damaged or lost or the injured party first receives medical treatment. However, the SOL is tolled until "an official of the United States charged with the responsibility to act in the circumstances" knows or could reasonably be expected to know that a basis for a claim exists (28 USC 2416(c)). Generally for medical care claims, this "official" is the recovery clerk at the MTF or the claims office or the CHAMPUS fiscal intermediary.

(3) Claims personnel may suspense their files based on the date Army or CHAMPUS fiscal intermediary personnel became, or should have become, aware of the Government's claim. However, the best approach is to conservatively calculate the SOL based on the date of the injury.

(4) An effective suspense system will guarantee that appropriate action is taken on cases before the SOL expires. This is especially important where the civilian attorney or insurance company does not cooperate with the claims office.

14–6. Claims against certain prospective defendants

Special rules pertain not only to the type of activity from which an affirmative claim arises but also to the category of prospective tortfeasors or defendants.

a. Military personnel and civilian employees.

(1) Property damage caused by military personnel or civilian employees may be the subject of an enforceable liability to the United States, but the liability is usually not determined, satisfied, or settled under the provisions of AR 27-20. Instead, the report of survey is used, and recovery is made by offset against the current or final pay of the responsible employee (AR 735-5, chap 13). In the exceptional case when resort is made to the claims system, the report of survey system provides the standard of liability unless private insurance covers the prospective defendant's liability. If insurance is available, State law determines liability and the claim for damage should be asserted under the provisions of AR 27-20.

(2) The FMCRA provides for recovery against a third person "other than, or in addition to, the United States," but it does not specify or define the particular classes of Federal "third persons" whose negligent acts will not give rise to claims under that statute. This language has generally been interpreted to mean that Congress intended to exclude claims arising out of the acts or omissions within the scope of employment or line of duty of employees of any Federal agency, members of the armed services, and persons acting on behalf of a Federal agency in an official capacity. Accordingly, RJAs or recovery attorneys will not assert claims against such individuals acting within the scope of Government employment. Further, the Federal Drivers Act (28 USC 2679(b)) precludes claims action against Government drivers.

b. Soldiers, family members, retirees and civilian employees. Recovery should not be attempted when the injured party is receiving medical care at Government expense and a soldier, family member, retiree or civilian employee is the uninsured third-party tortfeasor. A claim in these cases is payable from the uninsured tortfeasor's personal funds. This approach is consistent with the rule that the Government does not seek indemnity from negligent Government employees for the payment of claims to third parties (*United States v. Gilman*, 347 U.S. 507 (1954)). Exceptions to this general policy will be made when the incident involves gross negligence, such as in assault cases. Obtain approval from the Chief, Affirmative Claims Branch, USARCS, to assert claims against soldiers, family members, retirees or civilian employees who are grossly negligent. However, if the tortfeasor maintains liability or medical payments insurance coverage, a claim should be asserted and recovery pursued to the extent of the policy coverage.

c. Other Federal instrumentalities. An instrumentality of the United States is specifically excluded from the definition of those who may be prospective defendants.

d. Nonappropriated fund instrumentalities. Claims against nonappropriated fund instrumentalities (NAFIs) or claims generated by acts or omissions of NAFI employees are governed by the provisions of AR 27-20, chapter 12.

e. Foreign prospective defendants. Policy considerations inherent in the conduct of foreign relations, legal considerations in the nature of sovereign immunity or restrictions on State responsibility, and waiver provisions of international agreements all require separate treatment for certain foreign prospective defendants acting in an official capacity. Investigation will proceed normally unless an agreement or regulation provides otherwise. However, no claim will

be asserted without the prior approval of the Affirmative Claims Branch, USARCS. Claims against foreign prospective defendants whose actions are not affected by officiality will be investigated and processed in accordance with AR 27-20, subject to whatever procedural modifications the SJA of a major overseas command may prescribe.

Section II
Property Claims

14–7. General

a. General principles. The United States owns vast fee interests in real property and improvements, leaseholds, and innumerable items of personal property. As a property owner, the Army is often the victim of a tort. This section describes the principles and procedures by which the United States asserts and recovers claims for damage to, or loss of, its property. Property that can be the subject of a claim includes much more than property purchased with Army appropriations and used and controlled by the Army. In general, United States property under Army control, no matter what its original use, is Army property. The same is true for property of a foreign government for which the United States is responsible and over which the Army exercises control. Indeed, where the Army has been assigned single-service claims responsibility by the DOD, property of other military departments may be Army property for purposes of the Army Claims system. Maritime claims in favor of the United States are not processed in accordance with AR 27-20, chapter 14, as affirmative claims, but rather in accordance with AR 27-20, chapter 8.

b. Limitations. Field claims authorities must be aware of limitations affecting property damage claims in favor of the United States. Claims provisions of international agreements may waive property damage claims in whole or in part. (See AR 27-40, chap 5, relating to litigation.) Finally, the SJAs of certain overseas commands are authorized to modify procedures in Army regulations.

c. Historical background.

(1) Before the Civil War, the Supreme Court decided that the United States had the same rights as any other legal entity to assert a cause of action for tortious damage to its property interests (*Cotton v. United States*, 52 U.S. (11 How.) 229 (1850)). However, recognition of a Federal right as a property owner, important as that is, is but a threshold issue in the area of claims in favor of the United States. The allocation of powers and responsibilities within the Government to enforce such a right is another critical determination. The Constitution empowers Congress to dispose of property belonging to the United States and a cause of action is a property interest. Thus, the basic source of power to settle, compromise, or realize property damage claims in favor of the United States is found in Federal legislation.

(2) Departments and agencies of the Government using or having custody of United States property have a duty to protect it. Title III of the Budget and Accounting Act of 1921 (42 Stat. 24, repealed by PL 89-554, sec 8(a), 80 Stat. 63F) created the General Accounting Office (GAO), one of whose duties was to supervise the recovery of all debts it certified to be due the United States (42 Stat. 24, 31 USC 3702). The Comptroller General had the general statutory duty of settling and adjusting all claims and demands both by and against the United States by means other than litigation (E.O. 6166, reprinted at 5 USC 901). When the executive agencies were reorganized in 1933, the responsibility for prosecuting claims and demands in favor of the United States by way of litigation was vested in the DOJ (21 Comp. Gen. 59 (1941); see also 26 Comp. Gen. 618 (1947)). Once any Federal agency refers a claim to the DOJ, the latter has full authority to dispose of the claim as it deems appropriate. This authority and control by the DOJ does not affect the function of any other agency with respect to cases prior to referral for litigation.

(3) For many years, the Comptroller General recognized that some claims actions could be completed by other Federal agencies without referring them to the GAO or the DOJ. Actions that could be taken by other Federal agencies on property damage claims were limited, in general, to settlement by way of recovery in full. A Comptroller General decision is illustrative: "Where the remittance (from the tortfeasor's insurer) is in the full amount of the damages as found by the administrative office, as appears to be the case here, there would be no legal basis for this office to raise any objection if the administrative office receiving the remittance or any other officer of the establishment concerned, should execute a proper document releasing further liability in the matter." See S. Rep. No. 1331, 89th Cong. 2d Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2532, 21 Comp. Gen. 59.

(4) The narrow scope of Federal agency recovery action reflected a longstanding and well-established principle that, without specific statutory authority, Federal agency heads and delegees had no authority to compromise claims in favor of or against the United States. S. Rep. No. 1331, 89th Cong. 2d Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2532, 2533-34. As used here, "compromise" meant to dispose of the claim without conceding liability by considering factors such as the cost of recovery and the defendant's ability to satisfy the claim. As to claims in favor of the United States, the reason for this rigid rule concerning compromise was that a final settlement for less than the actual amount of the claim necessarily entailed a disposition of at least a portion of the Government's cause of action, and only Congress had the power to dispose of any property of the United States (80 Stat 308, 31 USC 3701, 3711, 3717, 3718).

(5) The inflexibility of Federal claims recovery practice led to the enactment of the FCCA of 1966, effective 15 January 1967. These standards are published at 4 CFR 101.1 through 105.5. The FCCA permits heads of agencies and their designees to compromise claims in favor of the United States that do not exceed $100,000 or to terminate recovery action on such claims. These new powers to dispose of claims are to be exercised in accordance with standards issued jointly by the Attorney General and the Comptroller General. The purpose of this Act is to afford more flexibility in the disposition of claims in favor of the United States. A very important application of the FCCA is to claims for damage to, or loss of, Army property. The basic implementation of this Act in the Army is AR 27-20, chapter 14, sections I, II and IV.

14–8. Repayment in kind

Monies received for personal property damage claims in favor of the Government are paid into the United States Treasury (AR 27-20, para 14-19*c*). Accordingly, at this time, these funds are not available to commanders for replacing or repairing the destroyed or damaged personal property. Thus, an alternative method of discharging the claims liability may be preferable. The RJA or recovery attorney who asserts the claim may accept, in lieu of money, the replacement of the property or the property's restoration to its prior condition. Before a release based on a repair or replacement in kind may be executed, the technical staff officer responsible for the type of property in question must certify that this procedure is acceptable and that the repair or replacement in kind was satisfactorily accomplished. This procedure may also be used in cases involving damaged real property.

14–9. Property damage predemand and post-demand procedures

a. General. Certain basic principles underlie the processing of property damage claims.

(1) Liability must be determined according to State law.

(2) Claims for property damage, medical care and soldiers' wages arising from the same incident will be processed separately under AR 27-20, chapter 14, sections II and III.

(3) If one incident results in a claim in favor of the United States for property damage and a claim against the United States, the claims approval or settlement authority authorized to settle the claim against the United States will process the property damage claim in favor of the United States. AR 27-20, paragraph 14-5*d*(2). However, the claims may be investigated together.

(4) Army claims authorities may not settle a claim with a prospective defendant who has brought a suit against the United States if the suit arises out of the same incident that gave rise to the affirmative claim. Only DOJ may approve such claims.

b. Investigation. Since property damage claims in favor of the United States are investigated in essentially the same manner as other tort claims, claims personnel can apply general instructions for tort claims investigations. However, additional information is needed relating to the prospective defendant, such as the defendant's identity, ability to pay, insurance coverage, information about any collateral legal proceedings arising from the same incident, and documented recommendations as to liability. Transfer of responsibility may be appropriate when another command can conduct the investigation more efficiently.

c. Administrative determinations of liability. Investigations are often conducted by unit claims officers, who do not make demands on prospective defendants. The unit claims officer's commander is responsible for the adequacy of the investigation but not for determining liability; this is the province of the RJA or recovery attorney. If the RJA or recovery attorney decides that the information in the claims file clearly negates the existence of a valid property damage claim, the appointing authority will be notified and the claims file will be closed. If the RJA or recovery attorney who first received the file is not required to forward it and determines that the prospective defendant is liable, a demand will be made on the prospective defendant and recovery action will be started under the procedures prescribed in the FCCA. A copy of the demand should be served upon the prospective defendant and his or her insurer, if known.

d. Property claims in Germany.

(1) *General.* In Germany, the NATO SOFA and supplementary agreements provide a special method of recovery for property damage claims. Normally, such claims are asserted directly against a prospective defendant's insurance company. However, when a foreign national tortfeasor has also suffered damage and has filed a claim against the United States at a German Defense Costs Office (DCO), the United States asserts its claim with the DCO as a counterclaim. The DCO applies German law in adjudicating the claim and sets off the U.S. Government's property damage claim against that of the foreign national claimant. The DCO then pays, with partial reimbursement by the United States, any balance remaining after the setoff to the claimant. Any excess owed to the United States from the claimant is recovered directly from the claimant or the appropriate insurer by USACSEUR.

(2) *AAFES property.* Property belonging to the AAFES, Europe, is also subject to the provisions contained in the NATO SOFA and supplementary agreements. Pursuant to a 9 October 1975 agreement between USACSEUR and AAFES, Europe, property damage claims resulting from motor vehicle accidents in Germany that involve AAFES, Europe, vehicles are processed by USACSEUR. Monies recovered are paid to the appropriate AAFES, Europe, account.

e. Property claims in Republic of Korea (ROK).

(1) In Korea, when damage to United States Government property is caused by third parties other than those assigned to jointly operated military installations and activities, military commands should forward copies of reports of survey, police reports, photographs of the damaged Government property, and evidence of estimated or actual costs of damages to the Commander, USAFCS-K, APO AP 96205-0084. Generally, claims for damages to United States Government property used by its Armed Forces and damaged by members and employees of the Armed Forces of the ROK in performance of their official duties are waived under the provisions of the United States/ROK SOFA agreement. An exception to this are reports of survey that reveal that a Korean augmentee to the U.S. Army is responsible for damage to, or loss of, U. S. military property. Otherwise, such claims will be forwarded to USAFCS-K for recovery, in an amount that does not exceed the soldier's monthly wage. USAFCS-K does not process AAFES claims.

(2) Where a ROK national has also filed a claim with the District Compensation Committee, claims personnel may still seek recovery against the tortfeasor or insurer. The RJA or recovery attorney will coordinate with the foreign claims attorney to ensure a consistent result.

f. Property claims in Japan. In Japan, ACOs may assert affirmative claims and deposit the full amount recovered. The U.S.A.F. has withheld authority from the Army to compromise or terminate recovery efforts on any claim in favor of the United States.

g. Property damage procedures following identification.

(1) If the information readily available indicates that a claim may exist, claims personnel will open a potential claims file and enter the information into the Affirmative Claims Potentials database. Claims personnel will then gather additional information the RJA or recovery attorney will need to determine if there is a cognizable claim.

(2) After identifying a cognizable property damage claim, claims personnel must send an assertion letter to the tortfeasor and his or her insurer, if known. Claims personnel should then coordinate closely with the post directorate responsible for that property. The post directorate will provide necessary information about the damaged property, such as the estimate of repair.

(3) Claims personnel should notify the tortfeasor and his or her insurer of the amount of the damage and provide any updates if that amount changes. After determining the amount of the Government's claim, claims personnel should transfer the claim from the Affirmative Claims Potentials database into the Affirmative Claims Management Program database.

(4) Claims personnel should suspense the file for an appropriate time, not to exceed 90 days, to ensure they take proper follow up action.

Section III
Medical Care Claims

14–10. General

a. History of FMCRA.

(1) During World War II, the War Department asserted claims in favor of the United States that were analogous to the common law cause of action of a master for injury tortiously inflicted upon his servant. The claims were asserted against any person who tortiously injured a member of the Army, leaving that soldier incapable of performing duty. The sum of damages sought was the cost of medical treatment provided and the amount of salary paid during the period of incapacitation.

(2) On 7 February 1944, while in a pedestrian crosswalk on Figueroa Street in Los Angeles, an enlisted soldier was struck by a Standard Oil of California truck. The Army routinely asserted a claim against Standard Oil for the cost of medical treatment ($123.25) and the Soldier's pay during his period of hospitalization ($69.31). Despite the modest amount of damages, Standard Oil declined to pay and the case went to trial. In an extensive opinion by Judge Yankwich (*United States v. Standard Oil Co. of Cal.*, 60 F. Supp. 807 (S.D. Cal. 1945)), the claim was upheld and Standard Oil was held liable for damages. The company appealed this decision and prevailed in the U.S. Court of Appeals (153 F.2d 958 (9th Cir. 1946)), which held that the injured soldier was not a "servant" nor the United States a "master" under the pertinent California statute. The United States appealed, and the Supreme Court affirmed the decision but upon a different theory (*United States v. Standard Oil Co. of Cal.*, 332 U.S. 301 (1947)). The Supreme Court held that even though the Government's right at issue derived from tort rather than from contract, Federal law controlled its existence. But looking into existing Federal law, they found that no such right existed. The Supreme Court determined that Congress and not the Court was the proper forum to create the claim if it was to be created at all.

(3) In a 1960 report entitled "Review of the Government's Right and Practices Concerning Recovery of the Cost of Hospital and Medical Services in Negligent Third Party Cases" (MS DCG B-133226, 6 May 1960), the Comptroller General estimated that without the type of enabling legislation the Supreme Court contemplated in the Standard Oil Company case, the Government was prevented from recovering several million dollars each year for hospital and

medical care furnished to soldiers. The report concluded by recommending such legislation. Several standing committees in both Houses of Congress studied the problem extensively, and the result was the Act of 25 September 1962, codified at 42 USC 2651 through 2653 and known as the FMCRA.

b. Persons for whom the United States "is authorized or required by law" to furnish medical care fall into many different categories. Recovery is sought for treatment provided by the U.S. Government or given to persons who, by virtue of a connection with the Army, receive treatment paid for by the U.S. Government.

c. Each service asserts claims involving care provided to its soldiers, retirees and family members, unless there is a local agreement to the contrary or when single-service responsibility dictates otherwise. For example, if a USAF pilot receives medical care at an Army MTF, the Army claims office would send notice of the potential claim to the closest USAF claims office for further processing. In limited circumstances, Army claims offices may pursue claims for medical care provided to retirees of other military services.

d. In 1994, the Department of Transportation and DOD changed their practices on interagency billing and reimbursement for medical care. In the past, the departments reimbursed each other and then pursued their own affirmative claims. Under the new Memorandum of Agreement (MOA) between DOD and Department of Transportation, each department will now pursue claims for care provided in its MTFs, regardless of the beneficiary's branch of service. If a department recovers an amount that is less than the interagency billing rate prescribed for the service rendered, the department whose soldier received the care is responsible for paying the difference. The department that provided the care should then forward the file to the other department for further recovery efforts. When forwarding files to another department, claims personnel should include a complete copy of their recovery attempts to eliminate duplicate efforts.

14–11. Recovery rights under the FMCRA

a. The FMCRA creates a claim in favor of the United States, offers a means of enforcement, and provides methods to satisfy (or extinguish) claims. At its heart is the creation of the claim itself. Liability may be pursued in any case in which the United States is authorized or required by law to furnish or pay for care and treatment to a person who is injured or suffers a disease under circumstances creating a tort liability upon some third person. The United States has the right to recover from that third person the reasonable value of the care, as well as the total amount of the pay accrued and owing to a soldier who remains unable to perform other duties as a result of the injury or disease. This right shall be subrogated to any right (of) the injured or diseased person. The statute sets forth these elements of liability:

- The United States is authorized or required by law to furnish or pay for care and treatment and the amount of pay that accrues during the period in which the soldier is unable to perform any military duties,
  - to a person who is injured or suffers a disease,
  - under circumstances creating a tort liability upon some third person.

(Sec 2651(a)).

The Government's right is independent of the rights of the person receiving medical care. The Government's right arises directly from the statute; the statutory reference to subrogation pertains only to one mode of enforcement. In creating an independent right in the Government, the Act prevents a release given by the injured person to a third party from affecting the Government's claim.

- *United States v. Winter*, 275 F.Supp. 895 (E.D. Pa. 1967).
- *United States v. Greene*, 266 F.Supp. 213 (N.D. Ill. 1967).
- *United States v. Bartholomew*, 266 F.Supp. 976 (W.D. Okla. 1967).
- *United States v. Jones*, 264 F.Supp 11 (E.D. Va. 1967).
- *United States v. Guinn*, 259 F.Supp 771 (D.N.J. 1966).

See also, *Validity and Construction of Medical Care Recovery Act Dealing with Third-Party Liability for Hospital and Medical Care Furnished by United States*, 7 ALR Fed. 289.

b. The Government is subrogated to the rights of the injured party to the extent of the value of the medical care provided. The head of the Federal agency furnishing the care may require the injured party to assign his or her cause of action against the tortfeasor to the extent of the Government's right of recovery. The United States is specifically allowed to intervene or join in any action at law brought by or through the injured party against the liable third person. Alternatively, if the injured party does not begin an action, the United States may bring an original suit in its own name, or in the name of the injured party. The Army does not recommend or prefer either of these latter two practices.

c. The Government's claim may be satisfied in various ways. According to regulations issued under the statute, the head of an agency, usually through delegees, may accept payment of a claim for the full cost of the medical care. Once the payment is received, a release may be executed. Such delegees may also compromise any claim in part, waive any claim in whole, or terminate recovery efforts.

d. The FMCRA also provides that no action taken by the United States in connection with its rights thereunder shall operate to deny to the injured party recovery for that portion of damages not covered by the FMCRA. This safeguard precludes a defendant from using an agency's administrative determination of nonliability or agreed percentage-of-damages compromise against the injured party. When the defendant's assets and insurance are insufficient to satisfy all claims, reference must be made to the Government's statutory authority to compromise or waive claims on grounds of hardship to the injured party.

14–12. Identification of potential medical care recovery claims

a. CHAMPUS. CHAMPUS provides extensive medical care benefits to family members and retired military personnel. The FMCRA allows the Government to recover amounts paid by CHAMPUS from negligent parties causing injury to qualified beneficiaries. One claims office for each State or region serves as the CHAMPUS point of contact to be notified of all potential claims arising in that State or region. That office must then forward the CHAMPUS Explanation of Benefits form to the proper claims office for further processing. Claims personnel must review the CHAMPUS Explanation of Benefits form to determine if the case is cognizable as a potential affirmative claim.

b. Notification. Hospital administrators generally report potential medical care claims for care provided in MTFs directly to claims personnel (AR 40-3, chap 4). Medical care furnished by civilian facilities comes to the attention of claims personnel upon notification by the officials who oversee, approve, or process vouchers for payment for such services (AR 40-16, para 3). For example, MTFs use supplemental care funds to pay for medical care that active duty soldiers receive at civilian hospitals. When members of the ARNG receive medical care at civilian facilities, which will be paid for out of ARNG operation and maintenance operation and maintenance funds, the vouchers are processed by the United States Property and Fiscal Officer. The regulatory provisions requiring notification of possible medical care recovery claims will automatically result in actual notice to RJAs or recovery attorneys in most instances as long as they coordinate closely with the MTF. The RJA or recovery attorney should ensure the MTF personnel understand what types of cases should be referred to the claims office. Prompt notification is essential; delays may be fatal to effective enforcement efforts, particularly when available assets for satisfying the claim are limited. Notification of incidents should be made to the appropriate RJA or recovery attorney, who will investigate, assert, pursue and, to the extent of his or her authority, settle any claim that may arise out of the incident that led to the notification, or negate the existence of such claim.

c. Review of additional information. Claims personnel are urged to identify possible claims from other sources. Documents prepared primarily for other than claims purposes present a means to discover possible medical care recovery claims. Each office should systematically review information contained in MP blotters and accident reports, reports of survey, local newspapers, and television broadcasts.

d. Processing affirmative claims for asbestos-related diseases.

(1) Many people have contracted various diseases after exposure to products containing asbestos and have received treatment at Government expense for these diseases. The DOJ generally will not pursue recovery of these asbestos-related medical costs. The reasons are two-fold:

- First, there is a limited amount of money available to pay the tens of thousands of still-extant claims. The Government does not wish to further reduce victims' recoveries by asserting medical cost recovery claims.
- Second, in cases where the Government brings suit against a private party, that party may counterclaim against the Government; in these cases, some of the defenses normally available to the Government may not apply. Consequently, in these cases, a suit brought by the Government could increase the cost of litigation without resulting in a substantial net monetary recovery for the Government.

(2) The only asbestos-related claims the Government should pursue are those that are included in injured parties' suits by operation of law (as in Wisconsin, for example). This will be determined on a case-by-case basis. This policy does not apply, however, to subrogation claims under the Federal Employees Compensation Act, where the position of the Department of Labor is that the Government must assert its subrogation rights.

(3) Claims personnel should contact the Affirmative Claims Branch, USARCS, if they identify a potential claim for care provided to an individual for an asbestos-related disease. Field claims offices will not assert affirmative claims in these cases. This is true even if the injured party is pursuing an action on his or her own behalf and offers to include the Government's claim in the suit.

14–13. Medical care procedures following identification

a. Initial review. Based on the notification and other facts readily available, the RJA or recovery attorney must first determine whether a cognizable claim exists. If the information is sufficient to determine that no third-party liability exists, the investigation may be closed. If the information indicates the possible existence of a claim, the RJA or recovery attorney will open a potential claims file, enter the information into the Affirmative Claims Potentials database, and send the injured party a report of injury questionnaire.

b. Determination of liability. The RJA or recovery attorney may use reports and information developed by other investigative officials concerning the incident giving rise to the claim. If a unit claims officer assists the RJA or recovery attorney, a DA Form 1208 will be completed. The RJA or recovery attorney will review all the evidence, including the unit claims officer's report of investigation. After ensuring that the file is complete, the RJA or recovery attorney will make a written determination as to the merits of asserting a claim. If the RJA or recovery attorney decides that no one is liable in tort, it is still possible that a claim may be asserted under 10 USC 1095, State workers' compensation laws, third party beneficiary of a contract, or State hospital lien laws. In determining liability based on tort law, the RJA or recovery attorney must take into account not just the elements of the tort at issue, but must also consider defenses such as contributory negligence or assumption of risk, application of the humanitarian "last clear chance" doctrine, guest statutes, and all other doctrines that could affect the outcome of litigation. In this regard, all attorneys should be aware of the body of law that renders one member of the military immune from liability for a negligent act that causes injury to another soldier when the injury arose out of, or was in the course of, activity that was incident to service. See *Martinez v. Schrock*, 537 F.2d 765 (3rd Cir. 1976); *Bailey v. Van Buskirk*, 345 F.2d 298 (9th Cir. 1965) cert. denied 383 U.S. 948 (1966). The several immunity cases that derive from *Barr v. Matteo* (360 U.S. 564 (1959)) must also be consulted if the prospective defendant is a U.S. employee who inflicted damage while acting within the "outer perimeter" of his or her authority. See note, Civilian Paving Foreman Employed by Air Force Held Immune from Negligence Action under *Barr v. Matteo*, 17 Stan. L. Rev. 1169 (1965). A host of other privileges or immunities may also affect the RJA's or recovery attorney's determination.

c. Assertion. After determining the Government has a right to recover, the RJA or recovery attorney should assert a demand against each tortfeasor, his or her insurer, all injured parties, their civilian attorneys, and each injured party's insurer. If the tortfeasor is an employee of a company owned by a parent corporation, claims personnel should also provide notice to the parent corporation. In other words, let every interested individual and business know that the Government has a claim. This should be done even if the injured party's attorney has signed a representation agreement. Claims personnel should advise the injured party's attorney of the notification made. This assertion will ensure that the Government will be named on the settlement draft. If it is not so named, the insurer settles at its own risk. Many insured prospective defendants fail to notify their insurance companies of incidents. This failure may be a breach of the cooperation clause in the policy and may be grounds for the insurer to refuse to defend the insured or be responsible for any liability. The United States, as a claimant, may prevent this by giving the requisite notification itself. The purpose of the insurance clause is satisfied if the insurer receives actual notice of the incident, regardless of the informant.

d. Demand and amount of claims. Demand should be made in a definite amount at the earliest possible date. If medical treatment will be protracted or if the facts concerning the total cost are not readily available, the RJA or recovery attorney may make a demand in an indefinite amount and advise the proper parties that further billing information will be forthcoming. Before making this demand, the RJA or recovery attorney should confirm that the total amount is legally due.

(1) *Costs of medical care.* The prescribed rates for medical care published by the Office of Management and Budget and DOD are the starting point for analysis. As a general rule, the defendant may not go behind these rates to litigate their reasonableness. One Federal court, however, has held that while the Office of Management and Budget rates are admissible as to the value of medical care furnished, they are not conclusive (*United States v. Wall*, 670 F.2d 469 (4th Cir. 1982)). The total amount may be challenged if it appears that an injured party received more care than medically required. Therefore, the amount of the claim for medical care will be limited to the hospitalization and outpatient treatment actually necessary. Additionally, claims personnel must obtain billing statements from all MTFs that provided care to the injured party.

(2) *Lost pay.* Claims personnel will also need to obtain information about the injured party's pay.

(a) To calculate the "costs of pay" furnished to a soldier tortiously injured by another, claims personnel must determine how long a soldier was unable to perform and military duties because of his or her injuries. This can be done by adding a question to the report of injury questionnaire routinely sent to the injured party: "How long were you unable to work at your regularly assigned duties or at any other military duties because of the injury you received in this accident?" Alternatively, the injured party's attorney may be asked the same question. This information may be verified by having the company commander verify the total number of days the soldier was unable to perform military duties.

(b) Claims personnel must then determine the amount of the injured party's basic pay, and whether he or she receives any special or incentive pay. A copy of the soldier's leave and earnings statement or a statement from the soldier would provide the amount of the additional pay. If there is additional pay, the leave and earnings statement or reference to a current pay chart will provide the

amount of basic pay the soldier was receiving at the time of the incapacitation.

(c) Once the necessary information has been gathered, calculating the amount attributable to the time the soldier was unable to perform any military duties becomes a simple mathematical calculation. For example, based upon the 1996 pay chart, if an E-4 with four years of service is unable to perform military duties for two weeks, the amount of these lost wages is $601.66 ($1302.60 monthly basic pay divided by the 4.33 weeks in one month then multiplied by two). Claims personnel should calculate the amount of a soldier's lost wages when they calculate medical expenses. When they assert the Government's claim against the insurance company or tortfeasor, claims personnel should include the total amount of medical care costs as well as the lost wages.

e. State procedures. In claims based on State law, the RJA or recovery attorney should ensure that demands on behalf of the United States comply with State administrative procedures.

f. Billing rates.

(1) The FMCRA authorizes the President to prescribe regulations establishing the reasonable value of the medical, surgical, or dental care and treatment to be furnished. The President ordered the Director, Office of Management and Budget, to determine and establish rates for such care (E.O. 11060, sec 1). The rates are published annually in the Federal Register.

(2) Title 10 USC 1095(f) authorizes the Secretary of Defense to prescribe regulations establishing the reasonable cost of health care services provided by or through a facility of the uniformed services. The DOD publishes these rates annually in the Federal Register. These amounts are currently based on diagnostic related group rates for inpatient care and a single per visit outpatient rate. Table 14-1 provides a history of the DOD and the Office of Management and Budget rates.

(3) Recoveries for care paid for by CHAMPUS are based on the amount CHAMPUS actually paid, regardless of the amount CHAMPUS is billed by the provider. The Government will not try to recover the patient's share of the costs (such as deductible and cost share.)

(4) Recoveries for lost pay are based upon payments of basic pay, incentive pay, or special pay to the soldier by the United States during periods of incapacitation. Claims personnel will need to determine how long a soldier was unable to perform any military duties because of his or her injuries. Determining the lost pay (basis, special, and incentive) is a simple mathematical calculation based on the current DOD pay chart. Claims personnel should calculate the amount of a soldiers' lost wages when they typically calculate medical expenses.

g. Transfer of Responsibility. When there is more than one injured party, or more than one MTF provides care, a RJA or recovery attorney may transfer responsibility for pursuing recovery to another area claims office.

h. Medical care claims in Germany.

(1) *General.* The absence of attorney representation agreements is unique to processing medical care recovery claims in Germany. The German Federal Code of Lawyer's Fees establishes minimum fees that German attorneys must charge. Because 5 USC 3106 permits an injured party's attorney to represent the United States on a no-fee basis only, German attorneys representing injured parties may not assert claims on behalf of the United States in Germany. Thus, USACSEUR asserts the Government's claims directly against the insurance companies of third-party tortfeasors.

(2) *The Haftpflicht-Unfall-und Kraftverkehrsversicherer ("HUK") Agreement.* Medical care claims resulting from motor vehicle accidents occurring in Germany are asserted in accordance with a 1971 agreement between the United States and the Association of Liability, Accident and Traffic Insurers, Hamburg, which limits Government claims for medical care costs to 62.5 percent of the Office of Management and Budget rate for care rendered in MTFs located in Germany. In exchange, the German insurance industry agreed not to challenge either the standing of the United States to assert such claims or the reasonableness of the Office of Management and Budget rates.

i. Medical care claims in the Republic of Korea. The Commander, USAFCS-Korea, has single-service responsibility for all medical care recoveries within Korea. There are no attorney representations permitted in the Republic of Korea (ROK). The USAFCS-Korea may proceed on an independent right to directly assert against insurance companies of third-party tortfeasors. In the ROK, insurance companies are required by law to provide unlimited policy benefits on behalf of their insures, eliminating all deductibles and maximum payments.

j. Medical care claims in Japan. In Japan, Army claims offices can recover and deposit affirmative claims that can be recovered in the full amount asserted. The USAF has withheld the authority of the Army to waive, compromise, or terminate recovery efforts on any claim in favor of the United States.

14–14. Relations with the injured party

a. Advice to the injured party. After receiving the initial notification of the incident, RJAs or recovery attorneys will advise injured parties of the Government's and the injured party's rights and obligations. Many injured parties will not be aware that the Government's claim exists, so the logical first step is to explain the law underlying the United States' interest. The injured party should be advised to seek legal assistance for clarification of the rights and obligations imposed by law. The injured party should also be informed of his or her duty to cooperate in the assertion of the Government's claim, to furnish a complete factual statement regarding the injury or disease, and to furnish information concerning any legal action brought. Further, the injured party should be cautioned not to execute a release or settlement for any claim without first notifying the RJA or recovery attorney. The RJA or recovery attorney will obtain a statement from the injured party acknowledging receipt of the advice, including the factual statement and information concerning any individual legal action pending or contemplated. See 32 CFR 537.23 and 220.9.

b. Ethical considerations. Rules of Professional Conduct for Lawyers (AR 27-26) and State ethics rules prohibit RJAs and recovery attorneys from communicating with a party represented by another attorney without the other attorney's consent. The RJA or recovery attorney cannot direct another person to contact a represented party. These rules apply to all claims personnel when obtaining information from an injured party. Usually claims personnel do not know if an individual is represented by an attorney until the injured party completes and returns the report of injury questionnaire. When claims personnel learn an injured party has retained an attorney, they must direct all further communication to the injured party's attorney. Of course, these rules do not prohibit claims personnel from dealing directly with an insurance company in appropriate cases.

c. Attorney agreements.

(1) United States policy authorizes the attorney retained by an injured party to assert the claim of the United States as an item of special damages in the injured party's claim. A model Agreement to Represent is at figure 14-1. The right of the injured party to assert the Army's claim finds support in the general rule permitting subrogation or partial assignment of the claim to the injured party to sue for the entire amount. Distribution of amounts recovered is a matter solely between the subrogor and the subrogee or assignor and assignee. The attorney may rely on the cases of *Conley v. Maatala*, 303 F.Supp. 484 (D. N.H. 1969), and *Palmer v. Sterling Drugs, Inc.*, 343 F.Supp. 692 (E.D. Pa. 1972), as authority to protect the Government's interests in any judicial proceeding against third parties.

(2) Ethical considerations play an important role during this representation. Since the injured party and the Army share a common interest in recovering damages from the tortfeasor, the ethical prohibition on multiple representation should not create any conflict for the injured party's attorney. An ethical conflict can arise, however, when a settlement is reached and there are insufficient insurance proceeds to satisfy both the Army's claim and the injured party's

claim. In such cases, the RJA or recovery attorney should then deal directly with the insurance company.

(3) A private attorney is not entitled to attorney fees and costs for representing the Government's interests along with those of his or her own client. (5 USC 3106). The RJA or recovery attorney must provide written authorization, in writing, for the injured party's attorney to include the Government's claim in the client's suit. The attorney then acknowledges that the Government will not pay for the representation.

(4) Requests for assistance involving potentially improper or unethical conduct by civilian attorneys representing the Government's interests should be referred to the SJA.

14–15. The MTF Third Party Recovery Program

a. 10 USC 1095 allows Federal agencies to recover certain medical care costs from health benefits insurers and from automobile insurance carriers. In 1992, TJAG and The Surgeon General signed a Memorandum of Agreement (figure 14-2), setting forth the responsibilities of the installation claims offices and the MTFs in pursuing claims against these third party payers.

b. MTFs, through their Third Party Recovery Program, pursue claims against health benefits insurers and Medicare supplemental insurance policies. Installation claims offices pursue claims against automobile insurance carriers as well as all claims arising under the FMCRA, State workers' compensation statutes, contractual third party-beneficiary theory, or hospital lien laws.

c. Some cases may involve collecting from both a health benefits insurer and an automobile insurance carrier. Consequently, the local MTF's Third Party Collection Program personnel must closely coordinate with the installation claims offices. In such cases, the MTF's Third Party Collection Program personnel will first attempt to recover the claim from the injured party's private health insurance. If the Third Party Collection Program personnel do not recover the full amount of the claim, they will forward it to the installation claims office for recovery from the automobile insurance carrier.

Section IV
Recovering and Depositing Claims

14–16. Installation demand procedures after initial assertion

a. After asserting a claim, it is imperative that claims personnel follow up on the case. This may require a letter or telephone call to the tortfeasor, unrepresented injured party, attorney of the injured party, or insurance company. Timely review and proper follow up will ensure the Government's interests are protected and that no SOL expires before the RJA or recovery attorney takes final action on the file.

b. If the injured party has received additional medical care since the claim was initially asserted, claims personnel should adjust the amount asserted and notify the proper parties.

c. All requests to compromise, waive, or terminate recovery efforts on medical care or property damage claims above the claims office authority must be forwarded (by mail or facsimile) to the Affirmative Claims Branch, USARCS. Claims personnel must complete a Medical Care Recovery Worksheet or Property Damage Recovery Worksheet in such cases. (See figures 14-3 and 14-4.) This provides an orderly method of setting forth the facts and the law regarding the claim as well as a recommendation for action. The worksheet must contain sufficient details to explain and support the action recommended. The opinion paragraph should balance the legal and factual issues so the RJA or recovery attorney can propose a fair and reasonable settlement. Claims personnel should be prepared to provide the Affirmative Claims Branch, USARCS legible copies of pertinent supporting documents, which include but are not limited to—

(1) Accident report.

(2) Discharge summaries.

(3) DA Form 3647-1 (Inpatient Treatment Record Cover Sheet) with accompanying narrative summary.

14–17. Settling affirmative claims

a. Distinguishing between waiver and compromise. The FMCRA does little to clarify the distinction between waiver and compromise when it addresses the ability of the head of the department or agency concerned to "waive any such claim, in whole or in part, for the convenience of the Government, or if [it is determined] that collection would result in undue hardship upon the person who suffered the injury or disease..." For purposes of the Affirmative Claims Program, it is important to understand that to waive a claim is to forfeit entirely the Government's right to recovery in a particular case. For example, to waive a $5,000 medical care claim would leave the Government without any recovery. To compromise, however, is to accept some lesser amount than the asserted amount of the Government's claim. For example, the RJA or recovery attorney may be authorized to compromise the $5,000 assertion to $3,500 or even to $1.

b. Compromise.

(1) The head of the claims office must exercise compromise authority so that the rights of the Government are protected and claims satisfied as fully as possible. The RJA or recovery attorney must be not only well-rounded in the facts and the law but also skilled in the art of negotiating. Skill in evaluating claims is essential to success in compromise negotiations. Other pertinent factors in compromise efforts are the ability of the prospective defendant to pay, based not only on present age, health, occupation, and income, but also on any anticipated inheritance or availability of other assets; the cost of collecting claims by litigation or more extensive administrative efforts; the strength or weakness of the facts; the law in the jurisdiction; the availability of evidence; and other circumstances affecting the likelihood of success should the claim proceed to litigation. If the injured party continues to receive medical care at Government expense, the RJA or recovery attorney should delay settlement or should consider this in negotiating a settlement of the Government's claim if delay is not appropriate.

(2) Should there be several prospective defendants who are jointly liable, the RJA or recovery attorney negotiating the compromise should be careful not to inadvertently release claims against the remaining debtors by making a compromise agreement with one. A compromise with one tortfeasor carries no obligation to reach a similar compromise with other tortfeasors.

c. Terminating recovery efforts. The RJA or recovery attorney is authorized to terminate recovery efforts for the convenience of the Government if the tortfeasor cannot be located, is found to be judgment-proof, has denied liability, or has refused to respond to repeated correspondence concerning legal liability involving a small claim. The head of a claims office can also terminate recovery efforts if the claim is legally without merit, the claim cannot be substantiated by evidence, or if the recovery costs will exceed the amount of the recovery. A termination for the convenience of the Government is made after it is determined that the case does not warrant litigation or that it is not cost-effective to pursue further recovery efforts. This is little more than an abandonment of recovery efforts, so no release would be executed. Since this is without consideration, a decision to terminate recovery efforts for the convenience of the Government would not preclude subsequent recovery efforts should a defendant be found or assets become available. In such cases, RJAs or recovery attorneys must be cognizant of the time available before the SOL expires to the detriment of the Government claim (28 USC 2415, 2416).

d. Waiver.

(1) The standards for waiver based on undue hardship to the injured party present different factors and should be evaluated on a case-by-case basis. Factors that should normally be considered include but are not limited to—

(a) Prognosis regarding disability or future medical treatment, including entitlement to future Government-rendered medical care.

(b) Decreased earning power and future income.

(c) Out of pocket expenses.

(d) The financial loss of the injured party.

(e) Age of the injured party.

(f) Marital status and number of family members.

(g) Other Government benefits accruing to the injured party.

(h) Present and prospective assets.

(i) Value of the injured party's claim.

(2) A request by the injured party for a waiver due to undue hardship may be treated as a suggestion to compromise the Government's claim. Waiver is considered, on request of the injured party, when the total assets of the prospective defendant and other resources such as insurance coverage are insufficient to discharge both the Government's and the injured party's claim. Usually, the RJA or recovery attorney estimates the reasonable value of the general damages aspect of the injured party's claim by reference to other similar cases in the same jurisdiction. The request for waiver must include detailed information concerning the reasonable value of the claim as to both general and special damage elements, pension rights, and other benefits. The injured party must also present evidence of other assets and income so that a realistic assessment of possible hardship may be made. If the request for waiver for undue hardship cannot be appropriately treated as a compromise, the RJA or recovery attorney must consider waiving the claim in its entirety.

e. Installment payments.

(1) Medical care and property damage claims should be recovered in a lump-sum payment when possible. If the debtor is financially unable to pay the debt in one lump sum, the RJA or recovery attorney may accept payment in regular installments (4 CFR 102.11). Installment payments will be required on a monthly basis, and their size must bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment agreement should specify payments of such size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause.

(2) When the RJA or recovery attorney has agreed to accept payment in regular installments, an executed confess-judgment note should be obtained from the debtor when the total amount of the deferred installments exceeds $750. The note should specify all the terms of the installment arrangement. The debtor should receive a written explanation of the consequences of signing the note, and the RJA or recovery attorney should document that the note was signed knowingly and voluntarily. The RJA or recovery attorney will not accept security from the debtor for the deferred payment. The installment agreement (figure 14-4) should contain a provision accelerating the debt should the debtor default. Before executing an installment agreement, the RJA or recovery attorney should get a financial statement from the debtor who asserts an inability to satisfy the Government's claim in a lump-sum payment.

f. Working with insurance companies.

(1) Often, despite timely proper notice from claims personnel, an insurance company settles with the injured party without satisfying the Government's claim. State insurance laws often require insurers to negotiate with all claimants before disbursing insurance proceeds. Consequently, claims personnel should continue to pursue the Government's claim with the insurance company. The RJA or recovery attorney should also research State law to determine if any other recourse against the insurance company exists.

(2) To avoid paying the Government's claim, an insurance company may argue that the injured party already has signed a release. However, case law has clearly established that a release from the injured party does not prevent the Government from pursuing its claim. Claims personnel need to advise the insurance company of this and continue to aggressively pursue the Government's claim. If the insurance company still refuses to negotiate with the RJA or recovery attorney, he or she may file a complaint with the State Insurance Commissioner. In appropriate cases, the RJA or recovery attorney may refer the case for litigation.

14–18. Litigation

a. Even the most skillful and vigorous administrative recovery efforts will not always succeed. Claims that cannot be settled administratively must be evaluated with a view toward possible litigation. Some cases must be referred to the Army Litigation Center (Torts Branch), such as those in which either the injured party or the prospective defendant has initiated suit and the attorney will not agree, in writing, to represent the interests of the United States.

b. RJAs or recovery attorneys may refer claims for $5,000 or less directly to the United States Attorney either for the district in which collateral suit has been instituted or, if there is no such suit, for the district in which the prospective defendant resides. Although the United States Attorney is responsible for litigation, RJAs or recovery attorneys will cooperate by providing memoranda and evidence from Army sources. Claims for more than $5,000 must be forwarded through the Affirmative Claims Branch, USARCS, who will in turn send the files to the Army Litigation Division for referral to the DOJ (AR 27-40, para 5-2*a* and *b*).

c. When referring a case for litigation, whether it is to initiate the Government's independent action or to intervene in the injured party's suit, the RJA or recovery attorney must prepare an investigative report. This report will contain complete details about the incident, an analysis of potential liability, defenses, counterclaims, copies of any pleading filed, a list of witnesses, recovery efforts by the claims office, information about the injured party's injuries, and copies of all medical records and bills. The report must clearly note the date the SOL expires. This report may require extensive investigation and research; successful recovery in court may hinge on the research provided in the investigative report. AR 27-40, chapter 5, provides further guidance on preparing this report.

d. RJAs or recovery attorneys should refer cases for litigation at least 6 months before the SOL expires (AR 27-40, para 5-1*d*). This will provide the Affirmative Claims Branch, USARCS, the Army Litigation Division, and the U.S. Attorney's Office sufficient time to process and prepare the case for trial.

14–19. Administrative matters

a. Releases. The RJA or recovery attorney who receives either payment of a claim in full or full satisfaction of an approved compromise settlement may provide a receipt and execute a release. An indemnity agreement cannot be included in the release, and the RJA or recovery attorney must ensure that the terms of the release do not prejudice the Government's right on any additional claim that arises out of the same incident. Language proposing to release any claim that the injured party holds against the tortfeasor must be avoided. Examples of releases for both medical care and property damage are at figures 14-6 and 14-7.

b. Depositing recoveries.

(1) In medical care cases, as a general rule, claims personnel must deposit into the General Treasury any recoveries for medical care that CHAMPUS paid for and must deposit into the appropriate MTF operation and maintenance (O & M) account recoveries for care provided by, or through, the MTF. Any amount recovered for lost pay must be deposited to the installation O & M account that supports the operation of the command, activity, or other unit to which the member was assigned. AR 27-20, paragraph 14-19*e*, provides detailed guidance on depositing medical care recoveries.

(2) In property damage cases, claims personnel must deposit recoveries for damaged real property into the account available for the repair or replacement of the real property (10 USC 2782). Previously, these recoveries were returned to the General Treasury. Recoveries for damage to Government housing caused by a soldier or his or her family members or guests will be deposited into the family housing O & M account at the installation responsible for the housing (10 USC 2775). Claims personnel must deposit into the General Treasury recoveries for damaged personal property.

c. Closing and disposing of files. Once the RJA or recovery attorney takes final action on a claim, claims personnel should make the proper entries in the Affirmative Claims Management Program database. Claims personnel must close the file and assign it an appropriate destruction date. AR 25-400-2, file numbers 27-20k (Army property damage claims) and 27-20m (Medical expense claims), details the disposition instructions based on the type of final

action taken. Additionally, AR 25-400-2 provides instructions for retaining closed files and for forwarding the closed files to record holding areas. Proper disposition of closed files is critical in case claims personnel need to retrieve a file later.

Table 14–1
Office of Management and Budget and DOD rates

DATES	CITATION	INPAT/DAY	OUTPAT/VISIT	BURN CENTER/DAY
01 Jun 79-06 APR 80	44 F.R. 32490	$226	$23	
07 Apr 80-10 May 81	45 F.R. 242913	$254	$26	
11 May 81-03 Jun 82	46 F.R. 25738	$336	$33	
04 Jan 82-14 Dec 82	46 F.R. 63157	$406	$40	
15 Dec 82-31 Oct 83	47 F.R. 55743	$430	$40	
01 Nov 83-01 Oct 84	48 F.R. 50642	$391	$49	
02 Oct 84-01 Oct 85	49 F.R. 45280	$452	$56	
02 Oct 85-01 Oct 86	50 F.R. 46373	$472	$62	
02 Oct 86-01 Oct 87	51 F.R. 35709	$441	$58	$1,635
02 Oct 87-30 Sep 88	52 F.R. 36851	$466	$60	$1,891
01 Oct 88-30 Sep 89	53 F.R. 39001	$494	$67	$2,020
01 Oct 89-30 Sep 90	55 F.R. 949	$554	$67	$2,042
01 Oct 90-30 Sep 91	55 F.R. 40963	$603	$71	$2,176
01 Oct 91-30 Sep 92	56 F.R. 51940	$701	$76	$2,347
01 Oct 92-25 Oct 93	57 F.R. 48642	*	$100	$2,761
***FY 93 Multiple rates per occupied inpatient bed day:**				
Medical Care Services			$ 777	
Surgical Care Services			1,022	
Obstetrical/Gynecological Care			993	
Pediatric Care			802	
Orthopedic Care			881	
Psychiatric Care/Substance Abuse			508	
Family Practice			716	
Medical Intensive/Coronary Care			1,749	
Surgical Intensive Care			1,767	
Neonatal Intensive Care			1,104	
Organ & Bone Marrow Transplants			1,814	
Same-Day Surgery			477	

High cost services rendered by external providers (beginning with fiscal year 1995) are too voluminous to publish in the Federal Register For example, FY F6 radiology service cost breakdowns span 21 printed pages. Individual Army medical treatment facilities should have these rates on hand. If you experience difficulty in obtaining high cost service rates, contact Lieutenant Commander Patrick Kelly of the Office of the Assistant Secretary of Defense (Health Affairs) at (703) 681-8910. You may request a hard copy or give your electronic mailing address to receive segments transmitted in the form of a PowerPoint for Windows spreadsheet or an ASCII file for conversion to your word processing software.

DATES	CITATION	INPAT/DAY	OUTPAT/VISIT	BURN CENTER/ DAY
26 Oct 93-31 Mar 94	58 F.R. 57638	**	$99	$2,946
****FY 94 Multiple rates per occupied inpatient bed day:**				
Medical Care Services				$ 772
Surgical Care Services				1,067
Obstetrical/Gynecological Care				1,006
Pediatric Care				775
Orthopedic Care				963
Psychiatric Care/Substance Abuse				472
Medical Intensive/Coronary Care				1,680
Surgical Intensive Care				1,830
Neonatal Intensive Care				1,072
Organ and Bone Marrow Transplants.				1,513
Same-Day Surgery				420
1 Oct 94-30 Sep 95	DOD 59 F.R. 53492[1]	DRG[3]	Ref F.R.	$3,794
	OMB 60 F.R. 61450[2]	DRG[3]	Ref F.R.	$3,794
1 Oct 95-30 Sep 96	DOD 60 F.R. 52655[1]	DRG[3]	Ref F.R.	$3,794
	OMB 60 F.R. 61450[2]	DRG[3]	Ref F.R.	$3,794
1 Oct 96-30 Sep 97	DOD 61 F.R. 57654[1]	DRG[3]	Ref F.R.	$4,086
	OMB 61 F.R. 56360[2]	DRG[3]	Ref F.R.	$4,086

Notes:

[1] Department of Defense rates used for medical care recovery claims when the theory of recovery is strictly 10 USC § 1095 or both 10 USC § 1095 and the FMCRA. Rates in the “Other” column apply.

[2] Office of Management and Budget rates used for medical care recovery claims when the theory of recovery is strictly the FMCRA (42 USC §§ 2651-2653 et seq.). The “Full Reimbursement Rate” is applicable.

[3] As authorized by 10 USC §1095(f)(3), the Office of Management and Budget twelve-category medical billing rates have been replaced with a billing method based on Diagnostic Related Group (DRG) rates, similar to the way CHAMPUS billing is calculated. DRG rates for FY 96 and FY 97 were published in 60 F.R. 51779 and 61 F.R. 54160, respectively.

RE: Carol Smith

I, Susan Jones, Attorney at Law, represent Carol Smith, who sustained injuries in an accident on or about April 23, 1996.

It is understood that pursuant to Title 42, United States Code, Sections 2651-2653, Title 10, United States Code, Section 1095, and state statutes and judicial decisions, the United States of America (hereinafter called the Government) has the right to recover the wages of a soldier who is unable to perform his or her military duties as the result of an injury as well as the reasonable value of care and treatment furnished or to be furnished by or for the Government to individuals entitled to such care and treatment when they suffer an injury or disease under circumstances that create tort or contractual liability on third parties, including insurance companies, to pay damages.

Title 42, United States Code, Sections 2651-2653, provides for an independent right of recovery by the Government for wages of a soldier and medical care furnished at Government expense due to the negligence of a third party. Under the provisions of Title 10, United States Code, Section 1095, the Government is entitled to recover from automobile insurance policies, including personal injury protection, medical payments, uninsured or underinsured and liability coverages.

It is the Army's policy to authorize the attorney retained by an injured party to assert the claim of the Government as an item of special damages in the injured party's claim or suit. This form of proceedings will permit the attorney to control all aspects of the joint collection effort. It will also prevent any adverse effect occasioned by the Government's independent collection action or intervention in proceedings brought on behalf of the injured party.

Title 5, United States Code, Section 3106, prohibits the payment of a fee for representing the Government. Further, as the claim of the Government is an independent cause of action rather than a lien on any settlement or judgment obtained by the injured party, any contingent fee arrangement with the injured party applies only to his or her claim and not to the Government's portion of the recovery. In return for rendered assistance, however, the Army will furnish without cost available medical records from U.S. Government medical facilities and, if possible, local Army medical personnel who have treated or are treating the injured party.

Recovery collected on behalf of the Government under the provisions of Title 42, United States Code, Sections 2651-2653, Title 10, United States Code, Section 1095 or any other legal theory should be made payable to the "Treasurer of the United States" and directed to this office.

I, Susan Jones, agree to represent the Government under the terms and conditions in the following paragraphs:

(a) I understand that the recovery attorney must be consulted regarding any potential compromise of any portion of the Government's claim that has been assigned under this agreement and that the recovery attorney must agree with the proposed compromise.

(b) I understand that should it later become necessary for me to withdraw from this agreement, I will provide the recovery attorney reasonable notice of my intent so that the Claims Office may protect the Government's rights.

(c) I understand that if compromise or waiver of the Government's claim is requested at any time, it will be considered in view of the facts and circumstances of the case.

(d) I agree to furnish status reports on the injured party's case upon request or following significant developments in the case.

(e) I agree to include the Government's model allegation in pleadings filed in the case.

(f) I agree that the Government may at its option terminate this agreement and enter into negotiations with third parties or institute legal action against third parties upon 30 days written notice if:

(1) I fail to provide status reports within 30 days of request therefor or of a significant development in the case;

(2) The Government's model allegation is not included in the pleadings filed; or

(3) The applicable statute of limitations is 6 months or less from running, negotiations have not been concluded, the Government has not received full payment of its claim and suit has not been filed.

Figure 14-1. Sample attorney representation agreement—Continued

The above terms are acceptable to me. I agree to protect the Government's interests in this matter in accordance with the terms outlined in this agreement.

Date: June 3, 1996

Signature:
Susan Jones
Attorney at Law
Severn, Maryland

The Government acknowledges that Susan Jones is representing the Government's interest in the above case. The U.S. Army agrees to be bound by any judicial determination rendered by a court of competent jurisdiction.

Date: June 10, 1996

Signature:
John K. Brown
Recovery Attorney
Office of the Staff Judge Advocate
Fort Washington, MD 21142

Figure 14-1. Sample attorney representation agreement

1. Purpose. Define OTJAG and OTSG relationships, responsibilities and procedures in conducting collections under 10 U.S.C. 1095, as implemented by Health Services Command's Third Party Collection Program (TPCP), and the Federal Medical Care Recovery Act (FMCRA).

2. Background. Prior to passage of Section 713, Public Law 101-511 (5 November 1990), Military Treatment Facilities (MTFs) could only collect from a retiree or family member's health insurance for inpatient hospital care. The amendment expanded collection authority to collect for outpatient care and collect from automobile insurance carriers and Medicare supplemental insurance (TAB A).

a. Through affirmative claims programs, Installation Claims Offices assert and collect on claims for medical care provided by MTFs from liability insurers under FMCRA and from other third party payers under contract coverages or state workmen's compensation statutes. Installation Claims Offices rely upon the local MTFs to notify them and provide information concerning potential third party cases.

b. Under previous guidance furnished by U.S. Army Claims Service (TAB B), Installation Claims Offices have also been collecting under 10 U.S.C. 1095 from automobile insurers for medical benefit payments and personal injury protection coverages.

c. Health Services Command has recently issued its Third Party Collection Program (TPCP) in a command memorandum which distributes the plan and sets forth command policy on collection of 10 U.S.C. 1095 claims from health care insurers under the TPCP program(TAB C).

d. 10 U.S.C. 1095 allows direct deposit of collections from claims asserted jointly under the Federal Medical Care Recovery Act and 10 U.S.C. 1095 into local MTF operations and maintenance accounts.

e. Because of the potential overlap between the Third Party Collection Program and the installation affirmative claims program, the above parties have entered into this Memorandum of Agreement.

3. Relationships. This Memorandum of Agreement is intended to facilitate and enhance medical care recovery under both 10 U.S.C 1095 and the Federal Medical Care Recovery Act by making maximum use of legal and medical resources at each installation and throughout the Army medical and legal system.

a. The Office of the Surgeon General has primary staff responsibility for 10 U.S.C. 1095 medical recovery activity from health benefits insurers and Medicare supplemental insurance. Health Services Command, through its Third Party Collection Program, has operational responsibility for 10 U.S.C. 1095 collections. TPCP directives call for collection of medical care recovery funds by Regional Claims Settlement Offices (RCSO) located in Regional Medical Centers. On 24 March 1992, the authority to compromise, waive or settle claims under paragraph E2b of Department of Defense Instruction 6010.15, Third Party Collection Program (TPCP), 7 March 1991, was delegated to The Judge Advocate General, with further redelegation authorized. Upon redelegation to the Commander, USARCS, further delegation to installation claims offices and the SJA, HSC, is anticipated. In accordance with the 8 June 1984, OTJAG/OTSG Memorandum of Understanding concerning Medical Claims Judge Advocates, these officers must be available to process and investigate medical malpractice claims (TAB D). Therefore, any use of MCJA'S to conduct 10 U.S.C. 1095 recoveries must not impede this important function.

b. The Judge Advocate General, through the Commander, U.S. Army Claims Service, will supervise the provision of legal services and support for the medical care recovery program under the Federal Medical Care Recovery Act and under 10 U.S.C. 1095 (automobile insurance carriers).

4. Responsibilities.

a. Legal Support. In accordance with the TPCP, medical care recovery from health benefits insurers will be handled by local MTFs and Regional Medical Centers through their Regional Claims Settlement offices. These regional offices will provide legal services and support for the 10 U.S.C. 1095 program to MTFs and act as conduits for guidance and reporting to Health Services Command. Installation Claims Offices will continue to conduct medical care recovery actions under FMCRA and 10 U.S.C 1095 (automobile insurance carriers) under guidance furnished by their Staff Judge Advocates and U.S. Army Claims Service. Staff Judge Advocates and MTFs may enter into agreements for additional legal support for the medical care recovery program on an as needed basis.

b. Funding. In accordance with TPCP, a portion of the money collected under 10 U.S.C. 1095 may be used by MTFs to offset the cost of operating the Third Party Collection Program. To the extent that Installation Claims Offices will participate in recoveries under 10 U.S.C. 1095 (automobile insurance carriers) and by deposit of a portion of funds collected under the Federal Medical Care Recovery Act,

Figure 14-2. Memorandum of agreement between the Office of the Judge Advocate General and the Office of the Surgeon General—Continued

MTFs must consider resourcing these activities to further facilitate and enhance recovery under these programs.

5. Procedures.

a. In continuation of the ongoing affirmative claims program, MTF personnel will obtain insurance and other relevant information from individuals requiring hospitalization or outpatient treatment because of an accident. They will also screen emergency room logs, clinic records and patient admission information for accident cases. They will notify Installation Claims Offices on a frequent basis of all potential medical care recovery cases not involving collection from a health benefits insurer or Medicare supplemental insurance. MTF personnel will also forward copies of paid vouchers for military members who were treated in civilian facilities for accidental injuries. MTFs will establish internal controls for the timely reporting of all accident cases and will keep a record of all cases forwarded to the installation claims offices in obtaining medical records and cost computations.

b. In cases where the MTF program and the affirmative claims program of the local Installation Claims Office overlap and the Army can collect from either a health insurer, an automobile insurer, or both, the MTF will first attempt collection from the health insurer. If this collection fails, MTFs will forward the claim file to the Installation Claims Offices for collection under other theories of recovery. MTFs will endeavor to process all claims involving potential recoveries from different insurers quickly so that claims against other insurers can be processed within the applicable statute of limitations.

c. Other than those related to precertification and utilization review under the HSC TPCP, MTFs will route all requests for release of medical records and medical information from injured parties, their agents or insurance companies through the installation recovery judge advocates.

d. Installation recovery judge advocates will record all potential medical care recovery cases received from the MTFs and will notify MTFs of the final disposition of each case. On a monthly basis, the installation claims offices will notify the MTFs of the amounts deposited into their operations and maintenance accounts.

e. MTFs will arrange for Installation Claims Offices to have access to relevant information from current automated systems such as the Automated Quality of Care and Evaluation Support System (AQCESS) and such future automated systems as may be developed in order to enhance medical care recovery.

f. MTFs may develop local Memorandums of Agreement with respective Installation Claims Offices outlining specific procedures and discussing issues involving funding, personnel, forms, automation practices and programs and other legal issues.

g. Staff Judge Advocates and the Health Services Command legal consultant will comply with existing Army regulations and procedures in all cases requiring litigation or referral to the Department of Justice.

6. Changes and Effective Date. Changes to or termination of this agreement may be made at any time by either party in writing. This agreement shall become effective upon the signature of both parties and will be reviewed and updated as required.

/s/	/s/
JOHN L. FUGH	FRANK F. LEDFORD, JR.
Major General, USA	Lieutenant General, USA
The Judge Advocate General	The Surgeon General
Date: 2 April 1992	Date: 10 April 1992

Figure 14-2. Memorandum of agreement between the Office of the Judge Advocate General and the Office of the Surgeon General

AFFIRMATIVE CLAIMS

PROPERTY DAMAGE RECOVERY WORKSHEET

FIELD OFFICE AND POC: CPT Wye Mee, Camp Outback, HI, (808) 655-8888

CLAIM #: 96-ZZZ-A0015

TYPE OF PROPERTY: UH-60A Blackhawk Helicopter

DESCRIPTION OF ACCIDENT: on 10 May 96, a privately owned Convair Passenger Transport, struck a parked UH-60A MEDEVAC aircraft. The mishap occurred at Cap Haitian (airfield), Haiti.

The U.S. Army received prior authorization from the FAA to "park" its helicopters at the airfield. It is documented that the air traffic controller denied the Conch Cargo pilot's request to land in the proximity of the UH-60A helicopter. The pilot ignored the instruction and attempted to land on the concrete pad, hitting overhead wires. Upon landing, the brakes locked up and the plane skidded off the runway, striking the helicopter. See Report of Proceedings by Investigating Officer/Board of Officers (DA Form 1574), attached.

TORTFEASOR: Conch Cargo, Inc. of 77 Sunset Strip, Key West, FL 33333

NATURE AND AMOUNT OF DAMAGES: $3,500,010.25

AMOUNT OF AVAILABLE INSURANCE: Unknown. AIG Aviation, Inc. is the insurance carrier for Conch Cargo, Inc.

AMOUNT OFFERED: $0, AIG denies liability.

FIELD OFFICERS RECOMMENDATION: Recommend full recovery through the litigation process. The litigation report and background materials (in duplicate) are attached.

Figure 14-3. Affirmative claims, property damage recovery worksheet

AFFIRMATIVE CLAIMS

MEDICAL CARE RECOVERY WORKSHEET

1. FIELD OFFICE (INCLUDE ADDRESS, POC, CIVILIAN PHONE NUMBER) CPT Warren Peese, RJA, Fort Knight, GA, (912) 370-4444

2. INJURED PARTY(IES) (IP)

a. Name(s): Johnny B. Good

b. Military status (rank/retiree/family member): family member of a retired Army sergeant

c. MOS/job description: student

d. Age(s): 12

e. Marital status: single (minor)

f. Number of family members: no dependents, lives with parents and two minor siblings.

g. Physical Evaluation Board's determination (fit or unfit for duty and percent of disability): PEB N/A, but treating physician indicates permanent mental and physical disabilities.

h. Date and type of Army discharge: N/A

i. Sources of income: None.

j. Prospects for future income: Limits on ability to perform substantial, gainful employment in the future.

k. Assets: None.

1. Financial obligations: Parents home is mortgaged. The family has credit card debt, two car payments, and routine living expenses, in addition to special care expenses for Johnny.

3. IP'S ATTORNEY

a. Name & address: Ms. Novi Gild

b. Fee arrangement with IP: 33.3% of her client's recovery

c. Amount attorney has agreed to reduce fee, if any: None.

d. Has the attorney signed an agreement to represent the Government's interests?: Yes, a copy is included in the claim materials provided.

4. TORTFEASOR(S):

a. Name(s): Ms. Mea Maxima-Culpa (car driver), Mr. Lex Silia (school bus driver)

b. Military status (rank/retiree/family member): Both are civilians

c. Age: 25, and 62, respectively

d. Occupation (Corporation): Computer Programmer, and School Bus Driver, respectively

e. Assets (Insurance Offer): No assets (see affidavit); $50,000 policy limits offered by liability insurer.

Figure 14-4. Affirmative claims, medical care recovery worksheet—Continued

f. Prospects of going directly against tort-feasor and factors considered to reach this conclusion:

Driver of car was not found guilty of gross negligence and has no assets. A law suit is pending against school bus driver whom may be found guilty of a misdemeanor for proceeding before all children disembarking from the bus, who needed to, safely crossed the roadway. See attached copy of GA CODE ANN. 40-6-164 (1994).

5. DESCRIPTION OF INCIDENT (INCLUDE DATE, LOCATION, AND CIRCUMSTANCES):

Pedestrian/car EVA in GA - on 2 May 96, IP exited school bus stopped on 2-lane Hwy 196 headed west. According to police report diagram, the school bus let Johnny off on Penny Lane then proceeded. Johnny ran across the busy highway where Penny Lane intersects. The school bus, followed by another vehicle, had already cleared the intersection when IP ran into the driver's side of a car where the door and fender meet. The driver of the car was traveling eastbound on Hwy 196. It is documented that the car driver stated that she started to slow down prior to the incident, just as the red stopping lights of the school bus went off, and that her view of Johnny was blocked by the school bus.

6. OPINION AS TO LIABILITY

a. State law mandates or restrictions: GA CODE ANN. 40-6-164 (1994)

b. IP's contributory negligence: Johnny's negligence is questionable and has not yet been determined.

c. Prospects if in litigation: A decision in Johnny's law suit against the school bus driver, et al. is pending. The legal complaint is attached .

The car driver's insurance company accepted liability.

7. NATURE OF INJURIES AND PROGNOSIS

a. Number of days hospitalized: 100 days

b. Number and type of surgeries:

Traumatic brain injury, skull fracture, left femur fracture, abdominal injuries. Four surgeries: two on brain, one to stabilize leg, and one exploratory procedure on the stomach.

c. Type of pain medication prescribed, what condition it is prescribed for, and how often IP takes it:

Amantadine for Parkinson's symptoms; Dantrium for muscle spasms; Reglan and Cisapride to aid digestion and Zantac to prevent stomach ulcers.

d. Current condition:

Johnny's treating physician documented that the child is totally disabled, needs around the clock care for life.

e. Anticipated future care:

Ongoing physical, occupational and speech therapies will be needed throughout his lifetime.

f. Nature of any permanent physical disability or mental impairment:

Profound, permanent brain damage manifested by seizures, and learning and speech deficits.

g. Type and time frame for rehabilitation: Continuing throughout lifetime.

h. Present and future occupational limitations: Requires constant care; ability to perform substantial, gainful future employment, nil.

i. Need for medical devices, prostheses, constant care, or other type of care: wheelchair, automatic bed, and a specially equipped van.

Figure 14-4. Affirmative claims, medical care recovery worksheet—Continued

8. MEDICAL PAYMENT INFORMATION

a. Total medical expense to the Government and date of last billing update: CHAMPUS bills total $120,000 as of 5 Jan 98.

b. Follow-up medical expenses: Approx. $2,500 per year for life.

c. Who will pay follow-up expenses?: CHAMPUS

d. Cost of lost military pay (basic, special or incentive pay): N/A

9. AVAILABLE INSURANCE FROM TORTFEASOR(S)

a. Insurance carrier(s): Allstate (car driver) Wausau (school bus driver)

b. Policy limits: $50,000 (Allstate); $100,000+ (Wausau)

c. Amount offered: $50,000 by Allstate, Wausau denies liability

10. AVAILABLE INSURANCE FROM IP

a. Insurance carrier(s): None.

b. Policy limits:

c. Amount offered:

11. BASIS FOR WAIVER/COMPROMISE/TERMINATION

a. IP's CHAMPUS cost share amount or other medical expenses:

CNAMPUS/TRICARE catastrophic cap on cost shares paid by retired military sponsors is $7,500 per fiscal year (FY) per family (cost of care for all family members is included in FY total).

b. Other out-of-pocket expenses: $30,000 per year in salary from mother's former job, which she had to resign to care for Johnny.

c. VA or Social Security disability benefit plan upon discharge: Family receives $200 per month in Social Security disability benefits.

d. Vocational training (VA or paid by IP): N/A

e. Reasonable value of IP's claim for permanent injury, pain and suffering, decreased earning power, and any other item of special damages and factors considered to reach this figure:

Approximately $1.3 million over lifetime (38 remaining years of work at $30,000 per year.

12. FIELD OFFICE'S RECOMMENDATION AND JUSTIFICATION

If considering a waiver of the Government's claim, you must provide evidence demonstrating the injured party would suffer undue hardship if the claim was compromised for any amount.

If considering a compromise settlement, you must calculate the total loss suffered by the injured party (as in item line above) plus the attorney's share of the injured party's portion. Then compare the Government's total loss (current and future care costs) and calculate the Government's recovery amount using the same ratio, to reach an equitable settlement amount.

Figure 14-4. Affirmative claims, medical care recovery worksheet

For value received, I, Jay Long, promise to pay to the order of the Treasurer of the United States the sum of $1,462 in 10 monthly installments. The first installment will be in the amount of $150 and the last installment will be in the amount of $112. The amount of $1,462 will be a full and final amount of restitution for the property damage loss the Government sustained because of my negligence, namely the damage to the brick entrance on Mapes Road, Fort Meade.

Payments shall be made before the first day of each month beginning August 1996 and paid each month thereafter until such obligation is fully paid. If any such installment shall remain unpaid for a period of 10 days or more, the entire amount of this obligation, less payments actually made, shall become immediately due and payable at the option of the Recovery Judge Advocate representing the United States without demand or notice, said demand and notice being hereby expressly waived.

Upon defaulting on any installment payment for a period of 10 days or more, I, Jay Long, do hereby authorize and empower any U.S. Attorney, Assistant U.S. Attorney, or any Federal or State court of record to appear for me and to enter and confess judgment against me in any court of record for the entire amount of this obligation, with interest, less payments actually made; to waive the issuance and service of process upon me in any suit on this obligation; to waive any venue requirement in such suit; to release all errors which may intervene in entering up such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment. I hereby ratify and confirm all that said attorney may do by virtue hereof.

In the event that any portion of this agreement shall be declared to be null or void, the remaining portion of this agreement is severable from such null or void portion and shall be enforced accordingly.

SIGNED:	(signature) Mary Jackson, CPT, JA Recovery Judge Advocate	24 July 1996
SIGNED:	(signature) Jay Long	24 July 1996
	(signature) Louis Varner Witness to debtor	24 July 1996
	(signature) Ada Snopes Witness to debtor	24 July 1996

Figure 14-5. Sample installment agreement

Date: 26 August 1996

The United States Army, in consideration of the payment of $7,456.95, does hereby release and forever discharge Allstate Insurance Company and its insured, Jeff Lloyd, from all claims and demands due the United States for and by reason of the reasonable value of medical care the United States furnished to Carol Smith or paid for on behalf of Carol Smith arising out of an automobile accident which occurred on April 23, 1996.

United States Army

By:
Captain John K. Brown
Recovery Judge Advocate
Office of the Staff Judge Advocate
Fort Washington, MD

Figure 14-6. Sample release in medical care claim

Date: 8 July 1996

The United States Army, in consideration of the payment of $1,376.84, does hereby release and forever discharge State Farm Insurance Company and its insured, Kevin Moore, from all claims and demands due the United States based on the damage to a fence on Fort Washington resulting from an accident which occurred on May 2, 1996.

United States Army

By:
Captain John K. Brown
Recovery Judge Advocate
Office of the Staff Judge Advocate
Fort Washington, MD

Figure 14-7. Sample release in property damage claim

Appendix A
References

Section I
Required Publications

AR 27–20
Claims. (Cited in paras 1-1, 1-5, 1-9, 1-14, 2-1, 2-2, 2-6, 2-7, 2-9, 2-10, 2-12, 2-13, 2-15, 2-18, 2-21, 2-22, 2-23, 2-25, 2-26, 2-27, 2- 28, 2-29, 2-30, 2-31, 2-32, 2-34, 2-36, 2-51, 2-54, 2-60, 2-66, 2- 67, 2-68, 2-72, 2-74, 2-75, 2-76, 2-79, 2-82, 2-83, 2-84, 2-85, 2- 86, 2-88, 2-89, 2-91, 2-95, 2-98, 2-100, 2-101, 2-102, 3-2, 3-3, 3- 4, 3-7, 4-2, 6-4, 7-1, 7-5, 7-10, 7-11, 8-6, 8-12, 9-4, 9-7, 10-2, 10-3, 10-4, 10-5, 10-6, 10-8, 10-10, 11-1, 11-3, 11-4, 11-5, 11-6, 11-7, 11-9, 11-10, 11-14, 11-19, 11-21, 11-24, 11-28, 11-30, 11- 31, 11-32, 11-34, 11-36, 12-1, 12-4, 12-9, 13-1, 13-8, 13-12, 13- 13, 14-2, 14-6, 14-7, 14-8, 14-9, 14-19.)

AR 27–40
Litigation. (Cited in paras 2-82, 3-8, 14-7, 14-18.)

AR 40–68
Quality Assurance Administration. (Cited in paras 2-2, 2-57.)

AR 215–1
Nonappropriated Fund Instrumentalities and Administration of Morale, Welfare and Recreation Activities. (Cited in paras 2-32, 2-67, 2-100, 12-1, 12-9.)

AR 405–15
Real Estate Claims Founded Upon Contract. (Cited in paras 2-18, 2-28, 2- 66, 10-2.)

DFAS–IN Reg 37–1
Finance and Accounting Policy Implementation (available online at http://www.asafm.army.mil)

FTCA
FTCA Handbook. (Cited in paras 2-9, 2-11, 2-23, 2-27, 2-31, 2-74, 2-75, 2-77, 2-78, 2-80, 2-81, 2-82, 2-83, 2- 84, 2-102, 3-3, 3-4, 3-5, 3-8, 4-2, 6-2, 7-1, 8-1, 10-1, 10-3, 12-1, 12-9.) (Copies may be obtained from U.S. Army Claims Service, ATTN: JACS-TC (Ms. McIntosh), 4411 Llewellyn Avenue, Fort Meade, MD 20755- 5360)

Section II
Related Publications

AFARS
Army Federal Acquisition Regulation Supplement. (Copies may be obtained on the Internet at http://www.sarda.army.mil/frame3.htm)

AFI 13–201
U.S. Air Force Airspace Management. (Copies may be obtained on the Internet at http://hqafpubs.hq.af.mil)

AR 1–75
Administrative and Logistical Support of Overseas Security Assistance Organizations (SAO).

AR 1–211
Attendance of Military and/or Civilian Personnel at Private Organization Meetings.

AR 15–6
Procedures for Investigating Officers and Boards of Officers.

AR 15–180
Army Discharge Review Board.

AR 25–1
The Army Information Resources Management Program.

AR 25–55
The Department of the Army Freedom of Information Act Program.

AR 25–400–2
The Modern Army Recordkeeping System (MARKS).

AR 27–26
Legal Services: Rules of Professional Conduct for Lawyers.

AR 27–50
Status of Forces Policies, Procedures, and Information.

AR 37–100
Account/Code Structure.

AR 37–103
Disbursing Operations for Finance and Accounting Offices.

AR 37–104–4
Military Pay and Allowances Policy and Procedures—Active Component.

AR 37–104–10
Military Pay and Allowance Procedures for Reserve Components of the Army

AR 37–106
Finance and Accounting for Installations: Travel and Transportation Allowances.

AR 40–3
Medical, Dental, and Veterinary Care.

AR 40–16
Special Notification—Injury Cases.

AR 40–66
Medical Record Administration.

AR 55–80
Highways for National Defense.

AR 60–20
Army and Air Force Exchange Service Operating Policies.

AR 190–9
Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 190–22
Searches, Seizures, and Disposition of Property.

AR 210–47
State and Local Taxation of Lessee's Interest in Wherry Act Housing (Title VIII of the National Housing Act).

AR 210–130
Laundry and Dry Cleaning Operations.

AR 340–21
The Army Privacy Program.

AR 600–4
Remission or Cancellation of Indebtedness for Enlisted Members.

AR 600–8–3
Unit Postal Operations.

AR 600–15
Indebtedness of Military Personnel.

AR 600–20
Army Command Policy.

AR 608–1
Army Community Service Program.

AR 608–4
Control and Registration of War Trophies and War Trophy Firearms.

AR 608–10
Child Development Services.

AR 608–99
Family Support, Child Custody, and Paternity.

AR 638–2
Care and Disposition of Remains and Disposition of Personal

AR 700–84
Issue and Sale of Personal Clothing.

AR 735–5
Policies and Procedures for Property Accountability. The Army Lawyer

DA Pam 25–51
The Army Privacy Program: System Notices and Exemption Rules.

DA Pam 740–2
Moving Your Mobile Homes.

DOD 4160.21–M
Defense Materiel Disposition Manual.

DOD 4500.34–R
Personal Property Traffic Management Regulation

DOD 4525.6–M
DOD Postal Manual (Volume I).

DODD 5515.8
Single Service Assignment of Responsibility for Processing of Claims.

DODD 5515.9
Settlement of Tort Claims.

DODD 5515.10
Settlement and Payment of Claims Under the Military Personnel and Civilian Employee Claims Act of 1964.

DODI 6025.5
Personal Services Contracts (PSCs) for Health Care Providers (HCPs).

EOP 57–2
Property, Casualty, and Contractor Insurance Programs. (Copies may be obtained from Headquarters, AAFES, ATTN: GC-Z (Mona Clark), P.O. Box 650062, Dallas, TX 75265-0062)

FAR
Federal Acquisition Regulation (codified at Title 48 of the Code of Regulations.)

FM 9–15
Explosive Ordnance Disposal Service and Unit Operations.

FM 44–80
Visual Aircraft Recognition.

JFTR
Joint Federal Travel Regulations.

TM 43–0001–37
Army Ammunition Data Sheets for Military Pyrotechnics.

Section III
Prescribed Forms

DA Form 2938–R
Affirmative Claims Report.

Section IV
Referenced Forms

AE Form 68B
Military Freight Warrant.

DA Form 285
U.S. Army Accident Report.

DA Form 348
Equipment Operators Qualification Record (except Aircraft).

DA Form 1208
Report of Claims Officer.

DA Form 1574
Report of Proceedings by Investigating Officer/Board of Officers.

DA Form 1666
Claims Settlement Agreement.

DA Form 1667
Claims Journal for (Personnel) (Tort) (Affirmative) Claims.

DA Form 1668
Small Claims Certificate.

DA Form 2397–R
Technical Report of U.S. Army Aircraft Accident—Part I, Statement of Reviewing Officials.

DA Form 3161
Request for Issue or Turn-In.

DA Form 3265–R
Explosive Ordnance Incident Report.

DA Form 3647–1
Inpatient Treatment Record Cover Sheet.

DA Form 3881
Rights Warning Procedure/Waiver Certificate.

DA Form 4106
Quality Assurance/Risk Management Document.

DD Form 139
Pay Adjustment Authorization.

DD Form 619–1
Statement of Accessorial Services Performed.

DD Form 788
Private Vehicle Shipping Document for Automobile.

DD Form 870
Request for Fiscal Information Concerning Transportation Requests, Bills of Lading, and Meal Tickets.

DD Form 1131
Cash Collection Voucher.

DD Form 1164
Service Order for Personal Property.

DD Form 1299
Application for Shipment and/or Storage.

DD Form 1348–1A
Issue Release/Receipt Document.

DD Form 1412
Inventory of Items Shipped in House Trailer.

DD Form 1701
Inventory of Household Goods.

DD Form 1797
Personal Property Counseling Checklist.

DD Form 1800
Mobile Home Inspection Report.

DD Form 1840 & 1840R
Notice of Loss or Damage.

DD Form 1841
Government Inspection Report.

DD Form 1842
Claim for Loss of or Damage to Personal Property Incident to Service.

DD Form 1843
Demand on Carrier/Contractor.

DD Form 1844
List of Property and Claims Analysis Chart.

DD Form 1863
Accessorial Services—Mobile Home.

DOL Form CA1
Federal Employees Notice of Traumatic Injury.

DOL Form CA2
Notice of Occupational Disease.

DOL Form CA6
Official Supervisor's Report of Employee's Death.

The following three FMS forms are available on the Internet at http://www.fms.treas.gov/tfm/judforms.pdf

FMS Form 195
Judgment Fund Payment Request.

FMS Form 196
Judgment Fund Award Data Sheet.

FMS Form 197
Voucher for Payment.

SF Form 91
Motor Vehicle Accident Report.

SF Form 95
Claim for Damage, Injury, or Death.

Glossary

Section I
Abbreviations

AAFES
Army and Air Force Exchange Service

AAO
area action officer

AC
amount claimed

ACO
area claims offices

AEA
Admiralty Extension Act

AGC
agreed cost of repairs

AGR
Active Guard Reserve

ALDG
Allowance List—Depreciation Guide

AMC
Air Mobility Command, Army Material Command

AMCSA
Army Maritime Claims Settlement Act

APF
appropriated funds

APO
Army Post Office

ARNG
Army National Guard

ASBCA
Armed Services Board of Contract Appeals

ASN
allotment serial number

AUSA
Assistant United States Attorney

AWOL
absent without leave

BBS
bulletin board system

BOA
basic ordering agreement

CAV
claims assistance visits

CCRB
Consultation Case Review Branch, Army Health Professional Support Agency

CD
compact disc

CDS
Child Development Services Center

CEA
claims expenditure allowance

CENTCOM
U.S. Central Command

CER
Command Expenditure Report

CERCLA
Comprehensive Environmental Response, Compensation, and Liability Act

CFR
Code of Federal Regulations

CHAMPUS
Civilian Health and Medical Program of the Uniformed Services

CID
Criminal Investigation Division

CJA
claims judge advocate

CLAIMS
Claims Automated Information Management System

CONUS
Continental United States

CPO
claims processing offices

CR
carrier recovery

CRNA
certified registered nurse anesthetist

D
depreciation

DA
Department of the Army

DAO
Defense Accounting Office

DCCS
Deputy Commander for Clinical Services

DCO
Defense Cost Office

DECA
Defense Commissary Agency

DERA
Defense Environmental Restoration Account

DFAS
Defense Finance and Accounting Service

DFAS-IN
Defense Finance and Accounting Service—Indianapolis Center

DFR
dropped from the rolls

DITY
do-it-yourself

DOD
Department of Defense

DODD
Department of Defense Directive

DODDS
DOD Dependents Schools

DOHSA
Death on the High Seas Act

DOJ
Department of Justice

DPM
direct procurement method

DPW
Directorate of Public Works

DRMO
Defense Reutilization Marketing Office

DSSN
Disbursing Station Symbol Number

DV
depreciated value

DVA
Department of Veterans Affairs

EPA
Environmental Protection Agency

ER
estimate of repair

ETS
expiration term of service

EX
exhibit

F & R
fair and reasonable

FAA
Federal Aviation Agency

FAR
Federal Acquisition Regulations

FBI
Federal Bureau of Investigation

FCA
Foreign Claims Act

FCC
family child care, foreign claims commission

FCCA
Federal Claims Collection Act

FCSC
Foreign Claims Settlement Commission

FECA
Federal Employees Compensation Act

FELRTCA
Federal Employees Liability Reform and Tort Compensation Act of 1988

FEMA
Federal Emergency Management Agency

FMCRA
Federal Medical Care Recovery Act

FMS
Financial Management Service

FOIA
Freedom of Information Act

FR
flat rate depreciation

FRC
full replacement cost protection

FRCP
Federal Rule of Civil Procedure

FRG
Federal Republic of Germany

FTCA
Federal Tort Claims Act

GAO
Government Accounting Office

GBL
Government Bill of Lading

GCMCA
General Court-Martial Convening Authority

GIR
Government Inspection Report

GOV
government owned vehicle

GSA
General Services Administration

HCFA
Health Care Financing Administration

HCP
health care provider

HQDA
Headquarters, Department of the Army

IG
Inspector General

IO
investigating officer

IRV
increased release value

ITGBL
International Through Government Bill of Lading

ITO
installation transportation office

JA
judge advocate

JFTR
Joint Federal Travel Regulation

JTR
Joint Travel Regulations

LAAWS
Legal Automation Army-Wide System

LOV
loss of value

LSHWCA
Longshore and Harbor Workers Compensation Act

MA
maximum allowance

MAAG
Military Assistance Advisory Group

MACOM
major Army command

MCA
Military Claims Act

MCJA
medical claims judge advocate

MEDCOM
Medical Command

MFR
memoranda for record

MOA
memorandum of agreement

MOU
memorandum of understanding

MP
Military Police

MPS
Military Postal Service

MS DCG
manuscript, decision of the Comptroller General (unpublished)

MSC
Military Sealift Command

MTF
medical treatment facility

MT-ITO
International Traffic Division, MTMC

MTMC
Military Traffic Management Command

MTMCEA
Military Traffic Management Command Eastern Area

MWR
Morale, Welfare, and Recreation

NAF
nonappropriated funds

NAFI
nonappropriated fund instrumentalities

NASA
National Aeronautics and Space Administration

NATO
North Atlantic Treaty Organization

NCO
noncommissioned officer

NG
National Guard

NGCA
National Guard Claims Act

NOE
nap-of-the-earth

N/P
not payable

NTS
nontemporary storage

O & M
operation and maintenance

OBS
obsolescence

OGC
Office of The General Counsel

OMB
Office of Management and Budget

OMPF
official military performance file

OSHA
Occupational Safety and Health Administration

OSJA
Office of the Staff Judge Advocate

OTJAG
Office of The Judge Advocate General

OWCP
Office of Workers' Compensation Programs

PA
Privacy Act

PAD
Patient Affairs Division

PCA
Personnel Claims Act

PCE
potentially compensable event

PCR
potential carrier recovery

PCS
permanent change of station

PED
preexisting damage

PL
Public Law

POV
privately owned vehicle

PP
purchase price

PPSO
Personal Property Shipping Office

PPTMR
Personal Property Traffic Management Regulation

PVA
Public Vessels Act

PX
Post Exchange

QA
quality assurance

QIC
Quality Improvement Coordinator

RC
replacement cost

RCM
Rule for Court-Martial

RIMP
Risk Management Program

RJA
recovery judge advocate

RM
risk manager

ROK
Republic of Korea

ROTC
Reserve Officers' Training Corps

RSMO
Regional Storage Management Office

RSO
receiving State office

SA
Secretary of the Army

SAD
State active duty

SCAC
Standard Carrier Alpha Code

SIA
Suits in Admiralty Act

SIR
serious incident report

SIT
storage in transit

SJA
staff judge advocate

SOCOM
Special Operations Command

SOFA
Status of Forces Agreement

SOL
statute of limitations

SOP
standing operating procedure

SPCMCA
Special Court-Martial Convening Authority

SSCRA
Soldiers and Sailors Civil Relief Act of 1940

SSN
social security number

STANFINS
Standard Financial System

STANFINS SRD1
Standard Financial System Redesign

SV/N
item has no salvage value

SV/T
salvage value, item retained

TAACOM
Theater Army Area Command

TAJAG
The Assistant Judge Advocate General

TDRL
temporary disability retirement list

TDY
temporary duty

TGBL
through Government bill of lading

TIAS
Treaties and Other International Acts Series

TJAG
The Judge Advocate General

TO
transportation officer

TSG
The Surgeon General

TVA
Tennessee Valley Authority

UCMJ
Uniform Code of Military Justice

UPPA
Uniform Periodic Payment Act

UPS
United Parcel Service

USACE
U.S. Army Corps of Engineers

USACHPPM
U.S. Army Center for Health Promotion and Preventive Medicine

USACSEUR
U.S. Army Claims Service Europe

USAEC
U.S. Army Environmental Center

USAEHA
U.S. Army Environmental Hygiene Agency

USAF
U.S. Air Force

USAFCS-K
U.S. Armed Forces Claims Service Korea

USAR
U.S. Army Reserve

USARCS
U.S. Army Claims Service

USAREUR
U.S. Army, Europe

USC
United States Code

USN
U.S. Navy

USPHS
U.S. Public Health Service

USPS
U.S. Postal Service

USSOC
U.S. Special Operations Command

VCR
video cassette recorder

VTC
video teleconference

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This section contains no entries.

Section III
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This section contains no entries.

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RESERVED

AFFIRMATIVE CLAIMS REPORT

For use of the form, see AR 27-20; the proponent agency is TJAG

REQUIREMENTS CONTROL SYMBOL
JAGC-42

REPORT FOR MONTH(S) OF _____, 19____ / 20____.

TO: COMMANDER
U.S. ARMY CLAIMS SERVICE
OFFICE OF THE JUDGE ADVOCATE GENERAL
ATTN: JACS-PCA
FORT GEORGE G. MEADE, MARYLAND 20755-5360

FROM: *(Reporting agency, location, ZIP)*
Office Code: _____

ITEM NO.	SECTION I MEDICAL CARE CLAIMS	SECTION II PROPERTY DAMAGE CLAIMS
1. Number of claims asserted		
2. Total dollar amount of claims asserted		
3. Number of claims collected		
4. Total dollar amount of claims collected		

5. a. Number of medical care claims compromised locally _____
5. b. Total dollar amount of medical claims compromised $_____
5. c. Number of property damage claims compromised locally _____
5. d. Total dollar amount of property claims compromised $_____
6. a. Number of medical care claims terminated locally _____
6. b. Total dollar amount of medical claims terminated $_____
6. c. Number of property damage claims terminated locally _____
6. d. Total dollar amount of property claims terminated $_____
7. a. Number of medical care claims waived locally _____
7. b. Total dollar amount of medical claims waived $_____
8. a. Total dollar amount collected for medical care that was returned to a military medical treatment facility (MTF) $_____
8. b. Total dollar amount of military lost wages collected $_____
8. c. Total dollar amount of real property collections $_____

REMARKS:

TYPED NAME, GRADE, AND TITLE *[RJA, CJA, Recovery Attorney or SJA]* SIGNATURE