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TORT CLAIMS

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This instruction implements AFD 51-5, *Administrative Claims and Accident Investigations*. It tells how to investigate, adjudicate, and settle tort claims under various statutory authorities. A tort claim is a demand for money damages based on a civil wrong, other than breach of contract. This publication applies to Air Force Reserve Command (AFRC) Units. **Chapter 6**, Section C applies to the Air National Guard (ANG). This publication may be supplemented at any level, but all supplements must be routed to the Office of Primary Responsibility (OPR) listed above for coordination prior to certification and approval. Refer recommended changes and questions about this publication to the OPR listed above using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate chain of command. Requests for waivers must be submitted to the OPR listed above for consideration and approval. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of in accordance with Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS). The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Air Force.

SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed.

Chapter 1 changes, clarifies and provides more detailed guidance on settlement authority responsibilities and outlines geographic claims jurisdiction for tort claims. Chapter 2 provides more detailed direction on tort claim investigative steps. Chapter 3 adds a requirement to forward legal memoranda to the Department of Justice for certain cases. Chapter 4 requires that overseas Military Claims Act (MCA) claims are evaluated for liability by applying the currently adopted Restatement of the Law. Chapter 5 formalizes the important role for Staff Judge Advocates (SJA) of the Air Force component commands of the U.S. geographic combatant commands in establishing claims jurisdiction for Air Force tort claims arising within their respective areas of responsibility (AOR), vests the SJAs with substantial flexibility in establishing appropriate settlement authority levels for subordinate Air Force legal offices falling under them, and clarifies when the Foreign Claims Act applies. Chapter 6 clarifies that National Guard Claims Act claims apply only to claims arising from noncombat activities and do not require a showing of fault or negligence; and clarifies when torts arising from volunteer activities are paid with appropriated funds. Chapters 7 through 9 are new to this instruction but have been adopted from Air Force Instruction (AFI) 51-502, *Personnel and Government Recovery Claims*, 1 Mar 97, to reflect the organizational responsible has changed to AFLOA/JACC. Chapter 7 is substantially changed to reflect the transition from the installation-based Hospital Recovery Program to the regional-based Medical Cost Reimbursement Program (MCRP). Chapter 8 includes more detailed guidance on processing Article 139, Uniform Code of Military Justice (UCMJ) claims. Chapter 9 clarifies the relationship between AFLOA/JACC and installation legal offices as it relates to property damage claims in favor of the United States.

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Chapter 1

TORT CLAIMS RESPONSIBILITIES

1.1. Scope of this Chapter. This chapter establishes geographic responsibility for Air Force tort claims and identifies the responsibilities of tort claims authorities.

1.2. Geographic Areas of Claims Responsibility for Air Force Tort Claims.

1.2.1. For tort claims arising in the United States and any United States territory where the Federal Tort Claims Act (FTCA) (28 USC 1346(b), 2671-2680) is applicable, Air Force Legal Operations Agency, Claims and Tort Litigation Division (AFLOA/JACC) determines geographic areas of claims responsibility. (T-1) It approves changes to claims jurisdiction maps and decides which installation SJA takes responsibility for a claim if a question arises. (T-1)

1.2.2. For tort claims arising outside the United States or in any territory where the FTCA is inapplicable, the SJA of the Air Force geographic component command of the appropriate United States combatant command determines geographic areas of claims responsibility for its own office and all subordinate offices. In relation to Air Force claims:

1.2.2.1. United States Air Forces in Europe Judge Advocate (USAFE/JA) is responsible for United States European Command's (USEUCOM) AOR. (T-1)

1.2.2.2. Pacific Air Forces Judge Advocate (PACAF/JA) is responsible for United States Pacific Command's (USPACOM) AOR. (T-1)

1.2.2.3. United States Air Force Central Command Judge Advocate (AFCENT/JA) is responsible for United States Central Command's (USCENTCOM) AOR. (T-1)

1.2.2.4. Air Forces Northern Judge Advocate (AFNORTH/JA) is responsible for United States Northern Command's (USNORTHCOM) AOR. (T-1)

1.2.2.5. Air Forces Southern Judge Advocate (AFSOUTH/JA) is responsible for United States Southern Command's (USSOUTHCOM) AOR. (T-1)

1.2.2.6. Air Forces Africa's supporting legal office, currently USAFE/JA at the time of this instruction's publication, is responsible for United States Africa Command's (USAFRICOM) AOR. (T-1)

1.2.3. Single Service Claims Responsibility. The Department of Defense has assigned responsibility for the settlement of certain claims in certain countries to a single branch of service, regardless of which branch the tortfeasor belongs to, pursuant to DoDI 5515.08, *Assignment of Claims Responsibility*, under the following statutes and agreements:

1.2.3.1. Foreign Claims Act (FCA) (10 USC 2734).

1.2.3.2. MCA (10 USC 2733).

1.2.3.3. International Agreement Claims Act (IACA) (10 USC 2734a and 2734b).

1.2.3.4. NATO SOFA (4 United States Treaties and Other International Agreements (U.S.T.) 1792, Treaties and International Acts Series (T.I.A.S.) 2846), as well as SOFAs with countries not covered by the NATO SOFA.

1.2.3.5. Federal Claims Collection Act (FCCA) (31 USC 3711-3720E) and Federal Medical Care Recovery Act (FMCRA) (42 USC 2651-2653).

1.2.3.6. Use of Government Property Claims Act (UGPCA) (10 USC 2737)

1.2.3.7. Claims by Members for Certain Losses of Household Effects Caused by Hostile Act (10 USC 2738)

1.2.3.8. Advance Payments Act (10 USC 2736)

1.2.3.9. National Guard Claims Act (32 USC 715)

1.2.4. In addition to assigning specific countries to the Military Departments of the Army, Navy, and Air Force, DoDI 5515.08 authorizes DoD/GC to change existing country assignments as well as issue new assignments for countries not yet assigned. Changes in assignments or new assignments brought to AFLOA/JACC attention are posted on AFLOA/JACC's homepage under "Foreign/International Tort Claims." (T-3)

1.2.5. Although Air Force legal offices lack authority to settle claims arising in countries assigned to the Departments of the Army and the Navy, the Air Force assists Army and Navy legal offices in investigating such claims when they involve Air Force property or personnel, or other property or personnel under Air Force control. (T-3)

1.2.6. Naval Forces Afloat. DoDI 5515.08 authorizes Navy personnel to settle non-scope of duty claims for less than \$2,500 arising in foreign ports visited by U.S. forces afloat, even if the particular country is assigned to the Air Force or the Army.

1.3. Responsibilities of Tort Claim Authorities for Air Force Claims Arising Worldwide

1.3.1. The Judge Advocate General (TJAG):

1.3.1.1. Develops tort claims policies and procedures.

1.3.1.2. Directs training of legal personnel on tort claim policies and procedures.

1.3.1.3. Approves settlement of tort claims within his or her authority (see Table A1.2).

1.3.1.4. Denies claims, regardless of amount, as appropriate.

1.3.2. Director, Civil Law and Litigation Directorate (AFLOA/JAC):

1.3.2.1. Approves settlement of tort claims within his or her authority (see Table A1.2). (T-1)

1.3.2.2. Denies claims, regardless of amount, as appropriate. (T-1)

1.3.2.3. Recommends settlement of tort claims above his or her delegated settlement authority. (T-2)

1.3.3. Chief, Claims and Tort Litigation Division (AFLOA/JACC):

1.3.3.1. Implements tort claims policies and procedures. (T-1) **Exception:** The Environmental Law and Litigation Division (AFLOA/JACE) implements environmental tort claims policies and procedures. (T-1)

1.3.3.2. Oversees and provides authoritative guidance on processing of tort claims worldwide. (T-1)

1.3.3.3. Conducts tort claims training. (T-2)

1.3.3.4. Coordinates, as appropriate, with Department of Justice (DoJ), DoD, and other Government agencies on tort claims. (T-1)

1.3.3.5. Denies tort claims, regardless of amount, as appropriate, and approves settlement of tort claims within his or her settlement authority (see Table A1.2). (T-1)

1.3.3.6. Recommends settlement of tort claims above his or her delegated settlement authority. (T-2)

1.3.3.7. Investigates, with local support, and takes final action on tort claims involving (T-1):

1.3.3.7.1. Property damage in excess of \$5,000 and within his or her settlement authority. **Exception:** Settlement authorities outside the 48 contiguous states (OCONUS) investigate and may settle tort claims involving property damage if final claim disposition is within their settlement authority.

1.3.3.7.2. Personal injury (non-medical malpractice). **Exception:** Settlement authorities outside the 48 contiguous states (OCONUS) investigate and may settle tort claims involving non-medical malpractice personal injury if final claim disposition is within their settlement authority.

1.3.3.7.3. Medical Malpractice. **Exception:** Air Force installation legal offices outside the 50 states investigate medical malpractice claims before forwarding the claims file to AFLOA/JACC's Medical Law Branch for final disposition.

1.3.3.7.4. Legal malpractice.

1.3.3.7.5. Admiralty or maritime law.

1.3.3.7.6. Civil Air Patrol (CAP) activities.

1.3.3.7.7. Claims filed by a member or by the immediate family of a member assigned to the office of the settlement authority.

1.3.3.7.8. Claims filed by any person in the settlement authority's chain of command or authority.

1.3.3.7.9. Claims arising from an incident likely to generate multiple FTCA claims. (Example: A multi-vehicle accident with numerous potential claimants).

1.3.3.8. AFLOA/JACC (or AFLOA/JACE) notifies the appropriate Public Affairs officer for incidents likely to incur adverse publicity. (T-2)

1.3.4. Chief, Environmental Law Division (AFLOA/JACE): Tort claims involve environmental damage allegedly caused by Air Force activities and include instances of alleged soil or groundwater contamination, chemical spills, and release of toxic gases or contaminants into the atmosphere, with resulting injury to property and/or persons.
AFLOA/JACE:

1.3.4.1. Implements environmental tort claims policies and procedures. (T-1)

1.3.4.2. Oversees and provides authoritative guidance on processing of environmental tort claims worldwide. (T-1)

- 1.3.4.3. Conducts environmental tort claims training. (T-2)
- 1.3.4.4. Coordinates, as appropriate, with DoJ, DoD, and other Government agencies on environmental tort claims. (T-1)
- 1.3.4.5. Denies environmental tort claims, regardless of amount, as appropriate, and approves settlement of environmental tort claims within his or her settlement authority (see Table A1.2). (T-1)
- 1.3.4.6. Recommends settlement of environmental tort claims above his or her delegated settlement authority. (T-1)
- 1.3.4.7. Instructs installation legal offices to investigate environmental claims and prepare a tort claims file. (T-1)

1.4. Responsibilities of Tort Claim Authorities for Air Force Claims Arising in the United States and its Territories Where the FTCA is Applicable.

1.4.1. Major Command SJAs and Numbered Air Force SJAs:

- 1.4.1.1. Provide general supervision of claims activities within the command.
- 1.4.1.2. Properly protect the Air Force by ensuring compliance with claims policies and requests for local support from AFLOA/JACC.

1.4.2. Installation SJAs in the 48 contiguous states responsible for tort claims in their geographic claims jurisdiction:

- 1.4.2.1. Investigate and take final action on tort claims involving solely property damage where the amount claimed is \$5,000 or less. (T-1) **NOTE:** If a claim for property damage exceeds \$5,000, an installation SJA may request authority from AFLOA/JACC to take final action on the claim. For example, a base may request authority to settle or deny a \$6,000 claim because they believe adjudication can be accomplished promptly.
- 1.4.2.2. Promptly forward all other tort claims for which AFLOA/JACC is responsible to AFLOA/JACC and ensure that the Air Force is properly protected by complying with all guidance and requests for local support from AFLOA/JACC. (T-1) See paragraph 1.3.3.7. Where possible, forward tort claims electronically according to the current AFLOA/JACC policy.
- 1.4.2.3. For environmental claims, conduct investigation and take final action where the amount claimed is \$25,000 or less. (T-1) Where the amount claimed is greater than \$25,000, the installation SJA may negotiate a settlement for \$25,000 or less. Promptly forward all other tort claims for which AFLOA/JACE is responsible at the conclusion of the investigation. (T-1)
- 1.4.2.4. Notify AFLOA/JACC (AFLOA/JACE for environmental) of incidents having significant potential tort liability or adverse publicity and investigate those incidents under the direction of AFLOA/JACC (AFLOA/JACE for environmental). (T-1)
- 1.4.2.5. See Chapter 8 for responsibilities of tort claims authorities regarding claims under Article 139, UCMJ (10 USC 939).

1.4.3. Installation SJAs in Alaska, Hawaii, and Guam for tort claims in their geographic claims jurisdiction:

1.4.3.1. Conduct investigation and take final action where the amount claimed is \$25,000 or less. (T-1) Where the amount claimed is greater than \$25,000, the installation SJA may negotiate a settlement for \$25,000 or less. Promptly forward on a CD (or other electronic means), all other tort claims for which AFLOA/JACC is responsible at the conclusion of the investigation. (T-1) The CD (or other electronic means) is secured/encrypted and properly marked as containing personally identifiable information. (T-0)

EXCEPTION: Medical malpractice claims arising in Alaska and Hawaii are promptly forwarded on a CD (or other electronic means) to AFLOA/JACC for investigation and adjudication. (T-1) Medical malpractice claims arising in Guam are investigated by the responsible installation SJA and forwarded to AFLOA/JACC for adjudication. (T-1)

1.4.3.2. For environmental claims, conduct investigation and take final action where the amount claimed is \$25,000 or less. (T-1) Where the amount claimed is greater than \$25,000, the installation SJA may negotiate a settlement for \$25,000 or less. Promptly forward all other tort claims for which AFLOA/JACE is responsible at the conclusion of the investigation. (T-1)

1.4.3.3. Notify AFLOA/JACC (AFLOA/JACE for environmental) of incidents having significant potential tort liability or adverse publicity and investigate those incidents under the direction of AFLOA/JACC. (T-1)

1.4.3.4. See Chapter 8 for responsibilities of tort claims authorities regarding claims under Article 139, UCMJ (10 USC 939).

1.5. Responsibilities of Tort Claim Authorities for Air Force Claims Arising Outside the United States in Foreign Countries or Outside Any Territory Where the FTCA is Applicable.

1.5.1. Air Force component command SJAs of the U.S. geographic combatant commands for tort claims arising in their respective AORs retain responsibility for all claims within the jurisdiction of its component command, even when settlement authority has been delegated. Delegations of claims authority should address the extent to which the Air Force component command SJA wishes to remain apprised of claims actions through notifications, reports, and/or coordination of claims actions.

1.5.1.1. Provide AFLOA/JACC (Foreign Claims Branch) with a list of all Air Force legal offices in the command, the geographical claims responsibility for each office, the extent to which each office has delegated denial and/or payment authority under the MCA and FCA, and whether the office is a sending state office with authority to pay IACA claims.

1.5.2. SJAs of offices assigned geographic areas of claims responsibility by the component command SJA:

1.5.2.1. Closely monitor and support host nation processing of tort claims in any location where host nation processing is mandatory per international agreement, and make payment to the extent that the United States is obligated to pay any amount of the final settlement or adjudication. (T-1)

1.5.2.2. Investigate and take final action on tort claims involving property damage and/or non-medical malpractice personal injury within their MCA and FCA settlement authority (see Table A1.2). (T-1)

1.5.2.3. Investigate medical malpractice claims and forward the investigation on a CD or other electronic means to AFLOA/JACC (Medical Law Branch) for final disposition. (T-1) The CD (or other electronic means) is secured/encrypted and properly marked as containing personally identifiable information. (T-0)

1.5.2.4. Conduct investigation and take final action on environmental claims within its delegated settlement authority. (T-1) Where the amount claimed is greater than the delegated authority, the SJA may negotiate a settlement within the delegated settlement authority. Promptly forward all other environmental tort claims to AFLOA/JACE at the conclusion of the investigation. (T-1)

1.5.2.5. Promptly forward all other tort claims for which AFLOA/JACC is responsible to AFLOA/JACC and ensure that the Air Force is properly protected by complying with all guidance and requests for local support from AFLOA/JACC. (T-1) See paragraph 1.3.3.7. Where possible, forward tort claims electronically according to the current AFLOA/JACC policy.

1.5.2.6. Notify AFLOA/JACC (AFLOA/JACE for environmental) of incidents having significant potential tort liability or adverse publicity and investigate those incidents under the direction of AFLOA/JACC (AFLOA/JACE for environmental). (T-1)

1.5.2.7. Advise AFLOA/JACC of actions by foreign countries affecting claims policies. (T-1)

1.5.2.8. See Chapter 8 for responsibilities of tort claims authorities regarding claims under Article 139, UCMJ (10 USC 939).

Chapter 2

PROCESSING TORT CLAIMS

2.1. Scope of this Chapter. This chapter identifies standard procedures for processing tort claims under the FTCA, 28 USC 1346(b), 2671-2680, the MCA, 10 USC 2733, the FCA, 10 USC 2734, the National Guard Claims Act, 32 USC 715, the Air Force Admiralty Claims Act, 10 USC 9801-9804, 9806, the Admiralty Extension Act, 46 USC 30101, the Use of Government Property Claims Act, 10 USC 2737, as well as Nonappropriated Fund Tort Claims. Refer to individual chapters discussing these types of tort claims for statute-specific instructions.

2.2. Avoiding Conflicting Interests. Air Force personnel do not represent any claimant or potential claimant in a claim against the United States. (T-0) Responding to a claimant's inquiries on the policies and procedures for filing a claim is not considered representing a claimant. At the same time, claims personnel are mindful that their client is the Air Force and avoid actions which are adverse to those of their client. (T-0).

2.3. Prohibited Actions. Claims personnel do not:

2.3.1. Suggest to or advise claimants how much to claim. (T-1)

2.3.2. Give an opinion to the claimant or claimant's representative about an anticipated approval or disapproval of the claim. (T-1)

2.3.3. Reveal the recommendations of a settlement authority outside claims channels. (T-1)

2.4. Presenting Tort Claims:

2.4.1. Filing a claim. A claimant or authorized agent presents to the Air Force a properly signed Standard Form 95, **Claim for Damage, Injury, or Death**, or other signed writing for money damages in a sum certain for damage to or loss of property, personal injury, or death. See [Chapter 5](#), paragraph 5.15 for additional discussion of filing requirements under the FCA.

2.4.2. Taking Immediate Action on a New Claim. Upon receipt of a new tort claim, base legal personnel who receipt for the claim mark the date received, their initials, and the office symbol of the receiving office on the tort claim. (T-1) Legal personnel who first receive the claim enter the claim information into the Air Force claims database and, if appropriate, transfer it to the proper settlement authority. (T-0) If the Air Force is the appropriate agency to adjudicate the claim, base legal personnel send a written acknowledgment of receipt of the claim to the claimant or the claimant's authorized agent. (T-1)

2.4.3. Deficient Claims. For claims that do not meet the basic requirements of a valid claim (no signature or lacking a sum certain), mark the date received, initials, and the office symbol of the receiving office on the document. (T-1) Notify the sender of the deficiency and of the requirement to present a proper claim within two years of the date of accrual. (T-1) A claim normally accrues at the time of injury or when essential operative facts of both the existence and cause of injury are apparent. Apply rules governing accrual found in federal court cases decided under the FTCA. (T-0) Return the original submissions to the sender and retain a copy of the document(s) and correspondence in a potential claims file in accordance with established disposition guidelines. (T-1)

2.4.4. Transferring a Claim. Base legal personnel receiving a claim from an incident that did not occur within their assigned geographic area or a claim they are unable to settle within their settlement authority transfer it to the appropriate legal office or government agency. (T-0) Air Force offices contact AFLOA/JACC or the appropriate Army or Navy legal office for guidance on where to transfer a claim for which the Army or Navy has been assigned responsibility. (T-1) Base legal personnel investigate and provide a legal analysis regarding all tort claims arising out of environmental damage in accordance with published guidance from AFLOA/JACE prior to transferring an environmental tort claim to AFLOA/JACE. (T-1)

2.4.5. Amending a Claim. A claimant may amend the amount of a claim in writing at any time before final action is taken on the claim.

2.5. Who are Proper Tort Claimants:

2.5.1. Owners of property for property damage, their duly authorized agents or legal representatives.

2.5.2. Injured persons for personal injury.

2.5.3. Executors or administrators of estates or personal representatives of deceased personnel based on the applicable state wrongful death statute or by any other person legally entitled to assert such a claim in accordance with applicable law.

2.5.4. The subrogor (insured) and the subrogee (insurer), jointly or individually.

2.6. Signatures on Tort Claims:

2.6.1. Claimant or Agent. The claimant or an authorized agent signs the claim. If an authorized agent signs the claim on behalf of a claimant, the authorized agent attaches a power of attorney, retainer agreement, or other evidence of authority to act on behalf of the claimant.

2.6.2. Owners of Property. All owners or their authorized agents having an interest in property that is the subject of a claim sign the claim. Lien holders (such as mortgage companies or banks who provide loans on real or personal property) are not required to sign the claim.

2.6.3. Corporations or subrogees. An authorized representative, showing the capacity to file claims on behalf of the corporation or insurance company, sign the claim.

2.7. Substantiating Tort Claims. For all torts claims filed against the United States Air Force, claimants substantiate their claims by submitting documentation in accordance with 28 Code of Federal Regulations (CFR), Part 14.4, *Administrative Claims, Evidence and Information to be Submitted*. **NOTE: Claims filed without proper substantiation are still valid claims for tolling the statute of limitations.**

2.7.1. Costs of preparing and presenting a claim, such as copying charges, appraisals, and attorneys' fees are not payable.

2.7.1.1. Private health care professionals typically charge a fee to provide copies of medical records. Claimants provide copies of their own private medical records, and pay all associated fees, instead of providing a release authorizing the Air Force to obtain their records.

2.7.1.2. Nevertheless, to further substantiate or test the validity of a claim, claims investigators may request that claimants provide a release authorizing the Air Force to obtain records and information directly from any medical provider. Any fees associated with records produced by any medical provider under such release are the responsibility of the claimant.

2.7.2. When a claimant fails to provide substantiation necessary to adjudicate the claim, including a requested medical release and payment of associated fees, base legal personnel immediately notify the claimant (or attorney) in writing. (T-1) This may be done in the same correspondence that acknowledges receipt of the claim. If the claimant fails to provide the requested documentation after a reasonable amount of time and after legal personnel send a follow-up letter, continue investigating and processing the claim in accordance with paragraph 2.8. (T-1)

2.8. Investigating and Processing Tort Claims. When charged with all or part of the responsibility to investigate tort claims, such as where the tort claim arises out of environmental damage, base legal personnel investigate and process tort claims as follows and in accordance with published guidance from AFLOA/JACC (or AFLOA/JACE for environmental tort claims): (T-1)

2.8.1. Witness Interviews. Interview principal witnesses promptly (to include claimants if they have or know information material to their tort claim). (T-1)

2.8.1.1. Do not make a recording of your conversations with witnesses or correspond with witnesses in writing, including email, except for purely administrative matters such as scheduling meeting times and locations. Exceptions to this policy may only be approved by AFLOA/JACC (or AFLOA/JACE for environmental torts). Summarize witness interviews in a memorandum for record, including frank impressions of the credibility of the witness. (T-1) Never permit witnesses to review or sign your memorandum or interview notes.

2.8.1.2. The information included in the memorandum may be communicated between legal personnel and a client for the purposes of providing legal advice or guidance. It may also be communicated to a decision maker in the deliberative process. Additionally, the memorandum may contain the mental impressions, observations, or conclusions of legal personnel created with an eye toward future litigation, even if the litigation is not presently reasonably anticipated.

2.8.1.3. Accordingly, include the following language in your memorandum: "Caution: This document may contain information protected from disclosure by the attorney-client privilege, the deliberative process privilege, the attorney work-product doctrine, or other applicable laws, rules, regulations, or orders." (T-1)

2.8.2. Witness Locator Information. On the interview memorandum or on a separate chart, record the following information for each witness: (T-1)

2.8.2.1. Full name.

2.8.2.2. Current work and home address.

2.8.2.3. Duty/work and home phone (commercial and DSN).

2.8.2.4. Expected PCS transfer or completion of service date.

- 2.8.2.5. Address for future contact.
- 2.8.2.6. For medical providers, state of licensure.
- 2.8.2.7. Short description of witness' involvement.
- 2.8.2.8. Projected deployment data.

2.8.3. Documents. Obtain copies of all relevant documents. (T-1) For each document, identify the name, duty address, and telephone number of the custodian of the original document. (T-1)

2.8.4. Photographs. Take photographs as soon as possible. (T-1) For digital photographs, immediately download the photographs from the camera to a non-rewritable medium. (T-1) Mark the medium with the date the photographs were taken and the name of the person(s) who took them. (T-1) Print paper copies of the photographs and annotate the back of them as set forth above. (T-1) Secure the medium in a similar manner as negatives. (T-1)

2.8.5. Legal Memorandum. Prepare a Legal Memorandum for all tort claims. (T-1) In each memorandum, include: (T-1)

- 2.8.5.1. The claimant's name, the claim number, the amount of the claim, the date and place it was presented, and the amount and date of any amendments.
- 2.8.5.2. The type of claim.
- 2.8.5.3. The date and place of the incident.
- 2.8.5.4. Address of claimant (if represented by an attorney, also include the name, address and telephone number of the attorney).
- 2.8.5.5. Facts of the incident.
- 2.8.5.6. Brief of the applicable law (federal and state and/or local law).
- 2.8.5.7. Liability and damage analysis and a recommendation as to disposition of the claim.

2.8.6. Assembling Tort Claim Files. Assemble and tab all tort claim files in accordance with **Attachment 2**. (T-1)

2.8.6.1. Summary Adjudication Memo. Claims adjudicators may use a summary adjudication memorandum (see **Attachment 3**) if the facts and law are simple enough to permit full treatment of the relevant issues to expedite handling of non-meritorious claims. This includes claims obviously subject to denial or summary judgment at trial (e.g., Feres barred or beyond the statute of limitations).

2.9. Action by Settlement Authorities. A settlement authority takes final action on all claims where the amount claimed or the negotiated settlement is within his or her delegated settlement authority. (T-1) (See Table A1.2)

2.9.1. Forwarding Claims. SJAs forward claims outside their settlement authority to the appropriate settlement authority immediately upon receipt unless he or she has investigative responsibility. (T-1) If the SJA with settlement authority is unable to settle a claim, but denial is inappropriate, he or she forwards the claim to AFLOA/JACC. (T-1) Where possible, forward tort claims electronically according to the current AFLOA/JACC policy.

2.9.2. Paying Claims. The settlement authority informs the claimant of the amount and basis of the offer. (T-1) Any offer letter contains the citation to the statute under which the claim was adjudicated. (T-1)

2.9.2.1. Before the settlement authority pays the claimant, the claimant accepts the amount offered in full satisfaction of the claim and sign the DoJ-approved settlement agreement. (T-1) Settlement authorities do not sign the settlement agreement until after the claimant does so. (T-1) Modifications to that agreement, other than those specifically authorized and contemplated in the template found on the AFLOA/JACC website, are not permitted. Contact AFLOA/JACC if a claimant refuses to sign the settlement agreement without modification. (T-1)

2.9.2.2. If the claimant rejects the offer, further negotiations may be conducted. When the claims office makes an offer on the claim and the claimant is given a specific date by which to accept the offer and it is not accepted, the claims office sends a separate denial letter. (T-1) Do not send offer letters containing self-executing denials at some time in the future. Do not put a contingent denial in the settlement offer, e.g., “If this offer is not acceptable, your claim is denied.”

2.9.2.3. Attorney fees are statutorily capped at 20 percent of the total of any administrative settlement amount for claims under 28 USC 2672. Attorney fees are statutorily capped at 25 percent of the total of any administrative settlement amount for claims under 28 USC 1346(b). Attorney fees are calculated based on and deducted from the amount tendered in settlement and not in addition thereto. For example, if a claim settles for \$5,000, the attorney shall not charge the claimant more than \$1,000 in attorney fees, which is payable from the \$5,000 settlement.

2.9.2.3.1. In a structured settlement, the Air Force calculates attorney fees from the total cost of the settlement to the U.S., and not on the payout value of the benefits under the settlement.

2.9.2.4. Punitive or exemplary damages are not payable under any claims statute in this instruction.

2.9.3. Denying Claims. The settlement authority sends a final denial letter to the claimant or authorized agent by certified mail, return receipt requested. (T-0) The letter is mailed the same day as the date that appears on the letter. (T-1) The letter states: (T-1)

2.9.3.1. The full title and legal citation of the statute under which the settlement authority considered the claim.

2.9.3.2. The reasons for denial.

2.9.3.3. A letter denying an FTCA claim includes the following language: “If [you/your client/John Doe] are/is dissatisfied with this decision, [you/he/she/they/John Doe] may file suit in an appropriate U.S. District Court not later than six months after the date of mailing of this letter.”

2.9.3.4. A letter denying an MCA claim includes the following language: “This is the final denial of [your/your client’s/John Doe’s] claim under the Military Claims Act. However, if [you/your client/John Doe] so desire[s], [you/he/she/John Doe] may appeal this decision. No particular form is necessary, but the appeal should be in writing,

describe the reasons for the appeal, provide any additional evidence to substantiate the claim, and arrive at this office within 60 days of the date of this letter.”

2.9.3.4.1. A letter denying an MCA claim arising from a noncombat activity arising in the 50 states or U.S. territories where the FTCA is applicable, or an NGCA claim, includes the following language: “This is the final denial of [your/your client’s/John Doe’s] claim under the [Military Claims Act/National Guard Claims Act]. However, if [you/your client/John Doe] so desire[s], [you/he/she/John Doe] may appeal this decision. No particular form is necessary, but the appeal should be in writing, describe the reasons for the appeal, provide any additional evidence to substantiate the claim, and arrive at this office within 60 days of the date of this letter. This also serves as the final denial of [your/your client’s/John Doe’s] claim under the Federal Tort Claims Act. If [you/your client/John Doe] are/is dissatisfied with this decision, [you/he/she/they/John Doe] may file suit in an appropriate U.S. District Court not later than six months after the date of mailing of this letter.” (T-1)

2.9.3.5. Upon receipt of the executed return receipt postcard, attach it to the copy of the denial letter maintained in the claim file. (T-1)

2.10. Making Advance Payments:

2.10.1. If all of the following are present, settlement authorities may make an advance payment:

2.10.1.1. The claimant requests it.

2.10.1.2. The claimant appears to have a valid MCA, FCA, or NGCA claim that exceeds the amount of the advance payment. Settlement authorities may not make advance payments for FTCA claims.

2.10.1.3. The circumstances demonstrate an immediate need for food, shelter, medical or burial expenses, or other necessities. The Air Force may make an advance payment for the benefit of commercial enterprise only if necessary to prevent severe financial loss or bankruptcy.

2.10.2. TJAG may make an advance payment of \$100,000 or less.

2.10.3. The following settlement authorities may make an advance payment of \$25,000 or less:

2.10.3.1. Director, AFLOA/JAC

2.10.3.2. Chief and Branch Chiefs, AFLOA/JACC.

2.10.3.3. Chief, AFLOA/JACE (for environmental torts).

2.10.3.4. The SJAs of the Air Force component commands of the U.S. geographic combatant commands for claims arising within their respective combatant command AORs.

2.10.4. Settlement authorities may delegate their authority to make advance payments orally. The delegation is confirmed in writing within 30 days.

2.10.5. Before making advance payments, settlement authorities first obtain from the aggrieved person a signed advance payment agreement which includes the requirements to:

2.10.5.1. Refund the money if the claimant does not file a claim within the statutory period.

2.10.5.2. Refund any portion of the advance payment that exceeds the final settlement.

2.11. Splitting a Claim. Even if claimant files separate claims for property damage and personal injury arising out of the same incident, do not settle or pay a separate or split claim.

2.11.1. Making an advance payment does not constitute splitting a claim.

2.11.2. Do not settle a claim filed by a subrogee (insurer) prior to settling the claim of the subrogor (insured) without prior approval of AFLOA/JACC or AFLOA/JACE.

2.12. Acting on Reconsiderations. A settlement authority has the inherent authority to reconsider a final decision. The mere fact that a request for reconsideration is received does not obligate the settlement authority to reopen the claim.

2.12.1. For claims denied under the FCA and FTCA, there is no statutory right to request reconsideration. Do not mention a reconsideration right in the original letter of denial. However, if a request for reconsideration is received under the FTCA, the settlement authority reopens the claim. (T-1) See [Chapter 3](#), paragraph 3.5.

2.12.2. For claims denied under the MCA, NGCA, and 10 USC 2738 (*Property Loss: Reimbursement for certain losses of household effects caused by hostile action*), there is a statutory right to appeal the final decision and the claimant is so advised. (T-1) See paragraphs 4.11 (MCA); paragraph 6.20 (NGCA); and paragraph 6.45 (10 USC 2738).

2.12.3. A settlement authority reconsiders the final action when there is:

2.12.3.1. New and material evidence concerning the claim (T-1) or,

2.12.3.2. Obvious errors in the original decision. (T-1)

2.12.4. A settlement authority documents in the claim file his or her reason for reconsideration. (T-1)

2.12.5. A settlement authority above the original settlement authority may direct a claim be forwarded to a higher settlement authority for reconsideration.

2.13. Handling Requests for Tort Claim Files. Tort claim files are the property of the Air Force and are protected from disclosure under the attorney work-product privilege.

2.13.1. Do not give claim files to claimants or their agents for review or reproduction.

2.13.2. Process Freedom of Information Act or Privacy Act requests for files in accordance with DoD Regulation 5400.7-R_AFMAN 33-302, *Freedom of Information Act (FOIA) Program* and AFI 33-332, *Air Force Privacy and Civil Liberties Program* respectively. (T-0)

2.13.3. Never release outside JA or DoJ, these documents from the claim file:

2.13.3.1. Legal memoranda containing opinions, conclusions, and recommendations.

2.13.3.2. Attorneys' and paralegals' written summaries of witness interviews.

2.13.3.3. Experts' written reports and evaluations (including engineering reports on sonic boom complaints), without approval of AFLOA/JACC or AFLOA/JACE.

2.13.3.4. Medical Quality Assurance documents (10 USC 1102).

2.13.3.5. Other material acquired as part of the deliberative process, including legal research.

2.14. Claim Withdrawal. Contact AFLOA/JACC when a claimant withdraws a claim prior to final adjudication. (T-1)

2.15. Claim File Disposition. Maintain claim files in accordance with record retention regulations. (T-1)

Chapter 3

FEDERAL TORT CLAIMS ACT CLAIMS

3.1. Scope of this Chapter. This chapter implements the FTCA, 28 USC 1346(b), 2671-2680, and 28 CFR, Part 14, *Administrative Claims Under Federal Tort Claims Act*.

3.1.1. The federal government may be held liable for the negligent or wrongful acts or omissions of its employees while acting within the scope of their office or employment, to the extent the U.S. has waived its sovereign immunity.

3.1.2. Government liability is similar to that of a private person and is determined by the law of the place where the act or omission occurred.

3.2. FTCA Settlement Authority: (See Table A1.2)

3.2.1. SECAF, TJAG, Deputy Judge Advocate General (DJAG), AFLOA/JAC, and AFLOA/JACC may:

3.2.1.1. Deny claims in any amount, as appropriate.

3.2.1.2. Pay claims, notwithstanding the amount claimed, when payment is for \$300,000 or less, inclusive of subrogation claims.

3.2.1.3. Negotiate settlements exceeding \$300,000, inclusive of subrogation claims, subject to approval of the U.S. Attorney General or designee.

NOTE: AFLOA/JACC does not have settlement authority over environmental tort claims.

3.2.2. TJAG, DJAG, AFLOA/JAC, and AFLOA/JACE may:

3.2.2.1. Deny environmental tort claims in any amount, as appropriate.

3.2.2.2. Pay environmental tort claims, notwithstanding the amount claimed, when payment is for \$300,000 or less, inclusive of subrogation claims.

3.2.2.3. Negotiate environmental tort claims settlements exceeding \$300,000, inclusive of subrogation claims, subject to approval of the U.S. Attorney General or designee.

NOTE: Use Chapter 1 for information regarding tort claim authority responsibilities and restrictions.

3.3. Redelegating Authority. Settlement authorities may redelegate a portion or all of their full authority, in writing, to a subordinate judge advocate, or civilian attorney. The Chief, AFLOA/JACC may redelegate up to \$25,000, in writing, to AFLOA/JACC paralegals. Upon a written request by an installation SJA, AFLOA/JACC may authorize installation SJAs to redelegate their settlement authority to base level paralegals.

3.4. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within 2 years of accrual. A claim normally accrues at the time of injury or when essential operative facts of both the existence and cause of injury are apparent. Apply rules governing accrual found in federal court cases decided under the FTCA.

3.5. Acting on Reconsiderations. In its regulations (28 CFR, Part 14), DoJ provides a claimant the opportunity to request reconsideration of the denial of a claim under the FTCA. Those

regulations are controlling. The request for reconsideration must be received by the Air Force not later than 6 months after the date of the mailing of the denial letter. Upon receipt of a request for reconsideration:

3.5.1. The settlement authority reviews the claim and any new evidence submitted to determine if an offer is appropriate. (T-1) If so, and if the offer is within its settlement limits, the settlement authority makes an offer. (T-1)

3.5.2. If the claim is not settled, or the settlement authority recommends denial of the claim, the settlement authority forwards the claim, as soon as possible after receipt, to AFLOA/JACC or AFLOA/JACE (for environmental tort claims). (T-1) No settlement authority below AFLOA/JACC or JACE may deny a claim on reconsideration under the FTCA.

3.5.2.1. Settlement authorities do not mention reconsideration in the original denial letter.

3.5.2.2. An FTCA claim may only be reconsidered once. (T-1)

3.6. Making Payments. Settlement authorities pay claims as follows:

3.6.1. To receive payment, claimants sign a settlement agreement in the format designated by DoJ. Modifications to the settlement agreement, other than to insert the particulars of the claim in the appropriate locations, are not authorized. The Air Force attorney signs the settlement agreement after receiving a fully executed agreement from the claimant and the Air Force settlement authority approves the agreement. (T-1) In settlements exceeding \$300,000 the Air Force attorney signs the settlement agreement after DoJ approves the settlement. (T-1)

3.6.1.1. With any settlement in an amount in excess of \$100,000 and within the delegated settlement amount (\$300,000), a copy of the legal memorandum explaining the basis for the settlement is sent to the Director, FTCA Staff, Torts Branch, Civil Division, Department of Justice. (T-1)

3.6.2. Payments for \$2,500 or Less. Use Air Force claims funds (SF 1034) for settlements of \$2,500 or less. (T-1)

3.6.3. Payments Exceeding \$2,500. For payments in excess of \$2,500, the settlement authority sends payment documents directly to: Judgment Fund Group, Department of the Treasury, Financial Management Service, Prince George's Metro Center 2, 3700 East-West Highway, Rm 6F03, Hyattsville, MD 20782, for payment under 31 USC 1304. (T-1) The payment documents include:

3.6.3.1. A signed payment voucher (FMS Form 197A). (T-1) The voucher contains the payee's taxpayer identification number (social security number for individuals). (T-1) If an attorney represents the claimant, the voucher contains the taxpayer identification numbers of both the claimant and the attorney. (T-1) Do not provide a fund cite.

3.6.3.2. A completed FMS Form 194 (Judgment Fund Transmittal). (T-1)

3.6.3.3. A completed FMS Form 196, front and back. (T-1)

3.6.3.4. A signed settlement agreement. (T-1)

- 3.6.3.5. A copy of the SF 95 or other written demand. (T-1)
- 3.6.3.6. A cover letter stating the officer signing the payment voucher has the requisite authority to act under the provisions of the FTCA. (T-1)
- 3.6.3.7. Evidence that an agent may act in the claimant's name, when applicable. (T-1)
- 3.6.3.8. Written approval of the U.S. Attorney General or designee when the payment exceeds \$300,000. (T-1)
- 3.6.3.9. When claimant is a minor, a copy of the state court order approving settlement, if required by state law. (T-0)

CHAPTER 4

MILITARY CLAIMS ACT CLAIMS

4.1. Scope of this Chapter. This chapter implements the MCA, 10 USC 2733, and DoD Directive 5515.3, *Settlement of Claims Under Sections 2733, 2734, 2734a, and 2734b of Title 10, US Code*; and DoD Instruction 5515.08.

4.1.1. Payment under the Act is made “[u]nder such regulations as the Secretary concerned may prescribe...” This instruction prescribes how the Air Force implements the MCA. The Act allows only an administrative determination of claims. The MCA does not provide a judicial remedy.

4.1.2. The MCA allows the military services to settle claims for death, personal injury, or property damage arising from the negligent or wrongful acts by members or employees of the armed forces acting within the scope of employment, and for losses sustained as a result of the noncombat activities of the military services. The MCA applies worldwide. However, for claims arising in the U.S., the MCA only applies to noncombat activity claims and incident to service property damage claims of military members.

4.2. MCA Settlement Authority: (See Table A1.2)

4.2.1. SECAF may deny or approve claims for any amount. For claims approved for more than \$100,000, SECAF or his or her designee reports the amount in excess of \$100,000 to the Department of the Treasury for payment. (T-0)

4.2.2. TJAG may deny claims filed in any amount and approve claims in an amount not to exceed \$100,000, notwithstanding the amount claimed.

4.2.3. DJAG; Director, AFLOA/JAC; Chief and Branch Chiefs, AFLOA/JACC; Chief and Environmental Litigation Center Chief, AFLOA/JACE (for environmental torts) may deny claims filed in any amount and approve claims in an amount not to exceed \$25,000, notwithstanding the amount claimed.

4.2.4. Installation SJAs in the 48 contiguous states for tort claims in their geographic claims jurisdiction investigate and take final action on tort claims involving solely property damage where the amount claimed is \$5,000 or less. (T-1) **NOTE:** If a claim for property damage exceeds \$5,000, an installation SJA may request authority from AFLOA/JACC to take final action on the claim. For example, a base may request authority to settle or deny a \$6,000 claim because they believe adjudication can be accomplished promptly.

4.2.5. The SJAs responsible for claims arising in Alaska, Hawaii, and Guam, as well as the SJAs of the Air Force component commands of the U.S. geographic combatant commands responsible for claims in their respective combatant command AORs, may deny claims filed in an amount of \$25,000 or less and pay claims filed in any amount when payment is for \$25,000 or less.

NOTE: Use Chapter 1 for information regarding further tort claim authority responsibilities and restrictions.

4.3. Redelegating MCA Settlement Authority. Settlement authorities may redelegate a portion or all of their full authority, in writing, to a subordinate judge advocate or civilian

attorney. The Chief, AFLOA/JACC may redelegate up to \$25,000, in writing, to AFLOA/JACC paralegals. Upon a written request by an installation SJA, AFLOA/JACC may authorize installation SJAs to redelegate their settlement authority to base level paralegals.

4.4. Who are Proper Claimants:

4.4.1. Persons determined to be U.S. inhabitants. U.S. inhabitants includes dependents of U.S. military personnel and federal civilian employees temporarily outside the U.S. for purposes of U.S. government service.

4.4.2. U.S. military personnel and federal civilian employees. **EXCEPTION:** Do not pay claims under the MCA for personal injury or death of U.S. military personnel or federal civilian employees that occurred incident to their service.

4.4.3. Foreign military personnel when the damage or injury occurs in the U.S. **EXCEPTION:** Do not pay claims under the MCA for personal injury or death of foreign military personnel that occurred incident to their service.

4.4.4. States, state agencies, counties, municipalities, and their political subdivisions.

4.4.5. Subrogees (insurers) of proper claimants to the extent they have paid the claim.

4.5. Who are Not Proper Claimants:

4.5.1. Governments of foreign nations, their agencies, and political subdivisions.

4.5.2. Agencies and NAFIs of the federal government.

4.5.3. Inhabitants of foreign countries for damages or injuries incurred in a foreign country.

4.6. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within 2 years of accrual. Under the MCA, the 2-year limitations period is tolled if the United States is at war or in an armed conflict when the claim accrues, or the U.S. enters a war or armed conflict after the claim accrues. Good cause must be shown for any tolling under this paragraph. A claim normally accrues at the time of injury or when essential operative facts of both the existence and cause of injury are apparent. Apply rules governing accrual found in federal court cases decided under the FTCA. In computing the statutory time period, exclude the date of the incident and include the date the claim is presented.

4.7. Payable MCA Claims:

4.7.1. Negligent or Wrongful Act or Omission Claims. Settlement authorities pay claims for damages resulting from negligent or wrongful acts or omissions of military or civilian personnel of the U.S. Armed Forces while acting within the scope of their employment, unless an exclusion listed in paragraph 4.8. applies.

4.7.2. Noncombat Activity Claims. Settlement authorities pay claims for damages caused by the noncombat activities of the U.S. Armed Forces unless an exclusion listed in paragraph 4.8 applies. Noncombat activities are defined in Attachment 1 to this Instruction. It is not necessary for a payable claim to arise from a wrongful act or omission or negligence.

4.8. MCA Exclusions. Settlement authorities cannot pay claims described in paragraph 4.7. under the MCA if the claim:

4.8.1. Is covered by the FTCA, FCA, IACA, 10 USC 2734a and 2734b, Air Force Admiralty Claims Act (AFACA), 10 USC 9801-9804, 9806, NGCA, 32 USC 715, or covered under the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 USC 3701, 3721.

4.8.1.1. MCA claims arising from noncombat activities in the U.S. are not covered by the FTCA because more elements are needed to state an FTCA claim than are needed to state a claim under the MCA for noncombat activities. All FTCA claims are based on elements of traditional tort liability (*i.e.*, duty, breach, causation, and damages); that is, they are fault based. Noncombat activity claims under the MCA are based solely on causation and damages. Because MCA claims for noncombat activities are not fault based, they are not covered by the FTCA.

4.8.1.2. Claims for incident-to-service damage to vehicles caused by the negligence of a member or employee of the armed forces acting in the scope of employment are paid under the MCA, instead of the MPCECA.

4.8.2. Arises with respect to the assessment or collection of any customs duty, or the detention of any goods or merchandise by any U.S. officer of customs or excise, or any other U.S. law enforcement officer. NOTE: This includes loss or damage to property detained by members of the Security Forces or Office of Special Investigation (OSI).

4.8.3. Is cognizable under U.S. admiralty and maritime law, to include:

4.8.3.1. The Suits in Admiralty Act, 46 USC 30901 and following.

4.8.3.2. The Death on the High Seas Act, 46 USC 30301 and following.

4.8.3.3. The Public Vessels Act, 46 USC 31101 and following.

EXCEPTION: Claims arising from noncombat activities may be paid under the MCA, even if they are also cognizable under U.S. admiralty and maritime law.

4.8.4. Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process. **EXCEPTION:** Unless such actions were committed by an investigative or law enforcement officer of the U.S. who is empowered by law to conduct searches, seize evidence, or make arrests for violations of federal law.

4.8.5. Arises out of libel, slander, misrepresentation, or deceit.

4.8.6. Arises out of an interference with contract rights.

4.8.7. Arises out of the combat activities of U.S. military forces.

4.8.8. Is for the personal injury or death of a member of the Armed Forces of the U.S. incident to the member's service.

4.8.9. Is for the personal injury or death of any person for workplace injuries covered by the Federal Employees' Compensation Act, 5 USC 8101, and following.

4.8.10. Is for the personal injury or death of any employee of the U.S., including nonappropriated fund employees, for workplace injuries covered by the Longshore and Harbor Workers' Compensation Act, 33 USC 901, and following.

4.8.11. Is for a taking of property, e.g., by technical trespass or over flight of aircraft.

4.8.12. Is for patent or copyright infringement.

- 4.8.13. Results wholly from the negligent or wrongful act of the claimant.
- 4.8.14. Is for the reimbursement of medical, hospital, or burial expenses furnished at the expense of the U.S., either directly or through contractual payments.
- 4.8.15. Arises from contractual transactions, express or implied (including rental agreements, sales agreements, leases, and easements), that:
- 4.8.15.1. Are payable or enforceable under oral or written contracts.
 - 4.8.15.2. Arise out of an irregular procurement or implied contract.
- 4.8.16. Is for the personal injury or death of military or civilian personnel of a foreign government incident to their service.
- 4.8.17. Is based on 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 is valid. Do not deny claims solely on this exception without the prior approval of AFLOA/JACC. **EXCEPTION:** Claims under the noncombat activities provision may be paid even if this subparagraph applies.
- 4.8.18. Is based on the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of a federal agency or a federal government employee, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of AFLOA/JACC. **EXCEPTION:** Claims under the noncombat activities provision may be paid even if this subparagraph applies.
- 4.8.19. Is not in the best interests of the U.S., is contrary to public policy, or is otherwise contrary to the basic intent of the MCA. Examples include, but are not limited to, when a claimant's criminal conduct or failure to comply with a nonpunitive regulation is a proximate cause of the loss. Do not deny claims solely on this exception without prior approval of AFLOA/JACC.
- 4.8.20. Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act, 50 USC app. 1-44.
- 4.8.21. Is for damages caused by the imposition or establishment of a quarantine by the U.S.
- 4.8.22. Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system.
- 4.8.23. Arises from the activities of the Tennessee Valley Authority.
- 4.8.24. Arises from the activities of a federal land bank, a federal intermediate credit bank, or a bank for cooperatives.
- 4.8.25. Is for the personal injury or death of any government contractor employee for whom benefits are available under any worker's compensation law, or under any contract or agreement providing employee benefits through insurance, local law, or custom when the U.S. pays insurance either directly or as part of the consideration under the contract. Only AFLOA/JACC may act on these claims.
- 4.8.26. Is for damage, injury or death from or by flood or flood waters at any place.

4.8.27. Is for damage to property or other losses of a state, commonwealth, territory, or the District of Columbia caused by ANG 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.

4.8.28. Is for damage to property or for any death or personal injury arising out of activities of any federal agency or employee of the government in carrying out the provisions of the Disaster Relief Act of 1974 (42 USC 5121, et seq.), as amended.

4.8.29. Arises from activities that present a political question.

4.8.30. Arises from private, as distinguished from government, transactions.

4.8.31. Is based solely on compassionate grounds.

4.8.32. Is for rent, damage, or other expenses or payments involving the regular acquisition, use, possession, or disposition of real property or interests therein by and for the U.S.

4.8.33. Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the U.S., or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the U.S. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the U.S. otherwise payable. Forward claims considered not payable under this subparagraph, with recommendations for disposition, to AFLOA/JACC.

4.8.34. Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter by the U.S. Postal Service or its agents or employees.

4.8.35. Is for damage to or loss of bailed property when the bailor specifically assumes such risk.

4.8.36. Is for property damage, personal injury, or death occurring in a foreign country to an inhabitant of a foreign country.

4.8.37. Is for interest incurred prior to the payment of a claim.

4.8.38. Arises out of matters which are in litigation against the U.S.

4.8.39. Is for attorney fees or costs in connection with pursuing an administrative or judicial remedy against the U.S. or any of its agencies.

4.8.40. Is for bail, interest or inconvenience expenses incurred in connection with the preparation and presentation of the claim.

4.8.41. Is for a failure to use a duty of care to keep premises owned or under the control of the U.S. safe for use for any recreational purpose, or for a failure by the U.S. to give any warning of hazardous conditions on such premises to persons entering for a recreational purpose unless there is a willful or malicious failure to guard or warn against a dangerous condition, or unless consideration was paid to the U.S. (including a nonappropriated fund instrumentality) to use the premises.

4.9. Interpretation of the MCA: The MCA gives SECAF authority to prescribe regulations, as set forth in this instruction, to implement the MCA in the Air Force. The meaning and construction of the MCA and SECAF's regulations implementing it are federal questions to be

determined by federal law. Many of the exceptions to payment SECAF has prescribed herein are based upon the wording of 28 USC 2680, or on other statutes or court cases. Federal case law interpreting the same exclusions under the FTCA is applied to the MCA. Where state law differs with federal law, federal law prevails.

4.10. Applicable Law for Determining Liability and Damages under the MCA:

4.10.1. For tort claims arising from negligent or wrongful acts or omissions, settlement authorities apply these rules:

4.10.1.1. When a claim arises in the U.S. or its territories or possessions, settlement authorities apply the substantive law they would use if the claim was cognizable under the FTCA. (T-1) See [Chapter 3](#), paragraph 3.1.2.

4.10.1.2. In claims arising in foreign countries, settlement authorities apply federal case law interpreting the FTCA. (T-1) Where the FTCA requires application of the law of the place where the act or omission occurred, settlement authorities use the rules set forth in the currently adopted edition of the *Restatement of the Law*, published by the American Law Institute, to evaluate the liability of the U.S., (T-1) subject to the following rules:

4.10.1.2.1. Foreign rules and regulations governing the operation of motor vehicles (rules of the road) are applied to the extent those rules are not specifically superseded or preempted by U.S. military traffic regulations.

4.10.1.2.2. The principle of absolute or strict liability does not apply.

4.10.1.2.3. Hedonic damages are not payable.

4.10.1.2.4. The collateral source doctrine does not apply.

4.10.1.2.5. Joint and several liability does not apply. Payment is made based only upon the portion of loss, damage, injury or death attributable to the Armed Forces of the U.S.

4.10.1.2.6. Future economic losses is discounted to present value after deducting for federal income taxes and, in cases of wrongful death, personal consumption.

4.10.2. For tort claims arising from noncombat activities, the claimant does not need to show negligence or fault, but must establish causation, without regard to concepts of proximate cause, and damages in accordance with the rules set forth in paragraph 4.8.

4.11. Acting on Appeals. A claimant has a statutory right to appeal the denial of claims under the MCA. A settlement authority receiving a timely appeal (within 60 days after the date of mailing of the final denial, unless the claimant provides good cause):

4.11.1. Reviews the appeal. (T-1)

4.11.2. Reaches a final settlement with the claimant, or forwards the file to the next higher appellate authority with a recommendation for final action. (T-1)

4.11.3. No settlement authority below AFLOA/JACC or JACE may deny an appeal.

4.11.4. The following are appellate authorities:

4.11.4.1. For claims denied below AFLOA/JACC or JACE, a Staff Attorney at AFLOA/JACC or JACE, designated as a settlement authority under this instruction or by delegation.

4.11.4.2. For claims denied by a Staff Attorney at AFLOA/JACC or JACE, a Branch Chief at AFLOA/JACC or JACE designated as a settlement authority under this instruction or by delegation.

4.11.4.3. For claims denied by a Branch Chief, AFLOA/JACC, Chief, AFLOA/JACC; for claims denied by a Branch Chief, AFLOA/JACE, Chief, JACE.

4.11.4.4. For claims denied by Chief, AFLOA/JACC or JACE, Director, AFLOA/JAC.

4.11.4.5. For claims denied by Director, AFLOA/JAC, DJAG.

4.11.4.6. For claims denied by DJAG, TJAG.

4.11.4.7. For claims denied by TJAG, SECAF or SECAF's designee.

4.11.5. Any higher appellate authority may act upon an appeal, e.g., TJAG may act upon an appeal of a claim denied by AFLOA/JAC. However, it is solely within the discretion of the higher appellate authority to do so.

4.12. Making Advance Payments: See [Chapter 2](#), paragraph 2.10.

4.13. Paying MCA Claims. (T-0). Settlement authorities:

4.13.1. Pay settlements of \$100,000 or less, per claimant, from Air Force claims monies.

4.13.2. Pay settlements exceeding \$100,000 by paying the first \$100,000, per claimant, with Air Force claims monies and sending the remainder to the Department of the Treasury for payment under 31 USC 1304. See [Chapter 3](#), paragraph 3.6.3.

Chapter 5

INTERNATIONAL AGREEMENT AND FOREIGN CLAIMS

Section 5A—

5.1. Scope of this Chapter. This chapter implements the FCA, 10 USC 2734; and the IACA, 10 USC 2734a and 2734b; DoD Directive 5515.3; and DoD Instruction 5515.08.

Section 5B—

5.2. General Discussion. Given that international agreements are rarely self-executing under U.S. law and that the U.S. Government cannot obligate funds without statutory authority, the IACA is the implementing statute authorizing payment for a limited category of claims arising under certain international agreements. 10 USC 2734a applies to certain cases where damages have been caused by U.S. forces abroad, and 10 USC 2734b applies to certain cases where damages have been caused by foreign forces in the United States.

5.3. IACA Settlement Authority Abroad. SJAs of the Air Force component commands of the U.S. geographic combatant commands are responsible, within their combatant command AORs, for fulfilling U.S. obligations concerning claims abroad subject to 10 USC 2734a for which the Air Force has settlement authority. (T-1) Consistent with 10 USC 2734a and the international agreement, they may reimburse or pay the “pro rata share” of a claim as agreed, or if inconsistent with the IACA or the international agreement, they may object to a bill presented.

5.3.1. IACA settlement authority abroad may also be exercised by SECAF; TJAG; DJAG; Director, AFLOA/JAC; and Chief, AFLOA/JACC.

5.3.2. SJAs of the Air Force component commands of the U.S. geographic combatant commands provide notice to AFLOA/JACC (Foreign Claims Branch) if an objection is anticipated or planned for an IACA claim abroad for which the Air Force is responsible. (T-1)

5.4. IACA Claims Abroad Subject to 10 USC 2734a. Process the tort claim according to the terms of the international agreement. (T-0) Host nation law typically governs claims payable under 10 USC 2734a, and the host nation government is generally responsible for assessing and settling such claims with investigative assistance from the U.S. military organization whose personnel allegedly caused the damages that resulted in the claim. The U.S. military office (“sending state” office) exercising claims responsibility in the country where the claim arose presents the claim to the host nation government (if not already in the possession of the host nation government) and serves as liaison with the host nation government on matters relating to claim adjudication. (T-1) Following adjudication, the host nation government (“receiving state” office) provides the sending state office with notice of its denial or a bill requesting appropriate pro rata reimbursement/payment.

5.4.1. Host nation law may not, in some cases, require notice of a sum certain as part of its formal claims protocol. Consult host nation law if a tort claim without a sum certain is received and follow the processing guidance of the sending state office where the claim arose.

5.5. IACA Claims in the United States Subject to 10 USC 2734b. Under DoDI 5515.08, the Army has exclusive settlement authority for claims arising in the United States subject to 10 USC 2734b. In accordance with Army Regulation 27-20, *Legal Services Claims*, paragraph 7-8, any member or employee of the U.S. Armed Services who learns of an incident in which a member of a foreign military force or civilian component may have caused or suffered personal injury, death, or property damage, will immediately notify the judge advocate (JA) or legal officer at the installation or activity to which such person is assigned or attached. (T-0) The JA or legal officer receiving such notification will in turn notify the Commander, U.S. Army Claims Service (USARCS). (T-0) Provide notification to AFLOA/JACC (Foreign Claims Branch) if the member of the foreign military force or civilian component was present in the United States in connection with Air Force activities. (T-1)

5.6. Redelegating IACA Settlement Authority Abroad. When efficient for their command and beneficial to host nation relations, Air Force component command SJAs may delegate their IACA settlement authority under paragraph 5.3. to a subordinate Air Force legal office SJA.

5.7. Advance Payments. If an international agreement governing an IACA claim requires host government adjudication, the host government determines what advance payments may be made.

5.8. IACA Exclusions. Do not make reimbursements/payments under 10 USC 2734a if any of the following are applicable:

5.8.1. The damages occurred in a country that was not a party to the international agreement invoked;

5.8.2. The international agreement did not provide for settlement or adjudication and pro rata cost-sharing of claims;

5.8.3. The claim did not arise out of an act or omission of a military member or civilian employee of the U.S. Armed Forces done in the performance of official duty or out of any other act, omission, or occurrence for which the U.S. Armed Forces is legally responsible under the law of the host nation where the damages occurred;

5.8.4. No damages were caused;

5.8.5. The claim arose out of an act of an enemy of the United States or arose, directly or indirectly, from an act of the U.S. Armed Forces, or a member thereof, while engaged in combat;

5.8.6. The claim is not payable under the terms of the international agreement on account of waiver, hold harmless, or other binding language.

5.9. Making Payment. Air Force IACA claims arising in U.S. Pacific Command's (USPACOM's) Area of Responsibility (AOR) are paid through PACAF finance channels. Air Force IACA claims arising elsewhere in the world are paid through the Air Force Claims Service Center. Air Force sending state offices comply with finance requirements evidencing the U.S. financial obligation, the amount to be paid, the currency to be used, and the host nation government office to receive the U.S. funds in satisfaction of the international obligation. (T-0)

Section 5C—

5.10. General Discussion. The purpose of the FCA is to promote friendly relations with foreign countries and their inhabitants by paying proper claimants for death, personal injury, or property damage, caused by military members or civilian employees of the U.S. Armed Forces, or arising out of the noncombat activities of such forces.

5.11. Appointing FCC. Only a Foreign Claims Commission (FCC) may settle FCA claims. Air Force FCC are identified in paragraph 5.12. and may also be appointed through redelegation under paragraph 5.13.

5.11.1. A judge advocate or civilian attorney of another Military Department is appointed as an Air Force FCC only with concurrence of the Chief, AFLOA/JACC, and the head of the claims service of the affected Military Department. (T-1) Similarly, a judge advocate or civilian attorney of the Air Force is appointed as an FCC for another Military Department only with concurrence of the Chief, AFLOA/JACC, and the head of the claims service of the affected Military Department. (T-0)

5.12. FCA Settlement Authority. SECAF may deny or approve claims for any amount. For claims approved for more than \$100,000, SECAF or his or her designee reports the amount in excess of \$100,000 to the Department of the Treasury for payment. (T-1) (See Table A1.2)

5.12.1. TJAG; DJAG; Director, AFLOA/JAC; and Chief, AFLOA/JACC, are FCC for claims worldwide and may deny claims in any amount, and pay claims filed in any amount when payment is for \$100,000 or less.

5.12.2. The Associate Chief, AFLOA/JACC, and the Chief, Foreign Claims Branch, AFLOA/JACC, are FCC for claims worldwide and may deny claims in any amount, and pay claims filed in any amount, when payment is for \$75,000 or less.

5.12.3. The SJAs of the Air Force component commands of the U.S. geographic combatant commands are FCC for claims arising in their respective combatant command AORs and may deny claims of \$50,000 or less, and pay claims filed in any amount when payment is for \$50,000 or less.

5.13. Redelegating FCA Settlement Authority. Settlement authorities may appoint, in writing, a subordinate judge advocate or civilian attorney to act as an FCC and redelegate to such persons a portion, or all, of their full authority.

5.14. FCA Statute of Limitations. A claimant must present a claim to the United States within two years after it accrues. War or armed conflict does not toll the statute of limitations. In computing the statutory time period, exclude the incident date and include the date the claim is filed.

5.15. Presenting Tort Claims. A claimant or authorized agent must present to the Air Force a properly signed Standard Form 95, **Claim for Damage, Injury, or Death**, or other signed writing for money damages in a sum certain for damage to or loss of property, personal injury, or death. For claims presented under the FCA, a claim may be presented orally only if oral claims are the custom in the country where the incident occurred and the claimant is functionally illiterate. In any case where an oral claim is made, the claim must be promptly reduced to writing with all particulars carefully noted. (T-1) In exceptional circumstances where no

signature is possible, some combination of reliable indicators confirming identity may be substituted for a valid signature upon approval by AFLOA/JACC.

5.15.1. Costs of preparing and presenting a claim, such as copying charges, appraisals, and attorneys' fees, are not payable under the FCA, but may be payable if the claim is settled and paid by a foreign country under an international agreement and U.S. payment is under the IACA (see Section 5B).

5.16. Who Are Proper FCA Claimants. Proper claimants include foreign country inhabitants who are:

5.16.1. Foreign nationals.

5.16.1.1. In a wrongful death case, if the decedent is an inhabitant of a foreign country, even though his or her survivors are U.S. inhabitants, the FCA applies.

5.16.2. Foreign military personnel, for property damage or loss only.

5.16.3. U.S. nationals residing abroad, unless the claim arises from a benefit, privilege, or service provided to them by the U.S. Government, or they reside in the foreign country primarily because they are employed directly by the United States, or sponsored by or accompanying such a person, or employed by a U.S. civilian contractor in furtherance of a contract with the U.S. Government, or sponsored by or accompanying such a person.

5.16.4. U.S. corporations with a place of business in the foreign country in which the claim arose.

5.16.5. Foreign governments and their political subdivisions, including municipal and prefectural governments.

5.16.6. Foreign companies and business entities.

5.17. Who Are Not Proper FCA Claimants. Not proper claimants include:

5.17.1. Insurers or other subrogees.

5.17.2. Persons determined to be U.S. inhabitants. U.S. inhabitants include dependents of U.S. military personnel and Federal civilian employees.

5.17.3. Civilian employees of the United States, including local inhabitants, injured in the scope of their employment.

5.17.4. National governments and their political subdivisions engaging in war or armed conflict with the United States or its allies. This includes factions that have not necessarily been recognized by the international community as a legitimate nation state.

5.17.5. A national or nationally controlled corporation of a country engaging in war or armed conflict with the United States or its allies unless the FCC determines the claimant is friendly with the United States.

5.17.6. Foreign military personnel for personal injury or death arising incident to service or pursuant to combined and/or joint military operations. Such operations include, but are not limited to, military exercises and United Nations, NATO, and other regional peacekeeping and humanitarian missions.

5.18. Investigating and Processing FCA Tort Claims. Air Force legal personnel charged with investigating and processing FCA tort claims abroad comply with Chapter 2 and any other published guidance from AFLOA/JACC (or AFLOA/JACE for environmental tort claims). (T-1) **Chapter 2**, paragraph 2.8 of this Instruction addresses witness interviews, witness locator information, documents, photographs, legal memorandum, and assembling tort claim files. In the tort claim file, include copies of international agreement provisions and relevant extracts of foreign law behind Tab B-7 “Other” (see Attachment 2). (T-1)

5.18.1. When conducting any investigation, documents not in English are translated into English by a competent translator for consideration by the appropriate settlement authority. Note the name and phone number of the translator in the claim file. (T-1)

5.18.2. When investigating personal injury and wrongful death FCA claims, expeditiously document employment and salary history and lost wages, if any, due to inability to work. (T-1)

5.18.3. When investigating personal injury and wrongful death cases claiming \$50,000 or less, SJAs exercising FCA claims jurisdiction should consider obtaining a legal opinion on liability and damages from a local foreign attorney knowledgeable in tort law. When investigating personal injury and wrongful death cases claiming more than \$50,000, SJAs exercising FCA claims jurisdiction obtain a legal opinion on liability and damages unless the host nation where the claim arose provides the Air Force with a reasonable assessment on liability and damages. (T-1) The command responsible for the activities described in the claim bears the cost of the legal opinion.

5.19. Application of the FCA:

5.19.1. The incident forming the basis of the FCA claim must:

5.19.1.1. Arise in a foreign country.

5.19.1.2. Be caused by noncombat activities of the U.S. Armed Forces, as that term is defined in Attachment 1, or by the negligent or wrongful acts of civilian employees or military members of the U.S. Armed Forces.

5.19.2. Scope of Employment. Settlement authorities may pay a claim even if the injury results from a criminal act clearly outside the scope of employment. **EXCEPTION:** Do not pay claims arising outside the scope of employment resulting from the acts of local hire civilian employees, whether or not those persons are indigenous persons, third country nationals, or U.S. citizens. However, claims arising from the operation of U.S. Armed Forces vehicles or other U.S. Armed Forces equipment by local hire civilian employees are payable, provided the employer or owner of the vehicle or equipment would be liable under local law in the circumstances involved.

5.20. FCA Exclusions. An FCA claim is not payable when it:

5.20.1. Is waived under an applicable international agreement, or pursuant to an applicable international agreement, a receiving state should adjudicate and pay the claim. However, if a foreign government subject to such an international agreement disputes its legal responsibilities under the agreement, and the claimant has no other means of compensation, AFLOA/JACC may authorize payment.

5.20.2. Is purely contractual in nature.

5.20.3. Is for attorney fees, punitive damages, interest, bail costs, or court costs. To allow claimants the opportunity to make a reasoned decision and to minimize misunderstanding, FCC should consider providing early notice to claimants that attorney fees are not payable as an item of damage under the FCA.

5.20.4. Arises from a private contractual relationship between U.S. personnel and third parties, e.g., property leases (including damage covered by a lease of real property), public utilities, hiring of domestic servants, and debts of any description, including damage to rental vehicles or payment for rental vehicles.

5.20.5. Is based solely on compassionate grounds.

5.20.6. Is a paternity claim.

5.20.7. Is for patent or copyright infringement.

5.20.8. Is for rent, damage or other payments involving the regular acquisition, possession, and disposition of real property by or for the United States.

5.20.9. Arises from a contractual relationship between the U.S. Government and third parties, e.g., damage to rental vehicles, office equipment, etc.

5.20.10. Is for real property taken by a continuing trespass.

5.20.11. Is for personal injury or death of a person covered by the FECA (5 USC 8101, et seq.); the Longshore and Harbor Workers' Compensation Act (33 USC 901, et seq.); or a U.S. contract or agreement providing employee benefits through insurance, local law, or custom, where the U.S. pays for them either directly or as part of the consideration under the contract. (See 42 USC 1651 and 42 USC 1701.) AFLOA/JACC may authorize an award where local benefits under a U.S. contract or agreement are not adequate. Local benefits are deducted from any award.

5.20.12. Results from an action by an enemy, or directly or indirectly from an act of the U.S. Armed Forces in combat. **EXCEPTION:** A claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the U.S. Armed Forces, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

5.20.13. Is based on the negligence of a concessionaire or other independent contractor.

5.20.14. Arises out of personal activities of family members, guests, servants, or activities of the pets of members and employees of the U.S. Armed Forces.

5.20.15. Results wholly from the negligent or wrongful act of the claimant or agent.

5.20.16. Is not in the best interest of the United States, is contrary to public policy, or otherwise contrary to the basic intent of the FCA. Claims considered not payable on this basis are forwarded to AFLOA/JACC for final decision.

5.20.17. Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the settlement authority determines the claimant is, and at the time of the incident was, friendly to the United States. **EXCEPTION:** A prisoner of war or interned

enemy alien is not excluded from filing a claim for damage, loss, or destruction of personal property within the U.S. Armed Forces' custody if the claim is otherwise payable.

5.20.18. Is the subject of litigation against the United States, or its employees. This restriction does not apply to joint criminal/civil proceedings in a foreign court. Claims settlement may be authorized by AFLOA/JACC in appropriate cases on request.

5.20.19. Is covered under U.S. admiralty and maritime laws, unless authorized by AFLOA/JACC.

5.20.20. Is filed by a Communist country or its inhabitants, unless authorized by AFLOA/JACC.

5.21. Applicable Law for Determining Liability and Damages under the FCA. Federal law, through the FCA, gives SECAF authority to prescribe the regulations set forth in this Instruction. This authority includes the appointment of an FCC and the implementation of the FCA by the Air Force.

5.21.1. In adjudicating FCA claims, settlement authorities follow the law, customs, and standards of the country where the claim arose (T-0) except:

5.21.1.1. Causation is determined based upon general principles of U.S. tort law found in federal case law and standard legal publications.

5.21.1.2. Joint and several liability does not apply. Payment is based solely on the portion of loss, damage, injury or death attributable to the U.S. Armed Forces.

5.21.1.3. If lost income or lost profits is recoverable under the law where the claim arose, they shall be limited to net lost income or net lost profits, taking into account appropriate deductions for taxes, regular business expenditures, and in the case of wrongful death, personal consumption during the loss period.

5.21.2. Settlement authorities do not deduct compensation from collateral sources except for:

5.21.2.1. Direct payments by a member or civilian employee of the U.S. Armed Forces for damages (not solatia) (See Section 5D).

5.21.2.2. Any payments recovered or recoverable from an insurance policy when premiums were paid, directly or indirectly, by the United States, or a member or civilian employee of the U.S. Armed Forces; or when the member or employee has the benefit of the insurance (such as when a U.S. member or employee borrows a vehicle of a local national, and the vehicle carries insurance for the benefit of any driver with permission to drive the vehicle).

5.21.2.3. Any workers compensation payments paid or payable to the claimant by a foreign government.

5.22. Acting on FCA Reconsideration. [Chapter 2](#), paragraph 2.12 governs reconsideration under the FCA. The FCA provides no statutory right to appeal.

5.23. Making Advance Payments under the FCA: See [Chapter 2](#), paragraph 2.10.

5.24. Rights of Subrogation, Indemnity, and Contribution. The Air Force has all the rights of subrogation, indemnity, and contribution, as local law permits. However, settlement authorities do not seek contribution or indemnity from U.S. military members or civilian

employees whose conduct gave rise to U.S. government liability, or whenever it would be harmful to international relations.

5.25. Paying FCA Claims. (T-0). FCA payments are *ex gratia* and within the discretion of SECAF or his or her designee. FCA claims are adjudicated, approved, and paid in the currency of the country where the incident occurred. **EXCEPTION:** If claimant is a foreign inhabitant of another country, payment may be made using the currency of the country where claimant resides. Do not pay in a currency other than that of the country where the incident occurred without the permission of AFLOA/JACC.

5.25.1. Air Force FCA claims arising in USPACOM's AOR are paid through PACAF finance channels. Air Force FCA claims arising elsewhere in the world are paid through the Air Force Claims Service Center. Pay settlements of \$100,000 or less, per claimant, from Air Force claims monies. Pay settlements exceeding \$100,000 by paying the first \$100,000, per claimant, with Air Force claims monies and by paying the remainder under 31 USC 1304 in accordance with foreign currency payment requirements of the Judgment Fund Group, Department of the Treasury, Financial Management Service, Prince George's Metro Center 2, 3700 East-West Highway, Rm 6F03, Hyattsville, MD 20782.

Section 5D—

5.26. General Discussion. A solatium payment is a nominal payment made immediately to a victim or a victim's family to express sympathy when local custom exists for such a payment. It is not compensation; it is not subject to single service claims responsibility; and in two of the three countries in the Far East where it is *bona fide* custom, payment is governed by military regulation (Korea, Japan). Solatia payments are not made from appropriated claim funds. They are made from the personal funds of a tortfeasor or from non-claims Operation and Maintenance (O&M) appropriations of the Military Department involved in an incident.

5.27. Problematic Solatia Payments. Although it is appropriate to honor the custom of solatia in countries where it is an established custom governed by military regulation, it is equally critical that the United States avoid this practice where no proof of custom exists and the offer of a truly nominal payment risks, not only creating new fiscal obligations, but also converting already tragic situations into greater offenses. Moreover, solatia (payable or not) is not a substitute for expeditious processing of meritorious claims under the FCA, and if a complicated meritorious claim presents immediate needs, the Advance Payments Act is available to meet such needs. See [Chapter 2](#), paragraph 2.10. Outside Korea, Japan, and Thailand, an FCC consults with AFLOA/JACC (Foreign Claims Branch) before making any solatia payment in connection with any potential or actual Air Force claim.

Chapter 6

NONAPPROPRIATED FUND, AIR NATIONAL GUARD, CIVIL AIR PATROL, ADMIRALTY, AND MISCELLANEOUS CLAIMS

Section A—

6.1. Scope of this Chapter.

6.1.1. This chapter contains procedures for settling:

6.1.1.1. Nonappropriated fund instrumentality (NAFI) claims.

6.1.1.2. Civil Air Patrol (CAP) claims.

6.1.1.3. Claims under the National Guard Claims Act (NGCA), 32 USC 715.

6.1.1.4. Claims under the Air Force Admiralty Claims Act (AFACA), 10 USC 9801-9804, 9806.

6.1.1.5. Claims under the Use of Government Property Claims Act (UGPCA), 10 USC 2737.

6.1.1.6. Claims by Members for Certain Losses of Household Effects Caused by Hostile Act, 10 USC 2738.

6.1.1.7. Claims of the U.S. Postal Service.

6.1.2. Air Force installation legal personnel receiving claims outside the coverage of this instruction coordinate with AFLOA/JACC to determine which federal agency should process the claim and under which statute the claim should be adjudicated. (T-1)

Section B—

6.2. Scope of this Section. This section implements DoD Directive 5515.6, *Processing Claims Arising Out of Operations of Nonappropriated Fund Activities*, dated 31 October 2006.

6.3. Settling NAFI Claims. Settle NAFI claims in accordance with Chapters 1 through 5 and this section.

6.4. Settlement Authority. The settlement authority for NAFI tort claims is the same as the authority listed in the particular chapter of this instruction under which the Air Force settles claims alleging negligence by appropriated fund employees (e.g., FTCA, MCA). The decision of the settlement authority is binding upon the NAFI.

6.5. Notice of Claim. Upon receiving a NAFI tort claim, the claims office promptly sends a copy of the claim to Headquarters, Army and Air Force Exchange Service, Financial Management & Accounting Directorate (T-1): ATTN: FA-T/RM, P.O. Box 650428, Dallas, TX 75265-0428; or to USAF/JAA-S, 2261 Hughes Avenue, Suite 156, Lackland AFB TX 78236, as appropriate. Proof that notice has been provided to the appropriate NAFI is placed in the claim file. (T-3)

6.6. Payment of Claims.

6.6.1. Pay claims from the fund source that pays the individual whose conduct gave rise to the claim. (T-0)

6.6.1.1. Use only nonappropriated funds to pay an administrative settlement, or a judgment resulting from a lawsuit, when the alleged negligent conduct was that of a nonappropriated fund employee.

6.6.1.2. Settlement agreements for claims involving NAFIs contain a release of nonappropriated fund employees, as well as the U.S., its agents, servants, and employees.

6.6.1.3. Military personnel or appropriated fund civilian employees performing off-duty, part-time work, and receiving NAFI pay for their duties, are nonappropriated fund employees for claims arising out of their off-duty work.

6.6.1.4. Claims involving volunteers. 10 USC 1588, as implemented by DoDI 1100.21, states that volunteers are considered employees of the government for tort claims purposes. Whether a volunteer who causes a tort is deemed a NAFI employee or Appropriated Fund employee depends on the type of activity the volunteer is supporting. Refer to AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation (MWR) and Nonappropriated Fund Instrumentalities (NAFIS)*, for the different categories of NAFI activities: Mission Sustaining (Category A), Basic Community Support Activities (Category B) and Revenue Generating Activities (Category C). Volunteers supporting Category A or B activities at the time of the incident giving rise to the tort are deemed appropriated fund employees. Volunteers supporting Category C activities at the time of the incident giving rise to the tort are deemed nonappropriated fund employees.

6.6.2. Send claims for payment involving the Army and Air Force Exchange Service (AAFES) to the address listed in paragraph 6.5. (T-1)

6.6.3. Send claims for payment involving all other Air Force NAFIs as follows:

6.6.3.1. For payments over \$500.00, send to AFPC/SVXB, at the address listed in paragraph 6.5. (T-1)

6.6.3.2. For payments of \$500.00 and under, send to the local NAFI that employs (or employed) the NAFI employee whose conduct gave rise to the claim. (T-1)

6.7. Claims Not Payable:

6.7.1. Claims arising out of the operation of a NAFI activity caused by military personnel or appropriated fund civilian employees performing assigned Air Force duties, even though they benefit a NAFI activity. For such claims, adjudicate and, if appropriate, settle them with appropriated funds.

6.7.2. Claims for personal injury or death of NAFI employees arising out of performance of their duties.

6.7.3. Claims that NAFI concessionaires or other contractors cause.

6.7.4. Claims arising out of the activities of private organizations.

6.7.5. Claims arising out of NAFI activities involving contract disputes, dishonored checks, debts to NAFIs, or third party workers' compensation claims.

6.8. Customer Complaints. Do not process under this section complaints or claims for personal property loss or damage by NAFI customers that the local NAFI activity can satisfactorily resolve. The manager of a NAFI activity may seek the advice of the local SJA when deciding the merits of a customer complaint.

6.9. NAFI Insurance Claims. AFLOA/JACC may settle under this chapter claims arising out of the activities of the authorized users of a NAFI program, such as an aero club or marina, on behalf of the NAFI self-insurance program.

Section C—

6.10. Scope of this Section. Settlement authorities may settle claims for death, personal injury, or property damage arising out of the authorized noncombat activities of the Air National Guard (ANG) under the NGCA, 32 USC 715.

6.10.1. Settlement authorities settle claims involving ANG personnel, other than claims arising out of noncombat activities, in accordance with Chapters 1 through 5 and this section. (T-1)

6.11. Settlement Authority: (See Table A1.2)

6.11.1. SECAF may deny or approve claims for any amount. For claims approved for more than \$100,000, SECAF or his designee reports the amount in excess of \$100,000 to the Department of the Treasury for payment. (T-0)

6.11.2. TJAG may deny claims in any amount and approve claims in an amount not to exceed \$100,000, notwithstanding the amount claimed.

6.11.3. DJAG; Director, AFLOA/JAC; Chief and Branch Chiefs, AFLOA/JACC; and Chief and Environmental Litigation Center Chief, AFLOA/JACE (for environmental torts) may deny claims in any amount and approve claims in an amount not to exceed \$25,000, notwithstanding the amount claimed.

6.11.4. Subject to the limitations of paragraphs 1.3 of this Instruction, the SJAs of each Air Force installation may:

6.11.4.1. Deny claims filed for \$5,000 or less.

6.11.4.2. Pay claims filed in any amount when payment is for \$5,000 or less.

6.12. Required Status of National Guard Personnel for Payable NGCA Claims:

6.12.1. ANG members must be performing duty under 32 USC 316, 502, 503, 504, or 505.

6.12.2. Settlement authorities process claims arising out of the activities of ANG technicians employed under 32 USC 709 under the FTCA or the MCA.

6.12.3. Claims arising out of the activities of ANG personnel while under state orders are not cognizable under federal claims statutes. SJAs refer such claims to state authorities.

6.13. Who are Proper Claimants. Refer to [Chapter 4](#), paragraph 4.4. for proper claimants.

6.14. Who are Not Proper Claimants. Refer to [Chapter 4](#), paragraph 4.5 for entities that are not proper claimants.

6.15. NGCA Exclusions. Refer to [Chapter 4](#), paragraph 4.8 for exclusions from payment under the NGCA.

6.16. Interpretation of the NGCA. Interpret the NGCA the same way as the MCA with regard to noncombat activity claims. Refer to [Chapter 4](#), paragraph 4.9. (T-0)

6.17. Applicable Law for Determining Liability under the NGCA. Use the same principles as are used under the MCA for noncombat activity claims. Refer to [Chapter 4](#), paragraph 4.10.2. (T-0)

6.18. Applicable Law for Damages. Use the same principles as are used under the MCA. See [Chapter 4](#), paragraph 4.10.2. (T-0)

6.19. Action by Settlement Authorities. A settlement authority takes final action on all claims where the amount claimed or the negotiated settlement is within its delegated settlement authority. Refer to [Chapter 2](#), paragraph 2.9. (T-1)

6.20. Acting on Appeals. A claimant has a statutory right to appeal the denial of claims under the NGCA. Refer to [Chapter 4](#), paragraph 4.11.

6.21. Making Advance Payments. Settlement authorities may make an advance payment if claimant appears to have a valid NGCA claim. Refer to [Chapter 2](#), paragraph 2.10.

6.22. Paying NGCA Claims. Refer to [Chapter 4](#), paragraph 4.13 for payment of NGCA claims.

Section D—

6.23. Scope of this Section. The federal government may be held liable for the negligent or wrongful acts or omissions of CAP or its members when performing Air Force-assigned missions causing personal injury, death, or property damage.

6.23.1. Air Force-assigned missions may include those in support of other federal agencies.

6.23.2. Instrumentality Status. CAP and its members are an instrumentality of the U.S. when they are performing Air Force-assigned missions under the Cooperative Agreement between the U.S. Air Force and the Civil Air Patrol. When CAP engages in activities other than Air Force-assigned missions, it is acting as a private corporation.

6.24. Settling Claims. Settlement authorities (SECAF; TJAG; DJAG; Director AFLOA/JAC; and Chief and Branch Chiefs, AFLOA/JACC) settle CAP tort claims arising out of Air Force-assigned missions in accordance with the FTCA ([Chapter 3](#)) or the AFACA ([Chapter 6](#), Section E), as appropriate. (T-0) Settlement authorities below AFLOA/JACC may not deny or pay CAP claims.

6.25. Notice of Claim. Consult AFLOA/JACC upon receiving a claim arising out of any CAP activity. (T-1) AFLOA/JACC may ask the base legal office to contact HQ CAP-USAF/JA, 105 South Hansell St, Maxwell AFB, AL 36112-6332, for a determination as to whether the activity in which the CAP member was engaged was an Air Force-assigned mission.

6.26. Proper Claims. Proper claims are those in which the negligence or wrongful acts or omissions of CAP members performing Air Force-assigned missions causes personal injury, death, or property damage.

6.27. Improper Claims:

- 6.27.1. Claims arising out of CAP corporate activities.
- 6.27.2. Claims for personal injury or death of CAP members, 18 years of age or older, covered by the FECA (5 USC 8101, et seq.).
- 6.27.3. Claims for use of privately owned property that CAP or its members use on Air Force-assigned missions.
- 6.27.4. Claims for expenses CAP or its members incur while engaged in Air Force-assigned missions.

Section E—

6.28. Scope of this Section. This section implements the AFACA, 10 USC 9801-9804, 9806, and the Admiralty Extension Act, 46 USC 30101.

6.29. Settlement Authority: (See Table A1.2)

- 6.29.1. For Claims Against the U.S.:
 - 6.29.1.1. SECAF may deny or approve claims in any amount, but if a claim is settled for more than \$500,000, he/she certifies the claim to Congress. (T-0)
 - 6.29.1.2. TJAG; DJAG; Director, AFLOA/JAC; Chief, AFLOA/JACC; and Chief, Aviation and Admiralty Law Branch, AFLOA/JACC, may deny claims in any amount; and approve claims in an amount not to exceed \$100,000, notwithstanding the amount claimed.
 - 6.29.1.3. Settlement authorities below AFLOA/JACC may not deny or pay admiralty and maritime claims.
- 6.29.2. For Claims in Favor of the U.S.:
 - 6.29.2.1. SECAF may settle claims asserted for \$500,000 or less in favor of the U.S. for damage to property under the jurisdiction of the Air Force.
 - 6.29.2.1.1. SECAF settles claims in any amount in favor of the U.S. for salvage services the Air Force performs.
 - 6.29.2.2. TJAG; DJAG; Director, AFLOA/JAC; Chief, AFLOA/JACC; and Chief, Torts Branch, AFLOA/JACC, may settle claims asserted for \$100,000 or less in favor of the U.S.
 - 6.29.2.2.1. TJAG; DJAG; Director, AFLOA/JAC; and Chief, Torts Branch, AFLOA/JACC may settle claims for \$10,000 or less for salvage services the Air Force performs.

6.30. Statute of Limitations.

- 6.30.1. Claims Against the U.S.:
 - 6.30.1.1. A claimant must agree to accept a settlement, and the appropriate settlement authority must approve the settlement for payment, within two years from the date the

cause of action accrued. The Air Force has no authority to settle or pay any claim under the AFACA after the expiration of this two-year period.

6.30.1.2. Neither the filing of a claim nor its consideration by the Air Force, to include settlement negotiations or related correspondence, waives or extends the two-year statute of limitation period for filing suit under 46 USC 30901 or 46 USC 31101.

6.30.1.3. Filing an administrative claim prior to suit is required only when the damage or injury to person or property is caused by a vessel on navigable water, but the damage or injury is done or consummated on land. In such cases, the claimant may not file suit until six months after filing the claim in writing with the federal agency owning or operating the vessel.

6.30.2. Claims in Favor of the U.S.: Claims in favor of the U.S. are barred unless a complaint is filed within:

6.30.2.1. Three years for tort actions (28 USC 2415(b)).

6.30.2.2. Six years for contract actions (28 USC 2415(a)).

6.31. Payable Claims:

6.31.1. Property damage, personal injury, or death caused by a maritime tort by any agent or employee of the Air Force, or by a vessel or other property under Air Force jurisdiction or control.

6.31.2. Compensation for towage and salvage services, including contract salvage that the claimant provides to disabled Air Force vessels or other property under Air Force jurisdiction or control.

6.32. Claims Not Payable:

6.32.1. Claims resulting directly or indirectly from combat.

6.32.2. Personal injury or death of U.S. Armed Forces members incident to their service.

6.32.3. Personal injury or death of federal civilian employees (including nonappropriated fund employees) incurred in the performance of their duties.

6.32.4. Claims payable under the IACA.

6.33. Claims Assertable by the U. S.:

6.33.1. Damage to property under Air Force jurisdiction caused by a vessel or floating object, or of a kind that is within the admiralty jurisdiction of a federal court.

6.33.2. Towage or salvage services the Air Force performs.

Section F—

6.34. Scope of this Section. This section implements 10 USC 2737, and explains how to settle claims against the U.S. for property damage, personal injury, or death incident to the use of a government vehicle, or any other government property on a government installation, when the claim is not payable under any other statute. Claims may be paid under this section whether or not the member or employee is acting in the scope of employment.

6.35. Settlement Authority. Anyone with settlement authority under Chapters 1 through 6 of this Instruction (see Table A1.2) may:

6.35.1. Deny claims in any amount.

6.35.2. Pay claims filed in any amount but with payment not to exceed \$1,000.

6.36. Payable Claims. When all of the following are present, payment of a claim in the amount of \$1,000 or less is authorized:

6.36.1. The claim is for property damage, personal injury, or death. Payment for a personal injury or death claim is limited to costs of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the U.S.

6.36.2. A military member or civilian employee of the Air Force caused the damage, injury or death, whether acting within or outside the scope of employment.

6.36.3. The damage, injury or death arose from the use of a government vehicle at any place or from the use of other government property on a government installation.

6.37. Claims Not Payable. A claim is not payable if it is:

6.37.1. Payable under any other provision of law.

6.37.2. Caused wholly or partly by a negligent or wrongful act of the claimant, the claimant's agent, or employee.

6.37.3. A subrogated claim.

6.37.4. Recoverable from other sources such as an insurance policy, or recovered from action under Article 139, UCMJ.

6.37.5. For pain and suffering.

Section G—

6.38. Scope of this Section. This section implements 10 USC 2738, which allows Air Force members to be reimbursed for household effects lost during a move incident to a permanent change of station. SECAF determines the loss of the household effects is due to a hostile action incident to war or a warlike action by a military force.

6.39. Settlement Authority. SECAF; TJAG; DJAG; Director, AFLOA/JAC; and Chief and Branch Chiefs, AFLOA/JACC may deny claims in any amount and approve claims in an amount not to exceed \$100,000, notwithstanding the amount claimed (see Table A1.2).

6.40. Statute of Limitations. A claim must be presented in writing to the appropriate federal agency within two years of accrual, unless the U.S. is at war or in an armed conflict when the claim accrues, or the U.S. enters a war or armed conflict after the claim accrues, and good cause is shown.

6.40.1. A claim normally accrues at the time of injury when essential operative facts are apparent.

6.40.2. In computing the statutory time period, exclude the date of the incident and include the date the claim was presented.

6.41. Who are Proper Claimants:

6.41.1. Members of the Armed Forces of the U.S.

6.41.2. Members of the National Oceanic and Atmospheric Administration or of the Public Health Service serving within the Department of Defense. Treat them as if they were a member of the Armed Forces.

6.42. Payable Claims. Losses of household effects sustained during a move made incident to a permanent change of station when, as determined by SECAF, the loss was caused by a hostile action incident to war or a warlike action by a military force. A claim is payable only to the extent the loss is not reimbursed under insurance or under the authority of another provision of law.

6.43. Substantiation. Claimants substantiate their claims as required for MPCECA claims for transportation loss of personal property under AFI 51-502.

6.44. Action by Settlement Authorities. A settlement authority takes final action on all claims where the amount claimed or the negotiated settlement is within its delegated settlement authority. (T-1) Refer to **Chapter 2**, paragraph 2.9.

6.45. Acting on Appeals. A claimant has a statutory right to appeal the denial of claims under 10 USC 2738 and 10 USC 2733(g). Refer to **Chapter 4**, paragraph 4.11.

6.46. Payment. Pay settlements from Air Force claims funds.

Section H—**S. Postal Service (USPS)**

6.47. Scope of this Section. The Air Force reimburses the USPS for the loss of postal funds, property, and accountable mail due to negligence, error or theft by Air Force postal personnel. This section implements USPS Publication 38, *Postal Agreement with the Department of Defense*, February, 1980.

6.47.1. Claims are submitted by the USPS through the Military Postal Service Agency, which forwards the claims directly to AFLOA/JACC.

6.47.2. TJAG; DJAG; Director, AFLOA/JAC; and Chief and Branch Chiefs, AFLOA/JACC, are authorized to settle USPS claims in any amount, and to seek recovery from the offender (see Table A1.2).

6.47.3. Claims involving third party mail loss or damage caused by other Air Force personnel, such as unit mail clerks or truck drivers, are processed under the MCA or FTCA.

Chapter 7

MEDICAL COST REIMBURSEMENT CLAIMS

Section 7A—

7.1. Scope. This chapter explains how the U.S. asserts and settles claims for costs of medical care against third parties under the Federal Medical Care Recovery Act (FMCRA), 42 USC 2651-2653; the Coordination of Benefits (COB) Statute, 10 USC 1095, 1095a, and 1095b; and other laws. This chapter also explains how the U.S. asserts and settles claims for accrued pay to members during periods of disability under the FMCRA. Refer to claims under this chapter as Medical Cost Reimbursement “MCR” claims.

7.2. Settlement Authority. TJAG delegates to DJAG, AFLOA/JAC, AFLOA/JACC, and the Chief, MCRP (see Table A1.2) the authority to:

7.2.1. Accept the full amount of a MCR claim and execute a release.

7.2.2. Compromise, settle, or waive any claim for \$300,000 or less.

7.2.3. Negotiate settlement, compromise, or waiver of claims exceeding \$300,000, subject to the approval of DoJ.

7.2.4. Redelegate a portion or all of their authority to subordinates, subject to the following limitations:

7.2.4.1. SJAs, when given MCR claims jurisdiction, are granted authority to waive, compromise, or settle claims in amounts of \$25,000 or less. This authority may be re-delegated in writing with authority to re-delegate to subordinates.

7.2.4.2. SJAs of numbered Air Forces, when given MCR claims jurisdiction, are granted authority to waive, compromise, or settle claims in amounts of \$40,000 or less. This authority may be re-delegated in writing with authority to re-delegate to subordinates.

7.2.5. Claims with an amount in excess of their settlement authority are forwarded to the next higher settlement authority for review and decision, and, if required, to DoJ. No settlement authority may exercise its authority to waive, compromise, or settle a claim that has been referred to DoJ or when a suit, naming the U.S. as a party, has been filed.

7.3. Terms. When used in this chapter, these terms have the following meanings:

7.3.1. An “injured party” is the person who received medical care for an injury or disease on which the claim is based. The injured party may be represented by a guardian, personal representative, estate, survivor, or attorney.

7.3.2. The term “third party” refers to an individual, partnership, business, corporation, insurer, or other entity, which is indebted or otherwise responsible to the U.S. for medical care or accrued pay for an injured party. In appropriate cases the third party may be a governmental entity.

7.3.3. The term “tortfeasor” refers to a wrongdoer who commits a wrongful act that injures another for which the law provides a legal right to seek relief.

7.3.4. “Medical care” includes medical and dental treatment, prescription medication, prostheses, and medical appliances the U.S. furnished or reimbursed other sources for providing.

7.3.5. “Accrued pay” is the total of all pay accrued to the account of an active duty member during a period when the member is unable to perform military duties. It does not include allowances.

7.3.6. “Future care” is medical care reasonably expected to be provided or paid for in the future treatment of an injured party as determined during the investigative process.

7.4. Program Generally. All claims asserted under this Chapter are processed by those with MCR authority having geographic responsibility for the location of the accident/incident that necessitated medical care.

7.4.1. The Chief, MCRP Branch, determines and assigns geographic responsibility for all MCRP regional field offices. (T-1)

7.4.2. If there is a change in geographic responsibility, the MCRP regional field office assigned new geographic responsibility coordinates with the MCRP regional field office transferring geographic responsibility to notify all injured parties, attorneys, insurance companies, medical care providers, medical facility registrars and patient affairs representatives, Medical Treatment Facility (MTF) resource management offices and TRICARE contractors, as necessary, of the change of geographic responsibility. (T-1) The regional field office also notifies these entities as to whether a claim has been transferred and provide a point of contact at the regional field office for each transferred claim. (T-1)

7.5. Assertable Claims, Generally. Assert a claim only if those with MCR authority, having been assigned a case to investigate and research, determine that it merits assertion. If the Government has furnished or will furnish medical care in military health care facilities, or has reimbursed a civilian healthcare provider who has provided care to an Air Force affiliated member and their dependents, a claim may be asserted under this chapter under:

7.5.1. FMCRA, when a third party is liable in tort for causing an injury or disease and, therefore, is liable for the cost of the medical care provided. The U.S. is also authorized under the FMCRA to collect an amount equal to the accrued pay of the injured party during any period that the military member is unable to perform military duties.

7.5.2. COB, when a third party payer is responsible for payment (such as a workers’ compensation claim, medical payment coverage, uninsured or underinsured motorist coverage, or any no-fault coverage under state law). The term “third party payer” is defined in the COB statute and/or regulations implementing it.

7.5.3. Any other Federal, State, or foreign law that would permit the U.S. to recover.

7.6. FMCRA or COB. MCR authorities can often assert claims under both FMCRA and COB. Whether a claim may be asserted against different parties under different statutes or against one party under both, use and cite the applicable statute(s) to all potential parties. This serves to maximize claims recovery.

7.7. Minimum Claims Value. In keeping with the Air Force policy of aggressive collection of pro-Government claims, each settlement authority may assert a claim in any amount. However,

settlement authorities only assert those claims for \$150 or less in which one of the following apply:

7.7.1. The amount collected exceeds the cost to collect. (T-1)

7.7.2. The third party offers payment. (T-1)

7.7.3. The U.S. has asserted a property damage claim under Chapter 9 of this Instruction arising out of the same incident. (T-1)

7.8. Nonassertable Claims. Settlement authorities do not assert MCR claims in the following circumstances:

7.8.1. Federal Agencies. Do not assert claims against any department, agency, or instrumentality of the U.S., unless permitted by statute, regulation, or policy. Secretary of Defense Policy for MTF billing should be used to establish policy for collection of TRICARE fees. Extend this guidance to include any related treatment paid for by TRICARE when asserting the claim. When reviewing bills for submission to agencies of the U.S., ensure proper rates are used. Generally, federal agencies are billed at interagency rates. See current Secretary of Defense Policy or contact MCRP for further guidance.

7.8.2. Department of Veterans Affairs (VA) Services. Do not assert claims for care the VA provides a veteran for a service-connected disability. This does not prevent the assertion of a claim against a liable third party for medical care an Air Force member received prior to discharge and transfer to the VA facility or when the Air Force reimbursed the VA facility for the care.

7.8.3. Merchant Seamen. Do not assert claims for care the U.S. furnishes a merchant seaman in accordance with 42 USC 249. Do not file a claim against the seaman's employer.

7.8.4. Contractors to be reimbursed by the Government under contract. If the U.S. needs to reimburse a contractor for a claim according to the terms of the contract, settlement authorities investigate the circumstances surrounding the incident to determine if assertion is appropriate. If necessary, the MCR authority can request a review of the contract by the SJA to determine the feasibility of asserting such a claim. If the U.S. is not required to reimburse the contractor, the MCR authority may assert a claim against the contractor.

7.8.5. Claims occurring outside the U.S. The responsibility for investigating MCR claims occurring outside the U.S. lies with designees of USAFE, USEUCOM, AFNORTH, AFSOUTH, AFAFRICA, PACAF, or AFCENT. Settlement authorities investigate any claims that might be made against foreign governments, their political subdivisions, armed forces members, or civilian employees.

7.8.6. Government Personnel. Generally, settlement authorities do not assert claims against members of the uniformed services, employees of the U.S., its agencies or instrumentalities, except as noted in paragraph 7.8.1 above, or a dependent of a service member or employee. Consult the regional attorney if assistance is required.

7.8.6.1. Settlement authorities may assert claims against such persons if:

7.8.6.1.1. They have insurance to cover the Air Force's claim, i.e. medical payment insurance, renters insurance, first party insurance, and underinsured insurance;

7.8.6.1.2. They were required by law or regulation to have insurance which would have covered the Air Force loss; or

7.8.6.1.3. Their actions, which necessitated the medical treatment provided at government expense, constituted willful misconduct or gross negligence.

7.8.6.2. Notwithstanding the above exceptions, no claim under this chapter should be asserted against a federal employee or military member if the relevant actions were performed in the course of official duty or scope of employment. MCR personnel send copies of files for potential claims against non-Air Force, active-duty military members or civilian employees to the military service concerned when they involve official duty or scope of employment issues. These issues are resolved by the other service.

7.8.7. Products Liability. Due to the unique nature of product liability issues and claims litigation, MCRP regional managers seek approval from regional attorneys before asserting a claim using a products liability theory of recovery. The regional attorney coordinates with Chief, MCRP, regarding whether or not to assert product liability claims.

7.8.8. Third Party Collections (TPC). MCR authorities and MCRP regional offices do not get involved with processing, reviewing, or settling TPC claims, which are active MTF programs for asserting and collecting claims against health plans for inpatient and outpatient care.

7.9. Medical Cost Reimbursement Claims Required. Each MCR authority ensures that his or her personnel promptly discovers all potential MCR claims and fully investigate, research, and vigorously pursue claims until collected and/or resolved. This requires both a network of contacts with appropriate offices and knowing and monitoring traditional sources of MCR claims, as set forth below:

7.9.1. Network of Contacts. Because of the difficult task of identifying all potential claims, the MCR authorities and staff should establish and maintain a network of contacts throughout all affiliated base communities to bring potential claims to the attention of the MCR authorities. Base contacts can provide potential claims from a variety of sources, including:

7.9.1.1. Medical facility registrars and patient affairs representatives. Medical facility registrars and patient affairs representatives advise the MCR authorities of potential third-party liability claims arising from injuries resulting from incidents such as motor vehicle accidents. Other medical clinics such as physical therapy, orthopedics, and dental are another source for potential claims. A screening of patient records by staff in these clinics may provide a source of potential claims. This notification is made on AF Form 1488, *Daily Log of Patients Treated for Injuries*, or AF Form 438, *Medical Care Third-Party Liability Notification*.

7.9.1.2. MTF resource management offices and TRICARE contractors. Managed care contractors and TRICARE fiscal intermediaries provide copies of paid bills for military members treated in private facilities.

7.9.1.3. Healthcare providers. Healthcare providers can be very useful in identifying potential claims that were not identified during emergent care or where emergent care was provided in another facility.

7.9.1.4. Other military legal offices. Other military legal offices are often a source for potential claims. Where care is provided at other military medical facilities, their supporting legal office may be notified of a claim within another jurisdiction. Often, private attorneys who are familiar with one legal office (such as an office of another military service) contact that office regarding a claim within the other jurisdiction.

7.9.1.5. Other MCR authority offices. Other MCR authorities determine the jurisdiction of an accident/incident and coordinate with the proper MCR authority POC for processing of potential claims that fall within their jurisdiction.

7.9.1.6. Commanders and First Sergeants. Commanders and First Sergeants are generally aware of medical treatment required by their Airmen and also generally know the cause of the injury or illness. When properly cultivated, Commanders and First Sergeants can be a source for identifying potential claims.

7.9.2. Historic Sources of MCR Claims. Knowing and monitoring the historic sources of MCR claims is vital to any MCRP. It allows the regional field office to identify potential claims and train others to properly identify and timely refer the same. Such sources include:

7.9.2.1. Other Federal medical facilities. Sometimes our patients are treated at other Federal medical facilities. Often these facilities have a claims function to identify potential claims. Coordination with these facilities can ensure proper referral to the military claims office of potential claims.

7.9.2.2. Security Forces desk blotters. Base legal offices review security forces desk blotters for the potential MCR claims or forward daily blotters to their regional MCRP office for screening. (T-1) Personnel are trained to screen for potential MCR claims and notify the regional MCRP office when a potential claim is identified or to refer the blotter to MCRP personnel for screening. (T-1)

7.9.2.3. Medical record requests. When medical records are requested by outside sources, especially attorneys, medical personnel provide copies of all documents to be sent to the requestor for MCR review. (T-0) A part of the review should be to determine if the record is required for reimbursement of medical expenses for medical treatment for personal injuries.

7.9.2.4. Reports of Survey and Line of Duty Determinations. Personal injury may accompany the loss of or damage to government property accounted for within the Air Force Report of Survey Program. Base legal offices forward only those reports of survey and line of duty determinations that involve personal injury at regular intervals to MCRP managers to ensure that regional field offices assert all possible claims arising from these reports. (T-1)

7.9.2.5. Property damage claims. Often incidents causing damage to government property, especially government vehicles, involve personal injury. All G claim files (see paragraph 9.1) are processed by the base legal office who provide notice to MCRP managers on potential MCR claims. (T-1)

7.9.2.6. Injured parties, their agents, workers' compensation boards, and insurance companies. Often, injured parties, their agents, workers' compensation boards, or insurance companies request medical records from Air Force medical facilities. This

request might indicate a potential claim. The applicable MTF records section, therefore, ensures that medical facility personnel provide copies of all such requests to the MCR authority for review and possible recovery action. The request for records might also indicate possible medical malpractice against the U.S. AFLOA/JACC oversees medical malpractice actions.

7.10. Statute of Limitations. A tort-based claim of the U.S. is subject to 28 USC 2415-2416. The U.S., or the injured party on behalf of the U.S., must file suit, based on tort, within three years after the accrual of a cause of action. Suits based in contract must be filed within six years. The MCR authority ensures that personnel apply the correct governing statute of limitations. (T-1) 28 USC 2416 provides for excluded periods when facts material to the right of action are not known and reasonably could not be known by the official charged with responsibility to act in the circumstances. MCR personnel document when notices of new potential cases are received in order to determine if any period could be excluded under this authority. (T-1)

Section 7B—

7.11. Opening Claims:

7.11.1. Open a claim as a potential claim when evidence exists that the Air Force has expended funds for the treatment of an injured party and a third party may be responsible for that expense. (T-1)

7.11.2. Open a claim as an MCR claim when regional claims personnel have enough facts to assign liability for payment to a specific third party, third party payer, or third parties. (T-1)

7.12. MCR Claims and AFCIMS. MCR personnel use the Web Air Force Claims Information Management System (WebAFCIMS) to manage MCR and potential MCR claims. (T-1) This includes cases that medical facilities, TRICARE, or other sources refer. A claim may be placed into litigation status under one of the following criteria:

7.12.1. The U.S. Attorney files pleadings or agrees to accept the case. Include appropriate documentation in the file.

7.12.2. When the plaintiff's attorney signs a representation agreement and protects the Government's interest by filing pleadings which include our model pleading. Place a copy of the agreement and pleadings in the file.

7.13. Referring MCR Claims. Claims personnel refer MCR claims to the appropriate MCR authority.

7.13.1. Base legal office personnel send all potential claims information involving an injured Air Force member, including TRICARE information or payments, to the MCR authority holding jurisdiction over the claim. (T-1)

7.13.2. If the injured party or sponsor is a member of another military service or Federal agency, base legal office personnel send the information concerning the potential case to the appropriate MCR authority to forward to the appropriate military service or agency for action. (T-1) MCR authority personnel coordinate and transfer MCR claims to the designated military service in those areas of the world where the DoD has imposed single-service responsibility. (T-1) The responsible department may ask a more conveniently located military service or agency to investigate a claim.

7.13.3. When a member of another military department has been treated in an Air Force MTF, the MTF forwards the initial notification, bill, treatment notes and all updates to the responsible SJA office for that military department. (T-1) The office with MCR authority provides the appropriate mailing address for each military department when cases are identified from the MTF trauma log. (T-1)

7.13.4. In single service claims jurisdictions, refer potential MCR claims to the office designated by the service with jurisdiction, regardless of the service affiliation of the injured party. (T-1)

7.14. Investigating and Documenting the Claim. After identifying a potential claim, MCR personnel fully investigate accidents/incidents giving rise to claims under the FMCRA and COB. (T-1) Review AF Form 1488 and/or AF Form 438 from MTFs, TRICARE notices of injury reports, requests from civilian attorneys for medical records, and any other resources available to determine if potential exists to legally recover the cost of medical care furnished to military members, retirees, and dependents. (T-1) The file should include, as applicable, information about:

7.14.1. Facts. (T-1) The facts relating to the injury or illness giving rise to the claim, to include any and all relevant evidence that determines whether assertion of potential claims are lawful and appropriate.

7.14.1.1. MCR authority personnel analyze written responses from the injured party through use of TRICARE DD Form 2257, MCRP Questionnaire, and information from his or her Counsel, locate interested parties and witnesses, and clarify disputed facts in order to determine if facts and circumstances give rise to potential third-party liability. (T-1)

7.14.1.2. MCR authority personnel ascertain the nature of the underlying action, including but not limited to, products liability (manufacture or design defect), motor vehicle accident, medical malpractice, slips/falls/hazards, sport and recreational injury, homeowner liability, business invitee liability, assaults, poisonings, and social host liability. (T-1)

7.14.1.3. MCR authority personnel obtain appropriate medical bills from both MTFs and TRICARE and determine the appropriate amount of claims, evaluate pre-existing injuries and determine what medical treatment and medications are related to the accident, and evaluate and determine appropriate recovery paths. (T-1)

7.14.1.4. MCR authority personnel evaluate the facts gathered and make independent decisions to close cases where no potential of recovery exist, collection costs outweigh potential recovery, or the case is too weak for litigation. (T-1) MCRP personnel should coordinate with regional attorneys as appropriate if issues of importance exist or if there is a need for assistance to determine liability.

7.14.2. Third Parties. (T-1) MCR authority personnel should make all attempts to get the name, address, and contact information of each third party for case files.

7.14.3. Insurance. (T-1) Include insurance information (to include the policy number and address of the insurance company) of all parties, including the injured party. This should include all types of insurance (i.e., Bodily Injury (BI) liability, Medical Payments (Med Pay),

Personal Injury Protection (PIP), Uninsured Motorist (UM), Underinsured Motorist (UIM), Medical Malpractice, Homeowners, Renters, Workers' Compensation), or any other form of liability insurance dependent on the facts or circumstances of the case. Include other insurance coverage available or required in the regional jurisdiction, whether offsetting or stacking of uninsured or underinsured motorist coverage is permitted by law or regulation.

7.14.3.1. In premises cases, the file includes information on medical payments insurance and liability insurance if liability exists. (T-1)

7.14.3.2. In motor vehicle cases, MCR personnel file information on liability coverage, uninsured or underinsured motorist coverage, personal injury protection, and medical payment coverage. (T-1)

7.14.3.3. In any type of case, all major medical insurance coverage or medical payments plans available to any person potentially involved is included in the file. (T-1)

7.14.3.4. Any action taken in accordance with a state's financial responsibility laws should also be fully documented.

7.14.4. Military Members and Civilian Employees. If the third party tortfeasor was a military member or employee, a statement indicating whether he or she was acting within the scope of employment, grossly negligent or engaged in willful misconduct at the time he or she caused the loss is included in the file. (T-1)

7.14.5. Medical Care Costs. MCR authority personnel include all the documentary evidence supporting the Government's claim for medical care costs in the claim file. (T-1) Reimbursement for the costs of care provided by non-Federal facilities, but for which the U.S. has paid, should be asserted at the rates paid. This evidence includes:

7.14.5.1. Tricare billing documents. (T-1)

7.14.5.2. Billing documents for the costs of military care. (T-1)

7.14.5.2.1. If MCRP regional personnel refer a claim to the Regional Attorney before care is completed, ensure that the current billing data is as accurate as possible and indicate whether treatment has been completed.

7.14.5.2.2. MCR authority personnel annotate the amount of the Air Force claim so a third party or its insurer can easily identify the treatment amounts and locations. (T-1) Readily identify the billing amounts for provided care, the actual dollar cost, or other amount that the U.S. has paid. (T-1) Calculate the Government's claim by totaling the costs of all provided care and adding the actual cost of treatment from non-federal sources. (T-1) Exclude any items that are not medical care costs incurred by the Government, such as subsistence or other dependent flat-rate charges, and hospitalization not directly related to the injury. (T-1)

7.14.5.3. Future Care. When settlement of a case is made before the injured party completes treatment, MCR authority personnel should project the cost of future medical expenses as required by 32 C.F.R. 199.12(i)(3).

7.14.5.3.1. Factors to be considered in determining future care cost:

7.14.5.3.1.1. Future Surgery or Major Procedures.

7.14.5.3.1.2. Average cost of past treatment.

7.14.5.3.1.3. Number of years of future eligibility (For example, when an injured party becomes Medicare Eligible TRICARE for Life only pays 25% of the bills not paid by Medicare).

7.14.5.3.2. When a case is settled with future care payments, as with any judicial settlement, there is no reconciliation of those future expenses. If TRICARE or MTF treatment is more or less than projected it is agreed as part of the settlement that the projections were a fair representation of future cost on the date of settlement and the case file is closed.

7.14.6. Accrued Pay Costs. MCR authority personnel include sufficient evidence to support a claim under the FMCRA for accrued pay disbursed to an injured military member in the claim file. (T-1) Personnel should work with the military member or local Military Personnel Flight and Finance Office to document and value a claim.

7.14.7. Injuries. MCR authority personnel include all information and evidence regarding the nature and extent of any injury or disease in the claim file (T-1), such as:

7.14.7.1. Whether the injured party has suffered a permanent or temporary disability.

7.14.7.2. Whether the injured party has sufficiently described the disability, including the extent of injury.

7.14.7.3. The amount of severance pay or pension the injured party has received, or will receive, from the U.S.

7.14.8. Medical Records. MCR authority personnel include a copy of relevant medical records in the claim file or electronic file when they are to be used to substantiate the care provided and the cost of that care. (T-1)

7.14.9. Important Information. MCR personnel include all important information or evidence in the claim file such as:

7.14.9.1. The name and address of the injured party's attorney. (T-1)

7.14.9.2. The status of any lawsuit or contemplated lawsuit. (T-1)

7.14.9.3. The disposition of all related charges and traffic citations. (T-1)

7.14.9.4. Police or other relevant investigation reports. (T-1)

7.14.9.5. Copies of all pertinent correspondence (i.e. court dockets, pleadings, rulings, judgments, court records), including returned receipts where applicable. (T-1)

7.15. Asserting the Claim:

7.15.1. MCR personnel assert a claim against a tortfeasor or other third party using a formal letter on Air Force stationery. (T-1) Make an assertion against all potential payers, including insurers. (T-1) In the demand letter, clearly state the legal basis for recovery and sufficiently describe the facts and circumstances surrounding the incident giving rise to the medical care. (T-1) Applicable bases of recovery include U.S. status as a third-party beneficiary under various types of insurance policies, workers' compensation laws, no-fault laws, or other Federal statutes, including COB or FMCRA.

7.15.2. Demand letters sent via ordinary mail should be suspended, and if a tortfeasor or other third party fails to respond within a reasonable period of time to any demand sent via regular mail, the matter should be reviewed for follow up, and letter re-sent possibly by certified mail. The need for this action is determined by the amount the government is seeking in reimbursement and whether it is cost effective to do so.

7.15.3. The MCR authority promptly notifies the injured party or their legal representative, in writing, that the U.S. attempts to recover from a third party the reasonable value of medical care furnished or to be furnished. (T-1) The MCR authority may advise the injured party to seek advice from a legal assistance officer or civilian counsel. Notify injured parties of their required cooperation in the prosecution of all actions by the U.S. against third parties. Advise them that they must give a complete statement regarding the facts and circumstances surrounding the incident giving rise to the medical care. (T-1) Advise injured parties that they should not sign a release or settle any claim resulting from the incident without first notifying the MCR authority. (T-1) MCR personnel refrain from communicating with an injured party when correspondence in the file indicates the injured party is represented by counsel. (T-1) MCRP personnel or the regional attorney contacts the injured party's counsel when information is required from the injured party. (T-1) When counsel does not cooperate, refer the matter to the regional attorney. (T-1)

7.16. Attorney Representation Agreement. It is often advantageous for the U.S. to have a private attorney represent the Government's medical care recovery interest. The U.S. Attorney is not able to handle routine MCR cases. The MCR authority may request the injured party's attorney to represent the Air Force. In such a case, advise that attorney of the conditions of the requested representation via sending the proper attorney representation letter and attorney representation agreement (ARA). (T-1) The injured party's attorney may include the Government's claim in his or her client's pleadings so that the U.S. need not become a party to the suit. See Attachments 4 and 5 for a sample representation letter and agreement. If an attorney is hesitant to sign an ARA or refuses to do so, contact the regional attorney and request that he or she contact the attorney in writing and/or telephonically. (T-1) If the MCR authority chooses not to obtain a representation agreement or no agreement is procured, the MCR authority independently pursues the claim through the responsible insurance company and notify the insurance company that the attorney does not represent the government's interest and has no authority to settle the government's claim. (T-1)

7.17. Monitoring the Claim. Diligently work to ensure settlement, payment, or closure of the file.

7.17.1. After asserting a claim, MCR authority personnel manage claims closely to ensure that payments are collected effectively and aggressively. (T-1) All assertions are managed and tracked to ensure that a response is received. (T-1) In the event no response is received, further steps should be taken to communicate with the third party. (T-1) If the third party will not deal with MCR personnel, the MCR personnel coordinates with their MCR attorney for potential referral to the U.S. Attorney for litigation. (T-1)

7.17.2. In the event an ARA has been signed, MCR personnel monitor the status of the case to ensure the matter is proceeding and the Air Force receives its just compensation. (T-1)

7.17.3. In the event a settlement has been reached, MCR authority personnel continue to manage the case to ensure that payment is received in full. (T-1) If the settlement agreement

is not honored, the MCR authority should address the issue with the third party for resolution. If resolution is not obtained, the MCR authority coordinates the issue with their respective MCR authority attorney for potential referral to the U.S. Attorney for litigation. (T-1) Prior to referral to a U. S. Attorney, approval is obtained from Chief, MCRP. (T-1)

7.18. Litigation. If settlement is not possible, the regional manager within MCRP may refer the claim for litigation to their regional attorney for possible referral to the U.S. Attorney. For claims processed by personnel outside of the MCRP, the claim should be referred to the appropriate attorney for review, and when approved by Chief, MCRP, referral to a U.S. Attorney or DoJ. The MCR authority manager/attorney provides all necessary assistance and support to the U.S. Attorney.

7.19. Referring a Claim to the U. S. Attorney. The Chief, MCRP Branch, may delegate the authority for the regional attorney to work directly with the U.S. Attorney. All cases that require forwarding to the DoJ are routed through the Chief, MCRP Branch by the regional attorney.

7.19.1. The MCR authority ensures that personnel review all claims for possible referral not later than two years after the date of the incident for tort based cases. (T-1)

7.19.2. The MCR authority, or the paralegal to which the case is assigned, provides a recommendation to their respective MCR authority attorney or regional attorney for review prior to a case being forwarded to the Chief, MCRP Branch (if not delegated IAW paragraph 7.18), for all unsettled cases where referral to the U.S. Attorney is recommended. (T-1) The Chief, MCRP Branch, may authorize referral of a case to the U.S. Attorney if the authority to act has not been delegated to the regional attorney.

7.19.3. Civilian attorneys may participate in litigating MCR claims, including filing pleadings and representing the U.S. before workers' compensation boards, administrative tribunals and courts of law, when approved by DoJ. Air Force attorneys cannot represent the U.S. in a court of law without the express approval of the DoJ or the appropriate U.S. Attorney. Coordinate with the Chief, MCRP Branch, and obtain the approval of the appropriate U.S. Attorney prior to participation.

7.20. Responding to Requests for Witnesses. A MCR authority manager in coordination with their respective MCR regional attorney or legal advisor, and Medical Law Consultants (MLCs), may honor an injured party's request for the presence of a government fact witness. Consult AFI 51-301, *Civil Litigation*, for further guidance regarding witness requests.

7.20.1. AFLOA/JAC is the approval authority for requests for special authorization to provide expert or opinion testimony. Once initial notification is provided, follow-up with a compilation of information regarding the request.

7.20.1.1. Treating Providers. Treating providers are ordinarily considered to be fact witnesses, even though their testimony may take on some aspects of expert testimony. Generally, treating providers may remain fact witnesses when testifying about diagnosis, prognosis or causation. However, their testimony should be limited to their treatment of the injured party. Opinions concerning causation, diagnosis, and prognosis are only considered factual to the extent the opinions were formed during the course of treatment. Requests for opinions not formed during the course of treatment are treated as requests for expert testimony.

7.20.1.2. Forward any requests for expert testimony to the regional attorney for disposition. (T-1) The regional attorney determines if the request for testimony should be coordinated through the Chief, MCRP.

7.20.2. If an MCRP regional manager believes that an MCR case may have impact Air Force wide, he or she may request witness funding from the Chief, MCRP Branch, via the regional attorney. Upon receipt of such a request, notify the regional attorney as soon as possible, then compile and submit information about the witness request to the regional attorney. (T-1) The regional attorney coordinates with the Chief, MCRP Branch and provide for witness representation if necessary (for instance at a deposition). (T-1)

7.20.3. MCRP personnel may be requested or subpoenaed to testify as to the accuracy of the government's claim. When requested to support the claim of the U.S., the MCRP manager should prepare an affidavit of the responsible government billing official that fully explains the amount of the government claim and how the amount was determined. (T-1) If a subpoena issued by a judge is received, work with the regional attorney to obtain the appropriate authority to testify or to provide the appropriate response. (T-1)

7.21. Releasing Records. MCRP regional managers review requests for medical records or other documents relating to MCR claims. (T-1) MLCs review requests for records upon request from MCR personnel. (T-1) Reviewers consider and comply with any authority or requirements of DoD Regulation 6025.18-R, *DoD Health Information Privacy Regulation*; AFI 51-301, *Civil Litigation*; DoD Regulation 5400.7-R_AFMAN 33-302; AFI 33-332; and the *Health Insurance Portability and Accountability Act of 1996* (HIPAA), when reviewing such requests. (T-0) Requests for medical records not related to MCRP claims are forwarded to the appropriate MTF office. (T-1)

Section 7C—

7.22. Payment Offered in Full:

7.22.1. Lump Sum Payment. When a third party offers to pay in full, any MCR personnel can accept the offer. If the third party requests a signed release, MCR personnel authorized by local office policy may sign an appropriate release. A release requiring the Government to indemnify or hold harmless is not acceptable. Unique releases should be reviewed by the appropriate attorney. All releases should be limited to parties, policies, and coverage with whom settlement is being made.

7.22.2. Installment Payments. When a third party offers to pay in full by installments, the MCR authority manager may accept if payment is completed within a reasonable time.

7.22.2.1. MCR authority manager or paralegal assigned the case prepares a promissory note, which details the repayment schedule, and have the tortfeasor execute it, if possible. (T-1) When these steps have been completed, the claim may be placed into installment payment status.

7.22.2.2. Keep the file until the third party pays the claim in full. (T-1) If the third party requests a signed release, the regional manager can sign a standard release that is preapproved by their regional attorney after full satisfaction of the claim. A release requiring the Government to indemnify or hold harmless is not acceptable. Unique releases should be reviewed by the regional attorney.

7.22.2.3. If a third party misses an installment payment, the MCR authority initiates aggressive collection efforts. (T-1) Continue trying to collect for no more than 90 days. (T-1) Notify and coordinate with your regional attorney and the Chief, MCRP, when the third party fails to provide an acceptable response. (T-1)

7.23. Compromise Settlements. A compromise is a mutually binding agreement where payment is made and accepted in an amount less than the full amount of the claim. A claim may be compromised in its entirety or as to a specific payer, fund, or policy of insurance. When a third party offers a compromise settlement, by payment of one lump sum or by installments, the settlement authorities have the authority to compromise a claim only if such action is for the convenience of the government or would otherwise result in undue hardship upon the injured party; and the value of the amount due falls within their delegated settlement authority. The MCR authority manager ensures that the third party makes payment within a reasonable time and that the compromise does not release any joint tortfeasor from payment. (T-1)

7.24. Waiver. A waiver is the voluntary relinquishment, by the U.S., of the right to collect for medical care, future care, or accrued pay for an injured party. Generally, parties who receive a waiver are released of liability. Waivers may be limited to a specific third party, policy or settlement. Settlement authorities have the authority to waive a claim only if such action is for the convenience of the government or would otherwise result in undue hardship upon the injured party and the value of the amount due falls within their delegated settlement authority. An injured party, its representative, or a third party requests a waiver in writing, and sufficiently state the basis for the requested waiver.

7.25. Basis for Compromising or Waiving a Claim. There are two bases for compromising or waiving a claim: (1) the convenience of the Government and (2) avoiding undue hardship on the injured party.

7.25.1. Convenience of the Government. When compromising or waiving a claim for the convenience of the Government consider the following factors:

7.25.1.1. Risks of litigation.

7.25.1.2. Questionable liability of the third party.

7.25.1.3. Costs of litigation.

7.25.1.4. Insurance (Uninsured or Underinsured Motorist and Medical Payment Coverages) or other assets of the tortfeasor available to satisfy a judgment for the entire claim.

7.25.1.5. Potential counterclaims against the U.S.

7.25.1.6. Jury verdict expectancy amount.

7.25.1.7. Amount of settlement with proposed distribution.

7.25.1.8. Tortfeasor cannot be located.

7.25.1.9. Tortfeasor is judgment proof.

7.25.1.10. Tortfeasor has refused to pay and the case is too weak for litigation.

7.25.2. Hardship on the injured party. When compromising or waiving of a claim to avoid undue hardship on the injured party, consider the following factors:

- 7.25.2.1. Permanent disability or disfigurement of the injured party.
- 7.25.2.2. Decreased earning power of the injured party.
- 7.25.2.3. Detailed out-of-pocket expenses to the injured party.
- 7.25.2.4. Financial status of the injured party.
- 7.25.2.5. Pension rights of the injured party.
- 7.25.2.6. Other government benefits available to the injured party.
- 7.25.2.7. Whether an offer of settlement from a third party (taking into account most or all of the third party's assets and insurance) is considerably less than the injured party's damages.
- 7.25.2.8. Whether the injured party received excessive treatment.
- 7.25.2.9. Amount of settlement with proposed distribution, including reductions in fees or damages by other parties, medical providers, or attorneys in order to reduce the hardship on the injured party.

7.25.3. Allow sufficient time to process compromise or waiver requests. The amount of the government's claim dictates what level of settlement approval is required for any compromise or waiver. Any case that is approved by the Chief, MCRP Branch, or DoJ is forwarded for staffing and requires several weeks for processing.

7.26. Closing Claims Without Collection. The U.S., for its own convenience, may close a claim without collection when it cannot locate the tortfeasor, the tortfeasor cannot pay or has refused to pay, collection costs outweigh potential recovery, or the case is too weak for litigation. Settlement authorities close these claims when they see fit and properly document the file. Closing a claim without collection does not prevent its future assertion against a third party if such action becomes warranted.

7.27. Reconsideration. A settlement authority may reconsider its previous action on a request for waiver or compromise whether requested or not. Reconsideration is normally on the basis of new evidence or discovery of errors in the waiver submission or settlement, but can be based upon a re-evaluation of the claim by the settlement authority.

7.28. Depositing Collections. Claims personnel use DD Form 1131, *Cash Collection Voucher*, to deposit funds that the U.S. collects under the MCRP. (T-1)

7.28.1. Deposit money recovered for treatment in an MTF into the operations and maintenance account of the Air Force, Army, Navy or Defense Health Activity MTF that provided the medical care. (T-0)

7.28.2. Deposit money recovered for treatment paid by Tricare to civilian providers into the designated Tricare funding account pursuant to 10 USC 1079a. (T-0)

7.28.3. Deposit money recovered for accrued pay regarding lost wages into the operations account of supporting member's unit at the time of injury or disease pursuant to 42 USC 2651(f). (T-0)

7.28.4. All funds collected are deposited to the current fiscal year appropriation in which they are collected. (T-0)

7.28.5. If there is no statutory basis to deposit the money with an MTF or other account, deposit money recovered with the Treasury to the Miscellaneous Receipts Account. (T-0)

7.28.6. Except when depositing to the Miscellaneous Receipts Account, provide a copy of the collection voucher or other suitable written notification to the MTF or other activity maintaining the account. (T-1)

Section 7D—

7.29. Regional Attorneys, MCRP (AFLOA/JACC).

7.29.1. Are assigned jurisdictional areas by the Chief, MCRP, to serve as senior advisers to Regional Managers and staff in the process of settling claims on behalf of the government.

7.29.2. Render legal opinions on personal injury tort claims to MCRP personnel, the Chief, MCRP, DoJ and the U.S. Attorneys. (T-1)

7.29.3. Assist and serve as co-counsel, when requested, in litigation activities with the DoJ and U.S. Attorneys. (T-2)

7.29.4. Recommend settlement of MCR claims to the Chief, MCRP, and the DoJ when the claim exceeds the delegated settlement authority. (T-1)

7.29.5. Deny or negotiate settlement of MCR claims within the delegated settlement authority. (T-1)

7.29.6. Provide tort claims and litigation training. (T-2)

Chapter 8

CLAIMS UNDER ARTICLE 139, UNIFORM CODE OF MILITARY JUSTICE

(10 USC 939)

Section 8A—

8.1. Scope. This chapter explains the Air Force procedures for processing, adjudicating, and paying claims made under Article 139 of the UCMJ. Article 139, UCMJ is the only administrative means to force an Air Force member to pay for damage or loss to non-federal property caused by willful or wrongful acts.

8.2. Relation to the Personnel Claims Act (PCA). If a claim is made under Article 139, UCMJ, but may also be cognizable under the PCA, settlement authorities proceed under this chapter. (T-1) If a claim under Article 139, UCMJ is denied, the claim may then be reviewed, and if appropriate, paid under the PCA.

8.3. Effect of Disciplinary Action. An Article 139, UCMJ claim is separate and distinct from disciplinary action that authorities may take under any other article of the UCMJ.

8.4. Responsible Parties:

8.4.1. Appointing Commander. The commander who exercises special court-martial jurisdiction over the offender is the appointing commander. When the offender is unknown, the commander exercising special court-martial convening authority (SPCMCA) over the installation where the complaint or claim was made or forwarded is the appointing commander.

8.4.2. Board of Officers. A board of officers is comprised of one to three commissioned officers and is appointed to investigate a complaint of willful property damage or wrongful taking by Air Force personnel. A Judge Advocate may be appointed to the board. The board of officers is responsible for investigating the incidents giving rise to the claim and recommending actions to the appointing commander consistent with this Instruction.

8.4.3. JA Office. The SJA provides guidance, gives advice and reviews the findings of the appointing commander and/or the board of officers consistent with this Instruction.

Section 8B—

8.5. Proper Claimants Under Article 139, UCMJ. A proper claimant under Article 139, UCMJ is any person who owns or has an interest in property damaged or taken by a military member consistent with this chapter.

8.5.1. Persons include: civilians, military members, businesses or charities (however owned or held), and state or local governments.

8.5.2. Federal agencies and nonappropriated fund instrumentalities are not proper claimants.

8.6. Claims Payable. Commanders may direct collection from individual pay to pay a claim for property that Air Force military personnel willfully damage or wrongfully take as a result of riotous, violent, or disorderly conduct.

8.6.1. Property. Property is any item owned or possessed by an individual or business. Property includes tangible items such as clothing, household furnishings, motor vehicles, real property, and currency. The term does not include:

8.6.1.1. Intangible property or items having no independent monetary worth. Items that are not considered as property for the purpose of this chapter include stocks, bonds, checks, checkbooks, credit cards, telephone services and cable television services.

8.6.1.2. Consequential, indirect, or remote damages such as loss of earnings, carrying charges, interest, attorney's fees, inconvenience charges, telephone charges and time spent preparing a claim are also not compensable.

8.6.2. Willful Damage. This is damage or destruction that is caused intentionally, knowingly, and purposely, without justifiable excuse. Willful damage involves conduct that falls into the following two categories:

8.6.2.1. Intentional acts without justification, such as vandalism. An example would be an Airman who slashes the tires of another Airman's automobile.

8.6.2.2. Riotous, violent, or disorderly act, acts of depredation, or conduct showing a reckless and wanton disregard for the property rights of others. An example would be an Airman who fires a weapon randomly into the air causing a shopkeeper's window to break, or an Airman who "accidentally" knocks over a lamp during a drunken brawl. While the Airman may not have intended to break the lamp, the involvement in a drunken brawl was intentional and constitutes conduct showing a reckless and wanton disregard for the property rights of others.

8.6.3. Wrongful Taking. "Wrongful taking" means an unauthorized taking or withholding of property with intent to deprive the owner or person in lawful possession of said property either temporarily or permanently. To be compensable under Article 139, UCMJ, any wrongful taking must be accompanied by force, violence, riotous or disorderly conduct.

8.7. Claims Not Payable:

8.7.1. Claims resulting from simple negligence.

8.7.2. Claims for personal injury or death.

8.7.3. Claims resulting from acts or omissions of Air Force military personnel performing legally authorized duties within the scope of their employment.

8.7.4. Claims of subrogees.

8.7.5. Claims arising from private indebtedness, including, but not limited to, contract debts, collections on checks, support payments and paternity claims.

8.7.6. Claims for reimbursement for bad checks.

8.7.7. Claims involving wrongful taking stemming from larceny, forgery or deceit, which are not accompanied by riotous or violent action.

8.7.8. Claims against Air National Guard members unless they are performing duty under Title 10 USC.

8.7.9. Claims for consequential damages.

Section 8C—

8.8. Filing a Claim. To file a claim in accordance with Article 139, UCMJ, an individual must complain to the commander of the military organization or unit of the alleged offending member or members. If claimants are unsure what organization the offender belongs to, they may file a complaint with the commander of the nearest military installation.

8.8.1. The complaint may be oral or written. However, if oral, the claimant must reduce the complaint to writing within a reasonable time. Similarly, while claimants do not need to request a specific dollar amount when they first complain, the claimant or authorized agent must present such a value, in writing, before a commander may make a settlement.

8.8.2. An Article 139, UCMJ complaint must be submitted within 90 days of the date of the incident. The claimant may file after 90 days if the appointing commander finds good cause for the delay. Often the fact that a claimant was unaware of the existence of Article 139, UCMJ claims or the identity of the offender is good cause. A command determination of good cause or absence of good cause is final.

8.9. Action by a Commanding Officer Receiving the Complaint:

8.9.1. If the commanding officer who receives the complaint has SPCMCA, and if the offender is a member of the command or is unknown, that commander retains the claim and acts as the appointing commander. (T-1)

8.9.2. A commanding officer without SPCMCA sends the complaint to the next higher officer in the chain of command exercising SPCMCA. (T-1)

8.9.3. If the offender is known, but is not a member of the command, the commander sends the complaint to the offender's immediate commanding officer. (T-1)

8.9.4. If multiple offenders are members of different commands whose commanding officers each have SPCMCA, the receiving commander submits the complaint to the SPCMCA nearest the place of the incident. (T-1) That commander appoints a board of officers to investigate the claim. (T-1)

8.9.5. If the offender is a member of another military service, the commander:

8.9.5.1. Sends the complaint to the offender's unit commander of that military service. (T-1)

8.9.5.2. Sends a copy of the complaint to the legal office serving that unit commander. (T-1)

8.10. Initial Action by the Appointing Commander. Once it is determined who the proper appointing commander is, consistent with paragraph 8.10 of this Instruction, the appointing commander reviews the complaint. (T-1)

8.10.1. If, on the basis of the complaint, it appears that an Article 139, UCMJ claim is cognizable, the commander appoints a board of officers to investigate the claim. (T-1)

8.10.2. If, on the basis of the complaint, it appears that an Article 139, UCMJ claim is not cognizable, the commander refers the complaint to the SJA for legal review. (T-1) If after legal review the claim is determined not cognizable under Article 139, UCMJ, the claim may be denied without appointing a board of officers. (T-1)

8.11. Action by the Board of Officers:

8.11.1. The board notifies the offender, in writing, of the pending complaint and of these rights (T-1):

8.11.1.1. Article 31, UCMJ, rights, including the right to counsel.

8.11.1.2. The right to examine evidence considered by the board, to include the right to be present during the examination of a witness. The board may examine witnesses prior to the identification of an offender and is not required to re-examine a witness after the offender has been identified.

8.11.1.3. The right to present evidence in the offender's own behalf.

8.11.1.4. The right to receive the commanding officer's written decision.

8.11.2. Each member of the board reads Article 139 of the UCMJ and Chapter 8 of this Instruction. (T-1)

8.11.3. The board of officers requests a briefing from the SJA's office regarding Article 139, UCMJ claims, privileges, rights, the standard of review, and any other relevant issues. (T-1) The board may, at any time, seek guidance from the SJA's office regarding their duties.

8.11.4. The board of officers investigates the facts and circumstances surrounding the complaint. (T-1)

8.11.4.1. The board gathers facts surrounding the event by visiting the scene of the incident, interviewing witnesses, reviewing physical evidence, and obtaining police reports or other relevant documents as necessary to evaluate the claim. (T-1)

8.11.4.2. Generally, the board considers all evidence that is relevant to the claim being investigated and not privileged. (T-1) However, while the Military Rules of Evidence do not apply to Article 139, UCMJ proceedings, how evidence was obtained and its source should be considered when determining the reliability, usefulness and veracity of that evidence. For example, while hearsay statements may be considered, members of the board should question the reliability of such statements.

8.11.4.2.1. The board does not consider privileged communications. (T-1)

8.11.4.2.2. The board reads witnesses their Article 31, UCMJ, rights where appropriate. (T-1)

8.11.4.2.3. The board should consult with the SJA's office whenever evidentiary or Article 31, UCMJ issues arise. (T-1)

8.11.5. Standard of Proof. A determination that a member is liable under Article 139, UCMJ must be supported by a preponderance of the evidence. This means that the board must determine it is more likely than not the member is responsible for the damages claimed. This determination must be based upon the weight of the evidence.

8.11.6. The board of officers make conclusions regarding the facts of the case. The board:

8.11.6.1. Determines if the claim falls under Article 139, UCMJ. (T-1)

8.11.6.2. Identifies the offenders or members present. (T-1)

8.11.6.3. Determines culpability of each alleged offender. (T-1)

8.11.6.4. Determines the value of claimant's loss. (T-1)

8.11.6.5. Determines whether the responsible party has made partial payment, and if so, how much has been paid. (T-1)

8.11.6.5.1. If the offender voluntarily makes payment of an amount in full satisfaction and final settlement, the claimant may seek no further recovery. (T-1)

8.11.6.5.2. If the offender voluntarily makes a partial payment, the board deducts that amount in computing the assessment. (T-1)

8.11.7. The board submits a report to the appointing commander with findings based on the evidence. (T-1) A description, photograph, or summary of testimony (or other reasonably accurate substitution) may be used for this report. If liability is assessed, the report must first go through the SJA's office for an opinion regarding legal sufficiency. (T-1) In its report the board sets out the facts as determined, attach any relevant evidence and recommend one of the following:

8.11.7.1. An assessment of damages against one or more offenders. (T-1)

8.11.7.2. An assessment of appropriate damages against individual unit members who were present when the damage occurred, when the board cannot individually identify the offender(s). (T-1)

8.11.7.3. A determination that the claim should be disapproved. (T-1)

8.12. SJA Review of the Report. When the board assesses damages and the offender is a member of the command, the SJA reviews the report for legal sufficiency and compliance with this chapter. (T-1) The SJA determines if a preponderance of the evidence supports the findings and if the board's recommendations are consistent with the findings. (T-1) The SJA returns the record to the board for further investigation or correction if irregularities or discrepancies exist, or sends the report to the appointing commander. (T-1)

8.13. Final Action by the Appointing Commander. The commander is the final authority on all Article 139 UCMJ claims. The appointing commander:

8.13.1. Reviews the board of officers' report to ensure he or she is the appropriate final authority. (T-1) An appointing commander never takes final action on a military member outside of his or her command.

8.13.1.1. If the alleged offender is not a member of the command, the appointing commander sends the report directly to the offender's commanding officer exercising SPCMCA for final action. (T-1) This may occur when an offender is unknown when the board is appointed, but is discovered during the investigation or when there are multiple offenders from different commands.

8.13.1.2. If the alleged offender is a member of a different service, the appointing commander sends the report directly to the commander of the member's unit of the service concerned. (T-1)

8.13.2. Ensures the board of officers' report is complete. (T-1) The appointing commander may return the record to the board or SJA for further investigation or correction if incomplete or if there are irregularities or discrepancies. If the record is returned to the board for further

investigation or correction, the board forwards the revised record to the SJA to review the report for legal sufficiency and compliance with this chapter.

8.13.3. Makes independent determinations based upon the board of officers' report. (T-1)

8.13.3.1. Determines if the claim falls under Article 139, UCMJ. (T-1)

8.13.3.2. Determines culpability of an individual, individuals, or unit members present during the relevant event if the specific offender cannot be identified. (T-1)

8.13.3.3. Sets the amount to be assessed against each offender or unit member. This amount may be less than what the board recommends, but may not exceed that amount. (T-1)

8.13.3.3.1. In the event the amount to be assessed against any one person exceeds \$5,000 for a single incident, a copy of the file is sent to AFLOA/JACC for approval. (T-1) The file includes a copy of the board of officers' report and the memorialized decision of the appointing commander. (T-1) The file is sent to AFLOA/JACC prior to the commander directing payment or notifying the offender(s). (T-1)

8.13.4. Memorializes his or her determinations in writing. (T-1)

8.13.5. Directs the accounting and finance officer to withhold the assessed amount from the pay of each offender, and to pay the claimant. (T-0) The accounting and finance officer having custody of the offender's pay record pays the claim. (T-1) This should only be done after a review by AFLOA/JACC if more than \$5,000 is assessed against an offender.

8.13.6. Notifies in writing the claimant and the offender of the action taken. (T-1)

8.13.7. Commanders may receive a report from a board convened by another Air Force commander or commander of another service. The commander may act upon that report without convening his/her own board, if the report is sufficient to satisfy the commander that assessment against a member of his or her command is consistent with Air Force policy regarding Article 139, UCMJ. Prior to action on the report, the commander obtains a review by his/her SJA for legal sufficiency. (T-1)

8.14. Appeals. Neither the claimant nor the offender has a right to appeal a decision of the appointing commander.

8.15. Reconsidering Article 139, UCMJ Assessments:

8.15.1. The commanding officer originally ordering the assessment may reconsider and change a decision if the findings later prove to be wrong either in law or fact.

8.15.2. A successor in command may change or cancel the assessment only on the basis of:

8.15.2.1. Newly discovered evidence.

8.15.2.2. Fraud.

8.15.2.3. Obvious mistake of fact or law.

8.15.3. Only the original appointing commander or his or her successor may take the actions stated above. This is true even if the offender is transferred to a different command.

8.16. Canceling Indebtedness. Authorities may cancel indebtedness assessed under Article 139, UCMJ, only in accordance with this chapter. Other statutes authorizing the Secretary of the Air Force to cancel indebtedness of a member do not apply to Article 139, UCMJ.

Chapter 9

PROPERTY DAMAGE TORT CLAIMS IN FAVOR OF THE U.S.

Section 9A—

9.1. Scope. This chapter describes the principles and procedures by which the U.S. Air Force asserts and collects claims for damage to its property due to a third party's negligence or wrongful act. These claims are generally referred to as "pro-Government" or "G" claims. As a property owner, the Air Force is often the victim of a tort and has the right and obligation under the FCCA (31 USC 3711-3720E) to collect for tortious damage or loss to its property. Air Force policy is to aggressively pursue all such claims for loss or damage.

9.2. Government Claims Program Required. Each supervisory claims authority ensures that its personnel promptly discover all potential claims under this chapter and fully investigate and vigorously pursue them. This can only occur if an appropriate government claims program is in place. This program:

9.2.1. Ensures a system exists whereby all potential claims can be identified and promptly reported.

9.2.2. Educates local personnel such that they are aware of the program, understand their reporting responsibilities, and can identify potential tortfeasors.

9.2.3. Ensures the legal office with claims jurisdiction over the incident area properly and aggressively assert, monitor and settle claims consistent with this chapter, the FCCA, and other pertinent Federal Regulations.

9.3. Assertable Claims. Generally, base legal personnel may assert claims against a tortfeasor or other responsible party (such as an insurance company) for loss of or damage to government property, including NAF property, if the loss or damage is for \$100 or more. If the loss or damage is less than \$100, assert the claim only if it is practicable and economical to do so. (T-1)

9.4. Settlement Authority:

9.4.1. TJAG; DJAG; AFLOA/JAC; and AFLOA/JACC may assert, waive or compromise claims in an amount not to exceed \$100,000 (see Table A1.2)

9.4.2. SJAs responsible for claims may (see Table A1.2):

9.4.2.1. Assert claims in any amount;

9.4.2.2. Waive or compromise claims up to \$25,000.

9.4.3. Redelegating Authority. Settlement authorities may redelegate their full authority, in writing, to a subordinate judge advocate, or civilian attorney.

9.5. Special Situations:

9.5.1. Contractors. Contact the local contracting officer first. Only assert a claim against a contractor under this chapter if the contracting officer does not intend to assert the claim under the contract. Document for the file the contracting officer's decision not to assert a claim. (T-1) If a dispute arises between the legal office and the contracting office as to: (1) whether a cause of action exists under tort law, or (2) whether the claim should be pursued

through procurement or claims channels, document the disagreement and send a full and complete copy of the claim to AFLOA/JACC. (T-1)

9.5.2. Medical Cost Reimbursement. If the “G” claim arises from the same incident as a medical cost reimbursement claim, the base legal office asserts claims for the property loss or damage and notify the regional MCRP office who in turn asserts the claim for medical costs. (T-1) Information each office discovers during the investigation process is shared with the other office.

9.5.3. Anti-Government Torts. If a tortfeasor, or his/her insurer, presents a claim against the Government arising from the same incident that serves as the basis of a pro-Government claim asserted under this chapter, process both the pro-Government and anti-Government tort claim together. (T-1) Do not settle either claim separately without coordination with AFLOA/JACC.

9.5.4. Foreign Torts Abroad. In cases where single service claims responsibility exists, only the service assigned claims responsibility for the geographic area where the incident arose asserts government claims. (T-0) Consult DoD Instruction 5515.08 prior to asserting such claims to determine the responsible service. In the event a tortfeasor, or his/her insurer, presents a foreign or international claim against the Government arising from the same incident that serves as the basis of a pro-Government claim, process the pro-Government tort claim as a counterclaim.

9.5.5. Product Liability. Due to the unique nature of product liability issues and claims litigation, obtain AFLOA/JACC approval before asserting a claim using a products liability theory of recovery. (T-1)

9.6. Nonassertable Claims. Base legal personnel do not assert a claim for loss of or damage to government property in these instances:

9.6.1. Claims Liability Reimbursement. Do not assert a claim for reimbursement against military or civilian employees for claims paid by the U.S. due to that employee’s negligence.

9.6.2. Nonappropriated Fund Employees. Do not assert claims for loss or damage that a nonappropriated fund employee causes to government property while on the job.

9.6.3. Military Members and Employees and the Report of Survey Program (ROS). Generally, procedures for seeking compensation for loss or damage to government property caused by Air Force employees and military members is governed by the ROS program (AFMAN 23-220, *Reports of Survey for Air Force Property*). However, consistent with the ROS program, damage to government property caused by a private conveyance may be properly asserted under this chapter. Regardless, never assert a claim for loss or damage to government property if an ROS has been processed against the same person for damage to the same property arising from the same incident or loss.

9.6.4. Maritime Claims. Do not assert maritime claims in favor of the U.S. under this chapter. Refer pro-Government maritime claims to AFLOA/JACC.

9.6.5. Medical Cost Reimbursement Claims. Do not assert MCR claims under this chapter.

9.6.6. Foreign Governments. Do not assert a claim for monies to be recovered from a foreign government or any of its political subdivisions. AFLOA/JACC may authorize exceptions to

this rule. If a foreign country voluntarily offers to pay a claim, or offers to repair or replace lost or damaged property, the SJA notifies AFLOA/JACC. (T-1)

9.6.7. Federal Agencies. Do not assert a claim against another Federal agency.

9.7. Statute of Limitations. The U.S. must file a lawsuit for loss or damage to government property based in tort within three years after accrual. Periods during which a responsible official of the U.S. did not know or reasonably should not have known the material facts that resulted in the claimed loss are excluded when calculating the three years. Some other periods are also excludable (see 28 USC 2415-2416). Suits based in contract or upon some other theory or upon state law may have a different statute of limitations period. The SJA ensures the correct governing statute is applied. (T-1) Base legal personnel must never allow expiration of the statute of limitations to prevent collecting on a claim. (T-1)

Section 9B—

9.8. Processing Claims Generally. All claims offices ensure claims are properly investigated, vigorously asserted, and closely monitored to aggressively protect Air Force interests. (T-0)

9.9. Reporting Potential Claims. Personnel report all incidents involving damages to or loss of government property that may result in liability of a third party in excess of \$10,000 to AFLOA/JACC by facsimile or electronic mail. (T-1)

9.10. Investigating the Claim. Base legal personnel conduct timely, thorough investigations of all claims and potential claims. (T-1) These investigations must thoroughly research and document both the facts and law necessary to support a cause of action against the tortfeasor. (T-1) Thoroughly document:

9.10.1. The factual and legal basis for the tortfeasor's negligence. (T-1) Include in the claims file, when applicable, witness statements, copies of other investigations, information regarding any violations of law or regulation (including charges or citations relating to criminal or traffic violations), and a summary of any applicable law.

9.10.2. Air Force damages. (T-1)

9.10.2.1. Include in the file evidence of loss or actual damage and costs of repair (including materials and overhead) or replacement of government property. (T-1) If the cost of labor and overhead is based on a government regulation, directive, or technical order, include the appropriate portions of that document in the file. (T-1)

9.10.2.2. Include in the file evidence of consequential damages (loss of use, removal to storage, and storage costs), if any. (T-1) Support with evidence the calculation of those damages, and include this information in the file. (T-1)

9.10.3. Include in the file all necessary information pertaining to the tortfeasor. (T-1) This includes items such as proof of service of the demand, correspondence with the tortfeasor, and insurance information and reports on the tortfeasor's financial status. (T-1)

9.11. Asserting the Claim. After investigating the incident giving rise to a property damage claim, researching relevant law and identifying the appropriate tortfeasors, the base SJA asserts the claim. (T-1) This is done by sending via certified mail, return receipt requested, a formal

letter to the tortfeasors on Air Force letterhead. (T-1) The letter provides sufficient notification of the facts and circumstances surrounding the incident, including:

- 9.11.1. A reference to the statutory right of the U.S. under the FCCA to collect for the loss or damage. (T-1)
- 9.11.2. A demand for payment for loss or damage to the property or a demand for the restoration of that property. (T-1)
- 9.11.3. A description of the loss or damage. (T-1)
- 9.11.4. A description of the tortfeasor's action or forbearance which led to the government loss. (T-1)
- 9.11.5. The date and place of the incident giving rise to the claim. (T-1)
- 9.11.6. The name, office address, and telephone number of the base legal office personnel to contact regarding the claim. (T-1)

9.12. Monitoring the Claim. After base legal personnel assert the claim, the SJA ensures personnel monitor the claim and aggressively follow up. (T-1) All contact by the tortfeasor or tortfeasor's counsel should receive a prompt response. If the tortfeasor fails to respond to the initial assertion letter, at least two subsequent demand letters should be sent at 30-day intervals. (T-1)

- 9.12.1. If the tortfeasor fails to respond to the assertion letters or makes a final decision not to pay, the SJA forwards the case to AFLOA/JACC. (T-1) AFLOA/JACC determines if the case is referred to the U.S. Attorney. (T-1)
- 9.12.2. If base legal personnel do not receive payment (notwithstanding ongoing negotiations or a signed settlement agreement) within 18 months from the incident date, or if there is indication of fraud or misrepresentation by the tortfeasor, the SJA forwards the file to AFLOA/JACC. (T-1)

Section 9C—

9.13. Disposition of Claims, Generally. After a claim has been asserted it must be settled, referred for litigation, or closed without collection. (T-1)

9.14. Settling Claims in Full. When a third party offers full payment, accept the offer. (T-1) Settlement authorities may sign an appropriate release, if requested. However, a release requiring the Government to indemnify or hold harmless any settling party is not acceptable.

- 9.14.1. The settlement authority may accept a third party's offer to repair or replace the damaged property as payment in full. The third party must agree to repair or replace the property to the satisfaction of the accountable property officer. (T-1)
- 9.14.2. Base legal personnel should strive to arrange repair or replacement, as this makes property useable for the mission without the expenditure of operational funds.

9.15. Compromise Settlements. When a third party offers an acceptable compromise on a claim within the base's settlement authority, accept the offer and sign a release, if requested. However, a release requiring the Government to indemnify or hold harmless any settling party is not acceptable.

9.15.1. In order to maximize collections for the U.S., settlement authorities may agree to a compromise settlement within their authority when:

9.15.1.1. The tortfeasor is unable to pay the full amount within a reasonable time. Obtain a sworn statement showing the debtor's assets and liabilities, income, expenses, and insurance coverage, and include it in the claim file.

9.15.1.2. The Government is unable to collect a claim in full within a reasonable time, even though it has used enforced collection proceedings.

9.15.1.3. The cost to collect does not justify enforced collection in the full amount.

9.15.1.4. The Government might have difficulty proving its case in court for the full amount claimed, if a question exists about the tortfeasor's liability or a problem arises in proving the amount and extent of damages to the U.S.

9.15.2. If a claims office decides not to pursue a claim for any reason (including those listed above), the claims office completes a detailed memorandum for record documenting the reason and place it in the file. (T-1)

9.15.3. Prejudgment Interest. A settlement authority may waive prejudgment interest (where statute, contract, or regulation do not require it) to encourage payment. Inform the tortfeasor that the U.S. seeks such interest in the event of litigation. (T-1)

9.15.4. Settlement authorities may not compromise in cases of fraud, misrepresentation, or violation of antitrust laws. The DoJ must authorize compromise of such claims. (T-1)

9.15.5. When two or more tortfeasors are jointly and severally liable, settlement authorities may divide the payment between them. Take care that a compromise with one tortfeasor does not release the claims against the remaining responsible parties. Prior to release of a party for partial payment, settlement authorities should consider whether the remaining loss can be collected from the remaining tortfeasors and hence whether release of one or more parties is in the best interests of the Air Force.

9.16. Installment Payment Settlements. When a third party offers to pay the claim in installments (either in the full amount or an acceptable compromise) and the claim is within the base settlement authority, the SJA may accept the debt if the third party can repay it within a reasonable time and the compromise does not release any joint tortfeasor.

9.16.1. Prepare a confession of judgment (*cognovit*) note, which details the repayment schedule, and have the tortfeasor execute it. (T-1) Carefully follow the claim to ensure the third party makes payment according to the schedule.

9.16.2. Base legal personnel keep the file until the third party has made full payment according to the terms. (T-1) If the third party is delinquent in making an installment payment, write a demand letter reminding the third party of the obligation to pay. (T-1) Continue collection efforts for no more than 90 days after the account becomes delinquent. After 90 days forward the file to AFLOA/JACC. (T-1) AFLOA/JACC determines if the matter is referred to the appropriate U.S. Attorney's Office. (T-1)

9.17. Referring a Claim to the U. S. Attorney for Litigation. If collection efforts are unsuccessful, AFLOA/JACC may refer a claim to the appropriate U.S. Attorney's Office or the DoJ for initiation of a lawsuit.

9.17.1. If requested by AFLOA/JACC, base legal personnel submit a detailed, written report to AFLOA/JACC. (T-1)

9.17.2. After referring the claim to the U.S. Attorney, AFLOA/JACC periodically queries the U.S. Attorney's Office to determine the status of the claim if AFLOA/JACC receives no report.

9.18. Potential Offset Action. The U.S. has the same right as any other creditor to apply money of the debtor toward paying off a debt. The U.S. may administratively offset a liquidated tort claim against an amount that it owes to the claimant. When a party refuses to pay voluntarily, settlement authorities look to implement offset action to collect claims, if a settlement agreement has been signed, a judgment exists or the claim has been otherwise liquidated.

9.19. Terminating Efforts Without Collection:

9.19.1. The SJA may terminate all collection efforts, within their settlement authority, when:

9.19.1.1. The Government is unable to collect the debt after exhausting all reasonable collection methods.

9.19.1.2. Base legal personnel cannot locate the tortfeasor after exhausting all reasonable efforts.

9.19.1.3. The cost to collect exceeds recovery.

9.19.1.4. The claim is legally without merit.

9.19.1.5. The evidence does not adequately prove the claim.

9.19.2. The SJA may suspend collection action when authorities cannot locate the tortfeasor or the tortfeasor is unable to pay, but future collection may be possible.

9.20. Depositing Collections. Claims personnel deposit collections as follows (see 31 USC 3302, 10 USC 2831 and 10 USC 2782) (T-0):

9.20.1. Deposit collections for loss, damage, or destruction to Air Force family housing, caused by abuse or negligence, to the DoD Military Family Housing Management Account 57*0745. (Insert the last digit of the current fiscal year for the *). Damages to privatized housing are generally not asserted as a G-claim. Legal personnel review the applicable privatized housing agreement(s) before asserting a G-claim for damages to such property.

9.20.2. Deposit collections for loss, damage, or destruction to other real property to the appropriate funds account of the organization responsible for the repair, maintenance, or replacement of the real property. Only reuse these funds if authorized by law (see 10 USC 2782). Historically, Congress does not provide such authorization and these funds may not be used locally.

9.20.3. Deposit collections for loss, damage, or destruction to property under control of an Air Force Industrial Fund (AFIF) or other revolving fund to the appropriate fund account (10 U.S.C. 2208(c), 65 Comp Gen 910).

9.20.4. Collections involving NAFI property are sent to the appropriate NAFI noted in paragraph 6.5 of this Instruction.

9.20.5. Unless specific statutory authority exists to do otherwise, deposit all other collections to the U.S. Treasury Miscellaneous Receipts Account 57 3210.999.

CHRISTOPHER F. BURNE
Lieutenant General, USAF
The Judge Advocate General

ATTACHMENT 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

- 5 USC 8101, et seq., *Federal Employees' Compensation Act*
- 10 USC 939, *Redress of Injuries to Property*
- 10 USC 1095, *Coordination of Benefits Program*
- 10 USC 1095a, *Medical Care: Members held as Captives and their Dependents*
- 10 USC 1095b, *TRICARE Program: Contractor Payment of Certain Claims*
- 10 USC 1102, *Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants*
- 10 USC 1588, *Authority to Accept Certain Voluntary Services*
- 10 USC 2733, *Military Claims Act*
- 10 USC 2734, *Foreign Claims Act*
- 10 USC 2734a, 2734b, *International Agreement Claims Act*
- 10 USC 2736, *Advance Payments Act*
- 10 USC 2737, *Use of Government Property Claims Act*
- 10 USC 2738, *Property Loss: Reimbursement for certain losses of household effects caused by hostile action*
- 10 USC 2782, *Damage to Real Property: Disposition of Amounts Recovered*
- 10 USC 2831, *Military Family Housing Management Account*
- 10 USC 9441, 9442, *Status of the Civil Air Patrol*
- 10 USC 9801-9804, 9806, *Air Force Admiralty Claims Act*
- 28 USC 2415(a), *Time for Commencing Actions brought by the United States*
- 28 USC 2415(b), *Time for Commencing Actions brought by the United States*
- 28 USC 2416, *Subcontractor Information*
- 28 USC 1346(b), 2671-2680, *Federal Tort Claims Act*
- 31 USC 1304, *Judgments, Awards, and Compromise Settlements*
- 31 USC 3302, *Custodians of Money*
- 31 USC 3701, 3721, *Military Personnel and Civilian Employees' Claims Act*
- 31 USC 3711-3720E, *Federal Claims Collection Act*
- 32 USC 316, 502, 503, 504, 505, *National Guard Training*
- 32 USC 709, *Technicians: Employment, Use, Status*
- 32 USC 715, *National Guard Claims Act*

33 USC 901, et seq., *Longshore and Harbor Workers' Compensation Act*

42 USC 249, *Medical Care and Treatment of Quarantined and Detained Persons*

42 USC 1651, *Compensation Authorized*

42 USC 1701, *Compensation for Injury or Death resulting from War-Risk Hazard*

42 USC 2651-2653, *Federal Medical Care Recovery Act*

42 USC 5121, et seq., *Disaster Relief Act of 1974*

46 USC 30301, *Death on High Seas Act*

46 USC 30901, *Suits in Admiralty Act*

46 USC 31101, *The Public Vessels Act*

50 USC App 1-44, *Trading with the Enemy Act*

28 C.F.R. part 14, *Administrative Claims Under the Federal Tort Claims Act*

32 C.F.R. part 199, *Civilian Health and Medical Program of the Uniformed Services Restatement (Second) of Torts*

Restatement (Third) of Torts

DoD Directive 5515.3, *Settlement of Claims Under Sections 2733, 2734, 2734a and 2734b of Title 10, United States Code*, 31 October 2006

DoD Directive 5515.6, *Processing Claims Arising out of Operations of Nonappropriated Fund Activities*, 31 October 2006

DoD Directive 5515.9, *Settlement of Tort Claims*, 31 October 2006

DoD Instruction 1100.21, *Voluntary Services in the Department of Defense*, 11 March 2002

DoD Instruction 5515.08, *Assignment of Claims Responsibility*, 11 November 2006

DoD Regulation 5400.7-R, *DoD Freedom of Information Act Program*, September 1998

DoD Regulation 6025.18-R, *DoD Health Information Privacy Regulation*, January 2003

USPS Publication 38, *Postal Agreement with the Department of Defense*, February 1980

4 UST 1792, *Agreement, with Appendix, between the United State of America and other Governments*

TIAS 2846, *Agreement, with Appendix, between the United State of America and other Governments*

AFI 33-332, *Air Force Privacy Program and Civil Liberties Program*, 12 January 2015

AFI 33-360, *Publications and Forms Management*, 1 December 2015

AFI 44-119, *Medical Quality Operations*, 16 August 2011

AFI 51-301, *Civil Litigation*, 1 July 2002

AFI 51-302, *Medical Law*, 5 November 2014

AFI 51-502, *Personnel and Government Recovery Claims*, 5 August 2016

AFI 51-503, *Aerospace Accident Investigations*, 14 April 2015

AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation (MWR) and Nonappropriated Fund Instrumentalities (NAFIS)*, 6 May 2009

AFPD 51-5, *Military Legal Affairs*, 27 September 1993

AFMAN 23-220, *Reports of Survey for Air Force Property*, 1 July 1996

AFMAN 33-363, *Management of Records*, 1 March 2008

AR 27-20, *Legal Services Claims*, 8 February 2008

Adopted Forms

Air Force Form 438, *Medical Care Third-Party Liability Notification*

Air Force Form 1488, *Daily Log of Patients Treated for Injuries*

Standard Form 95, *Claim for Damage, Injury, or Death*

Standard Form 1034, *Public Voucher for Purchases and Services*

Financial Management Service Form 194, *Judgment Fund Transmittal*

Financial Management Service Form 195, *Judgment Fund Payment Request*

Financial Management Service Form 196, *Judgment Fund Award Data Sheet*

Financial Management Service Form 197a, *Voucher for Payment*

Department of Defense Form 1131, *Cash Collection Voucher*

Abbreviations and Acronyms

AAFES—Army and Air Force Exchange Service

AB—Air Base

AEA—Admiralty Extension Act

AFACA—Air Force Admiralty Claims Act

AFAFRICA—U.S. Air Forces Africa

AFB—Air Force Base

AFCENT—U.S. Air Forces Central

AFCIMS—Armed Forces Claims Information Management System

AFI—Air Force Instruction

AFLOA/JAC—Air Force Legal Operations Agency/Civil Law and Litigation Directorate

AFLOA/JACC—Air Force Legal Operations Agency/Claims and Tort Litigation Division

AFLOA/JACE—Air Force Legal Operations Agency/Environmental Law and Litigation Division

AFNORTH—U.S. Air Forces Northern

AFSOC—Air Force Special Operations Command

AFSOUTH—U.S. Air Forces Southern
AFSVA/SVL—Air Force Services Agency/Office of Legal Counsel
ANG—Air National Guard
AOR—Area of Responsibility
APA—Advance Payments Act
CAP—Civil Air Patrol
CAP-USAF—Civil Air Patrol, United States Air Force
CFR—Code of Federal Regulations
CONUS—Continental United States
DJAG—Deputy Judge Advocate General
DoD—Department of Defense
DoD Form 2526—Case Abstract for Malpractice Claims
DoJ—Department of Justice
FCA—Foreign Claims Act
FCC—Foreign Claims Commission
FECA—Federal Employees’ Compensation Act
FMCRA—Federal Medical Care Recovery Act
FMS 195—Financial Management Service Form 195
FMS 196—Financial Management Service Form 196
FMS 197a—Financial Management Service Form 197a
FTCA—Federal Tort Claims Act
HQ USAF/JAO—Headquarters United States Air Force Operations and International Law Division
HR—Hospital Recovery
IACA—International Agreement Claims Act
LHWCA—Longshore and Harbor Workers’ Compensation Act
MAJCOM—Major Command
MCA—Military Claims Act
MCR—Medical Cost Reimbursement
MCRP—Medical Cost Reimbursement Program
MLC—Medical Law Consultant
MPCECA—Military Personnel and Civilian Employees’ Claims Act
MTF—Military Treatment Facility

NAF—Numbered Air Force
NAFI—Nonappropriated Fund Instrumentality
NATO—North Atlantic Treaty Organization
NGCA—National Guard Claims Act
O&M—Operation and Maintenance
PACAF—Pacific Air Forces
PVA—Public Vessels Act
SECAF—Secretary of the Air Force
SF 95—Standard Form 95, Claim for Damage, Injury, or Death
SF 1034—Public Voucher for Purchases and Services Other Than Personal
SIAA—Suits in Admiralty Act
SJA—Staff Judge Advocate
SOFA—Status of Forces Agreement
SPCMCA—Special Court Martial Convening Authority
SSCR—Single Service Claims Responsibility
TJAG—The Judge Advocate General
TPC—Third Party Collections
TPL—Third Party Liability
UCMJ—Uniform Code of Military Justice
UGPCA—Use of Government Property Claims Act
U.S.—United States
USAFE—United States Air Forces in Europe
USC—United States Code
USAFRICOM—United States Africa Command
USCENTCOM—United States Central Command
USEUCOM—United States European Command
USNORTHCOM—United States Northern Command
USPACOM—United States Pacific Command
USPS—United States Postal Service
USSOCOM—United States Special Operations Command
USSOUTCOM—United States Southern Command

Terms

Air Force Assigned Mission for Civil Air Patrol.—Any mission assigned to the CAP by the Secretary of the Air Force or authorized designee, which does not involve actual combat, combat operations, or combat training.

Air Force Military Personnel.—Active duty military members, Air National Guard members (when they are performing duty under Title 10 of the US Code) and Air Force Reserve members (when subject to the UCMJ).

Air National Guard (ANG).—The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam. There are three ANG duty statuses : (1) active federal service in the Air National Guard of the U.S. (ANGUS) under Title 10 USC; (2) federally funded training or duty under Title 32 USC as members of the ANG; or (3) state active duty as members of the state militia. During federally funded training, ANG members perform specified federally funded training or duty under Title 32 such as: weekend drills (IDT); annual training (AT); field exercises; range firing; military schooling; full-time unit support (Active Duty for Special Work, Active Duty Operational Support, Full-Time National Guard, Active Guard Reserve); and recruiting duties. ANG members may also perform federally funded operational missions under 32 USC 502. State active duty is that which the governor of the state requires and pays for with state funds.

ANG Members.—Military personnel of the ANG who perform duty under 32 USC 316, 502, 503, 504, or 505, for which they receive pay from the U.S. or waive pay from the U.S.

ANG Technicians.—Federal employees employed under 32 USC 709. A technician who is not employed under 32 USC 709 is a state employee.

Appeal.—Under the MCA, NGCA and 10 USC 2738, a request by the claimant to reevaluate the final agency action on the claim.

Appellate Authority.—Under the MCA, NGCA and 10 USC 2738, the individual (determined by job title) who makes the final determination regarding an appeal.

Army and Air Force Exchange Service (AAFES).—A joint command of the Army and Air Force that provides exchange and motion picture services to authorized patrons.

Authorized Agent.—Any person or corporation, including a legal representative, with the authority to act on a claimant's behalf.

CAP Members.— Private citizens who volunteer their time, services, and resources to meet CAP objectives and purposes. The two primary categories of members are cadets and seniors. Cadets are youths, 13 years (or having satisfactorily completed the sixth grade) through 17 years of age, who meet the requirements set by the CAP corporation. Cadets may keep their status until age 21. Seniors are adults, 18 years of age or older, who meet the requirements set by the CAP corporation, and who have not kept their cadet status.

Civil Air Patrol.—A federally chartered, civilian nonprofit corporation which is designated as a volunteer civilian auxiliary of the Air Force when its services are being used by any department or agency in any branch of the Federal Government.

Civilian Component.—Civilian personnel accompanying and employed by an international agreement contracting force. Local employees, contractor employees, or members of the

American Red Cross are not a part of the civilian component unless specifically included in the agreement.

Civilian Personnel.—Civilian employees of the U.S. Government who are paid from appropriated or nonappropriated funds. Civilian employees may include volunteer workers.

Claim.—Any signed, written demand made upon or by the Air Force for the payment of a specific sum. It does not include any obligations that the Air Force acquires in the regular procurement of services, supplies, equipment, or real estate. Under the FCA, a claim need not be in writing if that is the custom of the country in which the incident occurred.

Contracting Party.—A nation signing the governing international agreement.

Final Denial.—A letter from the settlement authority to claimant, his or her attorney, or legal representative sent by certified or registered mail advising that the Air Force denies the claim.

Force.—Personnel belonging to the land, sea, or air armed services of one contracting party when in the territory of another contracting party in connection with their official duties.

Foreign Claims Commission.—The claims settlement authority under the Foreign Claims Act. Under the FCA, only Foreign Claims Commissions (FCCs) or the Secretary may settle claims. The Secretary concerned or designee appoints FCCs.

Geographic Area of Claims Responsibility.—An SJA's jurisdiction for claims. AFLOA/JACC assigns CONUS claims areas. OCONUS, USAFE/JA is responsible for USEUCOM's AOR, PACAF/JA is responsible for USPACOM's AOR, AFNORTH/JA is responsible for USNORTHCOM's AOR, AFCENT/JA is responsible for USCENTCOM's AOR, AFSOUTH/JA is responsible for USSOUTHCOM's AOR, and AFAFRICA/JA is responsible for USAFRICOM's AOR. The DoD assigns areas of single service responsibility to each military department.

Inhabitant of a Foreign Country.—A person, corporation, or other business association whose usual place of abode is in a foreign country. The term "inhabitant" has a broader meaning than such terms as "citizen" or "national," but does not include persons who are merely temporarily present in a foreign country. U.S. military members, federal civilian employees, and dependents thereof are not considered inhabitants of a foreign country.

Legally Responsible.—A term of art providing for settlement of claims under cost sharing international agreements in accordance with the law of the receiving State. Often, employees who are local inhabitants, not part of the civilian component of the force, could cause the sending State to be legally responsible under a *respondeat superior* theory.

Maritime Tort.—A tort committed in navigable waters or on land or in the air where a substantial element of the damage, personal injury, or death occurred in or over navigable waters. The activity causing the tortious act must bear some significant relationship to traditional maritime activity.

Medical Cost Reimbursement Program.— Investigates, researches, adjudicates, and resolves MCR claims where a third party may be liable to the U.S. for medical treatment provided to active duty and retired Air Force military members and their dependents by MTFs and/or Tricare Management Activities. Recoveries are made pursuant to the Federal Medical Care Recovery Act and the Coordination of Benefits statute, as well as any applicable state laws allowing for recovery. There are eight regional offices comprised of eight regional managers with their

perspective staff of paralegals. Three civilian attorneys provide legal advice to the regional offices and work with the U.S. Attorneys and civilian attorneys to pursue recovery of the Government's claims. MCR claims may be waived where hardship is established or it is otherwise convenient for the government.

Morale, Welfare, Recreation, and Services (MWRS) Activities.—Activities operated directly or by contract, which provide programs to promote the morale and well-being of the Air Force's military and civilian personnel and their dependents which are funded wholly with appropriated funds, primarily with nonappropriated funds, or with a combination of appropriated and nonappropriated funds.

Nonappropriated Funds.—Funds that DoD military and civilian personnel and their dependents generate and that the DoD uses in addition to congressionally appropriated funds to provide a comprehensive morale building, welfare, religious, educational, and recreational program, designed to improve the well-being of military and civilian personnel and their dependents.

Nonappropriated Fund Instrumentality.—A federal government instrumentality established to generate and administer nonappropriated funds for programs and services for the morale and well-being of authorized personnel.

Noncombat Activity.—A term of art which is defined as activity, other than combat, war, or armed conflict, that is particularly military in nature, has little parallel in civilian pursuits, and has been historically considered as furnishing the proper basis for payable claims. "Noncombat activity" should not be interpreted as simply meaning "not combat."

Receiving State.—The country where the force or civilian component of another contracting party is temporarily located. It is often thought of as the "host nation."

Reconsideration Authority.— Under claims statutes which do not grant the right of appeal, the individual (determined by job title) who makes the final determination regarding a claim for which reconsideration has been requested.

Recreational Purpose.—The use of recreational facilities for the enjoyment of people, including, but not limited to, activities such as fishing, hunting, camping, ball playing, golf, water sports, beach activities, hiking, animal riding, off-road vehicle riding, bicycling, skating, skate-boarding, picnicking, sledding, skiing, and visiting or photographing historical, archeological, scenic, natural, and scientific sites.

Sending State.—The country sending the force or civilian component to the receiving State. In cases where U.S. personnel are stationed in a foreign country, the U.S. is the sending State.

Settle.—To consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

Settlement Authority.—The individual or Foreign Claims Commission (for claims under the FCA) who has the authority under this instruction to pay or deny a claim. An individual occupying an office in an "acting" capacity has the settlement authority of that office.

Third Parties.—A term of art used in International Agreements. Third parties are parties other than members of the force and civilian component of the sending or receiving States. Dependents, tourists, and other noninhabitants of a foreign country are third parties (and

therefore can generally make a claim under a SOFA) unless the international agreement, or an understanding between the countries involved, specifically excludes them.

Attachment 2

ADDRESSES

AFLOA/JACE

1500 West Perimeter Road, Suite 1500

Joint Base Andrews, MD 20762

AFLOA/JACC

1500 West Perimeter Road, Suite 1700

Joint Base Andrews, MD 20762

Judgment Fund Group

Department of the Treasury

Financial Management Service

Prince George's Metro Center 2

3700 East West Highway, Rm. 6F03

Hyattsville, MD 20782

Attachment 3

CLAIMS AUTHORITIES TABLE

	FTCA	MCA	FCA	NGCA	Admiralty (Against US)	Admiralty (For US)	Gov't Property Claims Act	Loss of HH Effects by Hostile Act	MCRP	G Claims
SECAF	\$300,000	Any amount	Any amount	Any amount	Any amount ¹	\$500,000 ²	\$1,000	\$100,000	\$300,000 ³	\$100,000
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09	10 USC 2733(d)	10 USC 2734(d)	32 USC 715(d)	10 USC 9802(b)	10 USC 9803(a)	10 USC 2737(a)	10 USC 2738(a)	- 42 USC 2652(b) - 28 CFR 43.3	31 USC 3711(a)(2)
TJAG	\$300,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000 ⁴	\$1,000	\$100,000	\$300,000	\$100,000
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5	- 10 USC 2733(a) - AFPD 51-5	- 10 USC 2734(a) - AFPD 51-5	- 32 USC 715(a) - AFPD 51-5	- 10 USC 9802(c) - AFPD 51-5	- 10 USC 9803(c) - AFPD 51-5	- 10 USC 2737(a) - AFPD 51-5	- 10 USC 2738(a) - AFPD 51-5	- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5	- 31 USC 3711(a)(2) - AFPD 51-5
DJAG	\$300,000	\$25,000	\$100,000	\$25,000	\$100,000	\$100,000 ⁴	\$1,000	\$100,000	\$300,000	\$100,000
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5 - AFI 51-501, 3.2.1.2	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.3	- 10 USC 2734(a) - AFPD 51-5 - AFI 51-501, 5.12.1	- 32 USC 715(a) - AFPD 51-5 - AFI 51-501, 6.11.3	- 10 USC 9802(c) - AFPD 51-5 - AFI 51-501, 6.29.1.2	- 10 USC 9803(c) - AFPD 51-5 - AFI 51-501, 6.29.2.2	- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35	- 10 USC 2738(a) - AFPD 51-5 - AFI 51-501, 6.39	- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5 - AFI 51-501, 7.2.2	- 31 USC 3711(a)(2) - AFPD 51-5 - AFI 51-501, 9.4.1
JAC	\$300,000	\$25,000	\$100,000	\$25,000	\$100,000	\$100,000 ⁴	\$1,000	\$100,000	\$300,000	\$100,000
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5 - AFI 51-501, 3.2.1.2	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.3	- 10 USC 2734(a) - AFPD 51-5 - AFI 51-501, 5.12.1	- 32 USC 715(a) - AFPD 51-5 - AFI 51-501, 6.11.3	- 10 USC 9802(c) - AFPD 51-5 - AFI 51-501, 6.29.1.2	- 10 USC 9803(c) - AFPD 51-5 - AFI 51-501, 6.29.2.2	- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35	- 10 USC 2738(a) - AFPD 51-5 - AFI 51-501, 6.39	- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5 - AFI 51-501, 7.2.2	- 31 USC 3711(a)(2) - AFPD 51-5 - AFI 51-501, 9.4.1
JACC	\$300,000	\$25,000	\$100,000	\$25,000	\$100,000	\$100,000 ⁴	\$1,000	\$100,000	\$300,000	\$100,000
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.3	- 10 USC 2734(a) - AFPD 51-5 - AFI 51-501, 5.12.1	- 32 USC 715(a) - AFPD 51-5 - AFI 51-501, 6.11.3	- 10 USC 9802(c) - AFPD 51-5 - AFI 51-501, 6.29.1.2	- 10 USC 9803(c) - AFPD 51-5 - AFI 51-501, 6.29.2.2	- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35	- 10 USC 2738(a) - AFPD 51-5 - AFI 51-501, 6.39	- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5 - AFI 51-501,	- 31 USC 3711(a)(2) - AFPD 51-5 - AFI 51-

	09 - AFD 51-5 - AFI 51-501, 3.2.1.2								7.2.2	501, 9.4.1
JACC Assoc Chf	\$300,000	\$25,000	\$75,000	\$25,000			\$1,000			
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFD 51-5 - AFI 51-501, 3.2.1.2 - JACC Memo, 5 Nov 12	- 10 USC 2733(a) - AFD 51-5 - AFI 51-501, 4.2.3 - JACC Memo, 5 Nov 12	- 10 USC 2734(a) - AFD 51-5 - AFI 51-501, 5.12.2	- 32 USC 715(a) - AFD 51-5 - AFI 51-501, 6.11.3 - JACC Memo, 5 Nov 12			- 10 USC 2737(a) - AFD 51-5 - AFI 51-501, 6.35			
JACC Br Chfs	\$300,000	\$25,000		\$25,000			\$1,000	\$100,000		
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFD 51-5 - AFI 51-501, 3.2.1.2 - JACC Memo, 5 Nov 12	- 10 USC 2733(a) - AFD 51-5 - AFI 51-501, 4.2.3		- 32 USC 715(a) - AFD 51-5 - AFI 51-501, 6.11.3			- 10 USC 2737(a) - AFD 51-5 - AFI 51-501, 6.35	- 10 USC 2738(a) - AFD 51-5 - AFI 51-501, 6.39		
JACC AALB Chf	\$300,000	\$25,000		\$25,000	\$100,000		\$1,000	\$100,000		
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFD 51-5 - AFI 51-501, 3.2.1.2 - JACC Memo, 5 Nov 12	- 10 USC 2733(a) - AFD 51-5 - AFI 51-501, 4.2.3		- 32 USC 715(a) - AFD 51-5 - AFI 51-501, 6.11.3	- 10 USC 9802(c) - AFD 51-5 - AFI 51-501, 6.29.1.2		- 10 USC 2737(a) - AFD 51-5 - AFI 51-501, 6.35	- 10 USC 2738(a) - AFD 51-5 - AFI 51-501, 6.39		
JACC Tort Chf	\$300,000	\$25,000		\$25,000		\$100,000 ⁴	\$1,000	\$100,000		
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar	- 10 USC 2733(a) - AFD 51-5 - AFI 51-501, 4.2.3		- 32 USC 715(a) - AFD 51-5 - AFI 51-501, 6.11.3		- 10 USC 9803(c) - AFD 51-5 - AFI 51-501,	- 10 USC 2737(a) - AFD 51-5 - AFI 51-501,	- 10 USC 2738(a) - AFD 51-5 - AFI 51-501,		

	09 - AFPD 51-5 - AFI 51-501, 3.2.1.2 - JACC Memo, 5 Nov 12					6.29.2.2	6.35	6.39		
JACC Foreign Claim Chf	\$300,000	\$25,000	\$75,000	\$25,000			\$1,000	\$100,000		
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5 - AFI 51-501, 3.2.1.2 - JACC Memo, 5 Nov 12	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.3	- 10 USC 2734(a) - AFPD 51-5 - AFI 51-501, 5.12.2	- 32 USC 715(a) - AFPD 51-5 - AFI 51-501, 6.11.3			- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35	- 10 USC 2738(a) - AFPD 51-5 - AFI 51-501, 6.39		
JACC MCRP Chf								\$100,000	\$300,000	
<i>Source</i>								- 10 USC 2738(a) - AFPD 51-5 - AFI 51-501, 6.39	- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5 - AFI 51-501, 7.2.2	
JACE (e-claims)	\$300,000	\$25,000	\$100,000 ⁹	\$25,000			\$1,000			
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5 - AFI 51-501, 3.2.2.2	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.3	- 10 USC 2734(a) - AFPD 51-5 - AFI 51-501, 1.3.4	- 32 USC 715(a) - AFPD 51-5 - AFI 51-501, 6.11.3			- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35			
JACC paralegals	\$25,000 ⁵	\$25,000 ⁵								
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.3								

	- AFI 51-501, 3.3									
AFCC SJAs of GCCs		\$25,000	\$50,000				\$1,000			
<i>Source</i>		- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.5	- 10 USC 2734(a) - AFPD 51-5 - AFI 51-501, 5.12.3				- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35			
NAF SJAs									\$40,000 ⁶	
<i>Source</i>									- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5 - AFI 51-501, 7.2.4.2	
Base SJAs (CONUS)	\$5,000 ⁷	\$5,000		\$5,000			\$1,000		\$25,000 ⁶	\$25,000
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5 - AFI 51-501, 1.4.2.1	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.4		- 32 USC 715(a) - AFPD 51-5 - AFI 51-501, 6.11.4			- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35		- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5 - AFI 51-501, 7.2.4.1	- 31 USC 3711(a)(2) - AFPD 51-5 - AFI 51-501, 9.4.2.2
Base SJAs (OCONUS)	\$25,000	\$25,000 ⁸		\$5,000			\$1,000		\$25,000 ⁶	\$25,000
<i>Source</i>	- 28 USC 2672 - 28 CFR App to Part 14 - SECDEF Memo, 10 Mar 09 - AFPD 51-5 - AFI 51-501, 1.4.3.1	- 10 USC 2733(a) - AFPD 51-5 - AFI 51-501, 4.2.5		- 32 USC 715(a) - AFPD 51-5 - AFI 51-501, 6.11.4			- 10 USC 2737(a) - AFPD 51-5 - AFI 51-501, 6.35		- 42 USC 2652(b) - 28 CFR 43.3 - AFPD 51-5 - AFI 51-501, 7.2.4.1	- 31 USC 3711(a)(2) - AFPD 51-5 - AFI 51-501, 9.4.2.2

NOTES:

¹ Settlements over \$500,000 must be certified to Congress.

² SECAF can settle in any amount in favor of the US for salvage services.

³ SECAF can settle MCRP claims in any amount under 10 USC 1095.

⁴ TJAG, DJAG, JAC, JACC and Chief GTB can settle claims for \$10,000 or less for salvage services the AF performs.

⁵ When delegated by JACC.

⁶ When given MCR claims jurisdiction.

⁷ SJAs can settle e-claims for \$25,000 or less.

⁸ SJAs in Alaska, Hawaii, and Guam have authority up to \$25,000.

⁹ OCONUS environmental claims are normally adjudicated based upon applicable SOFA considerations. NAFI claims follow delegation limits of statute that is used to pay claim.

Attachment 4

PREPARING, ARRANGING, AND ASSEMBLING TORT CLAIM FILES

A4.1. Order of Tabs. Claims personnel arrange all tort claim files under the tab headings below, from top to bottom. Place a contents sheet above Tab A, listing all of the following Tabs: **Exceptions:** *Claims which are settled locally and never forwarded to AFLOA/JACC do not have to be tabbed. Medical malpractice claims investigation files are sent electronically, on a CD, to AFLOA/JACC.*

A4.1.1. TAB A: Privileged Material

A4.1.1.1. TAB A-1: Legal Memorandum

A4.1.1.2. TAB A-2: Memoranda of Witness Interviews

A4.1.1.3. TAB A-3: Expert Opinions

A4.1.1.4. TAB A-4: Photographs

A4.1.1.5. TAB A-5: Privileged Correspondence

A4.1.1.6. TAB A-6: Other (e.g., Medical Quality Assurance documents)

A4.1.2. TAB B: Non-Privileged Material

A4.1.2.1. TAB B-1: Photographs

A4.1.2.2. TAB B-2: Regulations, Directives or Standard Procedures

A4.1.2.3. TAB B-3: Non-Privileged Correspondence

A4.1.2.4. TAB B-4: Medical and Personnel Records

A4.1.2.5. TAB B-5: Investigative Reports (Accident, Police, Report of Survey, OSI, Safety [Part I])

A4.1.2.6. TAB B-6: Applicable Contracts

A4.1.2.7. TAB B-7: Other (Copies of Relevant International Agreements, Extracts of Foreign Law, etc.)

A4.1.3. TAB C: Claimant Submissions

A4.1.3.1. TAB C-1: Claim (SF 95 or other notice of claim) and any Supporting Documents provided by Claimant

A4.1.3.2. TAB C-2: Repair Estimates

A4.1.3.3. TAB C-3: Medical Records

A4.1.3.4. TAB C-4: Other

A4.2. Tabs Not Used. Tabs A, B and C are mandatory for each investigative file. The sub-tabs listed above (A-1, A-2, etc.) are not required. No notation as to whether a particular sub-tab is used or not is necessary.

A4.3. Separate Listing of Tabs A-2, B-2, B-3, B-5, C-2, and C-3. Whenever more than one item appears under tabs A-2, B-2, B-3, B-5, C-2 and C-3, provide a separate index listing the

documents under the tab, including name, address, and telephone number of the custodian of the original of each document, if applicable. Separately identify each item under a tab.

A4.4. Placement of Tabs. Do not place tabs directly on to documents; use a separate sheet of paper and use tab identifiers that protrude from the right edge of the file.

Attachment 5

(SAMPLE SUMMARY ADJUDICATION FORM)

Claimant's Name:		Sex: Male Female	SUMMARY ADJUDICATION MEMORANDUM
Claim Number: -	Amount Claimed:	Claim Type: FTCA MCA NGCA Int'l Other:	
Incident Date:	Incident Place:	Claimant's Attorney: None	JACC Branch General Aviation Medical
Synopsis of the Facts:			Opinion: Air Force is liable Air Force is not liable Liability is in question Liability is with a third party Other:
Personal Injury/Property Damage:			
I recommend denial.		Bases: <i>Feres</i> FECA Statute of Limitations Independent Contractor Damages not substantiated Standard of Care met Other	
I recommend settlement.		Settlement range: to Initial offer:	Adjudicated by: Signature: Date:
I concur. I do not concur.		Approval authority:	Signature: Date:

**Attachment 6
(SAMPLE REPRESENTATION LETTER)**



**DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE LEGAL OPERATING OPERATIONS
AGENCY (AFLOA)**

DATE

AFLOA/MCRP, REGION 2
ATTN:
33 SWEENEY BLVD
LANGLEY AFB VA 23665

McDaniel Law Firm
Attn:
123 Dancer Street
Fayetteville, NC 28301

Dear Mr. McDaniel

We understand you represent _____ in a personal injury matter.

As you may know, the Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. Sections 2651-2653) and Coordination of Benefits Statute (COB) (10 U.S.C. 1095) establishes the right of the United States to recover the reasonable value of medical care furnished or to be furnished by government facilities or through CHAMPUS/Tri-Care from any third-party liable for the underlying injury or illness. Although the United States can proceed separately and directly against a third party tortfeasor, it is usually mutually beneficial for the United States to assert its claim through the injured party's attorney. This procedure permits you to retain more control over both settlement negotiations and litigation (except that you may not settle the claim of the United States for less than the full amount demanded without this office's approval). Also, the Air Force will cooperate with you in obtaining essential Government medical records and other reasonably available material at no cost to you or your client. However, 5 U.S.C. 3106 prohibits any payment to you for representing the United States.

Claims of the United States under the FMCRA are subject to the three-year statute of limitations contained in 28 U.S.C. 2415. The following "model allegation" will sufficiently protect such claims:

"As a result of said injuries, the plaintiff has received (and in the future will continue to receive) medical and hospital care and treatment furnished by the United States of America. The plaintiff, for the sole use and benefit of the United States of America under the provisions of 42 U.S.C. 2651-2653, and with its express consent, asserts a claim for the reasonable value of said (past and future) care and treatment."

In those cases where this allegation is not included in the pleadings, the file will be referred by this office to the local United States Attorney for intervention and the initiation of a separate suit. This may result in a loss of some of the benefits as indicated above.

The current amount of the United States' claim is \$_____. When and if the case is settled please forward the government's lien made payable to USAF-Claims to:

AFLOA/MCRP, Region 2
33 Sweeney Blvd
Langley AFB VA 23665-2198

Should you believe the facts warrant a waiver or compromise of the government's claim, please contact _____ at (757) 225-5886 for guidance.

We would appreciate your assistance in providing the following information pertaining to the defendant in this case: Name, Address, Phone Number, Insurance Company, Name of Insured, Policy Number and Type of Coverage. We would further ask that if circumstances necessitate a Motion of Judgment be filed in this matter, a copy of the motion be forwarded to this office.

Therefore, we request, on the terms and conditions stated above, you agree to assert the claim of the United States. If this arrangement is acceptable to you and your client, please acknowledge this at your earliest convenience.

Sincerely

NAME, RANK, DAFC
Regional Claims Manager

Attachment:

**Attachment 7
(SAMPLE REPRESENTATION AGREEMENT)**

Injured Party/Parties: Name

Debtor:

Date of Incident:

Place of Incident: North Carolina

It is understood that under the Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. Sections 2651-2653) and Coordination of Benefits Statute (COB) (10 U.S.C. 1095) and judicial decisions, the United States of America has the right to recover the reasonable value of care and treatment furnished or to be furnished by for the United States to persons entitled to such care and treatment when such persons suffer injury or disease under circumstances which create liability for payment on some third party.

In the case of the above-named injured party or parties, the undersigned attorney, acting for the firm named below, agrees to protect the interest of the United States in its claim for such care and treatment in return for the United States refraining from entering into separate negotiations with third parties or insurers. The United States will provide the attorney with evidence of such care and treatment and the reasonable value of the medical expenses. In that regard, the model allegation may be incorporated into any pleadings in this case.

IN ORDER TO ARRANGE FOR THE PRODUCTION OF SUCH EVIDENCE, THE UNDERSIGNED ATTORNEY AGREES TO REQUEST THE SAME NO LESS THAN TWO WEEKS PRIOR TO THE DATE OF TRIAL.

The undersigned attorney is aware that federal statute (5 U.S.C. 3106) specifically prohibits the payment of counsel fees by the United States or a deduction for fees from the United States' claim.

The undersigned attorney agrees to furnish brief status reports relative to the case of the above-named injured parties upon request or upon significant developments in the case.

The undersigned attorney further agrees that the United States may terminate this agreement and enter into negotiations with third parties upon thirty days written notice if: the undersigned attorney fails to provide status reports within 30 days of a request or of a significant development in the case, or if the model allegation is not included in the pleadings filed in the case, or if negotiations are not concluded satisfactorily to the government and suit has not been filed in the case within two years of the above stated accident or date of first treatment, whichever is later.

Law Firm

FOR THE GOVERNMENT

By:

NAME, RANK, DAFC
Regional Claims Manager

Date:

DATE: