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OF THE AIR FORCE**

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Law

**ADMINISTRATIVE CLAIMS
FOR AND AGAINST THE AIR FORCE**

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This instruction implements Air Force Policy Directive (AFPD) 51-3, Civil Law, Acquisition Law and Litigation, and AFPD 51-4, Operational and International Law. This publication describes investigation, adjudication, and settlement of certain claims. This publication applies to both military and civilian Air Force personnel, the Civil Air Patrol when they are performing AF-assigned missions under the Cooperative Agreement between the U.S. Air Force and Civil Air Patrol, as well as the Air Force Reserve and Air National Guard when in federal status under Title 10 or Title 32 United States Code. 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 functional chain of command. The authorities to waive wing/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. See Air Force Instruction (AFI) 33-360, Publications and Forms Management for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority, or alternately, to the requestor’s commander for non-tiered compliance items. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, Management of Records, and disposed of in accordance with Air Force Records Information Management System Records Disposition Schedule. This instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by Title 32 Code of Federal

Regulations, Part 842, Administrative Claims. The applicable systems of record notice F051 AFJA J, Claims Records, applies and is available at: <http://dpclo.defense.gov/Privacy/SORNs.aspx>. 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 interim change amends procedures for aviation, admiralty and environmental claims based on organizational changes, updates acronyms as a result of organizational changes and corrects an error in which the full contents of **Attachment 2** were not included in the previous interim change.

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Chapter 1

GENERAL PROVISIONS

1.1. Overview. This publication describes investigation, adjudication, and settlement of certain claims for and against the Air Force under Title 28 United States Code Sections 1346(b), 2671-2680 (*The Federal Tort Claims Act*), Title 10 United States Code Section 2733 (*The Military Claims Act*), Title 32 United States Code Section 715 (*The National Guard Claims Act*), Title 10 United States Code Section 2734 (*The Foreign Claims Act*), Title 10 United States Code Section 2734a (*The International Agreement Claims Act*), Title 31 United States Code Sections 3701, 3721 (*Military Personnel and Civilian Employees' Claims Act*), Title 10 United States Code Section 939 (*Article 139 Claims*), Title 10 United States Code Section 2737 (*Use of Government Property Claims Act*), Title 10 United States Code Sections 9801-9806 (*Air Force Admiralty Claims Act*), Title 31 United States Code Sections 3701, 3711-3719 (*Federal Claims Collection Act*), Title 42 United States Code Sections 2651-2653 (*Federal Medical Care Recovery Act*) and Title 10 United States Code Section 1095 (*Coordination of Benefits Statute*). Chapter 2 lays out general policies for all tort claims against the Air Force. Chapter 3 addresses issues unique to claims under the Foreign Claims Act and International Agreement Claims Act. Chapter 4 addresses property damage claims arising incident to service of military members and civilian employees. Chapter 5 addresses the recovery of funds expended for medical care of Air Force members, their dependents and retirees when a third party is legally liable. Chapter 6 addresses claims made under Article 139, Uniform Code of Military Justice (UCMJ). Chapter 7 addresses the recovery of damages when Air Force property is damaged by a third party.

1.2. Roles and Responsibilities

1.2.1. The Judge Advocate General (TJAG):

1.2.1.1. Develops claims policies and procedures.

1.2.1.2. Directs the training of legal personnel on claims policies and procedures.

1.2.1.3. Ensures legal offices and personnel have adequate resources to establish and administer a vigorous Air Force (AF) claims program.

1.2.1.4. Denies claims against the AF under this instruction, regardless of amount, as appropriate.

1.2.2. Chief and Associate Chief, DAF/JA - Civil Law/Claims and Tort Litigation:

1.2.2.1. Implements claims policies and procedures. **Exception:** DAF/JA - Operations and International Law/Environmental Law and Litigation implements claims policies and procedures for environmental tort claims and DAF/JA - Operations and International Law/Aviation and Admiralty Torts implements claims policies and procedures for aviation and admiralty tort claims.

1.2.2.2. Oversees and provides authoritative guidance on processing of claims worldwide.

1.2.2.3. Conducts claims training.

1.2.2.4. Coordinates, as appropriate, with Department of Justice, Department of Defense, and other government agencies on claims under this instruction.

1.2.2.5. Denies claims against the AF under this instruction, regardless of amount.

1.2.2.6. Refers pro-government claims (G-claims) that are not settled by payment to the Department of Treasury for administrative offset.

1.2.2.7. Recommends settlement of tort claims above his or her delegated settlement authority.

1.2.2.8. Investigates, with local support, and takes final action on tort claims not assigned to installation staff judge advocates.

1.2.2.9. Ensures all potential Medical Cost Reimbursement Program claims are fully investigated, researched and vigorously pursued until collected and/or resolved.

1.2.3. Chiefs and Associate Chiefs, DAF/JA – Operations and International Law/Environmental Law and Litigation and DAF/JA - Operations and International/Aviation and Admiralty Torts, as applicable within each Division's area of responsibility (AOR):

1.2.3.1. Implement environmental, aviation and admiralty tort claims policies and procedures.

1.2.3.2. Oversee and provide authoritative guidance on processing of environmental, aviation and admiralty tort claims worldwide.

1.2.3.3. Conduct environmental, aviation and admiralty tort claims training.

1.2.3.4. Coordinate, as appropriate, with Department of Justice, Department of Defense, and other government agencies on environmental, aviation and admiralty tort claims.

1.2.3.5. Deny environmental, aviation and admiralty claims against the AF under this instruction, regardless of amount.

1.2.3.6. Recommend settlement of environmental, aviation and admiralty tort claims above his or her delegated settlement authority.

1.2.3.7. Instruct installation legal offices to investigate environmental, aviation and admiralty claims and prepare a tort claims file, or as applicable, investigate, with local support, and take final action on tort claims not assigned to installation staff judge advocates.

1.2.4. Major command staff judge advocates, National Guard Bureau Office of Chief Counsel (NGB/JA) and numbered AF staff judge advocates within the United States and its territories:

1.2.4.1. Provide general supervision of claims activities within their respective commands.

1.2.4.2. Protect the DAF by ensuring compliance with claims policies and requests for local support from DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts.

1.2.5. AF component command staff judge advocates of the United States geographic combatant commands:

1.2.5.1. Retain responsibility for all claims within the jurisdiction of its component command, even when settlement authority has been delegated. **(T-1)**.

1.2.5.2. Provide DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts with a list of all AF legal offices in the command, identifying the following:

1.2.5.2.1. The geographical claims responsibility;

1.2.5.2.2. The extent to which each office has delegated denial and/or payment authority under the Military Claims Act and Foreign Claims Act.

1.2.5.2.3. Whether the office is a sending state office with authority to pay claims under the International Agreement Claims Act.

1.2.5.3. Monitor and support host nation processing of claims under the International Agreement Claims Act and process payments to the extent of United States obligations under the international agreement. **(T-1)**.

1.2.5.4. For claims outside of their settlement authority, investigate and forward the claim to DAF/JA - Civil Law/Claims and Tort Litigation, Operations and International Law/Environmental Law and Litigation or DAF/JA – Operations and International Law/Aviation and Admiralty Torts. Investigate all medical malpractice claims but do not settle them even if the amount claimed is within delegated settlement authority. Forward all such claims files on a CD or other electronic means to DAF/JA - Civil Law/Claims and Tort Litigation’s Medical Law Branch for final disposition.

1.2.5.5. Provide support as requested and comply with guidance from DAF/JA - Civil Law/Claims and Tort Litigation, DAF/JA - Operations and International Law/Environmental Law and Litigation or DAF/JA – Operations and International Law/Aviation and Admiralty Torts in the course of claims investigation.

1.2.5.6. Maintain a vigorous claims program to identify and assert claims under the Federal Medical Care Recovery Act within their assigned area of jurisdiction. **(T-0)**.

1.2.6. Installation staff judge advocates within the United States and its territories:

1.2.6.1. Promptly notify DAF/JA - Operations and International Law/Environmental Law and Litigation upon receipt of any environmental claim and DAF/JA – Operations and International Law/Aviation and Admiralty Torts upon receipt of any aviation or admiralty claim. **(T-1)**. In coordination with DAF/JA - Operations and International Law/Environmental Law and Litigation or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as applicable, conduct an investigation and prepare a seven-point memo (claims adjudication memo) into all environmental, aviation and admiralty tort claims within their area of responsibility as assigned by DAF/JA - Civil Law/Claims and Tort Litigation, DAF/JA – Operations and International Law/Environmental Law and Litigation or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as applicable, and take final action on claims where the amount claimed is within their settlement authority. **(T-1)**. However, final action on environmental claims where the amount claimed is within their settlement authority will only be taken after consultation with DAF/JA – Operations and International Law/Environmental Law and Litigation **(T-1)**. Upon completion of investigation and seven-point memo forward all tort claims outside their settlement authority to DAF/JA -

Operations and International Law/Environmental Law and Litigation or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as appropriate. **(T-1)**.

1.2.6.2. Investigate and take final action on all non-environmental tort claims within their area of responsibility as assigned by DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as applicable, alleging only property damage where the amount claimed is within their settlement authority. (T-1). Forward all other claims, including claims alleging medical malpractice, to DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as applicable, within 72 hours of receipt. (T-1). **EXCEPTION:** Claims that arise in the territories of the United States will be investigated by the staff judge advocate with responsibility for that area. **(T-1)**. Installation staff judge advocates may request permission from DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as applicable, to take final action on a claim outside their settlement authority if they believe adjudication can be accomplished promptly or will provide additional training opportunities for their personnel.

1.2.6.3. Assist DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts with all claims investigations as requested. **(T-1)**.

1.2.6.4. Maintain a vigorous claims program to identify and assert claims against tortfeasors for damage of AF real and personal property that occur within their area of responsibility as assigned by DAF/JA - Civil Law/Claims and Tort Litigation. See **Chapter 7** for further guidance. **(T-1)**.

1.2.6.5. Promptly notify DAF/JA - Civil Law/Claims and Tort Litigation of incidents having significant potential tort liability or adverse publicity (DAF/JA – Operations and International Law/Environmental Law and Litigation for environmental incidents and DAF/JA – Operations and International Law/Aviation and Admiralty Torts for aviation and admiralty incidents). **(T-1)**.

1.2.6.6. Ensure claims under Article 139, Uniform Code of Military Justice (10 United States Code section 939) are processed, investigated and resolved in accordance with law, regulation and policy. See Chapter 6 for further guidance. **(T-0)**.

1.2.7. Staff Judge Advocates at ANG and AFR installations will:

1.2.7.1. Promptly forward any claims received to their servicing Regular Air Force legal office. **(T-1)**.

1.2.7.2. As requested, assist with investigative support on any claims or litigation matters where witnesses or evidence are within the control of your installation. **(T-1)**.

1.3. Settlement Authority. See Attachment 2 for settlement authorities.

1.4. Redlegation of Responsibilities and Authority. Settlement authorities may redelegate all or part of their settlement authority to a subordinate attorney and, for claims arising in the United States, settlement authority may be redelegated to a subordinate paralegal. For claims arising outside the United States or its territories, settlement authority shall not be redelegated to a paralegal.

1.5. Avoiding Conflicting Interests. With the exception of claims under the Military Personnel and Civilian Employee Claims Act, claims for and against the AF are considered adversarial in nature. AF personnel do not represent any claimant or potential claimant in such claims against the United States. **(T-0)**. Answering a claimant's questions as to the policies and procedures for filing a claim is not considered representing a claimant. AF legal personnel may assist claimants if it will assist the AF to fairly and efficiently adjudicate the claim. At the same time, AF legal personnel must be mindful that their client is the AF and avoid actions which are adverse to those of their client. **(T-0)**. At a minimum, AF legal personnel do not:

1.5.1. Suggest to or advise claimants how much to claim. **(T-0)**.

1.5.2. Give an opinion to the claimant or claimant's authorized agent about an anticipated approval or disapproval of the claim. **(T-0)**.

1.5.3. Reveal the recommendations of a settlement authority outside claims channels. **(T-0)**.

Chapter 2

HANDLING TORT CLAIMS AGAINST THE AF

2.1. Scope of this Chapter. This chapter identifies standard procedures for processing tort claims under the Federal Tort Claims Act, Military Claims Act, Foreign Claims Act, National Guard Claims Act, Air Force Admiralty Claims Act, and Use of Government Property Claims Act as implemented by Title 28, Code of Federal Regulations, Part 14, *Administrative Claims under Federal Tort Claims Act*, and 32, Code of Federal Regulations, Part 842, *Claims and Litigation*.

2.2. Procedures for Receiving Tort Claims.

2.2.1. Because of the importance of preserving the statute of limitations as a viable defense in claims against the AF, settlement authorities must establish and follow procedures for retrieving mail daily. **(T-1)**.

2.2.2. Immediately upon receipt, annotate the claim with the date the claim was received and the name of and office symbol of the person annotating the receipt. **(T-1)**. The annotated claim becomes the official copy in the claim file. **(T-1)**.

2.2.3. If a claim alleges a negligent act or omission of nonappropriated fund instrumentality (NAFI) employees, forward a copy of the claim to the NAFI for notification purposes. **(T-1)**. The settlement authority retains responsibility to investigate and settle or deny such claims.

2.2.4. Enter the claim information in WebAFCIMS. **(T-1)**.

2.3. Substantiation of Tort Claims against the AF. Although by its terms 28 Code of Federal Regulations, Part 14.4, *Administrative claims; evidence and information to be submitted*, is applicable only to claims under the Federal Tort Claims Act, settlement authorities will request the same substantiation as noted in that provision for all tort claims filed against the AF under this instruction. **(T-1)**.

2.4. Resolving Tort Claims. At the conclusion of the investigation, settlement authorities prepare a signed legal memorandum detailing the allegations, facts as determined by the investigation, relevant controlling legal authority and conclusion as to whether a settlement offer is warranted or whether the claim should be denied. **(T-1)**.

2.5. Settlement Procedures.

2.5.1. If warranted, make a settlement offer in writing. **(T-1)**. Send the offer and a settlement agreement to the claimant or authorized agent. Cite the statute under which the offer is being made in the letter and on the agreement. **(T-1)**. Claimant(s) and their authorized agent must sign the settlement agreement in the format provided to finalize the settlement. **(T-1)**. Modifications to the terms of the settlement agreement, other than to insert the particulars of the claim, are not authorized. **(T-1)**. The settlement authority will sign the settlement agreement only after receiving the signed agreement from the claimant. **(T-1)**. Do not put a contingent denial in the settlement offer (for example, "If this offer is not acceptable, your claim is hereby denied."). **(T-1)**. If settlement discussions are not successful, a separate denial letter, following procedures in paragraph 2.6, will be sent. **(T-0)**.

2.5.2. Ensure the settlement is the full and final satisfaction of all claims, personal injury or property damage that the claimant has from the claimed incident. **(T-0)**. The approved settlement agreement must contain this provision. **(T-0)**. A claimant who agrees to a settlement may not subsequently file a reconsideration or additional claim, even in the face of newly discovered evidence as to damages (such as an unforeseen increase of costs to repair a vehicle).

2.5.3. The settlement agreement signed by a claimant does not extinguish the claim of a subrogor (insurance company), and vice versa, so long as the settlement did not contemplate the damages incurred by the non-party. For example, a settlement with an insured that settles a claim for their deductible or personal injury does not prevent their auto insurance company from claiming and recovering for the money they expended to repair their insured's automobile. In no case will the AF pay twice for the same damage, loss or injury. **Exception:** Subrogation claims are not recoverable under the Foreign Claims Act.

2.6. Denial Procedures. The settlement authority must send a final denial letter to the claimant or authorized agent by certified or registered mail. **(T-0)**. Hand-delivery of the denial letter in person is also permissible in foreign countries, with AF component command staff judge advocate and DAF/JA - Civil Law/Claims and Tort Litigation approval. The letter must be mailed the same day as the date that appears on the letter. **(T-1)**. See [paragraph 2.9.2](#) for denial letter format when the claim is cognizable under more than one statute. The letter states:

2.6.1. The full title and legal citation of the statute under which the settlement authority considered the claim. **(T-1)**.

2.6.2. The reasons for denial. **(T-1)**.

2.6.3. A letter denying a Federal Tort Claims Act 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." **(T-0)**.

2.6.4. A letter denying a tort claim under any statute other than the Foreign Claims Act or Federal Tort Claims Act includes the following language: "This is the final denial of [your/your client's/John Doe's] claim under the Military Claims Act [or National Guard Claims Act, or other statute]. 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." **(T-1)**.

2.6.5. A letter denying a claim under the Federal Tort Claims Act or Foreign Claims Act does not mention a right of reconsideration. **(T-1)**.

2.6.6. All denial letters will be sent certified or registered mail, through the United States Postal Service (USPS). **(T-0)**. The certified or registered mail receipt must be maintained as part of the claim file in accordance with record disposition rules. **(T-1)**. For claims sent under the Foreign Claims Act through foreign postal services, settlement authorities may use similar local mail procedures.

2.7. Acting on Reconsiderations or Appeals.

2.7.1. Foreign Claims Act. Claimants may request reconsideration for denials under the Foreign Claims Act. A Foreign Claims Act settlement authority may permit or decline reconsideration. A settlement authority reconsiders the final action when there is new and material evidence concerning the claim or obvious errors in the original decision. A settlement authority above the original settlement authority may direct a claim be forwarded for reconsideration.

2.7.2. All other claims. After a claim has been denied, claimants have a statutory or regulatory right to file an appeal or reconsideration if they are dissatisfied with the decision to deny the claim. **(T-1)**.

2.7.3. Upon receipt of a request for reconsideration or appeal, the original settlement authority:

2.7.3.1. Documents the receipt of the reconsideration or appeal in accordance with para. 2.2.2. of this instruction. **(T-1)**.

2.7.3.2. Reviews the request. **(T-1)**.

2.7.3.3. If the original settlement authority determines an offer within their settlement authority is not warranted or if further discussions are unable to result in a settlement, the claim file is forwarded to the next higher settlement authority. **(T-1)**. The original settlement authority may approve the appeal or reconsideration, but no settlement authority below DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as applicable, may deny an appeal or reconsideration request.

2.7.3.4. The original settlement authority prepares a legal memorandum detailing the claimant's basis for appeal or reconsideration, relevant facts not documented in the original legal memorandum, relevant controlling legal authority and conclusion as to whether a settlement offer is warranted or whether the appeal/reconsideration should be denied. **(T-1)**.

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

2.8. Handling Requests for Tort Claim Files. Tort claim files are the property of the AF and are protected from disclosure under the attorney work-product privilege. **(T-0)**.

2.8.1. Do not give claim files to claimants or their authorized agents for review or reproduction. **(T-1)**.

2.8.2. Process Freedom of Information Act or Privacy Act requests for files in accordance with Department of Defense Manual 5400.7_AFMAN 33-302, *Freedom of Information Act Program* and Air Force Instruction (AFI) 33-332, *Air Force Privacy and Civil Liberties Program* respectively. **(T-0)**.

2.8.3. Do not release the following privileged documents from the claim file outside of AF Judge Advocate or Department of Justice channels:

2.8.3.1. Legal memoranda containing opinions, conclusions, and recommendations. **(T-1)**.

2.8.3.2. Attorney and paralegal written summaries of witness interviews. **(T-1)**.

2.8.3.3. Experts' written reports and evaluations (including engineering reports on sonic boom complaints). **(T-1)**.

2.8.3.4. Medical Quality Assurance documents (Title 10 United States Code Section 1102). **(T-0)**.

2.8.3.5. Other material acquired as part of the deliberative process, including legal research. **(T-1)**.

2.9. Claims Cognizable Under More Than One Statute. It is possible that a claim is cognizable under more than one claims statute. The settlement of a claim under one statute precludes future claims under other statutes from the same incident. Do not deny a claim under one statute if it is payable under a different statute. **(T-1)**.

2.9.1. If a claim is payable under more than one statute, settlement authorities pay the claim in the following order: **(T-1)**.

2.9.1.1. Federal Tort Claims Act.

2.9.1.2. Military Personnel and Civilian Employees' Claims Act. **Exception:** Damage to vehicles not incurred during household good shipments is first considered under the Military Claims Act.

2.9.1.3. Military Claims Act or National Guard Claims Act.

2.9.1.4. Use of Government Property Claims Act

2.9.2. Denial letters for claims that are cognizable under more than one statute. Cite only the first statute applicable in paragraph 2.9.1. and use the appropriate language in paragraph 2.6. **(T-1)**. **Exception:** Denial letters for claims that are cognizable under the Federal Tort Claims Act and as a noncombat activity under the Military Claims Act or National Guard Claims Act shall cite both statutes and shall include the following language in the denial letter: "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)**.

2.10. Civil Air Patrol. The Civil Air Patrol (CAP) and its members are an instrumentality of the United States when they are performing AF-assigned missions under the cooperative agreement between the AF and CAP. When CAP engages in activities other than AF-assigned missions, it is acting as a private corporation. AF assigned missions may include those in support of other federal agencies.

2.10.1. Adjudicating CAP claims. There is no separate claims statute for CAP claims. Settlement authorities adjudicate CAP tort claims arising out of AF assigned missions in accordance with the applicable claims statute found in **paragraph 2.1** and this instruction **(T-0)**. Settlement authorities below DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts will not deny or pay CAP claims. **(T-1)**.

2.10.2. The following are examples of claims that are not cognizable as CAP claims.

2.10.2.1. Claims arising out of CAP corporate activities.

2.10.2.2. Claims for personal injury or death of CAP members when covered by the Federal Employees' Compensation Act (Title 5 United States Code Sections 8101-8152).

2.10.2.3. Claims for use of privately owned property that CAP or its members use on AF-assigned missions.

2.10.2.4. Claims for expenses CAP or its members incur while engaged in AF-assigned missions.

2.11. Payment Process.

2.11.1. Payments resulting from the acts or omissions of federal military personnel and appropriated fund employees whose conduct gave rise to the claim are processed either through the Judgment Fund, United States Treasury or through the Defense Finance and Accounting Service (DFAS), depending on the applicable claim statute and amount of settlement.

2.11.1.1. Federal Tort Claims Act: payments equal to or less than \$2,500 and payable through DFAS; all other payments are payable through the Judgment Fund. **(T-0)**.

2.11.1.2. Military Claims Act, Foreign Claims Act and National Guard Claims Act: The first \$100,000 of a claim is payable through DFAS, amounts over \$100,000 are payable through the Judgment Fund. **(T-0)**.

2.11.1.3. International Agreement Claims Act, Air Force Admiralty Claims Act, Use of Government Property Claims Act, and Loss of Household Goods by Hostile Act: All claims are payable through DFAS. **(T-0)**.

2.11.2. NAFI Claim Payments. Because there is no separate NAFI claims statute, NAFI tort claims are settled under the provisions of existing claims statutes by settlement authorities listed in this instruction. Payments resulting from the acts or omissions of nonappropriated fund employees whose conduct gave rise to the claim are paid from the NAFI responsible for the employee. **(T-0)**. The decision of the settlement authority to settle or deny a NAFI claim is binding upon the NAFI. **(T-1)**. Upon settlement of such claims, forward a complete copy of the case file, to include executed settlement agreement and legal memo, to the appropriate NAFI. **(T-1)**.

2.11.2.1. Settlement Agreements. Settlement agreements for claims involving NAFIs shall contain a release of liability of the nonappropriated fund employee, the NAFI as well as the United States. **(T-1)**. Failing to specifically include a release of liability of the NAFI employee and NAFI does not expose them to additional liability as they are deemed to be agents and employees of the United States for purposes of the claims statutes.

2.11.2.2. 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.

2.11.2.3. Claims Involving Volunteers. Volunteers are considered employees of the government for tort claims purposes. See Title 10 United States Code Section 1588, *Authority to accept certain voluntary services*, as implemented by Department of Defense Instruction 1100.21, *Voluntary Services in the Department of Defense. (T-0)*. Whether a volunteer who causes a tort is deemed a NAFI employee or appropriated fund employee depends on the category of activity the volunteer is supporting. See AFI 65-106, *Appropriated Fund Support of Morale, Welfare, and Recreation (MWR) and Nonappropriated Fund Instrumentalities (NAFIS)* for descriptions and lists of Category A, B and C activities. Volunteers supporting Category A or B activities at the time of the incident giving rise to the tort are deemed appropriated fund employees and payment for such claims is governed by paragraph 2.11.1. Volunteers supporting Category C activities at the time of the incident giving rise to the tort are deemed nonappropriated fund employees and payment is made by the NAFI. **(T-1)**.

2.12. Advanced Payments (Title 10 United States Code Section 2736). Advanced payments may be approved for claims cognizable under the Military Claims Act, National Guard Claims Act or Foreign Claims Act in accordance with 32 Code of Federal Regulations Part 842. Because the need for an advance payment is usually immediate and urgent, settlement authorities should first contact DAF/JA - Civil Law/Claims and Tort Litigation, or DAF/JA – Operations and International Law/Environmental Law and Litigation, or DAF/JA – Operations and International Law/Aviation and Admiralty Torts, as appropriate, for authority to make an advance payment. If advance payment is requested above \$25,000, DAF/JA - Civil Law/Claims and Tort Litigation (or DAF/JA – Operations and International Law/Environmental Law and Litigation for environmental claims, and DAF/JA – Operations and International Law/Aviation and Admiralty Torts for aviation and admiralty claims), as appropriate, will seek approval from TJAG on behalf of the requesting settlement authority.

Chapter 3

FOREIGN CLAIMS ACT AND INTERNATIONAL AGREEMENT CLAIMS ACT

3.1. Scope of this Chapter. This chapter identifies standard procedures for processing claims under the Foreign Claims Act and International Agreement Claims Act as implemented by 32 Code of Federal Regulations Part 842.

3.2. Geographic Areas of Claims Responsibility for AF Tort Claims. Department of Defense Instruction 5515.08, *Assignment of Claims Responsibility*, assigns responsibility for the settlement of tort claims in some countries to a single branch of service. For claims arising in countries assigned to the Departments of the Army or the Navy, AF legal offices shall assist those settlement authorities upon request in investigating claims under their jurisdiction when they involve personnel or property owned by or under the control of the AF. (T-3) For tort claims arising outside the United States or in any territory where the Federal Tort Claims Act is inapplicable, the staff judge advocate of the AF geographic component command of the appropriate United States combatant command determines geographic areas of claims responsibility for its own office and all subordinate offices. (T-2). AF component command staff judge advocates of the United States geographic combatant commands, for tort claims arising in their respective areas of responsibility, retain responsibility for all claims within the jurisdiction of the component command, even when settlement authority has been delegated. (T-1). In relation to AF claims:

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

3.2.2. Pacific Air Forces Judge Advocate (PACAF/JA) is responsible for United States Indo-Pacific Command's (USINDOPACOM) area of responsibility. (T-1).

3.2.3. United States Air Force Central Command Judge Advocate (AFCENT/JA) is responsible for United States Central Command's (USCENTCOM) area of responsibility. (T-1).

3.2.4. Air Forces Northern Judge Advocate (AFNORTH/JA) is responsible for United States Northern Command's (USNORTHCOM) area of responsibility. (T-1).

3.2.5. Air Forces Southern Judge Advocate (AFSOUTH/JA) is responsible for United States Southern Command's (USSOUTHCOM) area of responsibility. (T-1).

3.2.6. Air Forces Africa's supporting legal office is responsible for United States Africa Command's (USAFRICOM) area of responsibility. (T-1).

3.3. Translation of claims documents. 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).

3.4. Local legal opinion for Foreign Claims Act claims. When investigating personal injury and wrongful death cases claiming more than \$50,000, settlement authorities shall obtain a legal opinion on liability and damages from a competent attorney in the host nation unless the host nation where the claim arose provides the AF with a reasonable assessment on liability and damages. **(T-1).** For claims under \$50,000, settlement authorities should obtain an opinion if it would be a cost effective tool to assist the settlement authority in evaluating the claim. **(T-1).** The command responsible for the activities described in the claim bears the cost of the legal opinion. **(T-1).**

3.5. Solatia. 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 and it is not subject to single service claims responsibility. Based on Title 10 United States Code Section 2242, solatia will not be paid in countries for which the AF has tort claims responsibility unless investigation clearly evidences such payment is in accord with local custom. **(T-0).**

Chapter 4

MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT, CARRIER RECOVERY CLAIMS AND CLAIMS DUE TO HOSTILE ACTS

4.1. Scope of this Chapter. This chapter identifies standard procedures for processing claims under the Military Personnel and Civilian Employees' Claims Act, Carrier Recovery Claims and other Claims Due to Hostile Acts as implemented by 32 Code of Federal Regulations Part 842.

4.2. Incident to Service. By the terms of the Military Personnel and Civilian Employees' Claims Act, only loss or damage incident to service is payable. **(T-0).** Loss or damage is incident to service if it occurs at a place and time that is connected with the service of an active duty military member or employment of a civilian employee. The connection between service or employment and the cause of property loss also plays a role in making the determination. **(T-1).**

4.3. Location. In order for a claim to be payable, there must be some connection between the claimant's service and the location of the property. **(T-1).** This service connection exists, not only when the member is performing official duties, but also whenever the claimant or family members living with the claimant possess property while participating in activities or using facilities open to them only by virtue of the claimant's status as a military member. In situations where no connection to military service can be perceived, the claim is not payable. **(T-1).**

4.4. Extraordinary Circumstances. AF settlement authority for claims under this chapter is normally \$40,000, but up to \$100,000 can be approved for claims arising from "extraordinary circumstances." Examples of extraordinary circumstances include, but are not limited to, weather events of extreme intensity that are uncommon for the location or total loss of a household goods shipment due to a van or a warehouse fire.

4.5. Submitting a Claim. Claimants shall submit only one claim based on a single incident giving rise to loss or damage. **(T-1).** If a claimant submits multiple claims for loss or damage from a single incident, settlement authorities combine and adjudicate them as a single claim. **(T-1).** A claim is deemed submitted when it is received at the Claims Service Center. **(T-1).** A claim against the United States is subject to 31 United States Code Sections 3701, 3721. The claimant must file a claim within two years of the date of the incident causing the loss or damage or when the claimant knew or reasonably should have known of the loss or damage. **(T-0).** A claimant has officially submitted a claim under this instruction when it is submitted in one of the following ways:

4.5.1. An electronic claim submitted to the Claims Service Center website online at <https://claims.jag.af.mil> is deemed submitted when the claimant acknowledges the disclaimer and presses the submit button. The DD Form 1842, *Claim for Loss of or Damage to Personal Property Incident to Service*, is no longer required for electronically filed claims. This is the preferred method of submitting a claim.

4.5.2. An electronic claim transferred to the AF from an official Department of Defense claims website is deemed submitted when the claimant has performed the tasks necessary to transfer the claim. In the Defense Personal Property System, individual line items are transferred by pressing the "Transfer to MCO" button on the claims menu on each separate line item. The Claims Service Center is the military claims office (MCO) for the AF

4.5.3. A claim may be sent by facsimile (fax) or by scanning and emailing the signed DD Form 1842 and additional documents to the Claims Service Center. A claimant has officially submitted a faxed or e-mailed claim when a fax machine at the Claims Service Center receives it or it has been delivered to the email account. The fax number is 937-656-8307 and the email address is AFCSC.JA@us.af.mil. A claimant shall confirm receipt of the fax or email by calling the Claims Service Center at 1-877-754-1212 or 937-656-8044. **(T-1)**. Confirmation notice received by the claimant on his or her fax machine or e-mail does not satisfy the requirement of submission by the Claims Service Center.

4.5.4. A claim may be mailed to the Claims Service Center. For purposes of this chapter only, a claim mailed through the USPS is considered to have been submitted on the postmark date. Use of delivery services other than the USPS (e.g. FEDEX, DHL, UPS) is authorized; the submission date is the date the delivery is accepted at the Claims Service Center. If a claimant chooses to mail the claim, it shall be sent to “Claims Service Center, 1940 Allbrook Avenue, Ste 500, Wright-Patterson AFB, OH 45433.” **(T-1)**.

4.5.5. Claimants may submit a claim by personally delivering a signed DD Form 1842 and additional documents to the Claims Service Center or to an AF base legal office. For those installations where there is no AF base legal office (e.g., joint bases where another service has primary responsibility for mission support), claimants should submit with the Claims Service Center (<https://claims.jag.af.mil>) or the closest servicing AF legal office.

4.6. Reconsiderations . Reconsideration is the review of an initial settlement action. A claimant or claimant’s authorized agent who is not satisfied with the outcome of his or her claim may request reconsideration. A reconsideration authority may reverse any previous claims settlement decisions, including denying the entire claim, if appropriate. A reconsideration authority’s decision is final and conclusive, and claimants may not appeal the decision of a reconsideration authority to any other AF agency or court. **(T-1)**.

4.7. Carrier Recovery Claims. The basis for a transportation service provider recovery or carrier recovery claim is the failure of a transportation service provider, warehouse facility, or contractor to adequately protect goods entrusted to them for shipment. The goods must be delivered in the same condition as when the transportation service provider took possession of them. **(T-1)**.

Chapter 5

MEDICAL COST REIMBURSEMENT CLAIMS

5.1. Scope of this Chapter. This chapter identifies the Medical Cost Reimbursement Program which has the purpose of asserting and settling claims for costs of medical care against third parties under the Federal Medical Care Recovery Act, Coordination of Benefits statute, and other laws as implemented by 32 Code of Federal Regulations Part 842. This chapter also identifies how the United States asserts and settles claims for accrued pay to members during periods of disability under the Federal Medical Care Recovery Act. Refer to claims under this chapter as Medical Cost Reimbursement claims.

5.2. Claims occurring outside the United States. Settlement authorities investigate any claims that might be made and may assert claims against foreign governments, their political subdivisions, foreign armed forces members, or civilian employees, as well as private individuals, organizations and insurance companies.

5.3. Government Employees. Generally, settlement authorities do not assert claims against members of the uniformed services, employees of the United States, its agencies or instrumentalities or a dependent of a service member or employee, except as noted in 32 Code of Federal Regulations Part 842, Subpart K. Consult the servicing attorney if assistance is required.

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

5.3.1.1. They have insurance to cover the AF's claim, for example, medical payment insurance, renters insurance, first party insurance, and underinsured insurance; or

5.3.1.2. They were required by law or regulation to have insurance which would have covered the AF loss; or

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

5.3.2. Notwithstanding paragraphs 5.3.1.1., 5.3.1.2., and 5.3.1.3., no claim under this chapter shall 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. **(T-1)**. If the military member or federal employee is a member of another service, medical cost reimbursement personnel send copies of files to the military service concerned for a determination of whether that member or employee was performing official duty or in the scope of their employment at the time of the accident/incident. **(T-1)**.

5.4. Statute of Limitations. A tort-based claim of the United States is subject to 28 United States Code Sections 2415-2416. The United States, or the injured party on behalf of the United States, must file suit, based on tort, within three years after the accrual of a cause of action. **(T-0)**. Suits based in contract must be filed within six years. **(T-0)**.

5.5. Potential Claims. Open a potential claim when evidence exists that the AF has expended funds for the treatment of an injured party and a third party may be responsible for that expense. **(T-1)**.

5.6. Medical Cost Reimbursement Claims Database. Settlement authorities ensure all medical cost reimbursement claims are entered and maintained in the AF claims database. **(T-1).**

5.7. Referring Medical Cost Reimbursement Claims. Refer medical cost reimbursement claims to the appropriate medical cost reimbursement authority. **(T-1).**

5.7.1. Base legal office personnel send all potential claims information involving an injured AF member, members of another military service or federal agency including Defense Health Agency information or payments, to the medical cost reimbursement authority with jurisdiction over the claim. **(T-1).**

5.7.2. In single service claims jurisdictions, refer potential medical cost reimbursement claims to the office designated by the service with jurisdiction, regardless of the service affiliation of the injured party. **(T-1).**

5.8. Investigating and Documenting the Claim. Medical cost reimbursement personnel shall fully investigate all potential claims from military treatment facilities, the Defense Health Agency, civilian attorneys, and any other resources available to determine if the potential claim should be pursued. **(T-1).**

5.9. Asserting the Claim. Medical cost reimbursement personnel assert a claim against a tortfeasor or other third party using a formal letter on AF letterhead. **(T-1).** Make an assertion against all potential payers, including insurers. **(T-1).** Clearly state the legal basis for recovery in the demand letter. **(T-1).** In the letter, describe the facts and circumstances surrounding the incident causing the need for medical care. **(T-1).** Claim all possible sources of recovery, such as: United States' status as a third-party beneficiary under various types of insurance policies; workers' compensation laws; no-fault laws; or other federal statutes, including Federal Medical Care Recovery Act and/or Coordination of Benefits statute. **(T-1).**

5.10. Attorney Representation Agreement. It is often advantageous for the United States to have a private attorney represent the government's medical care recovery interest as the Department of Justice does not have sufficient resources to prosecute all medical cost reimbursement claims. The medical cost reimbursement authority may request the injured party's attorney to represent the AF. 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. **(T-1).** The injured party's attorney may include the government's claim in his or her client's pleadings so that the United States need not become a party to the suit.

5.11. Monitoring the Claim. After asserting a claim, medical cost reimbursement authority personnel shall manage claims closely to ensure that payments are collected effectively and aggressively. **(T-1).**

5.12. Litigation. If settlement is not possible, the regional manager within the Medical Cost Reimbursement Program may refer the claim for litigation to the servicing attorney for possible referral to the United States Attorney. For claims processed by personnel outside of the Medical Cost Reimbursement Program, the claim should be referred to the appropriate attorney for review. That attorney shall consult with the Chief, Medical Cost Reimbursement Program, prior to referring the claim to the United States Attorney or the Department of Justice. **(T-1).** The medical cost reimbursement authority attorney/manager provides all necessary assistance and support to the United States Attorney. **(T-1).**

5.13. Responding to Requests for Witnesses. A medical cost reimbursement authority manager in coordination with the respective medical cost reimbursement servicing attorney or legal advisor, and medical law consultants, 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, including approval of expert witnesses and treating providers. Forward any requests for expert testimony to the servicing attorney for disposition. **(T-1)**. The servicing attorney determines if the request for testimony should be coordinated through the Chief, Medical Cost Reimbursement Program. **(T-1)**. If a Medical Cost Reimbursement Program regional manager believes that a medical cost reimbursement case requires a witness' presence in order to protect the government's interests, he or she may request witness funding from the Chief, Medical Cost Reimbursement Program Branch, via the servicing attorney. Upon receipt of such a request, notify the servicing attorney as soon as possible, then compile and submit information about the witness request to the servicing attorney. **(T-1)**. The servicing attorney coordinates with the Chief, Medical Cost Reimbursement Program Branch and provide for witness representation if necessary (e.g., at a deposition). **(T-1)**.

5.14. Releasing Records. Medical cost reimbursement personnel review requests for medical records or other documents relating to medical cost reimbursement claims. **(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; DoD 5400.7-R_AFMAN 33-302; AFI 33-332; and Public Law 104-91, *The Health Insurance Portability and Accountability Act of 1996*, when reviewing such requests. **(T-0)**. Requests for medical records not related to Medical Cost Reimbursement Program claims are forwarded to the appropriate military treatment facility office. **(T-1)**. If Medical Cost Reimbursement Program records are subpoenaed, follow guidance in AFI 51-301 for their authentication. **(T-1)**. When requested to support the claim of the United States, the Medical Cost Reimbursement Program 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)**.

5.15. Payment Offered in Full. When a third party offers to pay in full, any medical cost reimbursement personnel can accept the offer. If the third party requests a signed release, medical cost reimbursement personnel authorized by local office policy may sign an appropriate release. A release requiring the government to indemnify or hold harmless is not acceptable. **(T-0)**. 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.

5.16. Compromise Settlements. A claim may be compromised in its entirety or as to a specific payer, fund, or policy of insurance. The medical cost reimbursement 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)**. 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:

5.16.1. Such action is for the convenience of the government or would otherwise result in undue hardship upon the injured party; **(T-1)** and

5.16.2. The value of the amount due falls within their delegated settlement authority. **(T-1)**.

5.17. Waiver. A waiver is the voluntary relinquishment, by the United States, 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 collection would otherwise result in undue hardship upon the injured party and the value of the amount due falls within their delegated settlement authority. **(T-1).** An injured party, its authorized agent, or a third party requests a waiver in writing, and sufficiently state the basis for the requested waiver. **(T-1).**

5.18. Closing Claims Without Collection. The United States, 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.

5.19. Depositing Collections. Claims personnel use DD Form 1131, *Cash Collection Voucher*, to deposit funds that the United States collects under the Medical Cost Reimbursement Program. **(T-1).**

5.19.1. Deposit money recovered for treatment in a military treatment facility into the operations and maintenance account of the appropriate account that provided the medical care. **(T-0).**

5.19.2. Deposit money recovered for treatment paid by the Defense Health Agency to civilian providers into the designated Defense Health Agency funding account pursuant to Title 10 United States Code Section 1079a, *TRICARE program: treatment of refunds and other amounts collected*. **(T-0).**

5.19.3. Deposit money recovered for accrued pay into the operations and maintenance account of supporting member's unit at the time of injury or disease pursuant to Title 42 United States Code Section 2651(f). **(T-0).**

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

5.19.5. If there is no statutory basis to deposit the money with a military treatment facility or other account, deposit money recovered with the Treasury to the Miscellaneous Receipts Account. **(T-1).**

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

Chapter 6

CLAIMS UNDER ARTICLE 139, UNIFORM CODE OF MILITARY JUSTICE (10 USC 939)

6.1. Scope of this Chapter. This chapter explains the AF procedures for processing, adjudicating, and paying Article 139 claims as implemented by 32 Code of Federal Regulations Part 842. Article 139 claims are the only administrative means to force an AF member to pay for damage or loss to non-federal property caused by willful or wrongful acts.

6.2. Relation to the Military Personnel and Civilian Employees' Claims Act . If a claim is made under Article 139, Uniform Code of Military Justice (UCMJ), but may also be cognizable under the Military Personnel and Civilian Employees' Claims Act, 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 Military Personnel and Civilian Employees' Claims Act.

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

6.4. Responsible Parties:

6.4.1. 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. The appointing commander will consult with his or her servicing staff judge advocate as needed when responding to such complaints. **(T-1).**

6.4.2. 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 AF personnel. **(T-0).** A judge advocate may be appointed to the board. The board of officers is responsible for investigating the incident(s) giving rise to the claim and recommending actions to the appointing commander consistent with this instruction. **(T-0).**

6.4.3. Staff Judge Advocate. The staff judge advocate provides guidance, gives advice and reviews the findings of the appointing commander and/or the board of officers consistent with this instruction. **(T-1).**

6.5. Proper Claimants. 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. Persons may include civilians, military members, businesses or charities (however owned or held), and state or local governments. Federal agencies and NAFIs are not proper claimants.

6.6. Claims Payable. Claims resulting from willful damage of property as a result of riotous, violent, or disorderly conduct of an Air Force military member are payable. Commanders may direct collection of payment from military members found to be offenders for such claims. 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 not compensable.

6.7. Filing a Claim.

6.7.1. The complaint may be oral or written. Claims will be forwarded to the commanding officer of the person receiving the claim. **(T-1)**. 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. **(T-1)**.

6.7.2. An Article 139, UCMJ, complaint must be submitted within 90 days of the date of the incident. **(T-2)**. A claim may be accepted more than 90 days after the date of incident if the appointing commander finds good cause for the delay. Often the fact that a claimant was unaware of the existence of a remedy under Article 139, or is unable to immediately identify the offender as a member of the AF is good cause. A command determination of good cause or absence of good cause is final.

6.8. Action by a Commanding Officer Receiving the Complaint:

6.8.1. 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)**.

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

6.8.3. 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)**.

6.8.4. 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)**.

6.8.5. If the offender is a member of another military service, the commander sends the complaint to the offender's unit commander of that military service and the staff judge advocate supporting that commander. **(T-1)**.

6.9. Initial Action by the Appointing Commander. Once it is determined who the proper appointing commander is, consistent with paragraph 6.8 of this instruction, the appointing commander reviews the complaint. **(T-1)**.

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

6.9.2. If, on the basis of the complaint, it appears that an Article 139 claim is not cognizable, the commander refers the complaint to the staff judge advocate for legal review. 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)**.

6.10. Action by the Board of Officers:

6.10.1. Each member of the board reads Article 139, UCMJ, Title 32, Code of Federal Regulations Part 842, Subpart B and this chapter. **(T-1)**.

6.10.2. The board of officers receives a briefing from the staff judge advocate regarding Article 139 claims, privileges, rights, the standard of review, and any other relevant issues. The board may, at any time, seek guidance from the staff judge advocate regarding their duties. **(T-1)**.

6.10.3. The board notifies the offender, in writing, of the pending complaint and of these rights:

6.10.3.1. Article 31, UCMJ, rights, including the right to counsel. **(T-1)**.

6.10.3.2. The right to examine evidence considered by the board, to include the right to be present during the examination of a witness. **(T-1)**. 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.

6.10.3.3. The right to present evidence on the offender's own behalf. **(T-1)**.

6.10.3.4. The right to receive the commanding officer's written decision. **(T-1)**.

6.10.4. The board of officers investigates the facts and circumstances surrounding the complaint. **(T-0)**.

6.10.4.1. 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)**.

6.10.4.2. Generally, the board considers all evidence that is relevant to the claim being investigated and not privileged. 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.

6.10.4.2.1. The board does not consider privileged communications. **(T-0)**.

6.10.4.2.2. The board reads witnesses their Article 31, UCMJ, rights where required. **(T-0)**.

6.10.4.2.3. The board should consult with the staff judge advocate whenever evidentiary or Article 31, UCMJ, issues arise.

6.10.5. Standard of Proof. A determination that a member is liable under Article 139, UCMJ, must be supported by a preponderance of the evidence. **(T-1)**. This means that the board must determine it is more likely than not the member is responsible for the damages claimed. **(T-1)**. This determination must be based upon the weight of the evidence. **(T-1)**.

6.10.6. The board of officers make conclusions regarding the facts of the case. **(T-1)**. The board:

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

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

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

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

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

6.10.6.5.1. If the offender voluntarily makes payment of an amount in full satisfaction and final settlement, the claimant may seek no further recovery.

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

6.10.7. 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 staff judge advocate's office for an opinion regarding legal sufficiency. **(T-1)**. In its report the board sets out the facts as determined, attaches any relevant evidence and recommends one of the following: **(T-1)**.

6.10.7.1. An assessment of damages against one or more offenders. **(T-0)**.

6.10.7.2. 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-0)**.

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

6.11. Staff Judge Advocate Review of the Report. The staff judge advocate shall review all reports for legal sufficiency and compliance with law and all applicable regulations. **(T-1)**. The staff judge advocate determines if a preponderance of the evidence supports the findings, if the board's recommendations are consistent with the findings and if the damage assessed is supported by the evidence. **(T-1)**. The staff judge advocate sends the approved reports to the appointing commander or, if irregularities or discrepancies exist, returns the report to the board for further investigation or correction. **(T-1)**.

6.12. Final Action by the Appointing Commander. The offender's commander is the final authority on all Article 139 claims. **(T-0)**. The appointing commander:

6.12.1. Reviews the board of officers' report to ensure he or she is the appropriate final authority. **(T-1)**. An appointing commander does not take final action on a military member outside of his or her command. **(T-1)**.

6.12.1.1. 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.

6.12.1.2. 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)**.

6.12.2. Ensures the board of officers' report is complete. **(T-1)**. The appointing commander may return the record to the board or staff judge advocate 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 staff judge advocate to review the report for legal sufficiency and compliance with this chapter. **(T-1)**.

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

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

6.12.3.2. Determines culpability of an individual, individuals, or unit members present during the relevant event if the specific offender cannot be identified. **(T-0)**.

6.12.3.3. 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-0)**.

6.12.4. Documents his or her determinations in writing. **(T-1)**.

6.12.5. 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-0)**.

6.12.6. Notifies the claimant and the offender of the action taken, in writing.

6.13. Boards Convened Outside the Command of the Offender. Commanders may receive a report from a board convened by another AF commander or commander of another service. The commander may act upon that report without convening his/her own board if after obtaining a legal review from his or her staff judge advocate, the report is sufficient to satisfy the commander that assessment against a member of his or her command is consistent with law and regulations.

6.14. Reconsidering Article 139, UCMJ, Assessments .

6.14.1. Although claimants under this chapter do not have a right to appeal, 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.

6.14.2. A successor in command may change or cancel the assessment only based on:

6.14.2.1. Newly discovered evidence;

6.14.2.2. Fraud; or

6.14.2.3. Obvious mistake of fact or law.

6.14.3. 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.

6.15. 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 7

PROPERTY DAMAGE TORT CLAIMS IN FAVOR OF THE UNITED STATES

7.1. Scope of this Chapter. This chapter identifies standard procedures for processing G-claims as implemented by 32 Code of Federal Regulations Part 842. As a property owner, the AF is often the victim of a tort and has the right and obligation to assert G-claims for tortious damage or loss to its property. Settlement authorities will aggressively pursue all such claims for loss or damage. **(T-1).**

7.2. Assertable Claims. Settlement authorities at AF installations shall promptly assert claims against all tortfeasors or other responsible parties (such as an insurance company) for loss of or damage to government property (including NAFI property), if the loss or damage is for \$100 or more. **(T-2).** If the loss or damage is less than \$100, assert the claim only if it is practicable and economical to do so. **(T-2).** Claims must be asserted promptly to ensure the AF's rights are preserved within the statute of limitations. **(T-0).**

7.3. Special Situations:

7.3.1. Contractors. Only assert a claim against an AF contractor under this chapter if the contracting officer does not intend to assert the claim under the contract. **(T-1).** Include substantiation from the contracting officer to document his or her decision not to assert a claim. **(T-2).**

7.3.2. 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 notifies the regional Medical Cost Reimbursement Program office who in turn asserts the claim for medical costs. **(T-1).** The Medical Cost Reimbursement Program office and base legal office shall share information obtained during their investigations with each other. **(T-1).**

7.3.3. Claims Against the Government. 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 G-claim asserted under this chapter, both claims will be adjudicated by a single settlement authority and resolved at the same time. Do not settle either claim separate from the other. **(T-1).**

7.3.4. Foreign Torts. In cases where single service claims responsibility exists, only the service assigned claims responsibility for the geographic area where the incident arose asserts G-claims. **(T-0).** Consult Department of Defense 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 G-claim, process the G-claim as a counterclaim. **(T-1).**

7.3.5. Product Liability. Do not assert a claim based on a products liability theory without DAF/JA - Civil Law/Claims and Tort Litigation approval. **(T-1).**

7.4. Nonassertable Claims. Settlement authorities do not assert a claim for loss of or damage to government property in these instances **(T-1)**:

7.4.1. Claims against military, civilian or nonappropriated fund employees for loss or damage caused by them while on the job, or for the reimbursement of claims paid out by the United States due to that employee's negligence.

7.4.2. Military Members and Employees and the Report of Survey Program. Generally, procedures for seeking compensation for loss or damage to government property caused by AF employees and military members is governed by the Report of Survey program in accordance with Department of Defense Financial Management Regulation 7000.14-R, Volume 12, Chapter 7, *Financial Liability for Government Property Lost, Damaged, Destroyed, or Stolen*. However, consistent with the Report of Survey program, damage to government property caused by a private conveyance may be properly asserted under this chapter. Regardless, do not assert a claim for loss or damage to government property if a Report of Survey has been processed against the same person for damage to the same property arising from the same incident or loss.

7.4.3. Maritime Claims. Refer G-claims arising out of maritime activities to DAF/JA - Civil Law/Claims and Tort Litigation. DAF/JA – Operations and International Law/Aviation and Admiralty Torts provides assistance as necessary to DAF/JA - Civil Law/Claims and Tort Litigation to assert these claims.

7.4.4. Medical Care. Claims for the cost of medical care expended by the AF or the Defense Health Agency are not asserted under this chapter. See Chapter 5 of this publication.

7.4.5. Foreign Governments. Do not assert a claim for monies to be recovered from a foreign government or any of its political subdivisions without the approval of DAF/JA - Civil Law/Claims and Tort Litigation. If a foreign country voluntarily offers to pay a claim, or offers to repair or replace lost or damaged property, the settlement authority notifies DAF/JA - Civil Law/Claims and Tort Litigation.

7.4.6. Federal Agencies. Do not assert a claim against another federal agency.

7.5. Processing Claims. Installation settlement authorities must ensure claims are properly investigated, vigorously asserted, and closely monitored to aggressively protect AF interests. **(T-1)**.

7.6. Reporting Potential Claims. Installation settlement authorities shall 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 DAF/JA - Civil Law/Claims and Tort Litigation. **(T-1)**.

7.7. Investigating the Claim. Installation settlement authorities shall 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)**.

7.8. Asserting the Claim. After investigating the incident giving rise to a property damage claim, researching relevant law and identifying the appropriate tortfeasor(s), the installation settlement authority shall mail a demand letter to the tortfeasor(s). **(T-1)**. Settlement authorities shall use the template provided by DAF/JA - Civil Law/Claims and Tort Litigation. **(T-1)**.

7.9. Monitoring the Claim. After the claim has been asserted, the installation settlement authority ensures the claim is carefully monitored. **(T-1)**. If the tortfeasor fails to respond to the initial assertion letter within 30 days, the 60-Day Due Process Letter is sent using the template provided by DAF/JA - Civil Law/Claims and Tort Litigation. **(T-1)**. The claim file shall be transferred to DAF/JA - Civil Law/Claims and Tort Litigation within three duty (3) days of the mailing date of the 60-Day Due Process Letter. **(T-1)**.

7.10. Correspondence. Send all demand letters to the tortfeasor via certified mail. (T-1). Keep all certified mail receipts as part of the claim file. (T-1). Download USPS tracking information for all correspondence to the claim file. (T-1)

7.11. Disposition of Claims. After a claim has been asserted it must be settled, terminated without collection, or transferred to DAF/JA - Civil Law/Claims and Tort Litigation. (T-1).

7.12. Settling Claims. Settlement authorities may sign a release for claims settled within his or her authority if requested by the tortfeasor. Do not sign a release purporting to require the AF or government to indemnify or hold harmless any third party. (T-0). When a tortfeasor offers full payment, accept the offer. (T-1). When the tortfeasor offers a compromise settlement, the settlement authority may accept or reject such offer if within their settlement authority.

7.12.1. When considering whether to accept a compromise offer, the settlement authority considers the following factors: (T-1).

7.12.1.1. The tortfeasor's ability 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; (T-1).

7.12.1.2. The government's ability to collect a claim in full within a reasonable time, even with enforced administrative offset collection proceedings; and

7.12.1.3. The strengths and/or weaknesses in the evidence supporting the government's assertion of liability and damages.

7.12.2. Prejudgment Interest. A settlement authority may waive prejudgment interest (where statute, contract, or regulation do not require it) to encourage payment.

7.12.3. Settlement authorities may not compromise in cases of fraud, misrepresentation, or violation of antitrust laws. The Department of Justice must authorize compromise of such claims. (T-0).

7.12.4. When two or more tortfeasors are jointly and severally liable, settlement authorities may divide the payment between them. Ensure that a settlement agreement with one tortfeasor does not release the claims against the remaining responsible parties unless fully satisfied or the compromise settlement is acceptable. (T-1). 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 whether release of one or more parties is in the best interests of the AF.

7.13. Repair in Kind. The settlement authority may accept a third party's offer to repair or replace the damaged property as payment in full. Because funds collected from tortfeasors under this chapter must usually be deposited into the General Treasury, repair in kind may be advantageous to the AF in that it allows the property to be rendered usable for the local mission without the additional expenditure of AF funds. Repair in kind is usually done by the AF obtaining a repair estimate from a reputable private company and having the tortfeasor make payment directly to that company.

7.14. 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 staff judge advocate may accept the debt if the third party can repay it within a reasonable time and the compromise does not release any joint tortfeasor.

7.14.1. 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. **(T-1)**.

7.14.2. Base legal personnel maintain the file in accordance with Air Force Records Information Management System records disposition schedule. **(T-1)**. If the third party is delinquent in making an installment payment, send a 60-Day Due Process letter (certified mail, return receipt requested). **(T-1)**. If the party does not make up the delinquent debt within 30 days of the Due Process letter, forward the file to DAF/JA - Civil Law/Claims and Tort Litigation. **(T-1)**.

7.15. Terminating Efforts Without Collection. The staff judge advocate may terminate all collection efforts of claims within their settlement authority only when the claim is legally without merit or the evidence does not adequately prove the claim. **(T-1)**. Document the claim file with the basis for termination. **(T-1)**. In all other cases, forward the claim to DAF/JA - Civil Law/Claims and Tort Litigation for further collection efforts. **(T-1)**.

7.16. Administrative Offset of Debts. The AF may report the tortfeasor's debt to the United States Treasury, which has the authority to administratively offset such debts from any funds the government owes to the tortfeasor (such as a federal tax refund or a vendor payment through a government contract). The burden of this administrative referral and offset are minimal on the AF. Because of this, settlement authorities may not close claims or terminate collection efforts based on an inability to locate the tortfeasor or the tortfeasor's ability/likelihood of paying the debt. **(T-1)**.

7.17. Depositing Collections. Claims personnel deposit collections as follows (see Title 31 United States Code Section 3302, *Custodians of money*, Title 10 United States Code Section 2831, *Military family housing management account*, and Title 10 United States Code Section 2782, *Damage to real property: disposition of amounts recovered*) **(T-0)**:

7.17.1. Deposit collections for loss, damage, or destruction to AF family housing, caused by abuse or negligence, to the Department of Defense Military Family Housing Management Account 57*0745 (Insert the last digit of the current fiscal year for the *). **(T-0)**. 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. **(T-1)**.

7.17.2. 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. **(T-0)**. These funds may not be used locally. **(T-0)**. Only reuse these funds if authorized by law (see, for example, 10 United States Code § 2782). **(T-0)**. **NOTE:** Historically, Congress has not provided such authorization.

7.17.3. Deposit collections for loss, damage, or destruction to property under control of an Air Force Industrial Fund or other revolving fund to the appropriate fund account in accordance with 10 United States Code 2208(c), *Working-capital funds*, 65 Comptroller General 910. **(T-0)**.

7.17.4. Forward collections involving NAFI property to the appropriate NAFI. **(T-1)**.

7.17.5. Unless specific statutory authority exists to do otherwise, deposit all other collections to the United States Treasury Miscellaneous Receipts Account. **(T-0)**.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

- 5 United States Code §§ 8101-8152, *Federal Employees' Compensation Act*
- 10 United States Code § 939, *Art. 139.Redress of injuries to property*
- 10 United States Code § 1079a, *TRICARE program: treatment of refunds and other amounts collected*
- 10 United States Code § 1095, *Health care services incurred on behalf of covered beneficiaries: collection from third-party payers*
- 10 United States Code § 1102, *Confidentiality of medical quality assurance records: qualified immunity for participants*
- 10 United States Code § 1588, *Authority to accept certain voluntary services*
- 10 United States Code § 2208, *Working-capital funds*
- 10 United States Code § 2242, *Authority to use appropriated funds for certain investigations and security services*
- 10 United States Code § 2733, *Military Claims Act*
- 10 United States Code § 2734, *Foreign Claims Act*
- 10 United States Code § 2734a, *International Agreement Claims Act*
- 10 United States Code §2736, *Property loss; personal injury or death: advance payment*
- 10 United States Code § 2737, *Use of Government Property Claims Act*
- 10 United States Code § 2782, *Damage to real property: disposition of amounts recovered*
- 10 United States Code § 2831, *Military family housing management account*
- 10 United States Code §§ 9801-9806, *Air Force Admiralty Claims Act*
- 28 United States Code §§ 1346(b), 2671-2680, *Federal Tort Claims Act*
- 28 United States Code §§ 2415-2416, *Time for commencing actions brought by the United States*
- 31 United States Code § 3302, *Custodians of money*
- 31 United States Code §§ 3701, 3721, *Military Personnel and Civilian Employees' Claims Act*
- 31 United States Code §§ 3711-3719, *Federal Claims Collection Act*
- 32 United States Code § 715, *National Guard Claims Act*
- 42 United States Code §§ 2651-2653, *Federal Medical Care Recovery Act*
- Public Law 104-191, *The Health Insurance Portability and Accountability Act of 1996*, 6 January 1996
- 28 Code of Federal Regulations, Part 14, *Administrative Claims Under Federal Tort Claims Act*
- 32 Code of Federal Regulations, Part 842, *Administrative Claims*

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

Department of Defense Instruction 5515.08, *Assignment of Claims Responsibility*, 30 August 2016

Department of Defense Manual 5400.7_AFMAN 33-302, *Freedom of Information Act Program*, 27 April 2018

Department of Defense 6025.18-R, *DoD Health Information Privacy Regulation*, 24 January 2003

Department of Defense Financial Management Regulation 7000.14-R, Volume 12, Chapter 7, *Financial Liability for Government Property Lost, Damaged, Destroyed, or Stolen*, March 2014

Air Force Policy Directive 51-3, *Civil Litigation*, 28 November 2018

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

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

AFI 51-301, *Civil Litigation*, 2 October 2018

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

Air Force Manual 33-302, *Freedom of Information Act Program*, 27 April 2018

Air Force Manual 33-363, *Management of Records*, 1 March 2008

Adopted Forms

DD Form 1131, *Cash Collection Voucher*

DD Form 1842, *Claim for Loss of or Damage to Personal Property Incident to Service*

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AF—Air Force

AFI—Air Force Instruction

CAP—Civil Air Patrol

DFAS—Defense Finance and Accounting Service

G—claims—Federal Claims Collection Act

MCO—Military Claims Office

NAFI—Nonappropriated Fund Instrumentality

OPR—Office of Primary Responsibility

SPCMCA—Special Court-Martial Convening Authority

TJAG—The Judge Advocate General

USPS—United States Postal Service

Terms

Accrued pay—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.

Appointing Commander—The commander who exercises special court-martial jurisdiction over the alleged offender for claims under Article 139, UCMJ.

Board of Officers—Up to three commissioned officers appointed to investigate a complaint of willful property damage or wrongful taking by AF personnel under Article 139, UCMJ.

Claim—A demand for money to correct a legal wrong.

Cognizable—A claim that meets the basic criteria of viability for being considered.

Cognovit—A written admission that admits the opposing party's legal claim is valid and allows that party to obtain a judgment in court without a trial.

Disorderly Conduct—Conduct that tends to disturb the public peace, decorum, scandalize the community or shock the public sense of decency.

Future care—Medical care reasonably expected to be provided or paid for in the future treatment of an injured party as determined during the investigative process.

G-Claims—claims asserted by the Air Force against responsible parties for damage to Air Force owned property.

Joint and Several Liability—A legal standard under some state laws that holds multiple tortfeasors liable for the whole damage. If one tortfeasor is unable or unwilling to satisfy their portion of a judgment, the remaining tortfeasor(s) are legally held liable for the whole injury or damage.

Nonappropriated Fund Instrumentality (NAFI)—An integral DoD organization and fiscal entity that performs a governmental function and enjoys the legal status of an instrumentality of the United States. NAFIs act in their own name to provide or assist other DoD organizations in providing Air Force Services programs for military personnel and authorized civilians.

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" does not mean "not combat."

Privileged Communications—communications between parties of a protected relationship for which law or regulation protects from forced disclosure.

Product Liability—Refers to the liability of manufacturers and sellers of goods to compensate buyers and users of such goods for damages because of defects in those goods.

Riotous—A public disturbance involving acts of violence or threats of violence made by one or more persons while part of an assembly of two or more persons. See Title 18, United States Code, §2102(a).

Settlement—To consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

Settlement Authority—1) An amount a role is authorized to award up to; and 2) an authority/role that is authorized to agree to a settlement.

Solatium (plural: Solatia)—A nominal payment made immediately to a victim or a victim's family when local custom exists for such a payment. Solatia payments are not intended to compensate the victim, only to express sympathy for the loss.

Subrogor—One who is substituted in the place of another with regard to a legal claim, often by reason of making payment on behalf of the original party. When an insurance company pays out benefits on behalf of their insured, they are a subrogor to their insured with regard to any legal claim their insured may have against a third party who may have caused the loss or damage requiring the insurance benefits to be paid out.

Tort—A wrongful act that causes injury or damage to another person or property, for which the law provides a legal right to seek relief.

Tortfeasor—One who commits a tort, as defined above.

Violent—physical force by extreme, sudden, unjust or improper force.

Waiver—the voluntary relinquishment of the right to collect monetary damages.

Willful—voluntarily, knowingly and deliberately and intending the result that came to pass.

Attachment 2

SETTLEMENT AUTHORITIES

Table A2.1. Settlement Authorities.

Approves claims against the Department of the Air Force up to the following amounts:	TJAG ¹	DJAG, DAF/JA - Civil Law, DAF/JA - Civil Law/Claims and Tort Litigation ^{1,2,3}	DAF/JA – Operations and International Law ^{1,4,5} , DAF/JA – Operations and International Law/Environmental Law and Litigation ^{1,6} DAF/JA – Operations and International Law/Aviation and Admiralty Torts ^{1,2,5}	DAF component command Staff Judge Advocates ⁷	Installation Staff Judge Advocates within the US and territories ⁸
Federal Tort Claims Act:	\$500,000	\$500,000	\$500,000		\$25,000
Military Claims Act and National Guard Claims Act	\$100,000	\$25,000	\$25,000	\$25,000	\$25,000
Foreign Claims Act and Air Force Admiralty Claims Act:	\$100,000	\$100,000	\$100,000	\$50,000 ⁹	

¹ May deny claims against the DAF regardless of the amount claimed.

² Includes Chief, Associate Chief, and the Tort Claims Branch Chiefs.

³ DAF/JA - Civil Law/Claims and Tort Litigation does not have settlement authority for aviation, admiralty, or environmental claims.

⁴ Includes Director, Division Chief, Associate Division Chief and the Tort Claims Branch Chief.

⁵ Has settlement authority only for aviation and admiralty tort claims.

⁶ Has settlement authority only for environmental claims.

⁷ May deny claims up to the amount listed in this table and may pay claims filed in any amount when payment is equal to or less than the amount listed in this table. Additionally, is responsible for fulfilling US obligations concerning claims abroad subject to 10 USC 2734a for which the Department of the Air Force has settlement authority.

⁸ Does not have settlement authority for medical malpractice claims or for non-environmental tort claims which allege personal injury, regardless of amount claimed.

⁹ Foreign Claims Act only.

Military Personnel and Civilian Employees' Claims Act:	\$40,000 ¹⁰	\$40,000 ⁸			
Use of Government Property Claims Act:	\$1,000	\$1,000		\$1,000	\$1,000
Advance payments	\$100,000	\$25,000	\$25,000	\$25,000	

Approves the compromise ¹¹ of claims for the Department of the Air Force when the claimed amount is no more than the listed amount	TJAG DJAG, DAF/JA - Civil Law, DAF/JA - Civil Law/Claims and Tort Litigation, DAF/JA – Operations and International Law, DAF/JA – Operations and International Law/Aviation and Admiralty Torts	DAF component command Staff Judge Advocates	Installation Staff Judge Advocates within the US and territories
Property damage claims under the Federal Claims Collection Act (G-claims) ¹² and Air Force Admiralty Claims Act ¹³ :	\$100,000	\$100,000	\$25,000
Federal Medical Care Recovery Act and Coordination of Benefits statute:	\$300,000	\$40,000	
Carrier Recovery Claims:	\$100,000		

¹⁰ May approve up to \$100,000 for claims arising from emergency evacuations or extraordinary circumstances.

¹¹ Any settlement authority in this table may accept payment in full regardless of the amount claimed.

¹² Settlement authority under this Act excludes DAF/JA – Operations and International Law and DAF/JA – Operations and International Law/Aviation and Admiralty Torts

¹³ Settlement authority under this Act excludes DAF/JA - Civil Law and DAF/JA - Civil Law/Claims and Tort Litigation