

CHAPTER 18

FOREIGN AND DEPLOYMENT CLAIMS

REFERENCES

1. U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS (8 Feb. 2008).
2. U.S. DEP'T OF ARMY, REG. 27-40, LITIGATION (19 Sept. 1994).
3. U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS (21 Mar. 2008).
4. USARCS Federal Tort Claims Handbook (May 2012 Web Edition).
5. Milsuite Claims Forum.
6. JAGINST 5890.1A, Administrative Processing and Consideration of Claims on Behalf of and Against the United States (18 June 2005)
7. JAGINST 5800.7F, Manual of the Judge Advocate General (JAGMAN), Chapter VIII (26 June 2012).
8. U.S. DEP'T OF AIR FORCE, INSTR. 51-501, TORT CLAIMS (15 Dec. 2005).
9. U.S. DEP'T OF AIR FORCE, INSTR. 51-502, PERSONNEL AND GOVERNMENT RECOVERY CLAIMS (1 Mar. 1997, IC-1, 31 July 2008, and IC-2, 10 November 2008).
10. DEP'T OF DEFENSE, INSTR. 5515.08, ASSIGNMENT OF CLAIMS RESPONSIBILITY (11 Nov. 2006).
11. DEP'T OF DEFENSE, DIR. 5515.8, SINGLE-SERVICE ASSIGNMENT OF RESPONSIBILITY FOR PROCESSING OF CLAIMS (9 June 1990). (CANCELLED)
12. Memorandum, Under Secretary of Defense for Secretaries of the Military Departments, et al., subject: Commanders' Emergency Response Program (CERP) Guidance (Jan 2009).
13. ALARACT Message, 210236Z Jul 06, Headquarters, U.S. Dep't of Army, subject: Policies and Procedures for the Handling of Personal Effects and Government Property.

I. INTRODUCTION

A. Most deployments, mobilizations, disaster relief operations, or routine field exercises involve the movement of large amounts of equipment and personnel. Careful planning and execution can reduce the amount of property damage or loss and personal injuries that occur during such operations. However, some damage, loss, and injuries are unavoidable, and claims will definitely result.

B. Claimants will include local residents, host nation governments, allied forces, and even U.S. service members. To ensure friendly relations with the local population and maintain the morale of our own troops, deploying Judge Advocates (JA) must be prepared to investigate thoroughly, adjudicate impartially, and settle promptly all meritorious claims.

II. SINGLE SERVICE RESPONSIBILITY

A. Department of Defense Instruction (DoDI) 5515.08, Assignment of Claims Responsibility (11 Nov. 2006)¹ assigns to each service exclusive geographical responsibility for settling tort claims against and on behalf of all of the Department of Defense (DoD). However, this Instruction can be and has been amended by the DoD General Counsel. When processing tort claims, JAs must use the rules and regulations of the service that has single-service responsibility for the country in which the claim arose. If in non-Army country, JAs must coordinate their investigations with the responsible Service's Foreign Claims Commission (FCC) with jurisdiction over the claim.

B. The current single-service responsibility assignments are listed in Appendix A. Before deploying, JAs should check with the U.S. Army Claims Service (USARCS) for the most current single-service list. For JAs deploying to an area where single-service responsibility has not yet been established, it may be appropriate to seek an interim assignment of responsibility from the responsible Unified or Specified Commander. This is accomplished through the command claims service responsible for the area of operations.

¹ This instruction cancels DoDD 5515.8, Single-Service Assignment of Responsibility for Processing of Claims (9 June 1990).

III. POTENTIAL CLAIMS

A. The statutes and regulations that provide relief for damages resulting from deployments often overlap. To determine the proper claims statutes and regulations to apply, JAs should always take into account the status of the claimant, as well as the location and type of incident that gave rise to the claim.

B. Although JAs may encounter some of the same types of claims while deployed as seen at their home station, most deployment claims operations will differ in several respects from those conducted in garrison. Additionally, not all “claims” for payment (for example, claims arising out of a contract) are cognizable under the military tort claims system.

IV. TYPES OF CLAIMS APPLICABLE DURING A DEPLOYMENT

A. **Claims Cognizable Under the Federal Tort Claims Act (FTCA).**² The FTCA provides a limited waiver of sovereign immunity for the negligent or wrongful acts or omissions of government employees acting within the scope of employment. In other words, a person who is harmed by the tortious conduct of one of our service members or employees may file a claim. If the FTCA claim is not settled satisfactorily, the claimant may sue in Federal court. The FTCA is an exclusive remedy when applicable. However, the FTCA does not apply to tortious conduct occurring outside the United States (OCONUS). Therefore you will not use the FTCA in most deployments, unless the deployment is within the U.S. (for example, U.S.-based disaster relief operations).³

B. **Claims Cognizable Under the Personnel Claims Act (PCA).**⁴ The PCA applies worldwide. It is limited to claims for loss, damage, or destruction of personal property of military personnel and DoD civilian employees that occurs incident to service. Claims JAs must first consider all claims under the PCA; only if not compensable under the PCA claim may the claim be considered under a tort claims statute. Valid PCA claims commonly arising in deployment situations include: loss of equipment and personal items during transportation; certain losses while in garrison quarters; losses suffered in an emergency evacuation; losses due to terrorism directed against the U.S.; and the loss of clothing and articles worn while performing military duties. No claim may be approved under the PCA when the claimant’s negligence contributed to the loss. Prompt payment of service members’ and civilians’ PCA claims is essential to the maintenance of positive morale in the unit. Unit Claims Officers (UCO) must be prepared to comply fully with small claims procedures immediately upon arrival at the deployment or exercise site.⁵

1. **Contractor Claims.** In deployed environments, Soldiers work side by side with contractor employees. However, when it comes to claims, contractors and Soldiers are treated much differently. First, contractors are not proper claimants under the PCA IAW DA PAM 27-162, para. 11-4j(1), although they may be able to recover under other claims provisions. In addition, if a Soldier files a claim under the PCA for contractor-caused damages (not related to storage or shipment of household goods), the Soldier should first attempt to recover directly from the contractor. However, if the contractor does not resolve the claim, then a PCA claim may be filed and paid.⁶ The Army is generally not liable in tort for claims arising from acts or omissions of contractors.

2. **Wounded Warrior Personal Effects Processing.** (ALARACT Message 139/2006). Over the last several years, CENTCOM has experienced difficulty with processing of the personal effects of Soldiers evacuated from theater. This loss of property resulted in numerous claims and decreased morale. Once a Soldier is killed in action (KIA), missing in action (MIA), or medically evacuated due to combat injuries from the CENTCOM theater of operations, commanders are responsible for processing the Soldier’s personal effects in accordance with the following procedures:

a. The appropriate Commander appoints a Summary Court Martial Officer (SCMO) immediately upon notification. THE SCMO will safeguard, inventory, and package all personal effects. While NCOs in the rank

² 28 U.S.C. §§ 2671 – 2680.

³ For more information on disaster relief operations, see Noncombat Deployment Operations, *infra*.

⁴ 31 U.S.C. § 3721.

⁵ Under the small claims procedures set forth in DA PAM 27-162, CLAIMS, para. 11-10 (21 Mar. 2008)[hereinafter DA PAM 27-162], personnel claims that can be paid for \$500 or less should be settled or paid within one working day of receipt. In addition, small claims procedures allow for relaxed evidentiary procedures. Therefore, substantiation of the value of the property may be accomplished through telephone calls and internet searches, rather than requiring more complex substantiation. Although UCOs cannot ensure payment of these claims, early coordination with the finance and accounting office and the designated Class A agent will also speed up the payment process.

⁶ DA PAM 27-162, *supra* note 5, para. 11-5a.

of Staff Sergeant and above may serve as medically-evacuated inventory officials, officer must still service as SCMOs for KIA and MIA Soldiers.

b. If Soldier is declared KIA or MIA, or is medically-evacuated because of combat-related injuries and will not return to the unit, the SCMO will process all personal effects through the mortuary affairs collection point (MACP).

c. The MACP will send the property to the Joint Personal Effects Depot (JPED), which will then process the property and send it to the Soldier or next of kin.⁷

C. Claims Cognizable Under the Military Claims Act (MCA).⁸ The MCA applies worldwide. However, the claimant must be a U.S. resident in order to recover under the MCA. All CONUS tort claims must first be considered under the PCA and FTCA. Overseas, the MCA will apply only when the claim cannot be paid under the PCA or the Foreign Claims Act (FCA) (discussed below). These limitations generally restrict application of the MCA overseas to claims made by members of the force, by family members and civilian employees accompanying the force, or by contractors and reporters during a deployment. There are two bases of liability under the MCA. The first requires damage or injury caused by an “act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel . . . acting within the scope of their employment.” The second permits a form of absolute liability for damage or injury caused by “noncombat activities.” “Noncombat activities” are defined as an activity “essentially military in nature, having little parallel in civilian pursuits” Examples include maneuver damage caused by the administrative movement of troops and equipment to and from military operations and exercises, and military training.

D. Claims Cognizable Under the Foreign Claims Act (FCA).¹⁰ The FCA is the most widely-used claims statute in foreign deployments. Since the FCA applies only overseas and, therefore, is not used routinely by U.S. based claims offices, JAs and UCOs must familiarize themselves with its provisions and compile as much supporting information (e.g., country law summaries and Status of Forces Agreements (SOFAs)) as possible before deployment. Under the FCA, meritorious claims for property losses, injury, or death caused by service members or the civilian component of U.S. forces may be settled “[t]o promote and maintain friendly relations” with the receiving state. Claims that result from “noncombat activities” or negligent or wrongful acts or omissions are also compensable.¹¹ Categories of claims that may not be allowed include: losses from combat; contractual matters; domestic obligations; and claims that either are not in the best interest of the U.S. to pay, or are contrary to public policy.¹²

1. Similar to the MCA, claims under the FCA may be based on either the negligent or wrongful acts or omissions of U.S. service members, or on the noncombat activities of U.S. forces. Unlike the MCA, however, there generally is no scope of employment requirement. The only actors required to be “in scope” for the U.S. to have liability are foreign nationals, hired in the country where the incident occurred, who work for the United States. The FCA allows payment of claims filed by inhabitants of foreign countries for personal injury, death, or property loss or damage caused by U.S. military personnel and civilian employees outside of the United States. “Inhabitants” includes receiving state and other non-U.S. nationals, and all levels of receiving state government unless barred by treaty. These are proper claimants.¹³ Enemy or “unfriendly” nationals or governments, insurers and subrogees, U.S. inhabitants, and U.S. military and civilian component personnel, if in the receiving state incident to service, are improper claimants.¹⁴

2. FCA claims should be presented in writing to U.S. or other authorized officials within two years of accrual. Oral claims may be accepted, but they must later be reduced to writing within one year of receipt.¹⁵ All

⁷ ALARACT Message, 210236Z Jul 06, Headquarters, U.S. Dep’t of Army, subject: Policies and Procedures for the Handling of Personal Effects and Government Property.

⁸ 10 U.S.C. § 2733.

⁹ U.S. DEP’T OF ARMY, REG. 27-20, CLAIMS, Glossary, sec. II (8 Feb. 2008) [hereinafter AR 27-20].

¹⁰ 10 U.S.C. § 2734.

¹¹ AR 27-20, *supra* note 9, para. 10-3.

¹² AR 27-20, *supra* note 9, para. 10-4.

¹³ AR 27-20, *supra* note 9, para. 10-2a.

¹⁴ AR 27-20, *supra* note 9, paras. 10-4h and i. Note, however, that nationals of a country at war or engaged in armed combat with the U.S. or an ally of such country, may be proper claimants if the settlement authority determines the claimant is, and at the time of the incident was, friendly to the US. Claims by POWs after capture are also compensable unless otherwise barred.

¹⁵ AR 27-20, *supra* note 9, para. 2-5.

claims, oral or written, should state the time, place, and nature of the incident; the nature and extent of damage, loss, or injury; and the amount claimed. A claim must be stated in the local currency or the currency of the country of which the claimant was an inhabitant at the time of loss.¹⁶ In order to promote access to the claims program, many units distribute claims cards when a potential claim arises. The cards usually contain instructions for the Soldier in English, with instructions for the claimant in the native language on the reverse. The cards have lines for the date, time, location, and unit involved in the incident. An example of a claims card may be found in the Deployment Claims SOP (Appendix D).

3. The FCA claims are investigated and adjudicated by FCCs, which may have one or three voting members. They are usually comprised of JAs, although other commissioned officers may serve as single-member commissions, as may officers of other U.S. military Services. At least two members of three-member FCCs must be JAs. Regardless of their composition, proper authority must appoint FCCs.¹⁷ The USARCS Commander, TJAG, and DJAG are the only appointing authorities for FCCs in Afghanistan and Iraq. These appointments should take place immediately after deployment, if possible. All legal offices subject to mobilization or deployment should identify FCC members and alternates as a part of their pre-deployment planning. Then, the FCC members must contact the USARCS Foreign Torts Branch (usarmy.meade.hqda-otjag.mbx.foreign-claims@mail.mil or (301) 677-9490/9498 [DSN 622]) for additional information regarding how to obtain a written appointment memorandum. All FCCs should also request permission to join the FCC restricted forum on Milsuite and the Claims Community of Practice, where there are invaluable training tools and guidance. In addition, prior to being appointed, FCCs must complete in-person or on-line training available on JAGCNET. The USARCS Commander will not appoint FCCs until they are deployed and confirmed as requiring appointment. While JAs make take and pass the examination prior to deployment, JAs should not submit appointment request memoranda until deployed.

4. In adjudicating claims under the FCA, the FCC applies the law of the country in which the claim arose to determine both liability and damages, unless the claimant is only transient in the country in which the claim arose and resides elsewhere; then, the law of the country of residence determines damages. This includes the local law or custom pertaining to contributory or comparative negligence and joint tortfeasors. Payments for punitive damages, court costs, filing costs, attorneys' fees and bailment are not allowed under the FCA. Before deploying, JAs should become familiar with the application of foreign law, and should attempt to compile local law summaries for all countries in which the unit is likely to conduct operations.¹⁸ After deployment, claims personnel may contact local attorneys for assistance, obtain information on local law and custom from the U.S. Consulate or Embassy located in-country, or contact the USARCS.¹⁹

5. Once the FCC issues its final decision and the claimant signs the settlement form, the FCC then certifies the claim to the local Defense Finance and Accounting Office for payment in local currency, if possible. If an FCC intends to "deny a claim, award less than the amount claimed, or recommend an award less than claimed but in excess of its authority," it must notify the claimant. This notice will give the claimant an opportunity to submit additional information for consideration before a final decision is made. When the FCC proposes an award to a claimant, it also forwards a settlement agreement that the claimant may either sign or return with a request for reconsideration.

¹⁶ AR 27-20, *supra* note 9, para. 10-9b.

¹⁷ In the Army, the USARCS Commander appoints FCCs. The USARCS has developed an "off-the shelf" appointment package and can assist in the speedy appointment of FCCs. Unless otherwise limited in an appointment letter, a one-member FCC who is a JA may pay or deny claims up to \$15,000. Non-JA FCCs may pay and deny claims up to \$5,000. A three-member FCC may deny claims of any amount and settle claims up to \$50,000. Two members of a three-member FCC constitute a quorum and decision is by majority vote. The USARCS is the settlement authority for claims in excess of \$50,000. The Secretary of the Army or his designee will approve payments in excess of \$100,000. All payments must be in full satisfaction of the claim against the U.S. and all appropriate contributions from joint tortfeasors, applicable insurance, or Article 139, UCMJ proceedings must be deducted before payment. Advance payments may be authorized in some cases. AR 27-20, *supra* note 9, paras. 10-5 to 10-9.

¹⁸ Before deploying, Army JAs responsible for unit claims management should contact the Chief of Claims in the SJA office of the Unified Command responsible for that particular country and the USARCS Foreign Torts Branch (301-677-9490/9498 (DSN 622)) for further information and guidance.

¹⁹ Although the Army claims regulation does not specifically set out conflict of law provisions, general principles applicable to tort claims are set out in AR 27-20, *supra* note 9, para. 3-5. These principles may be used in situations where local law and custom are inapplicable because of policy reasons, or where there is a gap in local law coverage.

E. **Claims Cognizable Under International Agreements (SOFA Claims).**²⁰

1. As a general rule, the FCA will not apply in foreign countries where the U.S. has an agreement that “provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States.”²¹ For example, if a unit deploys to Korea, Japan, or any NATO or Partnership for Peace country, claims matters will be managed by a command claims service under provisions outlined in the applicable status of forces agreement (SOFA).²² It is important to note that for out-of-scope acts, the FCA is generally used to settle claims, as SOFAs generally only cover in-scope acts.

2. Deployment to a SOFA country places additional pre-deployment responsibilities on JAs. First, knowledge of the claims provisions contained in the applicable SOFA is mandatory. Second, JAs must be aware of receiving state procedures for the settlement of claims. The JA element of the deploying unit may legitimately expect and plan for technical assistance from the servicing command claims service and should coordinate with that service prior to deployment.

F. Claims Cognizable Under the Public Vessels Act (PVA) and Suits in Admiralty Act (SAA). The PVA and SAA provide broad waivers of sovereign immunity for property damage and personal injury claims arising from maritime torts caused by an agent or employee of the government, or by a vessel or other property in the service of the government. Such claims typically arise from the negligent maintenance or operation of government vessels or aircraft. Claims may also take the form of demands for compensation for towage and salvage services, including contract salvage, rendered to a government vessel or to other property owned by the government.²³

1. Both the PVA and SAA contain two-year statutes of limitations, which run from the date of the event upon which a claim is based. No administrative claim is required under the PVA and SAA. However, when a claim arises under the Admiralty Jurisdiction Extension Act, 46 U.S.C. app. § 740, a claim is required. Unlike FTCA claims, no particular form is needed to assert an admiralty tort claim. However, a claimant will bear the burden of providing evidence from which government liability and the full measure of damages can be determined with a reasonable degree of certainty. Filing a claim does not toll the two-year limitations period. If an admiralty tort claim is denied, a claimant’s only recourse is to file suit in Federal district court within the two-year limitations period.

2. Unlike the FTCA, waiver of immunity under the PVA and SAA includes admiralty tort claims arising in international waters or in the territorial waters of a foreign country. While the PVA and SAA contain no express exceptions to their broad waivers, as does the FTCA, most Federal courts have incorporated, by implication, the discretionary function exception into the PVA and SAA.

G. Applicability of International Agreements to Admiralty Claims. Admiralty claims may or may not fall under the applicable SOFA. All personal injury or death claims arising from the operation of a U.S. government vessel or the actions of government personnel in a host country’s territorial waters are adjudicated by the host country under the SOFA’s claims provisions. However, property damage claims arising from the navigation or operation of a ship usually fall outside the terms of the SOFA.

1. In some instances, supplementary agreements may further modify the provisions of a SOFA. In Japan, for example, certain small fishing vessel and net damage claims were brought within the scope of SOFA adjudication by the 1960 *note verbale* to the SOFA, even for damage caused by a U.S. warship.

2. Separately, government-to-government admiralty claims for damage are waived by parties to a SOFA under the so-called “knock for knock” provisions. Even when you suspect that a knock-for-knock agreement may apply, it is still important to investigate and document all admiralty incidents and to contact your claims branch for guidance.

H. Claims Cognizable Under UN or NATO Claims Procedures. In special circumstances, U.S. personnel may be assigned to a UN or NATO headquarters unit and may cause damage or injury to a third party. In such

²⁰ 10 U.S.C. § 2734a (commonly referred to as the International Agreement Claims Act).

²¹ *Id.*

²² See Claims Community of Practice that the reader can link to from the USARCS portion of JAGCNET.

²³ Specific guidance on each service’s settlement authority and claims processing procedures is set forth at: 10 U.S.C. § 7622 and 32 C.F.R. § 752.1-752-5 (Navy); 14 U.S.C. § 646 and 33 C.F.R. Part 25 (Coast Guard); 10 U.S.C. § 4802-4806 and 33 C.F.R. § 536.44-536.45 (Army); 10 U.S.C. § 9802 and 32 C.F.R. Part 842 (Air Force).

cases, special UN or NATO claims procedures may apply, and the UN or NATO may actually pay the claim. If faced with such a situation, JAs should contact their command claims service for guidance.

I. **Article 139 Claims.**²⁴ Article 139, UCMJ authorizes collection of damages directly from a service member's pay for willful damage to or wrongful taking of property by military personnel acting outside the scope of their employment. For example, if a Soldier steals property from another Soldier or a civilian and refuses to return it, the victim may file an Article 139 claim in an effort to recover the value of the loss. During deployments, Article 139 claims are handled just as they are at the installation. The processing of these claims overseas, however, presents unique logistical challenges. Special Court-Martial Convening Authorities (SPCMCA), who function as appointing and final action authorities for Article 139 claims, may be geographically separated from the investigating officer and the reviewing JA. Every unit must prepare for these challenges and contingencies during pre-deployment planning.

J. **Real Estate Claims.** Corps of Engineers Real Property Teams (CREST) will assist in settling the majority of claims arising from the use of real estate. These claims are based upon contract principles and are paid by the occupying unit from O&M funds, not claims expenditure allowances.

1. Coordination and regular communication between JAs and the Corps of Engineers (COE) officers after deployment is essential. The JAs should also be aware that not all claims for damage/use of real estate are based on contract. Some are based on tort law and may be considered as claims under the FCA or MCA, such as claims for damage or use of real estate for a period of thirty days or less. If the claim is for a period of thirty-one days or more, it is normally considered a real estate claim.²⁵ Claims for physical damage to property should be handled within the lease for those longer than thirty days.

2. During lengthy deployments, rapid turnover of real estate officers is common. In OPERATION JOINT ENDEAVOR/GUARD/FORGE in Bosnia and Herzegovina, for instance, the COE rotated civilian real estate officers into the area of operations on sixty-day tours. In addition, in the first years of OIF and OEF, COE personnel were frequently rotated through theaters, making building relationships extremely difficult. However, as of late the COE has significantly increased its presence and largely remedied many of these difficulties.²⁶

3. All Claims JAs deploying to Iraq or Afghanistan should be familiar with the Gulf Region Corps of Engineers (COE) SOP located at Appendix E of this chapter.

K. **Claims Involving Non-appropriated Fund Instrumentalities (NAFI).** Frequently, FCCs will receive claims involving NAFIs. Although FCCs may adjudicate such claims, the FCCs will not actually pay the claimant unless the damage was "caused" by U.S. Forces or a DoD appropriated fund employee. Therefore, the FCCs should coordinate with the local manager of the NAFI prior to investigating the claim. Some NAFI managers have independent authority to settle small claims. For example, Army and Air Force Exchange Service store managers have authority to settle claims up to \$2,500. If the NAFI has the authority, it may settle the claim. If not, the FCCs will investigate and adjudicate the claim, as it would for any other FCA claim. However, instead of making payment, the FCCs will forward the adjudicated claim to the NAFI for payment.

L. **Affirmative Claims.** An affirmative claim is a claim asserted by the United States against a tortfeasor or a tortfeasor's insurance company. If claims personnel believe the possibility exists for an affirmative claim, and they can identify a party against whom the claim can be asserted, this should be reported to the responsible claims service. In countries where the Army has single-service claims responsibility, the responsible claims service may appoint a recovery JA to assert and collect payment. Recovery JAs should keep in mind that, after assertion, they may not have the authority to terminate or settle the claim for less than the full amount. This authority may rest with the responsible claims service or higher depending on the amount of the claim. In addition, claims against foreign governmental entities have to be coordinated with the USARCS and approved by TJAG.

M. **Alternatives to Claims.** In addition to the many claims provisions listed above, deployed units must also be aware of alternative sources for payments. Primarily, solatia and Commander's Emergency Response Program (CERP) funds may be used to make payments under certain circumstances in which a claim is not cognizable. Although these payment sources are NOT a part of the claims program, they may be a suitable alternative to claims in certain circumstances.

²⁴ 10 U.S.C. § 939. See generally, AR 27-20, *supra* note 9, ch. 9; DA PAM 27-162 ch. 9.

²⁵ DA PAM 27-162, *supra* note 5, para2-15m.

²⁶ For an example of implementing guidance for real property claims, see Appendix D, Enclosure 4, *infra*.

1. **Solatia Payments.**²⁷ If a unit deploys to the Far East or other parts of the world where payments in sympathy or recognition of loss are common, JAs should explore the possibility of making solatia payments to accident victims. Solatia payments are **not** claims payments. They are payments in money or in-kind to a victim or to a victim's family as an expression of sympathy or condolence. These payments are immediate and, generally, nominal. The individual or unit involved in the damage has no **legal** obligation to pay; compensation is simply offered as an expression of sympathy in accordance with local custom. Solatia payments are **not** paid from claims funds but, rather, from unit operation and maintenance (O&M) budgets. An individual should not receive both solatia and a claims settlement, as the two remedies are mutually exclusive. If a solatia payment is erroneously paid in a tort claim, the solatia payment is deducted from the tort claim payment. Prompt payment of solatia ensures the goodwill of local national populations, thus allowing the U.S. to maintain positive relations with the host nation. Solatia payments should not be made without prior coordination with the highest levels of command for the deployment area. On 26 November 2004, the DoD General Counsel (GC) issued an opinion that solatia is a custom in Iraq and Afghanistan.²⁸ Before deploying to one of these theatres, JAs should review the DoD GC's memo, which can be found in the FCC forum on JAGCNET.

2. **CERP Condolence Payments.** The Commanders' Emergency Response Program was originally created to respond to "urgent humanitarian relief and reconstruction requirements," but not for payments to individuals. However, in 2005, the guidance was changed to allow for payment of:

a. "Repair of damage that results from U.S., coalition, or supporting military operations and is not compensable under the Foreign Claims Act"; and

b. "Condolence payments to individual civilians for death, injury, or property damage resulting from U.S., coalition, or supporting military operations."²⁹

c. All JAs should pay particular attention to the qualifying language for the "repair of damage" provision that requires, prior to payment, a determination that the damage is not payable under the FCA.

d. Those JAs deploying to Afghanistan should be mindful of the timeline for CERP payments. Prior Department of Defense guidance dictated that CERP payments should only be made after a complete investigation. However, this policy resulted in significant delays in making "amends" for the loss of innocent life and injuries to innocent civilians. Units are now directed to "immediately and publicly express our regret for the loss of, or injury to, innocent life; make appropriate amends according to the dictates of law and cultural norms; and then launch an investigation."³⁰

V. PRE-DEPLOYMENT PLANNING

A. **General Considerations.** Many factors must be considered during pre-deployment planning. All personnel involved in the claims mission must be properly trained. Principal players must be properly appointed. International agreements with the host nation, compilations of local law, and/or other references that will impact on the claims operation, must be located. These agreements, and the application of local law to determine liability and damages under certain claims statutes, can give rise to unique ethical and conceptual challenges. All of these aspects of the claims operation must be considered.³¹

B. **Training.** The initial step in any successful claims operation is the establishment of education and prevention programs. The primary aspect of these programs is training. Claims JAs must ensure that all parties to the claims operation are properly trained, not only on legal requirements, but also on required military skills for potential deployed environments (e.g., weapons training, vehicle licensing, combat lifesaver training, etc.). This should be an ongoing part of the daily mission, whether or not deployment is contemplated. Claims JAs, attorneys, and legal NCOs and specialists must know the procedures for serving as FCCs and Foreign Claims NCOICs, and for operating Special Claims Processing Offices. All FCCs must certify completion of the training support packages in

²⁷ See, e.g., AR 27-20, *supra* note 9, para. 10-10 a; DA PAM 27-162, *supra* note 5, para. 10-10.

²⁸ Memorandum, Deputy General Counsel (International Affairs), Department of Defense to Chairman, Joint Chiefs of Staff, subject: Solatia (26 Nov. 2004).

²⁹ Memorandum, Under Secretary of Defense for Secretaries of the Military Departments, et al., subject: Commanders' Emergency Response Program (CERP) Guidance (27 Jul 2009).

³⁰ Memorandum, Secretary of Defense for Chairman of the Joint Chiefs of Staff, Subject: Response Posture for Noncombatant Civilian Casualty Incidents in Afghanistan (29 Oct 2008).

³¹ See also Appendices C and D to this chapter.

the FCC forum on JAGCNET prior to being appointed as FCCs. In addition to web-based training, the USARCS will provide live training to legal offices upon request.

Claims personnel must also brief service members and UCOs on how to avoid property damage, property loss, and personal injuries. These briefings should also address procedures for documenting and reporting preexisting damage. Finally, claims personnel should ensure that Unit Claims Officers (UCO) and Maneuver Damage Claims Officers (MDCO) know and understand the proper procedures for investigating claims, compiling evidence, and completing reports and forms. Claims avoidance, reporting, and investigation procedures must be addressed long before the unit begins actual operations.

Claims personnel should also ensure that all deploying Soldiers are trained to recognize and react to someone attempting to file an oral FCA claim. Since the FCA allows an oral claim initially, soldiers must receive training on where and to whom to send the claimant to file a written claim and ensure all claims are properly received and acknowledged.

C. The Tort and Special Claims Application (TSCA) Training. The Tort and Special Claims Application (TSCA) is a web-based application for tracking tort claims. This program is intended to provide USARCS with visibility on the claims being paid in deployed areas, as well as to provide all FCCs with access to a central repository of previously-paid claims. This information is invaluable for FCCs as they attempt to identify duplicate or fraudulent claims. In addition to FCC training, all FCCs and claims NCOs must participate in TSCA training, which is available under the Foreign Claims Commission Resources on the USARCS homepage.

D. Appointment Orders. Principal players in deployment claims operations include UCOs, MDCOs and FCCs. Prior to deployment, each company- or battalion-sized unit should appoint a UCO and, depending upon the equipment and mission of the unit, an MDCO. These individuals document and investigate every incident that may result in a claim either against or on behalf of the United States. UCOs and MDCOs coordinate their investigations with either servicing JAs or FCCs. Recognition and documentation of possible claims, and initial contact with claimants, often rests with UCOs and MDCOs. They are, therefore, very important assets to the claims operation.

VI. NONCOMBAT DEPLOYMENT OPERATIONS

A. The operation of deployment claims offices varies depending upon the type and location of the mission. Flexibility, therefore, is essential. An overseas location may present language barriers and logistical challenges, such as where to locate claims offices and how to coordinate the investigation, adjudication, and payment phases of the claims process. Nevertheless, some aspects of the operations, such as the need for a cooperative environment and consistent procedures for payment and processing, remain constant.

B. Disaster Relief and CONUS Deployment Claims. Generally, when we think of deployments, we think of overseas operations in preparation for combat, peace enforcement, or peacekeeping operations. However, these are not our only deployment operations. The military is called to react to natural and man-made disasters both within and outside the United States. These operations place a great demand on claims personnel.³² Claims offices must have operational claims disaster plans to execute claims contingencies when called upon to compensate persons harmed by military activities that cause the disasters, as well as military disaster relief activities that cause further harm. Additionally, the Army is DoD's executive agent for tort claims arising from chemical disasters under the purview of the Chemical and Biological Defense Command, and has other significant responsibilities for the resolution of tort, maneuver damage, and personnel claims arising from such disasters.

C. Logistical Support. Proper logistical planning and coordination is essential to effective deployment claims operations. During most deployments, claims processing is a complex, full-time job requiring dedication of substantial personnel and equipment assets. Claims investigators will have to travel frequently to visit areas where damages, losses, and injuries are alleged to have occurred. Depending on the security and force protection orders in effect during a given operation, claims personnel may have to deal with a variety of issues and planning factors that are not directly related to the adjudication and payment of claims. For example, in combat zones, claims teams may be subject to force protection rules that prohibit them from leaving their base camps except in four-vehicle convoys

³² In November 1998, the USARCS published a Disaster Claims Handbook designed to be a stand-alone guide for use in providing claims services during a disaster. This handbook consolidates the provisions from AR 27-20, DA Pam. 27-162, and other publications that are relevant to disaster claims. It also contains additional materials and forms necessary to provide disaster claims relief, including a model disaster claims plan and suggested annexes. This handbook will be updated periodically and is available on the JAGCNet. See DISASTER CLAIMS SOPs on JAGCNet for more information on disaster claims operations.

with crew-served weapons. Unfortunately, if Brigade Legal Teams do not have the vehicles or weapons (e.g., crew-served weapons) necessary to comply with applicable force protection orders, extensive coordination with supported units and other staff sections will become critical to accomplishing the claims mission.

1. Claimant forms and correspondence naturally must be in the native language of the claimants to be effective. Therefore, FCCs must request a translator for initial drafting of claim forms and settlement/rejection letters. In addition, FCCs must coordinate for translator support during claims processing hours. Because translation services are in high demand during a deployment, FCCs must coordinate this support immediately upon arrival in theater.

2. Every unit's claims deployment plan must address three areas: claims investigation; payment of claims; and the projected location of the claims office. The initial steps in an effective deployment claims operation are the establishment of a central location for the receipt of claims, and publication of this location to the local population. During the early stages of a deployment, this may mean simply erecting a tent. As the operation progresses, however, it is wise to establish a more substantial and permanent facility, if possible. The G-5 and Public Affairs Offices can publish the claims office's location and hours of operation. The local embassy and civil affairs personnel, if available, may also be helpful in disseminating information on the claims operation.

3. Transportation assets will be limited in any deployment. However, JAs and other claims investigators must be able to travel to claims sites. This requires the exclusive use of some type of vehicle(s). Claims personnel should be licensed and trained on how to properly operate and maintain dedicated vehicles. If claims offices are unable to procure sufficient vehicles to support their operations, they may also seek assistance in investigating claims from embassy and civil affairs personnel, as well as UCOs. Local national insurance adjusters may serve as additional sources of information and assistance in the investigation and adjudication of claims.

4. After claims personnel have adjudicated a claim, they must be able to pay it. Payment requires the presence of a Class A agent and a sufficient amount of local currency. Do not assume that finance offices will have Class A agents. Claims teams may have to train unit or legal personnel to be certified to act in this capacity. Likewise, do not assume that the Finance Office certification process is an easy one. After action reports from Iraq have related that Claims personnel received their FCC appointments and were designated as pay agents well before leaving home station. However, claims operations were still significantly delayed because after arrival into theater, the local finance offices had its own lengthy procedures for certifying pay agents. Security is always a concern. In Somalia, claimants often walked away from the claims office only to be robbed or shot to death within minutes. Still another issue is the "type" of money used to fund the operation. The money used to pay for claims filed under the FCA comes from the claims expenditure allowance. Not only must claims be paid from claims funds, they must be charged to the proper fund cite, which is tied to the payment authority for the claim (MCA, PCA, FCA, etc.). These issues must be resolved during pre-deployment planning through extensive coordination with unit comptroller personnel and higher level claims offices with claims appropriations.

VII. COMBAT CLAIMS

A. Effect of International Agreements. Provisions in international agreements between the U.S. and host nation governments regarding claims processing and adjudication generally do not affect combat claims. Most bilateral Military Assistance Agreements to which the U.S. is a party have no claims provisions. If there is a SOFA or other agreement that addresses claims issues, it may be suspended in time of armed conflict.³³ The agreement may also exclude claims arising from "war damage." However, one option the JA should investigate is preparing an agreement under which the host nation assumes responsibility for paying all claims that result from any combat activity.³⁴

B. Noncombat Claims Arising on Conventional Combat Deployments. A basic principle embodied in U.S. claims statutes is that damage resulting directly from combat activities³⁵ is not compensable. For example, claims resulting either from "action by an enemy" or "directly or indirectly from an act of the armed forces of the

³³ For example, NATO SOFA Art. XV provides that, in the event of hostilities, a party may suspend the SOFA by giving 60 days notice.

³⁴ For example, South Vietnam had responsibility for processing and paying all combat claims generated by U.S. and "Free World forces."

³⁵ Combat activities are defined as "[a]ctivities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in, or in immediate preparation for, impending armed conflict." AR 27-20, Glossary, sec. II.

United States in combat” are not payable under the FCA.³⁶ Claims personnel must, however, distinguish between combat-related claims and noncombat claims that arise in a combat setting. Claims unrelated to combat activities will arise under the FCA, the MCA,³⁷ and the PCA.³⁸ Solatia³⁹ payments are not barred by the combat activities rule, and will commonly be based on injury or death resulting from combat activities. Real estate claims and claims under Article 139, UCMJ⁴⁰ also arise in combat deployments. The JA must be prepared to process all of these claims, and a Class A agent must be present to pay claims in the local currency for FCA claims, and in U.S. dollars for PCA and MCA claims.

C. Combat Claims Arising on Conventional Combat Deployments. The combat-related claims exclusion often directly interferes with the principal goal of low-intensity conflict/foreign internal defense: obtaining and maintaining the support of the local populace. Our recent combat deployments offer insight into how we can maintain the support of the local population while observing the legal restrictions on combat-related damages. Each of our substantial combat scenarios over the last thirty years has been unique. Three major deployments—Vietnam, Grenada, and Panama—provide historical precedent of the various methodologies used to deal with combat claims.

1. In Vietnam, the South Vietnamese government agreed to pay all claims generated by military units of the Republic of Vietnam, the United States, and the Free World forces.⁴¹

2. After OPERATION URGENT FURY in Grenada in 1983, the U.S. Department of State (DoS) initiated a program to pay for combat-related death, injury, and property damage as an exception to the restrictions imposed by the combat activities exclusion.⁴²

3. Following OPERATION JUST CAUSE in Panama, the United States provided funds to the Government of Panama both to stimulate the Panamanian economy and to help Panama recover from the effects of the operation. These funds were used for emergency needs, economic recovery, and development assistance. The U.S. also provided Panama with credit guarantees, trade benefits, and other economic assistance programs.⁴³

D. Requisitions under the Law of Armed Conflict.

1. The impact of lawful requisitions of private property on the battlefield is an often overlooked area of deployment claims. Under the law of armed conflict, a Soldier may requisition any type of property whenever there is a valid military necessity.⁴⁴ Although public property may be “seized” as the need arises in combat, the appropriation of private property for such purposes may result in allowable claims for damage or destruction of the property. The combat exclusion may obviate many such claims, but the U.S. may still be liable for damage or destruction of the property if it was bailed to the U.S. under either an express or implied agreement.⁴⁵ To ensure proper documentation of requisition claims, the servicing JA must implement a procedure to document and describe

³⁶ 10 U.S.C. § 2734.

³⁷ 10 U.S.C. § 2733.

³⁸ 31 U.S.C. § 3721 (which provides compensation to service members for property losses due to enemy action).

³⁹ See notes 20 and 22 and accompanying text.

⁴⁰ 10 U.S.C. § 939.

⁴¹ Dep’t of the Army, Vietnam Studies, Law of War: Vietnam 1964-1073, Prugh, George S., Major General; Wash. D.C. 1975.

⁴² At the conclusion of combat in Grenada, it quickly became apparent that the U.S. could not refuse to pay for combat-related damage if it wanted to maintain the support of the Grenadian citizens. With claims statutes providing no means to make such payments, the Department of State entered a Participating Agency Servicing Agreement between the U.S. Agency for Internal Development (USAID) and the USARCS that allowed for payment of combat claims. This agreement established a nonstatutory, gratuitous payment program outside of the combat activities exclusion using USAID funds. The USARCS provided personnel to staff FCCs to process requests, investigate and recommend payment or denial of claims.

⁴³ This was done in Panama to support the Endara government and help to establish its legitimacy. The U.S. mission was to support the legitimate government, not to act in place of it. The U.S. and Panama agreed to a Letter of Instruction (LOI) that established the procedures to be followed, listed categories of claims deemed not compensable, and set monetary limits for claims under the FCA that were not barred by the combat claims exclusion. These commissions proceeded to adjudicate and recommend payment on the combat-related claims, essentially using the same procedures already established for the payment of claims under the FCA and incorporating the special requirement of the LOI. \$1.8 million of USAID money was made available: \$200,000 to support the claims office and personnel, and the remainder to pay claims.

⁴⁴ A common example is the taking of private vehicles for tactical transportation. Some U.S. forces took vehicles in OPERATIONS URGENT FURY, JUST CAUSE, DESERT STORM, and IRAQI FREEDOM. Other lawful examples would be the taking of food to feed service members who cannot be resupplied because of the tactical situation, or the billeting of service members in private dwellings if other suitable shelter is not available.

⁴⁵ AR 27-20, *supra* note 9, para. 10-3c(2).

all requisitioned items. A system using bilingual property receipts distributed down to the UCOs might prove effective, for example.

2. Also, JAs should warn units about unauthorized requisitioning of property in a more mature theater. For instance, five years into OPERATION IRAQI FREEDOM, several claims were filed by local national store owners who stated that Soldiers had come to their store and taken merchandise for an upcoming operation. In exchange, the Soldiers gave the store owners claims cards and told them to file a claim for the merchandise. Such practices are not cognizable claims, and are not proper requisitions because there was no valid military necessity to obtain these items through requisition. Instead, the Soldiers should have procured the property through the unit logistics officer.

APPENDICES

- A. Single Service Claims Responsibility Assignments
- B. Unit Claims Officer Deployment Guide
- C. Deployment Claims Office Operation Outline
- D. Sample Claim Card
- E. Gulf Region Corps of Engineers SOP

APPENDIX A

ASSIGNMENT OF SINGLE SERVICE CLAIMS RESPONSIBILITY FOR TORT CLAIMS

Afghanistan	Army	Kuwait	Army
Albania	Army	Kyrgyzstan	Army
Angola	Army	Latvia	Army
Australia	Air Force	Lebanon	Air Force
Austria	Army	Lithuania	Army
Azores	Air Force	Luxembourg	Air Force
Bahrain	Navy	Macedonia	Army
Belarus	Army	Marshall Islands	Army
Belgium	Army	Moldova	Army
Bosnia-Herzegovina	Army	Montenegro	Army
Bulgaria	Army	Morocco	Air Force
Burkina Faso	Army	Nepal	Air Force
Burundi	Army	Netherlands	Army
Canada	Air Force	Norway	Army
Cameroon	Army	Oman	Air Force
Central African Republic	Army	Pakistan	Air Force
Chad	Army	Poland	Army
Comoros	Army	Portugal	Navy
Croatia	Army	Qatar	Air Force
Cyprus	Air Force	Romania	Army
Czech Republic	Army	Rwanda	Army
Dem. Rep. of Congo	Army	Saudi Arabia	Air Force
Denmark	Air Force	Serbia	Army
Djibouti	Navy	Seychelles	Army
Egypt	Air Force	Slovakia	Army
El Salvador	Army	Slovenia	Army
Equatorial Guinea	Army	Somalia	Army
Eritrea	Army	Spain	Navy
Estonia	Army	Sudan	Army
Ethiopia	Army	Switzerland	Army
France	Air Force	Syria	Air Force
Gabon	Army	Tajikistan	Air Force
Germany	Army	Tanzania	Army
Greece	Navy	Tunisia	Air Force
Greenland (Denmark)	Air Force	Turkey	Air Force
Grenada	Army	Turkmenistan	Air Force
Haiti	Army	Uganda	Army
Honduras	Army	Ukraine	Army
Hungary	Army	U.A.E.	Navy
Iceland	Navy	United Kingdom	Air Force
India	Air Force	Uzbekistan	Air Force
Iran	Army	Vietnam	Navy
Iraq	Army	Yemen	Army
Israel	Navy	Yugoslavia	Army
Italy	Navy	Zambia	Army
Japan	Air Force		
Jordan	Air Force		
Kazakhstan	Air Force		
Kenya	Army		
Korea	Army		

International Agreement Claims Arising in the United States: Army

Claims Generated by United States Central Command in countries not assigned: Army

Claims Generated by United States Special Operations Command in countries not assigned: Air Force

Claims Generated by DOD entities: Army

Executive Agencies:

- Agent Orange Air Force

- Gulf War Illness Air Force

APPENDIX B

UNIT CLAIMS OFFICER DEPLOYMENT GUIDE

I. PURPOSE. To provide information regarding the use of Unit Claims Officers (UCO) to investigate and document claims incidents on behalf of Foreign Claims Commissions (FCC) during deployments.

II. INTRODUCTION. Any deployment of U.S. forces into a foreign country (a “receiving state”) may cause damage to the personnel and property of either the U.S. or the receiving state and its inhabitants. Willful misconduct or negligent acts and omissions on the part of U.S. or receiving state personnel can cause these damages. Ordinarily, prior to deployment, each company- or battalion-sized unit appoints a UCO to investigate and document every incident that may result in a claim either against or on behalf of the United States.

III. INVESTIGATION REQUIREMENT

A. Prompt and thorough investigations will be conducted on all potential and actual claims against or in favor of the government. Information must be collected and recorded, whether favorable or adverse. The object of the investigation is to gather, with the least possible delay, the best possible evidence without accumulating excessive evidence concerning any particular fact.

B. Occasions upon which immediate investigations are required include when: non-governmental property is lost or damaged by a government employee; an actual claim is filed; a receiving state national is killed or injured by the act or omission of a government employee; or when a competent authority so directs.

IV. APPOINTMENT PROCEDURES. Commanders appoint commissioned officers, warrant officers, noncommissioned officers, or qualified civilian employees as UCOs as an additional duty. Prior to appointment, UCOs must review the UCO materials located on the USARCS Homepage under “FCC Resources.”¹ The appointment orders (Enclosure 1) should instruct the UCO to coordinate with a designated Judge Advocate or attorney who services the UCO’s unit. Copies of UCO appointment orders should be forwarded to the appropriate command claims service or servicing claims activity.

V. UCO RESPONSIBILITIES

A. **Pre-deployment Prevention Program.** UCOs should coordinate with the servicing judge advocate to advise unit personnel of particular aspects of the pending deployment or the receiving state that could cause particular claims problems. Depending upon the mission and the unit, UCOs should also coordinate with the designated Maneuver Damage Control Officers (MDCOs) to ensure investigative efforts are not duplicated.

B. **Conduct of Investigations.** UCOs will conduct immediate investigations, the duration and scope of which will depend upon the circumstances of the claims incident itself. UCOs will often be required to coordinate their investigations with criminal or safety investigations, which have priority for access to incident sites and witnesses. The reports of such investigations can be extremely useful to UCOs in the completion of their own investigations. In certain cases, UCOs themselves may be doing the bulk of investigation, and are required to safeguard all evidence that may be used in subsequent litigation. To that end, UCOs should interview all possible witnesses and reduce their statements to writing, and secure police reports, statements to insurance companies, hospital records, and even newspaper accounts. It is not necessary that the statements are sworn; claims adjudications are administrative matters in which decisions are based upon a preponderance of the evidence. UCOs must consult with the servicing judge advocate before disposing of any evidence.

C. Claims Reports.

1. **Form of the Report.** In claims incidents that have, or may have, a potential value in excess of \$2,500, UCOs complete DA Form 1208 and attach all available evidence for review by the responsible FCC or Affirmative Claims Authority. Insignificant or simple claims with an actual or potential value of less than \$2,500 may require only a cover memorandum explaining the attachments, if any, and the UCO’s findings. The servicing judge advocate can provide guidance as to which form is better. In certain cases, such as when an AR 15-6 investigation is

¹ [Http://www.jagcnet.army.mil](http://www.jagcnet.army.mil). In order to navigate to the USARCS website, click on the “U.S. Army Claims Service” link, then the “Foreign Claims Commission Resources” link. Also join the Claims Community of Practice on JAGCNET to get access to these materials.

conducted, the claims report may be submitted on DA Form 1574 (Report of Proceedings). The FCCs should upload all reports to the TSCA except those containing classified information.

2. Content of the Report. The factual circumstances surrounding the claims incident must be detailed in the claim report, regardless of the format actually used. In vehicular accidents, for example, the questions found at Enclosure 2 can be used to develop a sufficient factual basis by even an unschooled investigator. UCOs should never make findings or recommendations as to liability or the dollar value of personal injuries in the claims report. These determinations should be left to the responsible judge advocate, but the UCO may note any additional comments in a separate document to accompany the claims report. Specific instructions on how to complete the claims report (DA Form 1208) are at Enclosure 3.

ENCLOSURES

1. Unit Claims Officer Appointment Order
2. Investigator's Interview Checklist for Vehicle Accidents
3. Instructions for Completing DA Form 1208 (Report of Claims Officer)

Enclosure 1 - Unit Claims Officer Appointment Order

**DEPARTMENT OF THE ARMY
HEADQUARTERS AND HEADQUARTERS COMPANY
99TH ARMORED DIVISION
UNIT 10000, APO AE 09000**

ABCD-EF-HHC

1 September 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Duty Appointment

1. Effective 12 September 2011, 1LT Joe Jones, Unit Mailing Address, DSN phone number, DEROS is assigned the following duty:

UNIT CLAIMS OFFICER

2. Authority: AR 27-20, para 2-3(a)(1).
3. Purpose: As indicated in the applicable directives.
4. Period: 12 September 2011 until officially released or relieved from appointment of assignment.
5. Special Instructions: This memorandum supersedes all previous appointments to this assignment. Unit claims officer will coordinate all claims investigation activities with MAJ Brown, OIC of the Bad Drecksfeld Legal Service Center.

FRED E. SMITH
CPT, AR
Commanding

Enclosure 2 – Investigator’s Interview Checklist for Vehicle Accidents

1. **Personnel Information.**
 - a. Full name.
 - b. Birth date.
 - c. Social security number.
 - d. Unit.
 - e. Home address.
 - f. Permanent home address.
 - g. Expiration term of service (ETS) date (ask about plans for reenlistment).
 - h. Date eligible for return from overseas (DEROS) (ask about extension).
 - i. Pending reassignment orders, reporting date at new installation. Get a copy of the orders and find out about the Soldier’s plans.
2. **Driving experience.**
 - a. When did the driver start to drive?
 - b. When did the driver first obtain a driver’s license?
 - c. Types of driver’s licenses and dates (get copies).
 - d. Driver training courses, dates of instruction.
 - e. Types of vehicles operated in the past for pleasure or business; add specifics on experience and training.
 - f. If the driver has been awarded a wheeled vehicle military occupational specialty, find out specifics of training and experience.
 - g. Accident record.
 - h. Enforcement record.
3. **Vehicle involved in the accident.**
 - a. How familiar was the operator with the vehicle (was it the operator’s assigned vehicle or the first time the operator ever drove it)?
 - b. PMCS (preventive maintenance, checks and services).
 - (1) Was PMCS conducted?
 - (2) Who conducted it?
 - (3) Where is the PMCS checklist for that day?
 - (4) If necessary, have the driver show you how PMCS was performed.
 - (5) Find out who else assisted with, witnessed, or checked PMCS.
 - c. Was there any problem with the vehicle (especially if the PMCS checklist is not available or does not list a defect)?
 - d. Did the vehicle develop a problem after the trip started? Was this a problem that had happened before? What action was taken once the problem was recognized?
4. **The trip.**
 - a. What were the driver’s normal assigned duties?
 - b. Was the trip part of these duties?
 - c. Had the driver driven the route before or was the driver unfamiliar with the route?
 - (1) How many times did the driver drive the route?
 - (2) If unfamiliar with the route, what directions did the driver get or what maps were provided?
 - d. Who authorized the trip?
 - e. Why was the trip authorized?
 - f. How long did the driver expect the trip to take?
 - g. Before the driver set out on the trip, how much sleep did he or she have the night before and what did the driver do before starting? Was the driver tired or alert? This is the point to ask about alcohol and drugs (see questions in paragraph 8).
 - h. Who else was in the vehicle (get full personal information)?
 - (1) Why were they in the vehicle?
 - (2) What did they do during the trip?
 - i. Have the driver take you through the trip from start point/time to destination and then to return. Ask the driver to describe the trip as planned and then as it actually happened.
 - (1) Get a map and ask the driver to show you the route on the map.

Enclosure 2 – Investigator’s Interview Checklist for Vehicle Accidents

14. (2) If the route is not the most direct route, ask the driver to explain any deviation and to include any reasons for the deviation.
(3) Indicate any interruptions or rest stops. Determine the reason for each stop, what happened during the stop, and the duration of the stop.
5. **The accident.**
 - a. If possible, visit the accident scene with the driver.
 - b. If relevant (and possible), drive the route with the driver.
 - c. Have the driver describe the sequence of events up to, during and after the accident.
 - (1) When did the driver see the other vehicle?
 - (2) What was the driver’s speed at the time of the accident?
 - (3) What evasive or other actions did the driver take?
 - (4) Did the other driver see our vehicle?
 - d. If the driver completed an accident report, ask the driver to review it and explain any omissions or errors.
6. **Injuries.**
 - a. Was our driver injured?
 - b. Names of other injured parties (compare with accident reports).
7. **Witnesses.**
 - a. Names of any witnesses known to the driver.
 - b. What did the witnesses supposedly see?
 - c. Any oral statements by witnesses the driver recalls?
8. **Alcohol/Drugs.**
 - a. Find out if the driver is a drinker.
 - b. If the driver does drink, when was alcohol last consumed before the accident?
 - (1) How much alcohol?
 - (2) Types of drinks?
 - (3) Was the alcohol taken with a meal?
 - c. Drug use? Get specific if you suspect it.
 - d. Was the driver taking medication?
 - (1) Name of drug.
 - (2) Get bottle if a prescription medication.
 - (3) Why was the driver taking medication?
 - (4) Did it affect his or her driving?
 - (5) Get specifics on amount taken, when, and whether the driver had used it before.
9. **Diagrams.**

Show the driver other accident diagrams if available and ask if they are accurate. If not, have the driver explain why.
10. **Insurance.**
 - a. Consider the following insurance sources:
 - (1) Automobile insurance
 - (a) Injured party’s own (even if injured party’s vehicle was not involved).
 - (b) Owner of automobile.
 - (c) Driver of automobile.
 - (2) Homeowner’s insurance.
 - (3) Property insurance.
 - b. Always ask for the following information about an insurer:
 - (1) Full name of company.
 - (2) Address/Telephone number of insurer.
 - (3) Name of adjuster/representative.
 - (4) Amount of claim, date filed, and date of payment.

PROCEDURES

DA Form 1208 (Report of Claims Officer) does not have to be typed, but it must be legible. Information on the form must be clear to claims personnel and receiving state authorities who may have to read and translate it. Unit claims officers (UCO) will complete DA Form 1208 as follows:

General Information.

Date of Report. Self-explanatory.

Headquarters. Enter designation and APO address of unit involved in the incident.

Location. Enter unit location.

1. **Accident or Incident.** Enter date, hour and place of incident in appropriate blocks.
2. **Claimants.** When available, enter claimant's name and address. If not available, leave empty, but complete the rest of the form. Claimants may file with receiving state authorities instead of UCOs or FCCs. In those instances, this report will provide the relevant information about U.S. involvement.
3. **Property and Personnel Involved.**

Government Property. Identify U.S. vehicles involved with vehicle type, bumper markings, and license plate number. Describe the condition of the military vehicle before and after the incident. If the foreign national is at fault (partially or in full) this information will aid in an affirmative claim against that person for damaging U.S. property or injuring U.S. personnel, or at least reduce U.S. liability. If available, attach photographs of damaged property.

Private Property. Provide all available information. Do not delay, however, trying to get information that is not reasonably available or information that the servicing judge advocate can get from other sources. When possible, interview claimants or foreign national(s) involved. Provide a description of the property before and after the incident. If a vehicle is involved, include the model, and license number. If available, attach photographs of damaged property.

U.S. Government Personnel. Enter name, rank or grade, position, social security number, current assignment, DEROS (if overseas), ETS date, and telephone number of U.S. personnel involved.

Civilian and Foreign Nationals. Enter names, nationalities, addresses, and telephone numbers of non-U.S. Forces persons involved.

4. **Scope of Employment.** Leave blank, the servicing judge advocate or FCC will determine this.
5. **Damage to Property.** Fully describe the damage to government and private property involved. Estimate repair costs.
6. **Persons Injured or Killed.** List U.S. Forces and private persons injured or killed. If personnel were hospitalized, indicate where, how long, and transfers to other facilities. Do not delay the investigation if this information is not readily available.
7. **Witnesses.** List names, addresses, and telephone numbers of witnesses not included in block 3.
8. **Police Investigation and Trial.** Try to obtain local police reports. If authorities are reluctant to release the information, do not delay the investigation.
9. **Findings.** Fully describe the incident. Reference to police reports and witness statements (*e.g.* "See attached" statements) is not enough. The UCO must make independent findings of fact taking into account personal observation and all evidence obtained.
10. **Exhibits.** List all exhibits and attach them to the report.

11. Recommendations.

It is Recommended That. Leave this block blank.

Reasons for Recommendations. Leave this block blank.

UCOs will send their recommendations on a separate sheet of paper. This is because local (receiving state) law often determines payment of claims. Claimants who are not satisfied with their settlements may go to court. DA Form 1208 may be made available to the claimant and to the local court for use in the proceedings. Because UCOs are not expected to know local laws, their recommendations about whether or how much to pay on a claim may be erroneous. If they are included on DA Form 1208, they may prejudice the United States' position in court.

Claims Officer. The UCO will include his or her name, and sign and date the forms in the appropriate blocks.

12. Action of Commanding Officer or Staff Judge Advocate. Leave this block blank.

Forward the completed form along with all exhibits and attachments and your recommendations to the servicing claims office or FCC.

APPENDIX C

DEPLOYMENT CLAIMS OFFICE OPERATION OUTLINE

I. **PURPOSE.** To outline the planning factors necessary to consider during the pre-deployment and deployment/stationing phases of a deployment of U.S. forces into a foreign country (a “receiving state”) in order to operate an effective foreign claims activity.

II. **OVERVIEW: THE AR 27-20 SCHEME.** AR 27-20, Claims (8 February 2008), envisions the following general scheme for deployment claims operations:

A. Unit Claims Officers (UCOs) and Maneuver Damage Control Officers (MDCO) are appointed by unit commanders and trained by unit or claims judge advocates or Foreign Claims Commissioners.

B. During the course of deployments, UCOs and MDCOs investigate claims incidents and forward potential claims files, both against and on the behalf of the U.S., to servicing Judge Advocates (JAs). DA Forms 1208 (Report of Claims Officer) are completed and forwarded as well, when appropriate.

C. Unit JAs forward potential claims files and completed DA Forms 1208 to the appropriate Foreign Claims Commissions (FCCs) for further processing and entry into the potential claims database.

D. Potential claims files are transferred to the active claims files system in the Torts and Special Claims Application (TSCA) database and all relevant documents uploaded. The TSCA will assign a claim file number when a claimant actually files a claim. Should access to the TSCA not be available when a claim is filed, FCCs should maintain a log of all claims, assign the next available number manually, and upload the claim to the TSCA in proper claim number order when connection to the TSCA is restored.

E. The FCCs investigate actual claims, in cooperation with the UCOs, and adjudicate them. Claimants are notified of the FCC’s decisions, and approved claims are processed for payment.

F. Special Claims Processing Offices (SCPO) handle the claims of members of the force or civilian component for damages to personal property.

III. PRE-DEPLOYMENT PLANNING AND TRAINING

A. Ensure that all units have UCOs, and MDCOs if necessary, appointed on orders.

B. Coordinate the training of UCOs and MDCOs in proper investigative techniques and completing accident report forms with the military police (MP)..

C. Coordinate the training of UCOs in compiling potential claims files and completing DA Forms 1208 with unit or claims judge advocates.

D. Train an NCO to serve as a Foreign Claims NCOIC. Foreign Claims NCOICs maintain the potential claims files and database, the actual claims files and TSCA database, and fiscal accountability. Foreign Claims NCOICs also coordinate the activities of the UCOs and MDCOs.

E. Determine force protection requirements in area of operations. Claims personnel should be licensed to drive available military vehicles, to use required weapons (including crew-served weapons), and to be combat lifesavers whenever possible.

F. To service a division-sized unit, train at least three judge advocates to serve as Foreign Claims Commissioners. Each can serve as a one-member commission to handle claims up to \$15,000 for their respective brigades. Together, the three can serve as a three-member commission, which can handle claims up to \$50,000 for the division, if necessary.

G. Secure a supply of the forms listed in appendix D for possible use by the FCC.

H. Train one JA and one NCO to staff an SCPO.

IV. DEPLOYMENT PLANNING

A. **The U.S. Army Claims Service (USARCS).** Immediately upon being informed of a possible deployment, contact the USARCS Foreign Torts Branch for current claims information and technical guidance at (301) 677-

9490/9498 [DSN 622]. The USARCS Commander has the authority to constitute and appoint FCCs and to issue fund cites to pay foreign claims. This authority may be delegated to a command claims service or to a Staff Judge Advocate (SJA), as necessary.

B. Planning Factors. The exact structure and operation of a deployment claims activity depends upon several factors:

1. Type and duration of deployment. Is the operation an evacuation of noncombatants from a hostile area, or will the unit be deployed to the area for a significant period of time?

2. Area to which U.S. forces will be deployed. Logistically, how close is the area to installations where U.S. forces maintain a permanent or significant presence? How isolated will the unit be?

3. Existence of stationing agreements or MOUs governing the presence of U.S. forces. Stationing agreements, like the NATO Status of Forces Agreement (SOFA), may preempt the ordinary application of U.S. foreign claims statutes and regulations. What legal status will members of the force or civilian component have in the area?

4. Single Service Responsibility (SSR). Department of Defense (DoD) Directive 5515.08 (2006) assigns SSR for claims for certain countries to particular service components. The U.S. Army, for example, is assigned Germany. Does another service component already have SSR for the area to which the unit will deploy?

5. Predominant Service Component. If SSR is not already assigned, which service will be the predominant service component, if any, in the deployment? Under DoD Directive 5515.08, the appropriate unified or specified commander may make an interim designation of SSR. In the absence of such designation, each service component will have Individual Service Responsibility (ISR) for its own claims.

V. DEPLOYMENT/STATIONING PHASE. Once the unit has begun deploying into the receiving state, the following factors need to be considered in conducting a deployment claims activity:

A. Coordination with receiving state authorities. It is very important to inform host nation authorities of the way in which the deployment claims activity will work. They have an interest in seeing that claims resulting from damages to their citizens and property are properly handled. If a NATO SOFA-style stationing agreement exists, for example, this interest may have significant status as a matter of international law.

B. Coordination with Civil-Military Affairs (CMA) personnel. The CMA activities can provide invaluable help in liaison with both local officials and the local population itself, as well as providing information about the local culture and customs that may have an impact on the adjudication of claims.

C. Claims activity publicity. Whether by means of the mass media or even by Soldiers handing out pamphlets to local nationals, the local population must be given basic information about claims procedures. This will expedite the processing of claims in general, and will help resolve meritorious claims before they become a public relations problem. Coordination with PAO and the SJA must occur before claims information is publicized. U.S. Department of State officials may also wish to be consulted.

D. Claims intake procedures. The deployment claims activity must establish an intake procedure for foreign claims. This may be something as simple as setting aside two days a week for the receipt of claims and dissemination of claims status information to claimants. Particular forms may have to be devised to expedite and simplify the intake process.

E. Translation capabilities. Translators should be secured as quickly as possible to help the deployment claims activity. Translators help in the investigation of claims, the translation of intake forms and claimants' submissions, and the translation of correspondence.

F. Local legal advice. As interpreted by AR 27-20, local law most often determines liability and the measure of damages under the Foreign Claims Act. A local attorney is often necessary to explain local law, particularly in areas without a Western-style legal system.

G. Security. Physical security of the deployment claims activity includes such measures as not making the Foreign Claims Commissioner (FCC) a Class A agent, and ensuring that crowd control measures are in effect on intake days. Security also includes fiscal security—checking the adjudication of claims to ensure that local organized crime elements are not trying to manipulate the claims system.

H. **Coordination with Military Intelligence personnel.** Claims offices can become very fertile ground for intelligence gathering. Military Intelligence personnel can likewise provide important information for claims investigations.

I. **Coordination with UCOs and MDCOs.** To make the claims activity run smoothly and efficiently, UCOs and MDCOs should be conducting most of the investigation of claims at their level. Because they are just on additional duty orders, and not legally trained, they must often be closely supervised to ensure that claims investigations are done properly.

J. **Coordination with Military Police personnel.** As trained investigators, MPs can provide invaluable assistance to UCOs, both in the course of actual investigations and in the compiling of reports after claims incidents. The Deployment Claims NCOIC should receive copies of the blotter on a daily basis and collect information related to potential claims against the United States.

K. **Coordination with Local Finance Offices.** Ensure that Class A agents are trained, certified, and available for claims missions. Also ensure that local currency will be available to pay claims.

L. **Coordination with Non-Governmental Organizations (NGOs) and Other Governmental Organizations (OGOs).** Depending upon the area into which the unit deploys, it could find various international and charitable organizations already operating there. Likewise, other agencies of the U.S. government may also be operating in the area. The operation of these NGOs and OGOs may have a direct impact on a deployment claims activity. For example, many of these organizations might pay for claims (in cash or in-kind) that the FCCs cannot under the applicable statutes and regulations.

M. **Coordination with the USARCS or command claims services.** Frequent coordination with USARCS or with the responsible command claims service is necessary both to ensure that funds are available to pay claims, and to maintain claims accountability. Both services also provide continuing technical oversight and logistical support.

N. **Coordination with the Corps of Engineers Real Property Teams (CREST).** Ensure that identification of the legal owners of all real property occupied or used by U.S. forces is completed, and obtain assistance from Real Estate personnel in determining fair market rental value and execution of a lease if the use/occupation lasts longer than 30 days.

APPENDIX D

FRONT SIDE OF POCKET CLAIMS CARD

Place unit logo here, if desired

The Army may pay claims to Iraqi civilians for property damage, injury and death caused by US Forces.

If your unit is involved in an incident resulting in damage to property of an Iraqi civilian, or injury or death of an Iraqi civilian:

1. Fill out the required information below.
2. Give this card to the Iraqi civilian, or other appropriate person in the case of death.
3. Direct them to the Iraqi Assistance Center (IAC) located at the Baghdad Convention Center. Do not promise anything.
4. Upon return to your FOB, complete DA Form 2823 describing the incident and forward to the 3rd Brigade Legal Office. *Please note that this information is not an admission of liability by the soldiers involved, it will be used only to substantiate a potential claim against the US Army.

UNIT _____

DATE _____

LOCATION _____

INCIDENT _____



إذا كنت تريد الحصول على التعويض عن الأضرار، الإصابة
أو الموت الذي تتسبب به القوات الأمريكية
عليك ان تجلب الكارت الذي يعطيه لك الجندي الأمريكي
اثناء الحادث أو أي دليل يتعلق بالحادث مثل الصور، إفادة الشهود
أوراق تحقيق الشرطة، إثبات الملكية أو الوصولات
الى مركز المساعدات العراقية IAC الواقع في قصر المؤتمرات
وذلك ما بين الساعة التاسعة صباحاً و الساعة الثالثة عصراً
طيلة أيام الاسبوع لرفع قضاياكم وشكراً لكم

APPENDIX E

GULF REGION CORPS OF ENGINEERS SOP



REPLY TO
ATTENTION OF

CEGRD-RE

DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
GULF REGION DIVISION
BAGHDAD, IRAQ
APO AE 09348



12 April 2009

MEMORANDUM FOR RECORD

SUBJECT: GRD Real Estate Standard Operating Procedure for Processing Real Estate Claims

1. References:

- a. 10 U.S.C. 2675, Leases: Foreign Countries
- b. AR 405-10, Acquisition of Real Property and Interests Therein (14 May 70)
- c. AR 405-15, Real Estate Claims Founded Upon Contract (1 Feb 80)
- d. AR 27-20, Claims (8 Feb 2008)
- e. DA PAM 27-162, Claims Procedures (21 Mar 08)
- f. FRAGO_176 (1 Aug 07)

2. Summary. This Standard Operating Procedure (SOP) prescribes policy and responsibilities for investigating, processing and settling claims against the United States involving Real Estate within Iraq and is intended to establish a division of responsibility and set forth a method for processing claims involving Real Estate.

3. Background. The US Government is obligated to pay the property owner fair & reasonable compensation for the use of property, even when the property is later occupied by Iraqi Army units accompanying or acting at the direction of US Forces.

4. A Real Estate owner whose Real Estate is or has been occupied for 30 days or more may file a Real Estate claim. US Forces will determine whether they can compensate the actual owner for rent covering the period of occupation, and/or whether any damage to the property is compensable. NOTE: Any claims not involving Real Estate will be handled through the normal claims process.

5. The Claimant shall:

- a. Complete SF Form 95 (Claim for Damage or Injury) or equivalent (Encl 1). Provide address or location of the property. Note: Claim must be signed by the Claimant as owner of the property. If claimant is not owner, provide a power of attorney or proof that they possess ownership rights for the property to file a claim.
- b. Provide the date of initial occupancy by US Forces or the term of occupancy and requested rental amount. Include any information justifying that this amount is typical rental for the area. Provide itemized list of any damages and/or losses incurred. If damages are claimed, the owner should provide photos of the damages along with receipts or estimates of repair along with a requested dollar amount.

CEGRD-RE

SUBJECT: GRD Real Estate Standard Operating Procedure for Processing Real Estate Claims

- f. Upon receipt of "DRAFT LEASE" from GRD-RE, prepare and submit fully executed funding document via a PR&C (DA 3953) or a DD 1149 (USMC). Prepare Voucher of anticipated amount to be charged (if approved for payment) and provide to GRD-RE, who will provide "FINAL LEASE", upon approval.
 - g. Submit "FINAL LEASE" to claimant for signature. Obtain all signatures of owners and witnesses. Submit "FINAL LEASE" to GRD-RE for execution by the Chief of Real Estate Division (or as delegated). Once the executed lease is received, units will provide payment to owner(s) along with copy of the executed lease. Provide copy of final pay documents and proof of payment to GRD-RE, when complete.
7. GRD- Real Estate Office shall:
- a. Review the application and SJA justification memorandum. Request verification or additional information required to complete claim.
 - b. Finalize any negotiations if required, then prepare "DRAFT LEASE" and forward to Unit for preparation of funding document. Prepare "FINAL LEASE" once unit provides approved funding document. Execute "FINAL LEASE" once signed by owners. Maintain lease documents and copy of unit's final payment.
 - c. Assist in determining ownership with title searches and/or appraisals to value claimant's property and damages. These services will be provided based upon available funding and the amount of the claim.
 - d. Title search results when completed are sent to MNC-I C7 Basing and are posted on the MNC-I SIPR Web portal for GRD customers to view at:
<http://corps.res.s-iraq.centcom.smil.mil/sites/c7/Basing/default.aspx>
8. The point of contact for this policy is the GRD Real Estate Division (Encl 2). A copy of this policy statement will be posted by the Chief, GRD Real Estate.


GARY R. DYE
Chief Real Estate, GRD

2 Encls
SF Form 95 (Claim for Damage or Injury)
GRD-RE Points of Contacts

CEGRD-RE

SUBJECT: GRD Real Estate Standard Operating Procedure for Processing Real Estate Claims

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