CHAPTER 12

CLAIMS

A significant portion of your duties as an LN will entail the investigation and processing of claims. Claims involving the United States Government and its military activities are governed by a complex system of statutes, regulations, and procedures. This chapter is not a substitute for the official departmental claims regulations published in the *JAG Manual* and JAGINST 5890.1, *Administrative Processing and Consideration of Claims on Behalf of and Against the United States.* It is, however, a useful starting point for research into claims.

This chapter is organized to reflect the various claims statutes and their respective functions in the claims system. Claims involving the federal government are of two types:

1. Claims in which the federal government is a claimant seeking compensation.

2. Claims against the government for which a claimant seeks compensation. These can be further divided into two functional categories:

a. General claims statutes, such as the Federal Tort Claims Act (FTCA) and Military Claims Act (MCA), that provide for payment of claims arising out of a broad range of incidents and situations.

b. Specialized claims statutes, such as the Military Personnel and Civilian Employees' Claims Act and the Foreign Claims Act (FCA), that provide for payment of claims arising out of specific types of incidents or to only specific classes of claimants.

Claims are adjudicated by a complex system of interesting statutes, regulations, and procedures. Claims that are not covered by one of the general claims statutes are frequently payable under one of the specialized statutes. Thus, specialized statutes can fill gaps in areas where the general statutes do not provide coverage. Conversely, some claims are not cognizable under one of the general statutes because one of the specialized statutes may apply to the claim. Likewise, classes of persons barred by statute or regulation from collecting under a general claims statute often can be compensated under one of the specialized statutes. Examples in this chapter will demonstrate the interaction of the various claims statutes, regulations, and procedures. The key to understanding claims law is to realize that it involves a logical system of interacting provisions and not just a perplexing labyrinth of seemingly unrelated rules.

FEDERAL TORT CLAIMS ACT

The Federal Tort Claims Act, 28 U.S.C. § 1346, 2671-2680 (1982) (FTCA), was a product of many years of congressional deliberations and considerations. Before 1946, if a person was wrongfully injured by a federal employee who had acted within the scope of his or her federal employment, the doctrine of "sovereign immunity" barred that injured party from suing the government for compensation. This doctrine often had the effect of denying fair compensation to persons with meritorious claims. At that time, the only available form of redress was the "private bill"—a system whereby the injured party could be compensated for his or her injury by a special act of Congress. This system was cumbersome and resulted in thousands of private bills annually. This system was also unfair to those who lacked sufficient influence to have a representative introduce a private bill on their behalf.

The FTCA was enacted with the intent of providing a more equitable, comprehensive system. The FTCA provides for compensation for personal injury, death, and property damage caused by the negligent conduct of federal employees acting within the scope of federal employment. It also covers certain intentional, wrongful acts. There are, however, three general types of exceptions from government liability under the FTCA. First, the government is protected from liability arising out of certain types of governmental actions. Second, the FTCA will not provide compensation when one of the specialized claims statutes (discussed later in this chapter) covers the claim. Third, certain classes of claimants, such as active duty military personnel, are prevented from recovering under the FTCA, although they may be compensated under other statutes.

SCOPE OF LIABILITY

The law defines <u>negligence</u> as the failure to exercise the degree of care, skill, or diligence that a reasonable person would exercise under the same circumstances.

Negligent conduct can arise either from an act or a failure to act. It can be either acting in a careless manner or failing to do those things that a reasonable person would do in the same situation.

Whether certain conduct was negligence—and, therefore, whether the government is liable—will be determined by the tort law of the place where the conduct occurred. Questions, such as whether the violation of a local law, by itself, constitutes negligence, are answered by applying the doctrines of the local tort law.

Example 1: Seaman Jones, while performing his duties in Virginia, injures Mr. Smith. Under Virginia law, Jones' conduct is not negligence. Therefore, Mr. Smiths FTCA claim will be denied.

Example 2: Seaman Door, while performing his duties in North Carolina, engages in exactly the same conduct that injured Mr. Smith in the previous example. Door injures Mr. Johnson in this example. Under North Carolina law, Door's acts constitute negligence. Therefore, Mr. Johnson's FTCA claim will be paid.

Limited Range of Intentional Torts

The FTCA will compensate for intentional wrongful acts under very limited circumstances. On or after 16 March 1974, the FTCA applies to any claim arising out of the following intentional torts committed by federal law enforcement officers: assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution. A federal law enforcement officer, for purposes of the FTCA, is any officer of the United States empowered bylaw to execute searches, to seize evidence, or to make arrests for violations of federal law.

Since Article 7, UCMJ, extends the authority to apprehend to commissioned officers and petty officers, these officers would be considered law enforcement officers for FTCA purposes when they are actually engaged in law enforcement duties. No other intentional tort claims are payable under the FTCA. Under very limited circumstances, however, the government may be liable for an intentional tort committed by a federal employee overseas under the FCA discussed later in this chapter. Federal employees have been held individually liable to the injured party for intentional torts committed while the employees are acting beyond the proper limits of their authority.

Government Employees

Under the FTCA, the government is liable only for the wrongful acts of its employees. The term *government employee* is defined to include the following individuals:

- Officers or employees of any federal agency
- Members of the military or naval forces of the United States
- Persons acting on behalf of a federal agency in an official capacity, either temporarily or permanently, and either with or without compensation

The term *federal agency* includes not only the departments and agencies of the executive, legislative, and judicial branches of the federal government, but also independent entities that function primarily as federal agencies such as the U.S. Postal Service and the Commodity Credit Corporation.

GOVERNMENT CONTRACI'OR.— A government contractor and its employees are not usually considered government employees under the FTCA. When, however, the government exercises a high degree of control over the details of the contractor's activities, the courts will find that the government contractor is, in fact, a government employee. The standard personnel qualifications and safety standards provisions in government contracts are not enough to turn a government contractor into an employee. Where the contract requires the contractor to follow extensive, detailed instructions in performing the work though, the contractor will usually be considered a government employee and the contractor's employees who work on the federal job will likewise be treated as government employees for FTCA purposes.

NONAPPROPRIATED FUND ACTIVITIES.— A nonappropriated fund activity is one that, while operating as part of a military installation, does not depend upon, and is not supported by, funds appropriated by Congress. Examples of nonappropriated fund activities include the Navy exchange and officers' clubs. Whether liability is incurred depends upon a two-pronged test. The FTCA applies to a nonappropriated fund activity if (1) the activity is charged with an essential function of the federal government and (2) the degree of control and supervision by the federal government is more than casual or perfunctory.

Every facet of the activity's operations must be examined. Is the activity entirely self-supporting? Does it own its own property? Does it use government properly, equipment, or personnel in its operation'? What control does the command have over the activity's operation? Dots the activity provide essential services or benefits to military personnel?

Applying the two-pronged test and considering the specific points mentioned previously, the Navy exchange would clearly be a nonappropriated fund activity subject to the FTCA. On the other hand, an equestrian club, sponsored by a command but operating entirely independent of the command, would not be subject to the FTCA. Each case must be determined on its own merits.

Many nonappropriated fund activities carry commercial liability insurance to protect them against claims for property damage and personal injury attributable to their operations. Therefore, many FTCA claims against nonappropriated fund activities are handled by commercial insurance carriers. The procedures for negotiating and settling FTCA claims against nonappropriated fund activities covered by liability insurance are set forth in JAGINST 5890. 1.

Scope of Employment

The government is liable under the FTCA for its employees' conduct only when the employees are acting within the scope of their employment. The scope-of-employment requirement is viewed by the courts as "the very heart and substance" of the act. While scope-of-employment rules vary from state to state, the issue usually turns to (1) the degree of control the government exercises over the employee's activities on the job and (2) the degree to which the government's interest were being served by the employee at the time of the incident.

Whether or not a government employee's acts were within the scope of employment is determined by the law of the state, including the principles of *respondeat superior,* where the incident occurred. This has led to many different results on the question of applicability of the FTCA involving PCS and TDY.

Example: Consider the following hypothetical situation. Seaman Doe, the command duty driver, is making an authorized run in the command vehicle. On the way back to the base, he stops at a local bar and drinks himself into a stupor. Barely able to stand, he gets back in the command vehicle and continues toward the base. In his drunken state, he fails to see a stop sign and crashes into an automobile driven by a civilian. Both Seaman Doe and the civilian are seriously injured. For the purposes of the FTCA, Seaman Doe could be considered, in at least some jurisdictions, to have been acting within the scope of his employment (he was completing an authorized run when he was involved in the accident). Accordingly, the claim of the civilian would be cognizable under the FTCA.

Example: Seaman Doe, the command duty driver, is making an authorized run in the command sedan. While daydreaming, he becomes inattentive, fails to keep a lookout for pedestrians, and hits Mr. Hatch. Seaman Dot's negligence occurred within the scope of his employment.

Example: Seaman Doe, the command duty driver, takes the command sedan after hours on an unauthorized trip to the ball game. After the game, he and some buddies stop at several taverns and all become drunk. Because of his drunken condition, while driving back to the base, Seaman Doe runs over Mr. Smith. In this case, Seaman Doe's negligence occurred outside the scope of his employment. He and his friends were off on their own and their activities were entirely unrelated to the performance of a governmental or military function. Therefore, Mr. Smith will not be able to recover under the FTCA. Since a government vehicle is involved, however, Mr. Smith may be entitled to limited compensation under the nonscope claims procedures discussed later.

Territorial Limitations

The FTCA applies only to claims arising in the United States, or in its territories or possessions (where a U.S. district court has jurisdiction). Any lawsuit under the FTCA must be brought in the U.S. district court in the district where the claimant resides or where the incident giving rise to the claim occurred.

EXCLUSIONS FROM LIABILITY

Statutes and case law have established three general categories of exclusions from FTCA liability. The following specific exclusions are encountered frequently in claims practice in the military. A complete list of FTCA exclusions is set forth in JAGINST 5890. 1. In each of the following situations, the government will not be liable under the FTCA, although it maybe liable under some other claims statute. The following categories are exempted governmental activities:

- Execution of statute or regulation. The FTCA does not apply to any claim based on an actor omission of a federal employee who exercises due care while in the performance of a duty or function required by statute or regulation.

- Discretionary governmental function. The FTCA does not apply to any claim based upon the cxercise or performance of, or the failure to exercise or perform, a discretionary governmental function. Perhaps no single exclusion under the FTCA has generated as much litigation as the discretionary function exclusion. The key issue usually is whether the government activity involved in the claim was a discretionary function. The problem is complicated by the fact that neither the FTCA nor any court has ever formulated a comprehensive definition of discretionary function. Each case must be decided on its own facts.

- Postal claims. The FTCA does not apply to claims for the loss, miscarriage, or negligent transmission of letters or postal matters. Such claims, under limited circumstances, may be payable under the MCA.

- Detention of goods. The FTCA does not apply to claims arising out of the detention of any goods or merchandise by a federal law enforcement officer, including customs of officials. This exception is commonly applied in situations where the claimant seeks compensation for property seized during a search for evidence. This exclusion also prevents compensation under the FTCA for alleged contraband seized by law enforcement officers.

- Combatant activities in time of war. The combatant activities exclusion has three requirements: the claim (1) must arise from activities directly involving engagement with the enemy; (2) must be conducted by the armed forces; and (3) occur during timc of war (declared and undeclared). Combatant activities are given a very strict meaning by the courts. It does not include practice or training maneuvers, nor any operations not directly involving engagement with an enemy.

- Intentional torts. The government is not liable under the FTCA for the following intentional torts: assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. This exclusion will not protect the government from liability for assaults, batteries, false imprisonments, false arrests, abuses of process, or malicious prosecutions committed by federal law enforcement officers.

Claims Cognizable Under Other Claims statutes

Certain claims cannot be paid under the FTCA because they are cognizable under some other claims statute. Although the claimant may still recover under another statute, the amount may be significantly less than under the FTCA. Also, the claimant may not have the right under the other claims statute to sue the government if the claim is denied. Examples of claims cognizable under other situations and therefore not payable under the FTCA include the following:

- Personnel claims. Claims by military personnel or civilian federal employees for damage or loss to personal property incident to service are cognizable under the Military Personnel and Civilian Employees' Claims Act.

- Admiralty claims. Admiralty claims, arising from incidents such as ship collisions, are usually governed by the Suits in Admiralty Act and the Public Vessel Act.

- Overseas claims. Claims arising in a foreign country arc not cognizablc under the FTCA, but may be allowed under either the MCA or the FTCA.

- Injury or death to civilian federal employee. Claims arising out of personal injury or death of a civilian federal employee, while on the job, arc usually covered by the Federal Employees' Compensation Act. Nonappropriated fund activity employees are compensated under the Longshoremen's and Harbor Workers' Compensation Act.

Excluded Claimants—Military Personnel

In *Feres v. United States,* the U.S. Supreme Court held that military personnel cannot sue the federal government for personal injury or death occurring incident to military service. The Supreme Court reasoned that Congress did not intend the FTCA to apply to military personnel because it had already provided medical care, rehabilitation, and disability benefits for them. Since 1950, the *Feres* doctrine has been applied consistently by federal courts at all levels and was reaffirmed by the Supreme Court in 1987.

The rationale for the *Feres* doctrine can be explained by examining the policy reasons underlying the doctrine proscribing governmental liability. The

Court noted that there is a special relationship of "solider to his superiors." Granting to him the right to bring an action would have an adverse effect upon discipline and would result in a judicial intrusion into the general area of military performance. Congress had established a system of uniform compensation for injuries or death of those in the armed services. This system provides adequate and comprehensive benefits for service personnel and compares favorably with workmen's compensation statutes. To allow individual suits would circumvent the statutory schemes of veterans' benefits.

The Court in *Feres* recognized the relationship existing between the United States and its military personnel as distinctively federal in character, so that it would be inappropriate to apply local law to that relationship by way of the FTCA. Applying the state law of the area where the injury took place, given the wide variety of local laws, would be unfair to the military member who has no choice as to his or her duty station.

A major exception to the *Feres* doctrine exists when the injury, death, or loss of the military member did not occur incident to military service. Under such circumstances, the *Feres* doctrine will not prevent FTCA recovery by a military claimant. The value of benefits received from the government, such as medical care, rehabilitation, and disability payments, however, will be deducted from the compensation paid to the claimant.

The central issue in determining whether the *Feres* doctrine will prevent a military member from recovering under the FTCA is whether the injury or loss occurred incident to military service. Courts decide this issue only after considering all the facts and circumstances of each case. As a general rule, however, all the following factors must be present for an injury, death, or loss of a military member to be held not incident to military service:

- The member must have been off duty.
- The member must not have been aboard a military installation.
- The member must not have been engaged in any military duty or mission.
- The member must not have been directly subject to military orders or discipline.

If any of the previous four factors are absent, the claim usually will be held by the courts to be incident to military service.

The *Feres* doctrine does not apply to claims by military members who are acting solely in a representative capacity (guardian, executor of an estate). It will bar FTCA claims by nonmilitary persons acting as legal representatives of injured or deceased military members. The following examples demonstrate these principles.

Example: Johnny Doe, the minor child of LT Doe, was the victim of medical malpractice at a military hospital. LT Doe presents a $100,000 claim on behalf of Johnny. The *Feres* doctrine will not apply. LT Doe is presenting the claim solely as the parent and legal representative of his minor son and the *Feres* doctrine does not apply to injuries, death, or loss suffered by a military dependent—only to military members themselves.

Example: While on duty, LT Doe was negligently killed by a Marine Corps officer acting within the scope of federal employment. The executor of LT Doe's estate, Mr. Rich, presents an FTCA claim for wrongful death. The *Feres* doctrine will bar this claim. Although Mr. Rich is a civilian, he is claiming only in his capacity as LT Doe's legal representative. Because LT Doe's death occurred incident to service the claim will be denied, just as if LT Doe had presented it himself.

CIVILIAN FEDERAL EMPLOYEES.— Civilian federal employees usually cannot recover under the FTCA for injury or death that occurs on the job because of Federal Employees Compensation Act (FECA) compensation benefits.

INTRA-AGENCY CLAIMS.— One federal agency usually may not assert an FTCA claim against another federal agency. Government property is not owned, for FTCA purposes, by any specific agency of the government. Therefore, the federal government will not normally reimburse itself for the loss of its own property.

MEASURE OF DAMAGES

The phrase *measure of damages* refers to the method by which the amount of a claimant's recovery will be determined. In FTCA cases, the measure of damages will be determined by the law of the jurisdiction where the incident occurred. For example, the measure of damages for a claim arising out of a tort that occurred in Maryland will be determined by Maryland law. When the local law conflicts with applicable federal law, however, the federal statute will govern.

The following amounts will be excluded from a claimant's recovery under the FTCA:

Punitive damages. Many states permit the plaintiff in a tort action to recover additional money from the defendant beyond the amount required to compensate the plaintiff for his or her loss. Such damages are known as punitive damages because they are awarded to punish a defendant who has engaged in conduct that is wanton, malicious, outrageous, or shocking to the court's conscience. Under the FTCA, the government is not liable for any punitive damages that might otherwise be permitted by state law.

- Interest before judgment.

- Value of government benefits. When the government is liable to pay an FTCA claim by a military member, and the claim is not barred by the *Feres* doctrine, the value of government benefits (such as medical care, rehabilitation, and disability benefits) will be deducted from the military member's recovery.

- While there is no maximum to the amount of recovery permitted under the FTCA, any FTCA payment in excess of $25,000 requires the prior written approval of the Attorney General of the United States or his or her designee.

STATUTE OF LIMITATIONS

The FTCA contains several strict time limits that include the following:

- Two-year statute of limitations. The claimant has 2 years from the date the claim against the government accrued in which to present a written claim. If the claimant fails to present his or her claim within 2 years, it is barred forever. A claim accrues when the act or incident giving rise to the claim occurs, or when the claimant learns or reasonably should have learned about the wrongful nature of the government employee's conduct. Thus, a claim arising out of an automobile accident would normally accrue when the accident occurred. A claim arising out of medical malpractice will not accrue, however, until the claimant learns or reasonably should have learned about the malpractice.

- Six-month waiting period. When a claimant presents an FTCA claim to a federal agency, the agency has 6 months in which to act on the claim. During this waiting period, unless the agency has made a final denial, the claimant may not file suit on the claim in federal court. If, after 6 months, the agency has not taken final action on the claim, the claimant may then file suit under the FTCA in federal district court without waiting any longer for the agency to act.

- Six-month time limit for filing suit. After the federal agency mails written notice of its final denial on the claim, the claimant has 6 months in which to file suit on the claim in federal district court. If suit is not filed within 6 months, the claim will be barred forever. However, before this 6-month time limit expires, the claimant may request reconsideration of the denial of his or her claim. The agency then has 6 months in which to reconsider the claim. If the claim is again denied, the claimant has another 6 months in which to file suit.

PROCEDURES

The following procedures apply not only to FTCA claims, but also, in large part, to claims cognizable under other claims statutes. Significant variations in procedures under other claims acts will be noted in the sections of this chapter dealing with those other statutes,

The first step is usually the presentment of the claim to a federal agency of the government. When a claim is properly presented, the statute of limitations is tolled. A claim against the government is presented when a federal agency receives a written claim for money damages. A claim may be presented by (1) the injured party for personal injury; (2) the owner of damaged or lost property; (3) the claimant's personal or legal representative; or (4) a subrogee who assumed the legal rights of another person.

Contents of the Claim

As discussed previously, when a claim is properly presented, the statute of limitations stops running. To be properly presented, the claim must satisfy the following requirements:

- In writing. The claim must be in writing. Standard Form 95, Claim for Damage or Injury, should be used whenever possible. See figure 12-1.

- Signed. The claim must be signed by a proper claimant.

- Claims money damages in a sum certain. The claim must demand a specific dollar amount. The courts have consistently held that a claim is not presented until it states a sum certain. If the claimant fails to state a sum certain, then the claim does not constitute a claim for purposes of complying with the jurisdictional prerequisites of the FTCA. Observance of the sum certain requirement does not prevent the claimant from

CLAIM FOR DAMAGE, INJURY, OR DEATH	INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	FORM APPROVED OMB NO. 1105-0008 EXPIRES 4-30-88

1. Submit To Appropriate Federal Agency:	2. Name, Address of claimant and claimant's personal representative, if any. *(See instructions on reverse.) (Number, street, city, State and Zip Code)*
Commanding Officer Naval Legal Service Office Naval Station San Diego, CA 92136-5138	Josephine Doe 555 Sunset Drive Westho, CA 92345

3. TYPE OF EMPLOYMENT	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME *(A.M. OR P.M.)*
☐ MILITARY ☒ CIVILIAN	Nov. 1, 1958	Married	April 17, 1994	7:15 a.m.

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

The claimant, accompanied by her husband, was driving her father's (Moe B. Banks) 1989 Ford Sedan north on Thruway Road, San Diego, California. She was stopped for a red traffic light at the intersection of Thruway Road and Aside Street when her vehicle was struck from the rear by a 1988 Navy pickup truck, Vehicle #5387765, driven by SN Ready M. Rickless, USN, from the Naval Station, San Diego, California.

9. **PROPERTY DAMAGE**

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

Moe B. Banks, 553 Sunset Drive, Westho, California 92345

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

The rear bumper trunk and fenders of the 1989 Ford were damaged extensively. Refer to the attached police report and to the enclosed estimates of repair.

10. **PERSONAL INJURY/WRONGFUL DEATH**

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

The claimant suffered severe neck pain which Dr. T.C. Bandaid (302 Business Street, Westho, California) diagnosed as whiplash injury. See Dr. Bandaid's statement and bills, copies of which are attached.

11. **WITNESSES**

NAME	ADDRESS *(Number, street, city, State, and Zip Code)*
Richard Doe	(same as claimant)

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

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL *(Failure to specify may cause forfeiture of your rights.)*
$738.70	$800.00	N/A	$1,538.70

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

13a. SIGNATURE OF CLAIMANT *(See instructions on reverse side.)*	13b. Phone number of signatory	14. DATE OF CLAIM
Josephine Doe	619-556-4274	April 17, 1994

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

95-107
Previous editions not usable.

NSN 7540-00-634-4046

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

Figure 12-lA.—Sample of Standard Form 95, Claim for Damage, Injury, or Death (front).

recovering more than the amount originally claimed. The claimant may amend the claim at anytime before final action on the claim. Once an action is initiated under the FTCA, the plaintiff is limited to the damage amount specified in the claim presented "except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the agency, or upon allegation

PRIVACY ACT NOTICE

The Notice is provided in accordance with the Privacy Act. 5 U S C 552a(e)(3). and concerns the information requested in the letter to which this Notice is attached.
A *Authority* The requested information is solicited pursuant to one or more of the following 5 U S C 301, 28 U S C 501 et seq., 28 U S C 2671 et seq., 28 C F R Part 14

B *Principal Purpose*: The information requested is to be used in evaluating claims.
C *Routine Use*. See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D *Effect of Failure to Respond*. Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

INSTRUCTIONS

Complete all items - Insert the word NONE where applicable

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

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

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

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

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

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

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

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

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

INSURANCE COVERAGE

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

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

NOPAY ,Auto Insurance
1258 Gotham
Big City, California 92678

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

Yes, deductible

17. If deductible, state amount

$200.00

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

No action taken

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

NOPAY Auto Insurance
(same as above)

U.S. GOVERNMENT PRINTING OFFICE : 1985 O - 484-738 SF 95 (Rev. 7-85) BACK

Figure 12-1B—Sample of Standard Form 95, Claim for Damage, Injury, or Death (back).

and proof of intervening facts, relating to the amount of the claim." The plaintiff has the burden of proving the existence of the newly discovered evidence or intervening facts.

- Describe the factual circumstances giving rise to the claim. To the maximum extent possible, the claimant must detail the facts and circumstances precipitating the claim.

- Submitted to a federal agency. The claim is not properly presented until it is submitted to a federal agency. The claim should be submitted to the agency whose activities give rise to the claim. If the claim is submitted to the wrong federal agency, that agency must promptly transfer it to the appropriate one. Although submission to any federal agency will stop the running of the statute of limitations, the 6-month waiting period does not begin until the claim is received by the appropriate agency. That the United States is aware of the potential claim or has actual notice does not relieve the claimant of the requirement of presenting the claim to a federal agency. Failure to formally present the claim can result in the dismissal of an action in court.

Information and Supporting Documentation

Although the FTCA itself does not specify what information and supporting documentation arc required for validating the claim, administrative regulations issued by the Attorney General of the United States and the Judge Advocate General of the Navy require that the claim include information such as the following:

- A reasonably detailed description of the incident on which the claim is based
- The identity of the federal agencies, employees, or property involved
- A description of the nature and extent of personal injury or property damage
- Documentation of the loss (such as physicians' reports, repair estimates, and receipts)

In some instances, failure to provide the required information may result in a court ruling that the claim was never properly presented. Minor technical failures will not nullify the claim.

Prompt action is necessary when a command receives a claim. The following steps must be taken:

1. Record the date of receipt on the claim.

2. Determine which military activity is most directly involved.

3. When the receiving command is the activity most directly involved, immediately connvene an investigation according to chapter II of the *JAG Manual* and, when the investigation is complete, promptly send the report and the claim to the appropriate claims adjudicating authority.

4. When the receiving command is not the activity most directly involved, immediately send the claim to the activity that is most directly involved.

5. Report to JAG, if required by the *JAG Manual* or JAGINST 5890.1.

Investigation

A *JAG Manual* investigation is required whenever a claim against the Navy is filed or is likely to be filed. An investigation not requiring a hearing usually suffices. Responsibility for convening and conducting the investigation usually lies with the command most directly involved in the incident upon which the claim is based. When circumstances make it impractical for the most directly involved command to conduct the investigation, responsibility may be assigned to some other command.

Because the government usually will have only 6 months in which to investigate and take final action on the claim, the investigation must be done promptly. Witnesses' memories fade quickly and evidence can become mislaid. Moreover, failure to investigate promptly could prejudice the government's ability to defend against the claim. A claim involving a command is an urgent and important matter involving substantial amounts of money. Therefore, when a person is appointed to investigate a claim, the investigation ordinarily takes priority over all other duties.

The general duties of the claims investigating officer include the following:

- Considering all information and evidence already compiled about the incident
- Conducting a thorough investigation of all aspects of the incident in a fair, impartial manner
- Interviewing all the witnesses as soon as possible
- Inspecting property damage and interviewing injured persons
- Determining the nature, extent, and amount of property damage or personal injury and obtaining supporting documentation

In addition to these general duties, the investigating officer also must make specific findings of fact. Great care must be used to make sure all relevant, required findings of fact are made. A major purpose of the claims investigation is to preserve evidence for use months, even years, in the future. An incomplete investigation can prejudice the government's ability to defend against

the claim. It could also deny a deserving claimant fair compensation.

Upon completion of the investigation, the CO or OIC takes action on the report of investigation. Depending on the circumstances, either the original report or a complete copy, together with all claims received, must be promptly sent to the appropriate claims adjudicating authority.

Adjudication

An adjudicating authority is an officer designated by JAG to take administrative action (pay or deny) on a claim. In the Navy and Marine Corps, adjudicating authorities include certain senior officers in the Office of the Judge Advocate General (OJAG) and COs of NLSOs.

NLSOs and certain other commands have been assigned responsibility for adjudicating claims in their respective geographic areas. A claim usually will be sent by the command to the adjudicating authority serving the territory where the claim arose.

There is no maximum limit on the amount that can be paid under an FTCA claim. Payments in excess of certain amounts may require prior written approval by the Attorney General or his or her designee. An adjudicating authority can deny FTCA claims up to twice the amount authorized; therefore, if an adjudicating authority can pay FTCA claims up to $20,000, FTCA claims up to $40,000 can be denied. Claims in excess of $40,000 could be denied only by an adjudictiting authority in OJAG. Even though a claim may demand more than the payment or denial limits of an adjudicating authority serving a particular area, the command receiving the claim should send it to the appropriate local adjudicating authority who can attempt to compromise the claim for an amount within payment limits.

The adjudicating authority can take any of the following actions:

- Approve the claim, if within the payment limits
- Deny the claim, if within the denial limits
- Compromise the claim for an amount within payment limits
- Refer the claim to OJAG if (1) payments are recommended in an amount above the adjudicating authority's payment limits or (2) denial is recommended, but the amount claimed is above the adjudicating authority's denial limits

When a claimant accepts a payment in settlement of an FTCA claim, the acceptance releases the federal government from all further liability to the claimant arising out of the incident on which the claim is based. Any federal employees who were involved are also released from any further liability to the claimant. Therefore, if a claimant is not satisfied with the amount the adjudicating authority is willing to pay on an FTCA claim, the entire claim will be denied. The claimant then will have to bring suit in federal district court to recover on the claim. A claimant who accepts payment on an FTCA claim, even though unhappy with its amount, will be barred from recovering any additional amounts on that claim from the government or from any federal employee who was involved. The courts have held that acceptance of payment for property damage does not prevent a subsequent action for personal injury, unless the government can demonstrate that a settlement of all claims was contemplated by the parties.

Settlement and Payment

A settlement agreement, signed by the claimant, must be received before payment in every case where the claim is either settled for less than the full amount claimed or the claim was not presented on a Standard Form 95. Refer to appendixes 1-2 and 1-3 of JAGINST 5890.1 for samples of settlement agreements.

Denial of the Claim

Final denial of an administrative claim will be in writing and will be sent to the claimant or his or her duly authorized agent or legal representative by certified or registered mail, with return receipt requested. The notification of final denial will include the reason(s) for the denial. The notification will also include a statement informing the claimant of his or her right to file suit in the appropriate federal district court not later than 6 months after the date of the mailing of the notification.

Reconsideration

Within 6 months of a final disposition of an FTCA claim by an adjudicating authority, the claimant may request reconsideration of the denial.

Claimant's Right to Sue

Within 6 months after final denial of an FTCA claim by the adjudicating authority, the claimant may bring suit in federal district court. There is no right to a jury trial in an FTCA case. Although the Department of

Justice will represent the Department of the Navy in court, naval judge advocates assist by preparing litigation reports summarizing the pertinent facts in the case.

EXAMPLES

The following examples demonstrate the operation of legal principles governing FTCA claims:

1. Facts. YN3 Daytona, the command's duty driver, was on an authorized run in Pensacola, Florida, when he was involved in an auto accident with Mr. Lucky. The police report clearly indicates that the accident was caused by YN3 Daytona's negligent failure to stop at a red light and that there was nothing Mr. Lucky could have done to avoid the collision. Mr. Lucky has filed, within 2 years of the accident, an FTCA claim for $75,000 damage—including property damage to his automobile, medical expenses, and punitive damages. Can he collect'?

Solution. Yes (except for the punitive damages). The accident was caused by the negligence of a government employee, YN3 Daytona, who was acting within the scope of his federal employment. None of the exclusions from liability apply. The claim does not arise out of an excluded governmental activity. It is not cognizable under any other claims statute and the claimant is not a member of any excluded class of claimants. Therefore, this claim is cognizable under the FTCA, Punitive damages arc excluded from FTCA compensation. Because the claim is for $75,000, it can be paid by a local adjudicating authority only if Mr. Lucky is willing to accept $20,000 or less in full settlement of his claim. Otherwise, an adjudicating authority in OJAG will approve his claim.

2. Facts. Mrs. Shimmy, the dependent wife of an active duty naval officer, underwent surgery at the Naval Hospital, Portsmouth, Virginia. The surgeon, CDR Badknife, negligently severed a nerve in her neck. At first, Mrs. Shimmy was paralyzed from the neck down, but after 5 months' treatment and rehabilitation at the Naval Hospital she regained complete use of her arms, legs, and trunk. She has lost 5 months' wages from her civilian job, for which she was ineligible for state disability compensation. Also, she suffers from slight residual neurological damage that causes her shoulders to twitch involuntarily. This twitching is permanent. Mrs. Shimmy has presented an FTCA claim. Can she collect?

Solution. Yes (from the United States, but not from Dr. Badknife), The paralysis and lasting damage were caused by the negligent acts of CDR Badknife, a federal employee acting within the scope of his employment. None of the three general types of exclusions from FTCA liability apply. The *Feres* doctrine does not apply to this claim because it involved personal injury to a military dependent not to active duty military personnel. Therefore, this claim is payable under the FTCA. The value of medical care and rehabilitation services Mrs. Shimmy received at the Naval Hospital will be deducted from her compensation; however, she will be compensated for all other nongovernmental medical services as well as for the pain and suffering she endured, the wages she has lost already (and likely will lose in the future), and the permanent nature and disfigurement of her injury. No claim will lie against CDR Badknife individually.

MILITARY CLAIMS ACT

Like the FTCA, the Military Claims Act, 10 U.S.C. § 2733 (1982) (MCA), compensates for personal injury, death, or property damage caused by activities of the federal government. MCA claims are limited to two general types: (1) injury, death, or property damage caused by military personnel or civilian employees acting within the scope of their employment and (2) injury, death, or property damage caused by noncombatant activities of a peculiarly military nature.

The MCA provides compensation for certain claims that are not payable under the FTCA. First, its application is worldwide. Also, the claimant has no right to sue the government if his or her MCA claim is denied by the adjudicating authority. Finally, unlike the FTCA that creates statutory rights for claimants, the MCA is operative only "under such regulations as the Secretary of a military department may prescribe." Each service Secretary has issued regulations stating under what circumstances claims will be paid by his or her department under the MCA. A claimant has no greater rights than what is prescribed by each service's regulations.

SCOPE OF LIABILITY

The MCA is limited to two rather broad categories of claims: those arising from the acts of military employees in the scope of their employment and those incident to noncombatant activities of a peculiarly military nature.

The Department of the Navy is liable under the MCA for injury, death, or property damage caused by its military members or civilian employees acting within

the scope of their employment. Although MCA regulatations do not specifically require the claimant to establish governmental negligence to be able to recover damages under the MCA, OJAG has opined informally that the term *caused by* means negligently caused by. The concept, then, of causation under the MCA is the same as that required under the FTCA. Also, the scope of employment concept under the MCA is identical to that required under the FTCA claims.

The Department of the Navy also is liable under the MCA for injury, death, or property damage incident to noncombat activities of a peculiarly military nature. Examples include claims such as those arising out of maneuvers, artillery and bombing exercises, naval exhibitions, aircraft and missile operations, and sonic booms. Under this second theory of MCA liability, the claims need not show that the activities were belligerently conducted. In fact, the claimant's losses need not be traced to the conduct of any specific federal employees. The scope of employment concept does not apply.

The MCA applies worldwide. If a claim arising in a foreign country is cognizable under the FCA, however, it will be processed under that statute and not as an MCA claim. If the claim is denied, the claimant does not have the right to sue.

EXCLUSIONS FROM LIABILITY

As with FTCA claims, there are three general categories of exclusions from liability under the MCA: certain exempted activities; claims cognizable under other claims statutes; and certain excluded classes of Claimants.

Exempted Governmental Activities

A claim will not be payable under the MCA if it involves an exempted governmental activity. The most frequent examples include the following:

- Combat activities or enemy action
- Certain postal activities
- Property damage claims based on alleged contract violations by the government

Claims Cognizable Under Other Claims Statutes

Claims that are governed by one of the following claims statutes are not payable under the MCA:

- Federal Tort Claims Act
- Military Personnel and Civilian Employees' Claims Act
- Foreign Claims Act
- Certain admiralty claims

Excluded Classes of Claimants

Military members and civilian employees of the Department of the Navy may not recover under the MCA for personal injury or death occurring incident to service or employment. Compensation may be recovered for property damage under the MCA if it is not covered by another claims statute. As a practical matter, however, when a military member suffers property damage incident to service, it will usually be compensated under the Military Personnel and Civilian Employees' Claims Act.

Nationals of an ally of a country at war with the United States, unless the individual claimant is determined to be friendly to the United States, are excluded from MCA coverage.

Generally, a claim will not be paid under the MCA if the injury, death, or personal property damage was caused in whole or in part by the claimant's own negligence or wrongful acts. This contributory negligence is a complete bar to tort recovery in many states. However, if the law of the jurisdiction where the claim arose would allow recovery in a lawsuit, even though the claimant was negligent, the MCA claim can be paid. Under such circumstances, the negligent claimant will only recover that amount that local law would permit a negligent claimant to recover in its courts. This partial recovery concept is known as the comparative negligence doctrine.

MEASURE OF DAMAGES

The rules for determining the amount of a claimant's recovery under the MCA arc similar to those governing other claims.

The amount of compensation for property damaged is based on the estimated cost of restoring the property to its condition before the incident. If the property cannot be repaired economically, the measure of damage will be the replacement cost of the property minus any salvage value. The claimant also may recover compensation for loss of use of the property.

Compensation under the MCA for personal injury or death will include items such as medical expenses, lost earnings, diminished earning capacity, pain and suffering, and permanent disability. Usually, local standards are applied.

The following amounts are excluded from a claimant's MCA recovery:

- Interest
- Cost of preparing the claim
- Attorney's fees
- Compensation for inconvenience to the claimant

The Department of the Navy may pay MCA claims up to $ l00,000. If the Secretary of the Navy considers that a claim in excess of $100,000 is meritorious, a partial payment of $100,000 may be made with the balance referred to the General Accounting Office for payment from appropriations provided therefore.

STATUTE OF LIMITATIONS

A claim under the MCA may not be paid unless it is presented in writing within 2 years after it accrues. The statute of limitations may he suspended during time of armed conflict. The rules governing presentment of the claim are substantially similar to those under the FTCA.

PROCEDURES

The investigation and adjudication procedures for MCA claims are substantially similar to those for FTCA claims. In fact, many claims paid under the MCA were initially presented as FTCA claims. The significant procedural differences under MCA are as follows:

- Advance payments. In limited circumstances, the Secretary of the Navy, or a designee, is authorized to make an advance payment not to exceed $1,000 to, or on behalf of, any person suffering injury, death, or property damage resulting from an incident covered by the MCA or the FCA. This payment may be made before the claimant presents a written claim. Advance payments may be made only when the claimant or the claimant's family is in immediate need of funds for necessities (shelter, clothing, medical care, or burial expenses). Other resources must not be available, An advance payment is not an admission of government liability. The amount of the advance payment will be deducted from any settlement subsequently authorized.

- Dollar limits on adjudicating authorities. FTCA adjudicating authorities also adjudicate MCA claims. Dollar limitations are set forth in par. 9, enclosure (2) of JAGINST 5890.1. All adjudicating authorities may make advance payments.

- Claimant's right to appeal. There is no right to sue under the MCA after an administrative denial of an MCA claim. If an MCA claim is denied, in whole or in part, the claimant may appeal to JAG within 30 days after the denial.

Claim Form

A claim is correct in form if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, with a claim for money damages in a sum certain. A Standard Form 95 is preferred. A claim should be substantiated. A claim must be substantiated as required by JAGINST 5890.1 in order to be paid.

A proper claim maybe amended by the claimant at any time before final denial or payment of the claim. An amendment is submitted in writing and signed by the claimant or a duly authorized agent or legal representative.

Payment

Claims approved for payment are sent to such disbursing officers as are designated by the Comptroller of the Navy for payment from appropriations designated for that purpose.

Final Disposition

The adjudicating authority notifies the claimant, in writing, of the action taken on the claim. A final denial, in whole or in part, of any MCA claim will be in writing and sent to the claimant, or his or her attorney or legal representative, by certified or registered mail, return receipt requested. The notification of denial will include a statement of the reason(s) for denial and that the claimant may appeal. The notification will also inform the claimant of the following:

- The title of the appellate authority who will act on the appeal and that the appeal will be addressed to the adjudicating authority who last acted on the claim.
- No form is prescribed for the appeal, but the grounds for appeal should be set forth fully.

- The appeal must be submitted within 30 days of receipt by the claimant of notice of action on the claim.

Appeal

A claim that is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. An appeal will be in writing and state the grounds relied upon. An appeal is not an adversary proceeding and a hearing is not authorized; however, the claimant may obtain and submit any additional evidence or written argument for consideration by the appellate authority.

Processing of the appeal may be delayed pending further efforts by the adjudicating authority to settle the claim. Where the adjudicating authority does not reach a final agreement on an appealed claim, he or she will send the entire claim file to the next higher settlement authority who is the appellate authority for that claim.

The appellate authority will notify the claimant in writing of the determination on appeal; that such determination constitutes the final administrative action on the claim; and there is no right to sue under the MCA.

EXAMPLES

1. Facts. A Navy aircraft crashed, utterly demolishing an automobile owned by Mr. Smashed, a civilian. Mr. Smashed has presented an MCA claim for the fair market value of his car. Can he recover?

Solution. Yes. This claim falls under the second theory of MCA liability—an incident arising out of noncombat activities of a peculiarly military nature. None of the exclusions from liability apply. This incident does not involve an exempted governmental activity. It is not covered by any other claim statute. The FTCA would not apply because the facts do not indicate any negligence by any federal employee. (If the crash had been caused by the Navy pilot's negligence, it would be compensable under the FTCA.) Mr. Smashed does not belong to an excluded class of claimants. There is no evidence that his actions in any way caused the incident; therefore, Mr. Smashed can recover the value of his car-less any salvage value.

2. Facts. While conducting gunnery exercises aboard USS *Shotinthedark,* naval personnel miscalculated and accidentally shot a shell into the fleet parking lot. The shell completely destroyed an automobile owned by ENS Noluck who was on duty aboard one of the ships tied up at a nearby pier. ENS Noluck has filed an MCA claim. Is this claim payable under the MCA?

Solution. No. Although this incident involved noncombatant activities of a peculiarly military nature and was also caused by naval personnel acting within the scope of employment, the MCA does not apply. A claim that is cognizable under the Military Personnel and Civilian Employees' Claims Act is not payable under the MCA. Because compensation for this motor vehicle loss is available as a personnel claim, it is not payable under the MCA. However, ENS Noluck's recovery will be limited to the $2,000 amount prescribed under the personnel claims regulations and not the greater amount payable under the MCA.

Special points. Perhaps you were thinking that, since the Military Personnel and Civilian Employees' Claims Act limits payments for automobile claims to $2,000, the MCA could be used to pay the amount of ENS Noluck's loss that is in excess of the $2,000 limit. No such luck. JAG has interpreted the phrase cognizable under the Military Personnel and Civilian Employees' Claims Act to mean payable under the Military Personnel and Civilian Employees' Claims Act. Accordingly, in this particular situation, the Military Personnel and Civilian Employees' Claims Act is considered to be the exclusive remedy available to pay for the damages to ENS Noluck's automobile.

CLAIMS AGAINST THE GOVERNMENT-SPECIALIZED CLAIMS STATUTES

The general claims statutes discussed earlier in this chapter cover abroad range of losses and incidents. The specialized claims statutes are limited to certain types of losses suffered by specific classes of claimants occurring under certain specific circumstances. The specialized claims statutes interact with the general claims statutes in two ways. First, they may permit compensation for certain losses, claimants, or incidents not covered by one of the general claims statutes. Some of the specialized statutes were enacted to plug gaps in the general claims statutes. Second, the specialized claims statutes often act as exclusions from liability under general statutes. For example, a claim that otherwise would be payable under the FTCA or the MCA cannot be paid under those statutes if it is also cognizable under the Military Personnel and Civilian Employees' Claims Act.

MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT

The Military Personnel and Civilian Employees' Claims Act of 1964,31 U.S.C. § 3721 (1982) (hereafter called the Personnel Claims Act [PCA]), is a gratuitous payment statute intended to maintain morale by compensating service members and other federal employees for personal property that is lost, damaged, or destroyed incident to service.

Like the MCA, the PCA contemplated payment of claims under such regulations as the head of an agency may prescribe. Personnel claims regulations in other services are similar to the Navy's, but are not identical.

SCOPE OF LIABILITY

The PCA is limited to recovery for personal property damage that includes the loss, destruction, capture, or abandonment of personal property. Damage to real property (land, buildings, and permanent fixtures) is not covered, but maybe compensated under the MCA. Also, remember that the PCA applies worldwide.

Only military personnel and civilian employees of the Department of Defense may recover compensation. Military personnel include commissioned officers, warrant officers, enlisted personnel, and other appointed military members. Civilian employees include those paid by the Department of the Navy on a contract basis.

To be payable under the PICA, the claimant's loss must have occurred incident to military service or employment. Eleven general categories of losses incident to service exist. These categories include the following:

1. Property losses in quarters or other authorized spaces designated by superior authority for storage of the claimant's personal property

2. Transportation losses, such as damage to household goods shipped pursuant to PCS orders

3. Losses caused by marine or aircraft disaster

4. Losses incident to combat or other enemy action

5. Property damage by being subjected to extraordinary risks

6. Property used for the benefit of the U.S. Government

7. Losses caused by the negligence of a federal employee acting within the scope of employment

8. Money deposited with authorized personnel for safekeeping, deposit, transmittal, or other authorized disposition

9. Certain noncollision damage to motor vehicles (limited to $2,000, not including the contents of the vehicle)

10. Damage to house trailers and contents while on federal property or while shipped under government contract

11. Certain thefts aboard military installations from the possession of the claimant.

NOTE: Within each of these 11 categories are numerous specific types of incidents and circumstances. The rules governing each of these 11 areas can be complex and detailed. Therefore, it is absolutely necessary to refer to JAGINST 5890.1 to determine whether a particular personnel claim is contemplated by one of the 11 categories.

Not only must the property damage or loss occur incident to service, the claimant's possession and use of the damaged property must have been reasonable, useful, or proper under the circumstances. While the PCA provides broad protection for the military member's personal property, the government has not undertaken to insure all property against any risk. A personnel claim will usually be denied if the claimant's possession or use of damaged property was unreasonable under the circumstances. Thus, while possession of an inexpensive radio in a locker in the barracks is reasonable under most circumstances, keeping a $1,500 stereo system in the locker usually is not. Whether the possession or use of the property was reasonable, useful, or proper is largely a matter of judgment by the adjudicating authority. Factors that are considered include, but are not limited to, the claimant's living conditions, reasons for possessing or using the property, efforts to safeguard the property, and the foreseeability of the loss or damage that occurred.

EXCLUSION FROM LIABILITY

Exclusions from personnel claims liability fall into three general categories. The two most common examples are as follows:

- Caused by claimant's negligence. If the property damage was caused, either in whole or in part, by the claimant's negligence or wrongful acts, or by such conduct by the claimant's agent or employee acting in the scope of employment, the personnel claim will be

denied. Such contributory negligence is a complete bar to recovery.

- Collision damage to motor vehicle. Damage to motor vehicles is not payable as a personnel claim when it was caused by collision with another motor vehicle. "Motor vehicle" includes automobiles, motorcycles, trucks, recreational vehicles, and any other self-propelled military, industrial, construction, or agricultural equipment. Collision claims may be paid under other claims statutes—most frequently the FTCA or MCA—depending on the circumstances.

JAGINST 5890.1 limits or prohibits recovery for certain types of property damage. The most common examples are as follows:

- Currency or jewelry shipped or stored in baggage
- Losses in unassigned quarters in the United States
- Enemy property or war trophies
- Unserviceable or worn-out property
- Articles acquired for persons other than the claimant and members of his or her immediate household
- Inconvenience or loss of use expenses
- Items of speculative value
- Business property
- Sales tax
- Appraisal fees
- Quantities of property not reasonable or useful under the circumstances
- Articles being worn except under certain limited circumstances
- Intangible property representing ownership or interest in other property, such as bankbooks, checks, stock certificates, and insurance policies
- Government property
- Contraband (property acquired, possessed, or transported in violation of law or regulations)

MEASURE OF DAMAGE

The rules for calculating the amount the claimant can recover on a personnel claim are not complicated. The provisions of JAGINST 5890.1, encl. (5), for computing the amount of award may be summarized as follows:

- If the property can be repaired, the claimant will receive reasonable repair costs established either by a paid bill or an estimate from a competent person. Estimate fees may also be recovered under certain circumstances. Deductions may be made for any preexisting damage (damage or defects that existed before the incident that gave rise to the personnel claim) that also would be repaired. If the cost of repairing the property exceeds its depreciated replacement cost, however, the property will be considered not economically repairable.

- If the property cannot be economically repaired the claimant will recover an amount based on the property's replacement cost. This amount is reduced to reflect any depreciation. Schedules of depreciation deductions are published by JAG. The schedules do not normally require depreciation for items less than 6 months old. Older items are depreciated on a basis of a percentage of the replacement cost for each year the claimant owned the property. Depreciation deductions are not usually taken for certain expensive items that appreciate in value over time (antiques, heirlooms, valuable jewelry) or for relatively unique items such as original works of art. Deductions may also be taken when the claimant retains property that cannot be economically repaired, but nonetheless retains a significant salvage value.

The maximum amount payable under the PCA is $40,000. Lower maximum amounts may be imposed for certain types of property. For example, noncollision damage claims for motor vehicles are limited to $2,000, except when the vehicle is being shipped pursuant to PCS orders.

STATUTE OF LIMITATIONS

The statute of limitations for personnel claims is 2 years, although it can be suspended during time of armed conflict. In household goods claims, however, the claimant must act relatively promptly. Failure to take exceptions when the goods are delivered by the carrier, or within 70 days, may result in reduced payment. Also, failure to file the claim in time for the federal government to recover compensation from the earner under the carrier's contract with the government may also result in reduced payment.

PROCEDURES

Personnel claims procedures follow the same general pattern of presentment, investigation, and adjudication discussed with respect to FTCA claims. There are, however, some significant differences. Procedures in household goods shipment claims, which constitute the largest portion of personnel claims, can be complicated. The most notable differences and distinctions are as follows:

- Claim forms. Personnel claims are presented on DD Form 1842, Claim for Loss of or Damage to Personal Property Incident to Service, a copy of which is reproduced in appendix 5-1 of JAGINST 5890.1, encl. (5), and illustrated in figure 12-2.

CLAIM FOR LOSS OF OR DAMAGE TO PERSONAL PROPERTY INCIDENT TO SERVICE

PART I - TO BE COMPLETED BY CLAIMANT *(See reverse side for Privacy Act Statement and Instructions.)*

1. NAME OF CLAIMANT *(Last, First, Middle Initial)*	2. BRANCH OF SERVICE	3. RANK OR GRADE	4. SOCIAL SECURITY NUMBER
Doe, John J.	USN	E-5	123-45-6789

5. HOME ADDRESS *(Street, City, State and Zip Code)*	6. CURRENT MILITARY DUTY ADDRESS *(If applicable) (Street, City, State and Zip Code)*
1111 Navy Blvd Pensacola FL 32507	NAS Pensacola FL 32508-1000

7. HOME TELEPHONE NO. *(Include area code)*	8. DUTY TELEPHONE NO. *(Include area code)*	9. AMOUNT CLAIMED
(904) 123-4567	(904) 234-5678	$673.98

10. CIRCUMSTANCES OF LOSS OR DAMAGE *(Explain in detail. Include date, place, and all relevant facts. Use additional sheets if necessary.)*

HHGs were picked up by Bay Shore Lines on 11 February 1994 and delivered to residence on 12 March 1994. Upon inspection it was noted that one (1) cartoon was missing, and the sofa, king-size headboard, and the china cabinet were damaged.

	YES	NO
11. DID YOU HAVE PRIVATE INSURANCE COVERING YOUR PROPERTY? *(E.g., say "Yes" on a shipment or quarters claim if you had transit, renter's or homeowner's insurance; say "Yes" on a vehicle claim if you had vehicle insurance. Attach a copy of your policy.)*		X
12. HAVE YOU MADE A CLAIM AGAINST YOUR PRIVATE INSURER? *(If "Yes," attach a copy of your correspondence. If you have insurance covering your loss, you must submit a demand before you submit a claim against the Government.)*		X
13. HAS A CARRIER OR WAREHOUSE FIRM INVOLVED PAID YOU OR REPAIRED ANY OF YOUR PROPERTY? *(If "Yes," attach a copy of your correspondence with the carrier or warehouse firm.)*		X
14. DID ANY OF THE CLAIMED ITEMS BELONG TO THE GOVERNMENT OR TO SOMEONE OTHER THAN YOU OR YOUR FAMILY MEMBER? *(If "Yes," indicate this on your "List of Property and Claims Analysis Chart," DD Form 1844.)*		X
15. WERE ANY OF THE CLAIMED ITEMS ACQUIRED OR HELD FOR SALE, OR ACQUIRED OR USED IN A PRIVATE PROFESSION OR BUSINESS? *(If "Yes," indicate this on your "List of Property and Claims Analysis Chart," DD Form 1844.)*		X

16. UNDER PENALTY OF LAW, I DECLARE THE FOLLOWING AS PART OF SUBMITTING MY CLAIM:

If any missing items for which I am claiming are recovered, I will notify the office paying this claim. *(For shipment claims.)* Missing items were packed by the carrier; they were owned prior to shipment but not delivered at destination; after my property was packed, I/my agent checked all rooms in my dwelling to make sure nothing was left behind.

I assign to the United States any right or interest I have against a carrier, insurer, or other person for the incident for which I am claiming; I authorize my insurance company to release information concerning my insurance coverage.

I authorize the United States to withhold from my pay or accounts for any payments made to me by a carrier, insurer, or other person to the extent I am paid on this claim, and for any payment made on this claim in reliance on information which is determined to be incorrect or untrue. I have not made any other claim against the United States for the incident for which I am claiming. I understand that if any information I provide as part of my claim is false, I can be prosecuted.

17. SIGNATURE OF CLAIMANT *(or designated agent)*	18. DATE SIGNED *(MMDDYY)*
John J. Doe	032194

PART II - CLAIMS APPROVAL *(To be completed by Claims Office)*

19. PROCEDURE *(X one)*	20. AMOUNT AWARDED. The claim is cognizable and meritorious under 31 U.S.C. 3721; the claimant is a proper claimant; the property is reasonable and useful; the loss has been verified in accordance with applicable procedures as prescribed by the controlling departmental regulation; and the following award is substantiated:	
a. SMALL CLAIMS		
b. REGULAR CLAIMS		$

21. SIGNATURES *(Signatures at a and c not required if small claims procedure is utilized.)*

a. CLAIMS EXAMINER	b. DATE SIGNED *(MMDDYY)*	c. REVIEWING AUTHORITY	d. DATE SIGNED *(MMDDYY)*

e. TYPED NAME AND GRADE OF APPROVING AUTHORITY	f. SIGNATURE OF APPROVING AUTHORITY	g. DATE SIGNED *(MMDDYY)*

DD Form 1842, DEC 88 *Previous editions may be used until exhausted.* S/N 0102-LF-006-6000 1191/350

Figure 12-2A.—Sample DD Form 1842, Claim for Loss of or Damage to Personal Property Incident to Service (front).

Privacy Act Statement

AUTHORITY: 31 U.S.C. 3721, and EO 9397, November 1943 (SSN).

PRINCIPAL PURPOSE: Filing, investigation, processing and settlement of claims for losses incident to service.

ROUTINE USES:

a. Information is principally used to provide a legal basis for the administrative payment of claims against the Government. Information is also used in connection with:

(1) Recovery from common carriers, warehouse firms, insurers and other third parties.

(2) Collection from claimants of improper payments or overpayments.

(3) Investigation of possible fraudulent claims.

(4) Possible criminal prosecution by the Department of Justice or other agencies if fraud is established.

b. Social Security Numbers are used to assure correct identification of claimants in order to assure payment to the proper claimant and avoid duplication of claims.

DISCLOSURE: Voluntary; however, failure to supply information will cause delay in settlement and may result in denial of a portion or all of the claim.

INSTRUCTIONS TO CLAIMANTS

1. You must submit your claim in writing within two years of the date of the incident giving rise to the claim. This two year time limitation may not be waived.

2. The claimant or an authorized agent must complete and sign Part I of this form, answering all questions. If the claim is signed by an agent *(such as a spouse)* or a survivor of a deceased proper claimant, that person must have a document showing his or her authority to present the claim, such as a power of attorney, etc.

3. If the claim is for property lost or damaged while being shipped or stored pursuant to travel orders, submit copies of your orders and all shipping documents, including your inventory and your "Joint Statement of Loss or Damage at Delivery/Notice of Loss or Damage," DD Forms 1840/1840R. If you notice damage after delivery, you must complete the DD Form 1840R and get it to the Claims Office within 70 days after delivery.

4. You may obtain further information from a Claims Office.

5. You are entitled to claim the following:

a. Reasonable local repair cost, if an item can be economically repaired. *(You may claim small amounts without an estimate. Otherwise, submit an estimate of repair from a repair firm or, if repairs have been completed, your receipt. The claims office may waive this in appropriate cases.)*

b. Reasonable local replacement cost if an item is missing, destroyed, or not economic to repair. *(Replacement costs may be obtained from commercial catalogs or a military exchange. If you cannot find the item in a catalog or the exchange and the cost is more then $100.00, obtain a statement from a commercial firm for the cost of a similar item. If you have purchase receipts, bring these to the Claims Office as well.)*

c. Reasonable cost of obtaining local estimates of repair, if the cost of such estimates will not be credited if repair work is done. *(Normally, you may not claim appraisal fees.)*

PART III - DENIAL OR SUPPLEMENTAL PAYMENT *(To be completed by Claims Office)*

☐ **23. DENIAL** *(X if applicable)* The claim is not cognizable or meritorious under 31 U.S.C. 3721 and the applicable provisions of the controlling departmental regulation, and is denied.	☐ **24. SUPPLEMENTAL PAYMENT** *(X and complete if applicable)* The claim is cognizable and meritorious under 31 U.S.C. 3721, and the following additional award is substantiated: $

25. SIGNATURES

a. CLAIMS EXAMINER	b. DATE SIGNED *(MMDDYY)*	c. REVIEWING AUTHORITY	d. DATE SIGNED *(MMDDYY)*

26. APPROVING/SETTLEMENT AUTHORITY *(Settlement Authority is required for denial.)*

a. TYPED NAME AND GRADE	b. SIGNATURE	c. DATE SIGNED *(MMDDYY)*

DD Form 1842 Reverse, DEC 88

*U.S. Government Printing Office: 1990-704-010/04257 2-1

Figure 12-2B.—Sample DD Form 1842, Claim for Loss of or Damage to Personal Property Incident to Service (back).

- Supporting documentation. Supporting documentation in personnel claims can be rather extensive. DD Form 1844, List of Property and Claims Analysis Chart, usually is required. A sample DD Form 1844 is reproduced in appendix 5-2 of JAGINST 5890.1, encl. (5), and illustrated in figure 12-3. Also, other documentation (such as copies of orders, bills of lading, inventories, copies of demands on carriers, and written repair estimates) may be required. JAGINST 5890.1 sets forth the extent and type of documentation and supporting evidence required. These documents should not be treated lightly. DD Form 1840/1840R,

LIST OF PROPERTY AND CLAIMS ANALYSIS CHART

ITEMS 14 THROUGH 31 TO BE FILLED OUT BY CLAIMS OFFICE

1. NAME OF CLAIMANT (Last, First, Middle Initial): Jones, John P.
2. CLAIMANT'S INSURANCE COMPANY (If applicable): a. NAME: USAA; b. POLICY NO: 123456
3. PICK-UP DATE (MMDDYY): 032194
4. DELIVERY DATE (MMDDYY): 043094
14. ORIGIN CONTRACTOR: Rusty Whse
17. 2ND CONTRACTOR: WEMOVEIT Van Lines
21. CLAIM NUMBER: 90-0582
22. NET WT/MAX CAR LIABLT.: 1800 x 1.25= $2,250.00
15. INVENTORY DATE (MMDDYY):
18. EXCEPTION SHEET DATE (MMDDYY): 051594
23. GBL NUMBER: QB-123,456
24. LOT NUMBER: 001

5. LINE NO.	6. QTY	7. LOST OR DAMAGED ITEMS (Describe the item fully, including brand name, model and size. List the nature and extent of damage. If missing, state "MISSING.")	8. INV NO.	9. ORIGINAL COST / 10. MM/YY PURCHASED	11. AMOUNT CLAIMED a. REPAIR COST / b. (OR) REPL COST	16. EXCEPTIONS	19. INV NO.	20. EXCEPTIONS	25. AMOUNT ALLOWED	26. ADJUDICATOR'S REMARKS	27. ITEM WT	28. WARE HOUSE LIABILITY	29. CARRIER LIABILITY
1	1	Sony Color TV 27" missing	30	575 / Jun85	595				(297.)	Ins pd 50% D			297.
2	1	Rug with Pad Can't be cleaned Wet and Mildewed	35	750 / Dec85	950				930.	Ins pd 768.64			903.
3	1	Lamp shade shattered	20	60 / Dec86	65	5.2 ctn glass lamp-shade cp	21	5.2 ctn crushed glass broken	46.00	30% D SV/N		46.00	
4	1	Sofa 12" rip, Cushion missing	40	1400 / Sep85	700		40	arm so	560.	300 labor fabric 20% D			560.
5	1	Dresser gouged and scratched	42	995 / Sep85	250	SC 4-8-12 5-4-3			225.00	ER, exl less 10% PED		50.00	PED 0

12. REMARKS:

13. TOTAL AMOUNT CLAIMED: $ 2560.

30. TOTAL AMOUNT ALLOWED: $ 2031. / 1066. / 965.

31. THIRD PARTY LIABILITY: $ 96.00

$ 1760.

DD Form 1844 — Previous editions are obsolete. — Page of Pages

Figure 12-3.—Sample DD Form 1844, List of Property and Claims Analysis Chart.

Notice of Loss or Damage (fig. 12-4), must be submitted to a personal property office within 70 days of the delivery. Failure to furnish it means the military member will not recover anything for lost or damaged articles because the government must file with the carrier by 75 days.

- Investigation. The CO of the military organization responsible for processing the claim refers the claim to a claims investigating officer. At large commands, the claims investigating officer is often a full-time civilian employee, The claims investigating officer's duties include reviewing the claim and its supporting documentation for completeness and, if necessary, examining the property damage. The claims investigating officer will also prepare and present a concurrent claim on behalf of the federal government

NOTICE OF LOSS OR DAMAGE

INSTRUCTIONS TO MEMBER You have up to 70 days to inspect your property and note all loss and/or damage. Should you find any loss or damage not reported on DD Form 1840 at the time of delivery, complete Section A below. Use only ball point or typewriter. **THE COMPLETED FORM MUST BE DELIVERED TO YOUR LOCAL CLAIMS OFFICE NOT LATER THAN 70 DAYS FROM DATE OF DELIVERY. FAILURE TO DO SO MAY RESULT IN A REDUCTION OF THE AMOUNT PAYABLE ON YOUR CLAIM.** Keep a copy of this form for your records, receipted and dated by the Claims Office. If more than one page is needed, please number the pages.

SECTION A - *(To be completed by member)*

1. STATEMENT OF PROPERTY LOSS/DAMAGE. You are hereby notified of the loss and/or damage in the following shipment of personal property.

a. MEMBER'S NAME *(Last, First, Middle Initial)*	b. DEPARTURE POINT	
JONES, John P.	San Diego, California	
c. ARRIVAL POINT	d. GBL NUMBER	e. DATE OF DELIVERY
Alexandria, Virginia	QB-123-456	28 FEB 1994

f. You are further notified that property owner intends to present a claim for this loss and/or damage. You are hereby extended an opportunity to inspect the property. The estimated amount of loss/damage is *(x one)* [ ] under $500 [X] over $500

2. LIST OF PROPERTY LOSS/DAMAGE. *(NOTE: Tracer action is requested for items listed as missing)*

a. INVENTORY NO	b. NAME OF ITEM	c. GENERAL DESCRIPTION OF LOSS OR DAMAGE *(If missing, so indicate)*
35	Rug & Pad	Wet and mildewed
20	Lampshade	Shattered glass
42	Dresser	Gouged and Scratched

SECTION B - *(To be completed by Claims Office) (NOTE: MAIL ORIGINAL TO HOME OFFICE OF CARRIER)*

3. TO: *(Home Office of Carrier) (Include ZIP Code)*	3a. DATE OF DISPATCH
WEMOVEIT Van Lines 1150 Moveit Street Jacksonville, TN 32223	

4. YOUR REPRESENTATIVE MAY CONTACT THIS CLAIMS OFFICE FOR ASSISTANCE:

4a. NAME AND ADDRESS OF CLAIMS OFFICER	4b. SIGNATURE	
	4c. DATE SIGNED	4d. TELEPHONE NO

DD FORM 1840R (Reverse), 84 SEP

Figure 12-4.—Sample DD Form 1840R, Notice of Loss or Damage.

against any carriers liable for the damage under their government contract.

- Adjudication. Personnel claims adjudicating authorities and their respective payment limits are listed in section 7 of JAGINST 5890.1, encl. (5). For Marine Corps personnel, personnel claims are adjudicated at Headquarters, Marine Corps.

- Advance payments. When the claimant's loss is so great that the claimant immediately needs funds to provide fundamental necessities of life, the adjudicating authority may make an advance partial payment—normally one-half of the estimated total payment.

- Reconsideration. The claimant may request reconsideration of the claim, even though he or she has accepted payment, if the claim was not paid in full. If the adjudicating authority does not resolve the claim to the claimant's satisfaction, the request for reconsideration is forwarded to the next higher adjudicating authority. There is no right under the PCA to sue the government.

- Effect of claimant's insurance. If the claimant's property is insured in whole or in part, the claimant must file a claim with the insurer as a precondition to recovery under the PCA. The PCA is intended to supplement any insurance the claimant has; it is not intended to be an alternative to that insurance or to allow double recovery. If the claimant receives payment under his or her insurance policy for the claimed property damage, the amount of such payment will be deducted from any payment authorized on the PCA claim. Likewise, if the claimant receives payment on his or her personnel claim, and then is paid for the same loss by an insurance company, the claimant must refund the amount of the insurance payment to the federal government.

EXAMPLES

1. Facts. Airman Hero was standing near the hangar when an aircraft crashed while landing. An officer told Hero to jump into a vehicle and go to the crash scene to help out in any way he could. Airman Hero immediately complied. At the scene, Airman Hero assisted an injured crew member from the wreckage. In doing so, Airman Hero badly ripped his uniform pants on a jagged piece of debris, and the intense heat melted the plastic case of his watch. Airman Hero has presented a personnel claim for his pants and watch. Will he collect?

Solution. Yes. Although damage to articles being worn is not usually payable under the PCA, an exception exists when the loss is caused by fire, flood, hurricane, theft or vandalism, or other unusual circumstances. In this case, Airman Hero was performing an official duty in response to an aircraft disaster and suffered property damage while trying to save lives. This situation meets the requirements of unusual occurrence and, therefore, the claim is payable.

2. Facts. While parked in an authorized parking space during working hours, Seaman Rolledover's automobile was destroyed by a runaway government steamroller operated by Mr. Pancake, a civilian Navy employee acting in the scope of his employment. The car, presently valued at $3,800, is a total loss. Seaman Rolledover's insurance policy does not cover steamroller accidents, so Seaman Rolledover has filed a personal claim for $3,800. Can he collect?

Solution. Yes (but not under the PCA), Although this loss appears to be incident to service, collision damage to automobiles is specifically excluded from payment under the PCA. Like many other vehicle collision claims, Seaman Rolledover's claim is payable under the MCA because his loss was caused by a federal employee acting in the scope of employment. This claim is not payable under the FTCA because the *Feres* doctrine effectively prevents such claims by military members. Where one act may not cover Seaman Rolledover's loss, another statute will. The fact that this claim is not payable under the PCA actually works in Seaman Rolledover's benefit. Under the MCA, Seaman Rolledover can recover the entire $3,800 he claimed. Under the PCA, the maximum amount payable for noncollision vehicle damage is usually only $2,000.

FOREIGN CLAIMS ACT

The Foreign Claims Act, 10 U.S.C. § 2734-2736 (1982) (FCA), provides compensation to inhabitants of foreign countries for personal injury, death, or property damage caused by, or incident to noncombat activities of military personnel overseas. Although the U.S. Government's scope of liability under the FCA is broad, certain classes of claimants and certain types of claims are excluded from the statute's coverage. Procedures for adjudicating an FCA claim are substantially different from the general procedural pattern for other types of claims against the government.

Chapter VIII, part B, of the *JAG Manual* prescribes the requirements for the investigation and adjudication of FCA claims.

SCOPE OF LIABILITY

The government's liability under the FCA is somewhat parallel to that under the MCA. Liability is based on two general theories: (1) loss caused by military personnel and (2) loss incident to noncombat military activities. The government's liability under the FCA is generally greater than under the MCA. On the other hand, the FCA is more limited than the MCA in terms of eligible claimants and territorial application.

Loss Caused by Military Personnel

Under the FCA, the government is liable for personal injury, death, and property damage, including both real and personal property, caused by military members or civilian military employees. Unlike the FTCA and the MCA, the scope of employment doctrine does not apply except when the civilian employee is a native foreign national (for example, a Spanish citizen employed by the U.S. Government in Spain who must be acting within the scope of employment for a possible recovery under the FCA). Also, unlike FTCA claims, the acts that caused the loss need not be wrongful or negligent. The government assumes liability for virtually all acts ranging from mere errors in judgment to malicious criminal acts.

Loss Incident to Noncombat Military Activities

The second theory of FCA liability is virtually identical to the second basis for liability under the MCA. The government assumes liability for personal injury, death, or property damage, both real and personal property, caused by, or incident to, noncombat military activities. Such activities are peculiarly military, having little parallel in civilian life, and involve situations in which the federal government historically has assumed liability. If such a loss incident to noncombat military activities is payable both under the FCA and also under the MCA, it will be paid under the FCA.

Effect of Claimant's Negligence

A claimant whose negligent or wrongful conduct partially or entirely caused the loss might be prevented from recovery under the FCA. The effect, if any, of the claimant's contributory or comparative negligence is determined by applying the law of the country where the claim arose. Under such circumstances, the claimant recovers under the FCA only to the extent that his or her own courts would have permitted compensation.

Territorial Application

The FCA applies to claims arising outside the United States, its territories, commonwealths, and possessions. The fact that the claim arises in a foreign country, but in an area that is under the temporary or permanent jurisdiction of the United States (for example, an overseas military base), does not prevent recovery under the FCA.

Relationship to Claims Under Treaty or Executive Agreement

Certain treaties and executive agreements, such as Article VIII of the NATO Status of Forces Agreement, contain claims provisions that may be inconsistent with the FCA principles and procedures. When such treaty or executive-agrccnwn (claims provisions conflict with the FCA, the treaty or the executive agreement usually governs. In countries where such treaty or cxccutivc-agreement provisions arc in effect, directives of the cognizant area coordinator should be consulted before processing any claims by foreign nationals.

EXCLUSIONS FROM LIABILITY

There are two general categories of exclusions from FCA liability: excluded types of claims and excluded classes of claimants.

Excluded Types of Claims

The following types of claims we not payable under the FCA:

- Claims that are based solely on contract rights or breach of contract
- Private contractual and domestic obligations of individual military personnel or civilian employees (private debt owed to foreign merchant)
- Claims based solely on compassionate grounds
- Claims for support of children born out of wedlock where paternity is alleged against a service member
- Claims for patent infringements
- Claims arising directly or indirectly from combat activities
- Admiralty claims unless otherwise authorized by JAG

Excluded Classes of Claimants

The following types of classes of claimants are excluded from recovering under the FCA:

- Inhabitants of the United States, including military members and dependents stationed in a foreign country and U.S. citizens and resident aliens temporarily visiting the foreign country
- Enemy aliens, unless the claimant is determined to be friendly to the United States
- Insurers and subrogee

MEASURE OF DAMAGES

Damages under the FCA are determined by applying the law and local standards of recovery of the country where the incident occurred.

The maximum amount payable under the FCA is $100,000. In the case of a meritorious claim above that amount, the Secretary of the Navy may pay up to $100,000 and certify the balance to Congress for appropriation.

STATUTE OF LIMITATIONS

The claim must be presented within 2 years after the claim accrues. If the claim is presented to a foreign government within this period, pursuant to treaty or executive agreement provisions, the statute of limitations requirement will be satisfied.

PROCEDURES

Under the FCA, the investigation and adjudication functions are merged in a foreign claims commission that the commanding officer appoints. The foreign claims commission not only conducts an investigation similar to a *JAG Manual* investigation not requiring a hearing, but also is empowered to settle the claim within certain dollar limits.

EXAMPLE

Facts. USS *Getunderway* was making a goodwill visit to Alexandria, Egypt. EM3 Party went on liberty. Wanting to see as much of the countryside as he could, he hot-wired a car parked near the pier. Later that night, while driving extremely fast, high on hashish, and carefully sipping his ouzo, EM3 Party smashed the car into a tree. The owner, Mr. Mycarbustad, an Egyptian citizen, wants to file a claim. Can he collect?

Solution. Yes, Even though EM3 Party's acts were not in the scope of his employment, were highly negligent, and involved criminal acts, the claim is payable under the FCA.

ADMIRALTY CLAIMS

Admiralty is a vast, highly specialized area of law. The purpose of this section is merely to provide a brief introduction to admiralty claims, with specific focus on the command's responsibilities.

ADMIRALTY LAW DEFINED

Admiralty law involves liability arising out of maritime incidents such as collisions, grounding, and spills. Admiralty claims may be asserted either against or in favor of the federal government. The Navy's admiralty claims usually are handled by attorneys in the Admiralty Division of OJAG. Other judge advocates with specialized admiralty training are located at larger NLSOs and at certain overseas commands. When admiralty claims result in litigation, attorneys with the Department of Justice, in cooperation with the Admiralty Division, represent the Navy in court. Thus, while the command has little involvement in the adjudication or litigation of admiralty claims, it often has critical investigative responsibilities.

STATUTORY AUTHORITY AND REFERENCES

Suits in Admiralty Act, 46 U.S.C. § 741-752 (1982)—The Suits in Admiralty Act provides that a suit in admiralty may be brought against the federal government in all circumstances under which an admiralt y suit could be brought against a private party or vessel.

Public Vessels Act, 46 U.S.C. § 781-790 (1982)—The Public Vessels Act supplements the Suits in Admiralty Act and provides for admiralty remedies in cases involving naval vessels.

10 U.S.C. § 7623 (1982)—Section 7623 of Title 10, U.S.C., provides for settlement of claims by the government against private parties and vessels.

JAG Manual— Chapter XII of the *JAG Manual* prescribes the Navy's regulations governing reporting, investigation, and adjudication of admiralty claims for and against the government.

SCOPE OF LIABILITY

The federal government has assumed extensive liability for personal injuries, death, and property damage caused by naval vessels or incident to naval maritime activities. Examples of the specific types of losses that give rise to admiralty claims include incidents such as the following:

- Collisions
- Swell wash and wake damage
- Damage to commercial fishing equipment, beds, or vessels
- Damage resulting from oil spills, paint spray, or blowing tubes
- Damages or injuries to third parties resulting from a fire or an explosion aboard a naval vessel
- Damage to commercial cargo carried in a Navy bottom
- Damage caused by improperly lighted, marked, or placed buoys or navigational aids for which the Navy is responsible
- Personal injury or death of civilians not employed by the federal government (longshoremen, harbor workers, and passengers)

EXCLUSIONS FROM LIABILITY

Certain categories of persons are prevented from recovering under an admiralty claim for personal injury or death incurred incident to maritime activities. Such potential claimants arc compensated under other statutes. Such excluded claimants include the following:

- Military personnel cannot recover for personal injury, death, or property damage resulting from the negligent operation of naval vessels, except when they are injured or killed while aboard a privately owned vessel that collides with a naval vessel.

- Civil service employees and seamen aboard Military Sealift Command vessels are limited to compensation under the Federal Employees' Compensation Act, 5 U.S.C. § 8101-8150 (1982), for personal injury or death.

MEASURE OF DAMAGES

A survey of damaged property is required in all collisions and any other maritime incidents involving potential liability for property damage. Surveys have been customary in admiralty law and are intended to eliminate burdensome and difficult questions concerning proof of damages. Section 1210 of the *JAG Manual* has an extensive discussion of survey procedures.

In personal injury cases, medical examinations are required for all injured persons. The function of the medical examination is similar to that of the property damage survey.

The Secretary of the Navy is authorized to settle admiralty claims up to $1,000,000, Amounts in excess of that must be certified to Congress for appropriation. Certain other officials in the Department of the Navy are authorizcd to settle admiralty claims for smaller amounts.

STATUE OF LIMITATIONS

Suits in admiralty must be filed within 2 years after the incident on which the suit is based. Unlike the statute of limitations rule under the FTCA, filing an admiralty claim with the Department of the Navy does <u>not</u> toll the running of this 2-year period. Nor can the government administratively waive the statute of limitations in admiralty cases. If the admiralty claim cannot be administratively settled within 2 years after the incident, the claimant <u>must</u> file suit against the government to prevent the statute of limitations from running.

PROCEDURES

The procedures for investigating and adjudicating admiralty claims are explained in sections 1204-1216 of the *JAG Manual.* For purposes of this brief introduction to admiralty claims, the following procedural aspects are most significant.

The most critical command responsibility in admiralty cases is to <u>immediately</u> notify JAG and an appropriate local judge advocate of <u>any</u> maritime incident that <u>might</u> result in an admiralty claim for, or against, the government. Section 1204 of the *JAG Manual* gives details concerning the requirement for immediate reports. Because of the highly technical, factual, and legal issues that may be involved in an admiralty casa, it is absolutely vital that the Admiralty

Division of OJAG be involved in the case from the earliest possible moment.

After initially notifying JAG, the command must promptly begin an investigation of the incident. A JAGMAN investigation usually is required although, in some circumstances, a letter report is appropriate. Section 1205 of the *JAG Manual* provides guidance for determining whether a JAGMAN investigation is necessary, and, if one is necessary, the type of investigation that is most appropriate. Chapter II of the *JAG Manual* provides specific investigatory requirements for certain maritime incidents. Also, sections 1207 and 1210 of the *JAG Manual* prescribe requirements and procedures concerning witnesses and documents in admiralty investigations.

NONSCOPE CLAIMS

Section 2737 of Title 10, U. S. C., and enclosure (4) of JAGINST 5890.1 provide for payment of certain types of claims not cognizable under any other provisions of law. Such claims are known as "nonscope claims" and arise out of either the use of a government vehicle anywhere or the use of government property aboard a federal installation. The personal injury, death, or property damage must be caused by a federal military employee, but there is no requirement that the acts be negligent or in the scope of federal employment (hence the term *nonscope claim).*

SCOPE OF LIABILITY

As a precondition to payment under the nonscope claims provisions, the claim must not be cognizable under some other claims statute.

The resulting personal injury, death, or property damage must be caused by a federal military employee (either a military member or a civilian employee of the armed forces or Coast Guard). Acts by employees of nonappropriated fund activities are not covered by the nonscope claims statute.

Neither the nonscope claims statute nor the Navy's regulations require that the federal military employee's conduct causing the loss be negligent or otherwise wrongful.

The scope of employment concept, which is required under the FTCA and for some MCA claims, does not apply to nonscope claims.

Nonscope claims are limited to injury, death, or property damage arising out of either of the following circumstances:

- Incident to the use of a government vehicle anywhere.

- Incident to use of government property aboard a government installation. (Government installation means any facility having fixed boundaries and owned or controlled by the federal government. It includes both military bases and nonmilitary installations.)

There are no territorial limitations on nonscope claims.

EXCLUSIONS ON LIABILITY

If the loss was caused, in whole or in part, by the claimant's negligence or wrongful acts, or by negligence or wrongful acts by the claimant's agent or employee, the claimant is barred from any recovery under the nonscope claims statute.

Subrogee and insurers may not recover subrogated nonscope claims.

MEASURE OF DAMAGES

For personal injury or death, the claimant may recover no more than actual medical, hospital, or burial expenses not paid or furnished by the federal government.

The claimant may not recover any amount that he or she can recover under an indemnifying law or indemnity contract.

The maximum payable as a nonscope claim is $1,000.

STATUTE OF LIMITATIONS

A nonscope claim must be presented within 2 years after the claim accrues or it will be forever barred.

PROCEDURES

Notable procedural aspects of nonscope claims include the following:

- Automatic consideration of other claims. Claims submitted pursuant to the FTCA or MCA, but which are not payable under those acts because of scope of employment requirements, automatically will be considered for payment as a nonscope claim.

- Adjudicating authority. All adjudicating authorities listed in JAGINST 5890.1 are authorized to adjudicate nonscope claims.

- Claimant's rights after denial. If a claim submitted solely as a nonscope claim is denied, the claimant may appeal to the Secretary of the Navy (Judge Advocate General) within 30 days of the notice of denial. There is no right to sue under the nonscope claims statute.

EXAMPLE

Facts. SW1 Bad Boy resolved to kill his archenemy SWC Nice Guy, but he planned to make it look like an accident. He stole a government sedan, drove it off base, and rode around town looking for SWC Guy. When he spotted SWC Guy standing on a corner, SW1 Boy aimed the car at SWC Guy and bore down on him at a high speed. SWC Guy tried to jump out of the way, but not quickly enough to avoid being struck a glancing blow. As a result, SWC Guy suffered extensive injuries. Also, the clothes he was wearing and the radio he was carrying were destroyed. SWC Guy has filed an FTCA claim for $15,000 ($600 for property damage and $14,400 for personal injury, pain and suffering, and lost wages from his part-time job). How much, if anything, will SWC Guy collect?

Solution. his claim is not payable under the FTCA for several reasons, not counting any possible *Feres* doctrine problem caused by the claimant being a military member. First, FTCA does not provide compensation for losses caused by intentional torts such as assaults and battery. Moreover, SW1 Boy's act was not within the scope of his federal employment. Under the FTCA, the government is liable only for acts within the scope of federal employment. The fact that SW 1 Boy's acts were outside the scope of his federal employment also prevent paying his claim under the MCA. However, under the automatic consideration provisions, this claim may be considered as a nonscope claim. It is not cognizable under another claims statute and the injuries and damage were caused by a federal employee. Neither negligence nor scope of employment is required. The claim involves the use of a government vehicle. Therefore, SWC Guy can recover under the nonscope claims statute. He will not be compensated for medical expenses that were provided by the U.S. Government. Pain and suffering and lost wages are likewise not compensable under the nonscope claims statute. Therefore, SWC Guy will recover only the $600 property damage loss.

ARTICLE 139, UCMJ, CLAIMS

Article 139 of the UCMJ provides compensation for private property damage caused by riotous, willful, or wanton acts of members of the naval service not within the scope of their employment or the wrongful taking of property by a member of the naval service. Article 139 claims are unique in that they provide for the checkage of the military pay of members responsible for the property damage. Overseas, these types of damages may be paid for under the FCA. Private citizens in the United States generally do not have an effective means by which to be reimbursed for property damage or loss in these situations. Historical y, Article 139 claims have been extremely rare within the Department of the Navy because of the low dollar limit and a requirement that an investigation requiring a hearing be conducted to investigate the validity of the claim.

Because it is the only Victim's Rights Act that the Department of the Navy has, there is a new emphasis being placed on Article 139 claims within the Navy. Although the individual member, not the federal government, is liable for the damage, the member's command has significant procedural responsibilities that can be found in chapter IV of the *JAG Manual,*

SCOPE OF LIABILITY

Article 139 claims arc limited to damage, loss, or destruction of real or personal property.

The property damage, loss, or destruction must be caused by acts of military members that involve riotous or willful conduct, or demonstrate such a reckless and wanton disregard for the property rights of other persons that willful damage or destruction is implied. Only damage that is directly caused by the conduct will be compensated.

A claim that a marine accidentally bumped into and broke a mirror in the course of a drunken brawl with a Navy SEAL would be cognizable. Even though the marine did not specifically intend to break the mirror and you could characterize the act as simple negligence, the marine's conduct was riotous and damage resulted from it.

A claim that a sailor drove a carat 90 miles an hour down the highway and drifted over the center line into an oncoming car would not be cognizable.

A wrongful taking is essentially theft. Claims for property that was taken through larceny, forgery, embezzlement, misappropriation, fraud, or similar theft offenses are normally payable. Loss of property that

involves a dispute over the terms of a contract or over ownership of property is not normally payable unless the dispute is merely a cover for an intent to steal. Article 139 is not a way in which an individual can have his or her debts collected, nor is it to be used to mediate business disputes.

A claim that a marine borrowed a friends VCR to tape a show and did not return it on the promised date would not be cognizable unless the marine borrowed the VCR on such a pretext and then sold it. This would prove a present intent to steal.

A claim that a sailor issued a worthless check would be cognizable if evidence establishes an intent to defraud. Such intent may be inferred when the sailor fails to make good on a bad check within 5 working days of receiving notice of insufficient funds, in the same way that a criminal intent to defraud maybe inferred under Article 123a, UCMJ,

A claim that a sailor stole a check or credit card and used it to obtain items of value would be cognizable.

EXCLUSIONS FROM LIABILITY

The following types of claims are not payable under Article 139:

- Claims resulting from conduct that involves only simple negligence (failure to act with the same care that a reasonable person would use under the circumstances)
- Subrogated claims (by insurers)
- Claims payable under other claims statutes or regulations
- Claims for personal injury or death
- Claims arising from conduct occurring within the scope of employment
- Claims for reimbursement for damage, loss, or destruction of government property
- Claims arising from contractual or fiduciary relationships
- Claims for indirect or consequential damages (such as lost business, lost earnings, carrying charges, interest, attorney fees, inconvenience, telephone calls, or time spent preparing the claim)

PROPER CLAIMANTS

Any individual (including both civilians and service members), business entity, state or local government, or charity may submit a claim.

MEASURE OF DAMAGES

The amount of recovery is limited to only the direct physical damage caused by the service member. Service members are not assessed for damage or property loss due to the acts or omissions of the property owner, his or her lessee or agent, that were a proximate contributing factor to the loss or damage of said property. In these cases, the standard for determining responsibility will be one of comparative responsibility.

The maximum amount that maybe approved by an OEGCMJ under Article 139 is $5,000 per offender, per incident. Where there is a valid claim for over $5,000, the claim, investigation into the claim, and the CO's recommendation are sent to JAG (Code 35) or to Headquarters, U.S. Marine Corps (Code JAR), as appropriate, before checkage against the offender can begin. The amount that can be charged against an offender in any single month cannot exceed one-half of the member's basic pay.

STATUTE OF LIMITATIONS

The claim must he submitted within 90 days of the incident upon which the claim is based.

PROCEDURES

Article 139 claims involve certain unique procedures. The claimant may make an oral claim, but it must be reduced to a personally signed writing that sets forth the specific amount of the claim, the facts and circumstances surrounding the claim, and any other matters that will assist in the investigation. If there is more than one claimant from a single incident, each claimant must submit a separate and individual claim.

Investigation

Claims cognizable under Article 139 may be investigated by an investigation not requiring a hearing. There is no requirement that the alleged offender be designated as a-party to the investigation and afforded the rights of a party. The investigation inquires into the circumstances surrounding the claim, gathering all relevant information about the claim. Under no

circumstances should the investigation of a claim be delayed because criminal charges are pending.

The investigation makes findings of fact and opinions on whether the claim:

- is by a proper claimant (in writing and for a definite sum).
- is made within 90 days of the incident that gave rise to it.
- is for property belonging to the claimant that was the subject of damage, loss, or destruction by a member or members of the naval service.
- specifies the amount of damage suffered by the claimant.
- is meritorious.

The investigation also makes recommendations about the amount to be assessed against the responsible parties. If more than one service member is responsible, the investigation must make recommendations concerning the amount to be assessed against each individual.

A preponderance of the evidence is necessary for pecuniary liability under Article 139.

Normally, the measure of a loss is either the repair cost or the depreciated replacement cost for the same or similar item. Depreciation for most items depends on the age and condition of the item. The Military Allowance List-Depreciation Guide should be used in determining depreciated replacement cost.

Subsequent Action

If all offenders are attached to the command convening the investigation, the CO assures that the offenders have an opportunity to see the investigative report and are advised that they have 20 days in which to submit a statement or additional information. If a member declines to submit further information, he or she will so state, in writing, during the 20-day period.

The CO reviews the investigation and determines whether the claim is in proper form, conforms to Article 139, and whether the facts indicate responsibility for the damage by members of the command. If the CO finds that the claim is payable, he or she fixes the amount to be assessed against the offender(s).

If the CO has authority to convene a GCM, no further review of the investigation is required. If the CO does not have GCM CA, the investigation and the CO's action is forwarded to the OEGCMJ over the command for review and action. The OEGCMJ will then notify the CO of his or her determinations, and the CO will take action consistent with that determination.

If the offenders are members of different commands, the investigation is sent to the OEGCMJ over the commands to which the alleged offenders are assigned. The OEGCMJ makes sure the alleged offenders are shown the investigative report and are permitted to comment on it before action is taken on the claim.

The OEGCMJ reviews the investigation to determine whether the claim is properly within Article 139 and whether the facts indicate responsibility for the damage on members of his or her command. If the OEGCMJ determines that the claim is payable, he or she fixes the amount to be assessed against the offenders and direct their COs to take action accordingly.

The OEGCMJ may, upon request by either the claimant or the member assessed for the damage, reopen the investigation or take other action he or she believes is in the interest of justice. If the OEGCMJ anticipates acting favorably on the request, he or she will give all interested parties notice and an opportunity to respond.

If the claim is for $5,000 or less, the claimant or the member against whom pecuniary responsibility has been assessed may appeal the decision to the OEGCMJ within 5 days of receipt of the OEGCMJ's decision. If good cause is shown, the OEGCMJ may extend the appeal time. The appeal is submitted via the OEGCMJ to JAG for review and final action. Imposition of the OEGCMJ's decision is held in abeyance pending final action by JAG.

RELATIONSHIP TO COURT-MARTIAL PROCEEDINGS

Article 139 claims procedures are entirely independent of any court-martial or nonjudicial punishment proceedings based on the same incident. Acquittal or conviction at a court-martial may be considered by an Article 139 investigation, but it is not controlling on determining whether a member should be assessed for damages. The Article 139 investigation is required to make its own independent findings.

EXAMPLE

Facts. YN3 Snootfull got uproariously drunk, stole a U.S. Government sedan, and drove down the main street of Anywhere, Florida, at 85 mph. Finding this less

than entirely challenging, he decided to drive in reverse with his eyes closed. In doing so, YN3 Snootfull smashed into the front window of Anywhere's Country Kitchen. Mama Cook has filed an Article 139 claim with YN3 Snootfull's CO. Is this claim payable under Article 139, UCMJ?

Solution. No. YN3 Snootfull's conduct certainly qualified as acts showing reckless and wanton disregard of the property rights of others. However, this claim would also be compensable under the nonscope claims statute because it involved use of a federal government vehicle while not within the scope of federal employment. Therefore, it is not payable under Article 139, UCMJ.

CLAIMS ON BEHALF OF THE GOVERNMENT FEDERAL CLAIMS COLLECTION ACT

Under the Federal Claims Collection Act, 31 U.S.C. § 3711 (1982) (FCCA), the federal government may recover compensation for claims on behalf of the United States for damage to or loss or destruction of government property through negligence or wrongful acts.

GOVERNMENT'S RIGHTS

The extent of any FCCA recovery by the federal government is determined by the law where the damage occurred. As a general rule, if a private person would be entitled to compensation under the same circumstances, the federal government may recover under the FCCA.

FCCA claims may be pursued against private persons, corporations, associations, and nonfederal governmental entities. An FCCA claim also can be asserted against any federal employee responsible for the damage and, if the responsible party is insured, the claim may be presented to the insurer. See Federal Drivers' Act, 28 U.S.C. § 2679(b) (1982), prescribing immunity for federal drivers.

MEASURE OF DAMAGES

The amount of the government's recovery for an FCCA claim is determined by the measure-of-damages rules of the law where the damage occurred. There is no maximum limit to recovery.

STATUTE OF LIMITATIONS

The government has 3 years after the damage occurs in which to make a written demand on the responsible party.

PROCEDURES

Specific procedures and collection policies are issued in JAGINST 5890.1. Among the notable features of FCCA procedures are the following:

- Authority to handle FCCA claims. JAGINST 5890.1 lists the officers authorized to pursue, collect, compromise, and terminate action on FCCA claims. These include certain officers in OJAG and COs of NLSOs, except NLSOs in countries where another service has single service responsibility according to DOD Directive 5515.8. Claims over $20,000 can be terminated or compromised only with permission of the Department of Justice.

- Repair or replacement in kind. In some cases, the party responsible for the damage, or that party's insurer, may offer to repair or replace the damaged property. If such a settlement is in the government's best interest, the CO of the property may accept repair or replacement under conditions described in JAGINST 5890.1.

- Collection problems. Collecting the full amount claimed under an FCCA claim can often be difficult for a number of reasons. Therefore, the Joint Regulations authorize specific procedures to resolve or overcome collection problems:

  Collection by offset. The U.S. Government may deduct the amount of the FCCA claim from any pay, compensation, or payment it owes the responsible party.

  Suspension or revocation of federal license or eligibility, This can be a strong incentive for an entity desiring to do business with the government to pay a claim.

  Collection in installments. In cases where the responsible party is unable to make a lump-sum payment, an installment payment schedule may be used. Terms, conditions, and limitations on installment payment plans are set forth in JAGINST 5890.1. A substantial portion of FCCA claims against individuals are liquidated through installment payments.

  Compromise. When the responsible party is unable to pay the full amount of the claim within

a reasonable time (usually 3 years), or when the responsible party refuses to pay and the government is unable to enforce collection within a reasonable time, the claim may be compromised.

- Referral to Department of Justice. Unsettled claims may be referred to the Department of Justice for litigation. The referral is made by OJAG and not by the local authority directly.

MEDICAL CARE RECOVERY ACT

The Medical Care Recovery Act (MCRA) provides that, when the government treats or pays for the treatment of a military member, retiree, or dependent, it may recover its expenses from any third party legally liable for the injury or disease. The key to understanding the complexities of the MCRA is to realize that the federal government operates one of the largest health care systems in the world.

THE GOVERNMENT'S RIGHT

The MCRA created an independent cause of action for the United States. Its right of recovery is not dependent upon a third party. The requirement that the United States furnish care to an injured party is merely a condition precedent to the government's independent right of recovery. If the tortfeasor has a procedural attack or defense against the injured party, it will not serve as a bar to a possible recovery by the government.

The extent of any MCRA recovery by the federal government is determined by the law where the injury occurred. The federal government enjoys no greater legal rights or remedies than the injured person would under the same circumstances. Thus, if the injured person would be legally entitled to compensation for injuries from the responsible party under the law where the injury occurred, the federal government may recover its expenses in treating the injured person.

MCRA claims may be asserted against private individuals, corporations, associations, and nonfederal governmental agencies. They also may be asserted against a federal employee responsible for the injuries, except that no such claim may be asserted against a service member injured as a result of his or her own willful or negligent acts for two reasons. First, the wording of the MCRA, 42 U.S.C. § 2651-2653 (1982), is explicit in providing a right of action against third parties. The injured member does not qualify as a third party. Second, to allow such a claim would violate the provisions and spirit of 10 U.S.C. § 1074 (1982) that provides the entitlement of active duty service members to medical care free of charge. However, the United States can subrogate against any insurance coverage that the member may have that might cover medical care and treatment as a result of the self-injury.

If the party responsible for the injuries is insured, an MCRA claim maybe asserted against the insurer. Since a large portion of injuries resulting in MCRA claims involve automobile accidents, assertions against insurance companies are commonplace.

MEASURE OF DAMAGES

The federal government may recover the reasonable value of medical services it provided, either directly at a U.S. Government hospital or indirectly through the CHAMPUS program.

The value of treatment at federal government facilities is computed on a flat rate per diem basis for inpatient care and a per-visit charge for outpatient treatment, rather than the itemized charges used by most civilian hospitals. These are issued by the Office of Management and Budget (OMB).

The federal government may recover the amount actually paid to, or on behalf of, a military dependent under the CHAMPUS program.

The federal government may recover amounts it paid to civilian facilities for emergency medical treatment provided active duty personnel.

STATUTE OF LIMITATIONS

MCRA claims must be asserted within 3 years after the injury occurs.

PROCEDURES

MCRA procedures tire governed by JAGINST 5890.1, enclosure (6), section B. Notable aspects of MCRA procedures include the following:

- JAG designees. Primary responsibility for assertion and collectiom of MCRA claims rests with JAG designees (officers delegated MCRA responsibilities by JAG). JAG designees include certain officers in OJAG and COs of most NLSOs. Designees outside of OJAG have been assigned geographic responsibility. JAG designees may assert and receive full payment of MCRA claims in any amount, but they may compromise, settle, or waive claims up to $40,000. Claims in excess of $40,000 may be compromised.

settled, or waived only with the approval of the Department of Justice.

- Initial action. JAG designees learn of potential MCRA claims from several sources.

- Investigations. When a military member, retiree, or dependent receives, either directly or indirectly, federal medical care for injuries or disease for which another party may be legally responsible, an investigation is required. One exception to this requirement is when the inpatient care does not exceed 3 days or outpatient care does not exceed 10 visits.

The responsibility for conducting the investigation of a possible MCRA claim normally lies with the CO of the local naval activity most directly concerned, usually the CO of the personnel involved in the incident or of the activity where the incident took place. This responsibility may be assigned to another CO under certain circumstances.

An investigation into a possible MCRA claim is conducted according to the *JAG Manual* and JAGINST 5890.1. An investigation of the same incident that was convened for some other purpose usually may be used to determine possible MCRA liability, provided it is complete.

If any investigation, regardless of its origin or initial purpose, involves a potential MCRA claim, a copy should be sent to the cognizant JAG designee.

Reports of Care and Treatment

The second major way that the JAG designee learns of a possible MCRA claim is by a report from the facility providing medical care.

Military health care facilities are required to report medical treatment they provide when it appears that a third party is legally responsible for the injuries or disease. In the Navy, this reporting requirement is satisfied by submission of NAVJAG Form 5890/12, Report of Hospital and Medical Care - Third Party Liability Case (fig. 12-5) to the cognizant JAG designee. A NAVJAG 5890/1 2 is submitted when it appears that the patient will require more than 3 days' inpatient care or more than 10 outpatient visits. Preliminary, interim, and final reports are prepared as the patient progresses through the treatment. This report is, in essence, a hospital bill because it will reflect the value of the medical care provided to date, computed according to OMB rates. Military health care facilities in other services use forms similar to NAVJAG 5890/12.

Statements of CHAMPUS payments on behalf of the injured person are available from the local CHAMPUS carrier (usually a civilian health care insurance company that administers the CHAMPUS program under a government contract), Statements are sent automatically to JAG designees in cases involving potential third-party liability.

District medical officers arc required to submit reports to cognizant JAG designees whenever they pay emergency medical expenses incurred by active duty personnel at a civilian facility and the circumstances indicate possible MCRA liability.

Injured Person's Responsibilities

The JAG designee advises the injured person of his or her legal obligations under the MCRA. These responsibilities arc as follow:

- Furnish the JAG designee with any pertinent information about the incident

- Notify the JAG designee of any settlement offer from the liable part y or that party's insurers

- Cooperate in the prosecution of the government's claim against the liable party

- Give the JAG designee the name and address of any civilian attorney representing the injured party, since the civilian attorney may represent the government as well as the injured person if the claim is litigated in court

- Refuse to execute a release or settle any claim concerning the injury without the prior approval of the JAG designee

- Refuse to provide any information to the liable party, that party's insurer, or attorney without prior approval of the JAG designee

At first, these restrictions and obligations may appear unfair. But, it must be remembered that the government's rights under the MCRA are largely derivative from the injured person's legal rights. If the injured person makes an independent settlement with the liable party, the government's rights could be prejudiced. Also, if the injured person settles the claim independently and receives compensation for medical expenses, the government is entitled to recover its MCRA claim from the injured person directly out of the proceeds of the settlement.

JAG Designee Action

The JAG designee formally asserts the government's MCRA claim by mailing a Notice of

HOSPITAL AND MEDICAL CARE
3RD PARTY LIABILITY CASE
NAVJAG 5890/12 (Rev. 3-78) S/N 0105-LF-105-8960 RCS JAG 5890-1

TO: DATE:

FROM: Submission: ☐ Initial ☐ Interim ☐ Final

1. Patient Data *(Include Name, Grade, Component, Organization and Station, Home Address, Branch of Service (i.e. Army, Navy, Air Force), Status (i.e. EAD, Retired, Inactive duty for training, etc.), Date of Admission)*

2. Diagnosis *(Use Standard Nomenclature)*

3. Prognosis *(Include expected length of hospitalization or number of outpatient visits expected)*

4. Cause of Injury *(Append statement of patient or accident report if available)*

5. Agency Sponsoring Patient	6. Disposition	7. Date of Disposition

8. STATEMENT OF CHARGES

	This Facility (a)	Prev. Reports This Case (b)	Total To Date (c)	Unit Charges Per OMB (d)	Total Charges (e)
INPATIENT - NUMBER OF DAYS					$
OUTPATIENT-NUMBER OF TREATMENTS					$
				GRAND TOTAL	$

9. Signature *(Patient Records Officer)*

(Continue items 2, 3, and 4 on separate sheet if necessary)

PRIVACY ACT STATEMENT

1. AUTHORITY: 42 U.S.C. Sections 2651 - 2653; 31 U.S.C. Sections 951 - 953; Executive Order 16060

2. PRINCIPAL PURPOSE(S): To provide information for the collection of claims by the United States against third-party tortfeasors under the Medical Care Recovery Act and the Federal Claims Collection Act.

3. ROUTINE USES: Information furnished by individuals receiving treatment at Government expense for injuries caused by third-party tortfeasors is used by the Navy for the pursuit by the Navy of claims against third-party tortfeasors under the Medical Care Recovery Act and the Federal Claims Collection Act; for the preparation of litigation reports to the Department of Justice; and for use in civil litigation by the Department of Justice.

4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSAL TO DISCLOSE: The disclosure is voluntary. If the individual does not provide the requested information, the Navy may require a written assignment of the patient's medical care claim.

☆U.S. GOVERNMENT PRINTING OFFICE: 1986—605-009/35159

Figure 12-5A.—Sample NAVJAG form 5890/12, Report of Hospital and Medical Care—Third Party Liability (front).

Claim to the liable party or insurer the includes the following information:

- Reference to the statutory right to collect
- A demand for payment or restoration
- A description of damage
- The date and place of the accident
- The name, phone number, and office address of the claims personnel to contact

The JAG designee may accept full payment of the claim or may establish an installment payment plan with the liable party. Under appropriate circumstances, the JAG designee may waive or compromise the claim. Waivers or compromises of claims in excess of $40,000 require prior Department of Justice approval. If the

HOSPITAL AND MEDICAL CARE
3RD PARTY LIABILITY CASE,
SUPPLEMENTAL STATEMENT
NAVJAG 5890/12 (Rev. 3-78)(Back)

TO: DATE:

FROM: NAVAL HOSPITAL,

Patient's Name | Rank/Rate | Social Security No. | Status

PART I - PERIODS OF LEAVE, WEEKEND LIBERTY AND SUBSISTING OUT

Leave

FROM	TO	TYPE	NO. OF DAYS
		TOTAL	

Weekend Liberties

NO. OF LIBERTIES	NO. DAYS IN LIBERTY PERIOD	TOTAL DAYS
	TOTAL	

Subsisting Out (Officers Only)

FROM	TO	NO. OF DAYS
	TOTAL	
	GRAND TOTAL	

PART II - PATIENT CLASSIFICATIONS (ENLISTED ONLY)*

CLASS	FROM	TO

CLASS I	AMBULANT	NO LIMITATIONS ON PHYSICAL CAPACITY.
CLASS II	AMBULANT	PHYSICAL ACTIVITY MODERATELY LIMITED.
CLASS III	AMBULANT	CONFINED TO WARD EXCEPT TO GO TO SPECIFIC HOSPITAL AREAS.
CLASS IV	BED PATIENT	BED PATIENT WITH HEAD PRIVILEGES.
CLASS V	BED PATIENT	STRICT BED PATIENT.

PART III - EVALUATION OF MEDICAL TREATMENT

1. If this patient had been in a civilian hospital rather than a military establishment:
   A. Date that necessary inpatient treatment was essentially completed: _____
   B. The number of outpatient treatments which would have been required had subject been discharged on the above date: _____
2. Prognosis for permanent injury and permanent disability in this case:

Attending Physician's Signature
(Applicable to Part III Only)

Figure 12-5B.—Sample NAVJAG Form 5890/12, Report of Hospital and Medical Care—Third Party Liability, Supplemental Statement (back).

claim cannot be collected locally, referral to the Department of Justice for litigation is possible, but this must be done by JAG.

MEDICAL PAYMENTS INSURANCE COVERAGE

Government claims for medical care normally are directed against the tortfeasor and recovery is obtained either directly from him or her or the insurance carrier. There are, however, other potential sources for recovery of medical care expenditures, depending upon the circumstances involved.

One such potential source is medical payments insurance coverage. Under the provisions of certain automobile insurance policies, an insurer may be obligated to pay the cost of medical care for injuries

incurred by the policyholder, his or her passengers who are riding in the insured vehicle, or a pedestrian who is struck by the insured vehicle. Assuming such coverage exists (and it is the claims officer's responsibility to determine if it does), medical payments clauses apply regardless of who was at fault and the United States may be entitled to recover as the provider of medical care. It is extremely important to note that recovery has been allowed, based on one of two theories: (1) that the United States is insured under the medical pay provisions of the insurance policy or (2) that the United States is a third-party beneficiary of the insurance contract. Recovery is not based upon the MCRA, but under the terms of the individual insurance policy.

UNINSURED MOTORIST COVERAGE

Another potential source of recovery of medical care costs is the uninsured motorist coverage provisions of the typical automobile insurance policy. If an injured service member has obtained such coverage, and the tortfeasor is uninsured, the typical uninsured motorist coverage clause provides for payment to the policyholder of those sums that he or she would have been able to recover from the tortfeasor, but for the fact that the tortfeasor was uninsured. Like medical payments insurance coverage, the right of the United States to recover is based upon the terms of the insurance contract and not upon the MCRA. If the term *insured* includes any person, then the courts have generally held that the United States is entitled to recover.

NO-FAULT STATUTES

The recovery of the United States under the MCRA in states that have enacted no-fault statutes will be determined by the language of the statute. It is necessary to determine if the United States is within the terms of the statute so as to be entitled to recover for medical care provided. If the state statute eliminates a cause of action against the tortfeasor, then the only probable source of recovery is under the injured party's no-fault insurance. If the United States is excluded and has no cause of action, then there maybe no recovery in the particular case.

AFFIRMATIVE CLAIMS AGAINST SERVICE MEMBER TORTFEASER

The United States may not assert an affirmative claim against a service member or employee who, while in the scope of employment, damages government property or causes damage or injury for which the United States must pay. Consideration, in the case of gross negligence or willful and wanton acts, should be given to whether such actions took the service member or employee outside the scope of employment.

CLAIMS MANAGEMENT

As a senior LN, your knowledge in claims accounting procedures must be thorough. You need to be familiar with the many budget projects out of which claims are paid. The following will present an overview of how to manage a claims accounting system.

MANAGING NAVY CLAIMS FUNDS

Managing claims funds should be no more difficult than taking care of a checking account. Checks (vouchers) and deposits (case collection vouchers and fund authorizations) arc recorded in a checkbook (memorandum accounting logbook). They are processed by a bank (accounting activity) which then sends out bank statements (accounting reports). These are used to reconcile what actually has been recorded by the bank (accounting activity) against what should have been recorded as indicated in your checkbook (memorandum accounting logbook). While the bank statement is usually correct and reconciliation can be delayed, the accounting reports must be reconciled each month due to the possibility of input error or missing documents. Therefore, you must reconcile monthly with authorization accounting activities.

FUND AUTHORIZATIONS

All funds are issued on a NAVCOMPT Form 372, Allotment/Suballotment Authorization (fig. 12-6), by budget project. Budget project 10 authorizes funds to pay NATO/SOFA claims; budget project 11 authorizes funds to pay federal tort claims; budget project 12 authorizes funds to pay military claims; and budget project 13 authorizes funds to pay personnel claims. If necessary and as long as JAG is notified immediately, funds can be transferred between budget projects.

The fiscal year runs from 1 October to 30 September. After the initial authorization at the beginning of the fiscal year, additional funds will be authorized at the beginning of each succeeding quarter and upon request. When funds are issued by message or telephone, obligation can be made before the actual receipt of the NAVCOMPT Form 372. For the first three quarters of the fiscal year, fund balances maybe carried forward from one quarter to the next, but the end-of-year balances cannot be carried forward to the next fiscal year.

ALLOTMENT/SUBALLOTMENT AUTHORIZATION

NAVCOMPT FORM 372 (REV 6-57)

S/N 0104-LF-700-6700

ALLOT NO N00013__AL00___

SUBALLOT NO

FROM

OFFICE OF THE JUDGE ADVOCATE GENERAL, DEPT. OF THE NAVY,
200 STOVALL ST., HOFFMAN II BUILDING, ALEXANDRIA, VA 22332

(Activity Code) 43298

TYPE OF AUTHORIZATION

☒ NEW ☐ AMEND NO 4

TO

COMMANDING OFFICER
NAVAL LEGAL SERVICE OFFICE
XXXXXXXX XXXX
XXXXXXXXXXX, XX XXXXX

ALLOTMENT ACCOUNTING OFFICE

ACCOUNTING NO 00345

(Name and address)

COMMANDING OFFICER
NAVAL SUPPLY CENTER
XXXXXXXXXX XXXX
XXXXXXXXXXX, XX XXXXX

TITLE OF APPROPRIATION AND SUBHEAD

CLAIMS, DEFENSE FY 19__

APPROPRIATION SYMBOL AND SUBHEAD

97-0102.1341

AUTHORIZATION

The total of this authorization is allotted to fund the purpose stated under "Instructions" and is subject to all limitations specified therein. All financial control, jurisdiction, and responsibility under Section 3679 R. S. and regulations thereunder, for the total amount allotted, is passed to the addressee. To accomplish the purpose of this allotment, amounts assigned to budget projects may be adjusted within the total limitation but cumulative adjustments to any one budget project totaling 10% or more must be reported to the allotter in accordance with NavCompt Manual, Volume 2.

PROJECT NO.	TITLE OR DESCRIPTION	PREVIOUS ADJUSTED AUTHORIZATION	AMOUNT OF THIS AUTHORIZATION
			3rd qtr inc
11	SETTLEMENT OF CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT 28 USC 2672	$ 10,000.00	$ 2,000.00
12	SETTLEMENT OF CLAIMS UNDER THE MILITARY CLAIMS ACT 10 USC 2733	$ 5,000.00	$ 1,000.00
13	SETTLEMENT OF MILITARY & CIVILIAN CLAIMS OF NAVAL PERSONNEL UNDER THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES CLAIMS ACT OF 1964 31 USC 240-243	$ 250,000.00	$ 50,000.00
	TOTAL	$ 265,000.00	$ 318,000.00

INSTRUCTIONS

DATE 6 APRIL 19__

APPROVED DAVID R. SPAIN, Comptroller

U.S. GOVERNMENT PRINTING OFFICE 1975—603-622/5114 2-1

Figure 12-6.—Sample NAVCOMPT Form 372, Allotment/Suballotment Authorization.

PAYMENTS

Each office is authorized to pay claims up to a specified dollar amount. Specific authorizations are contained in the *JAG Manual.* If settlement of the claim requires payment above that authority, the claim should be forwarded to the nearest authority authorized to pay

it. Federal tort claims settled for over $2,500 are not paid using Claims, Defense Appropriation funds. Payment is made by submitting a Voucher for Payment Under Federal Tort Claims Act, Standard Form 1145 (fig. 12-7), to the Claims Division, General Accounting office.

All payments using Navy claims funds should be made on a Voucher for Disbursement and/or Collection, NAVCOMPT Form 2277 (fig. 12-8), or its equivalent. The form identifies to whom the money is paid, the amount of payment, and the account from which the funds will be withdrawn (indicated by the accounting

Standard Form 1145
September 1973
4 Treasury FRM 2000
1145-105

VOUCHER FOR PAYMENT
UNDER FEDERAL TORT CLAIMS ACT

Voucher No. Do not fill in
Schedule No. Do not fill in
Claim No. Do not fill in

PAID BY

U.S. Department of the Navy -- Naval Legal Service Office, Philadelphia
(Department, bureau, or establishment)

Voucher prepared at U.S. Naval Base, Philadelphia, PA 19112 17 Apr 94
(Give place and date)

THE UNITED STATES, Dr.,

To John Doe, Sr., as Guardian of John Doe, Jr., & Joseph Smith, Esq.
c/o Smith, Jones & Black (Payee(s))

Address 312 West Fourth St., P.O. Box 961, New York, NY 10000

Amount claimed, $ 10,000.00 Date claim accrued January 18, 19 94

Amount of award, compromise, or settlement FOUR THOUSAND DOLLARS AND NO CENTS $ 4,000.00

BRIEF DESCRIPTION OF CLAIM: (See attachments for further explanation in detail.)
On January 18, 1994 a U.S. Navy vehicle operated by Joe Doakes while acting within the scope of his Federal employment, struck a vehicle in which claimant was a passenger. The accident occurred at the intersection of Main and Broad Avenue, Paoli, Pennsylvania. The claimant was not contributorily negligent, and he has agreed in writing to accept the above sum in full settlement of his claim. This claim is considered proper for payment under the Federal Torts Claims Act (28 U.S.C. 2671-72, 2674-2680)

ACCEPTANCE BY CLAIMANT(S)

I, (We), the claimant(s), do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), and agree that said acceptance constitutes a complete release by me (us) of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Date Do not fill in, 19 ..... SIGN ORIGINAL ONLY (Claimant)

Not necessary. Enclose SF-95 (and settlement agreement if payment is less than amount stated on SF-95) (Claimant)

This claim has been fully examined in accordance with the provisions of the Federal Tort Claims Act (28 U.S.C. 2672), and is approved in the

amount of $ 4,000.00

(signature)
(Head of Federal agency, or authorized designee)

Date May 3, 19 94

SIGN ORIGINAL ONLY Title Commanding Officer NLSO, Philadelphia

Pursuant to the authority vested in me, I certify that this voucher is correct and proper for payment in the

amount of $ Do not fill in

To be signed by GAO
(Authorized certifying officer)

Date Do not fill in, 19 .....

SIGN ORIGINAL ONLY Title Do not fill in

ACCOUNTING CLASSIFICATION

U.S. GOVERNMENT PRINTING OFFICE : 1974—O-539-348

Paid by Check No. .....

Figure 12-7.—Sample Standard Form 1145, Voucher for Payment Under Federal Tort Claims Act.

VOUCHER FOR DISBURSEMENT AND/OR COLLECTION–NAVCOMPT FORM 2277 (8PT.) (2-81) S/N 0104-LF-702-2770 Page 1 of Pages

1. Purpose	2. Date	3. Reference Document No.	4. Bill Number	5. Voucher No.
DISB. ☐ COLLECT ☒	6 APRIL 19			

6. FROM:
NAVAL LEGAL SERVICE OFFICE
XXXX XX XXXXX
XXXXX XXXX, XX XXXXX

7. PAID BY:
CHECK NO.
S A M P L E

8. TO:

9. ARTICLES, SERVICES OR ITEMS

A. INVOICE OR ORDER NO.	B. DATE OF DELIVERY/SERVICE	C. DESCRIPTION (REMITTER, EXPLANATION, DETAILS, ETC.)	D. QUANTITY	E. UNIT PRICE COST	E. UNIT PRICE PER	F. AMOUNT
		CARRIER RECOVERY ON CLAIM # ____ CHECK #_____ DTD_____ XYZ VAN LINES, INC.				$156.00
		CARRIER RECOVERY ON CLAIM #_____ CHECK #_____ DTD_____ ABC VAN LINES				15.00

G. DISCOUNT TERMS H. TOTAL $171.00

10. TYPE OF PAYMENT OR BILL: COMPLETE ☒ PARTIAL ☐ FINAL ☐ PROGRESS ☐ ADVANCE ☐

11. ACCOUNTING CLASSIFICATION TO BE CREDITED (COLLECTION)

A. ACRN	B. APPROPRIATION	C. SUB-HEAD	D. OBJ. CLASS	E. BUREAU CONTROL	F. SA	G. AAA	H. TT	I. PAA	J. COST CODE	K. AMOUNT (U.S. CURRENCY ONLY)
	97_0102	1341	042	14048	0	65872	2D	000000	000000099250	$171.00

12. DEDUCTIONS

A. ACRN	B. TRANSPORTATION	C. DISCOUNT	D. TAX	E. RESERVE	F. MISCELLANEOUS	G. TOTAL FOR ACRN (U.S. CURRENCY ONLY)

H. CURRENCY: EXCHANGE RATE =$1.00 I. TOTAL DEDUCTIONS

13. ACCOUNTING CLASSIFICATION TO BE CHARGED (DISBURSEMENT)

A. ACRN	B. APPROPRIATION	C. SUB-HEAD	D. OBJ. CLASS	E. BUREAU CONTROL	F. SA	G. AAA	H. TT	I. PAA	J. COST CODE	K. AMOUNT (U.S. CURRENCY ONLY)

L. TOTAL NET AMOUNT TO BE PAID (BLOCK 9-H MINUS BLOCK 12-I)

14. INSPECTION REPORT NOS: 15. GOV'T B/L NOS:

16. APPROVED
BY A. PERSON, CDR, JAGC, USN
4-6-__ TITLE CHIEF, CLAIMS DIVISION
(DATE)

17. CERTIFIED
BY _____
_____ TITLE _____
(DATE)

18. PAYMENT RECEIVED:
PAYEE–
PER–
TITLE–

Figure 12-8.—Sample NAVCOMPT Form 2277, Voucher for Disbursement and/or Collection.

data entered on the document). If a claim is paid in one fiscal year, but an additional payment is required (for example, a reconsideration) in the next fiscal year, the claim should be paid using current fiscal year funds.

DEPOSITS

Deposits are made on NAVCOMPT Form 2277. Deposits fall into two categories: (1) deposits back into

the Claims, Defense Appropriation and (2) deposits made into an appropriation other than Navy claims funds. Deposits received in foreign currency should be deposited with the local disbursing officer in the same manner as any other collection. It is the responsibility of the local disbursing officer to exchange the foreign currency for United States currency.

- Deposits—Claims, Defense Appropriations—carrier recoveries are the major type of deposits you will encounter in this category. Specific instructions for making deposits of carrier recoveries and any additional types of transactions related to carrier recoveries are found in JAGINST 5890.1.

- Deposits-other than into the Claims, Defense Appropriations. Money recovered under the MCRA and from affirmative tort claims related to damage of government property is not deposited into the Claims, Defense Appropriations but into a Navy general fund receipt account. The check or money order should be made payable to the order 01 the collecting organization or to the Treasurer, United States.

FUNDS ADMINISTRATION

The primary report used to manage these funds is the Trial Balance Report, NAVCOMPT Form 2199A (fig. 12-9). This report must be reviewed to verify that the amount of funds authorized is accurately recorded on the report. To do this, compare your current authorization to the amount shown for the General Ledger Account (GLA) 1031. They should be equal. The amount currently reported as obligations in the GLA 0998 should be reviewed next. This figure should be as current as possible. If you are able to enter your obligations directly into the system, this should not be a problem. Next, review what has been disbursed by looking at the GLA 1060. Within several months after the end of each fiscal year, this should equal the total amount obligated. If this is not the case, determine the reasons for the differences. Finally, determine if there were any problems in liquidating the amounts obligated by looking at the GLA 1960. This will tell you what amounts have been disbursed against your account that have problems (for example, no corresponding obligation or erroneous accounting data). Make sure these problems are promptly corrected.

Your responsibilities do not end on 30 September. You must continue to review NAVCOMPT Form 2199A for prior years to make sure the obligations are promptly liquidated and erroneous expenditures are not charged against your operating budget.

RECONCILIATION

Reconciliation compares what is recorded in your memorandum accounting logbook with what has been recorded in the accounting system. You must reconcile both obligations and expenditures. What makes reconciliation so crucial is that the authorization accounting activity (AAA) records are the official records accepted by higher authority. For this reason they must be correct. Although the responsibility for the error may not be yours, the responsibility for an overobligation is yours. his is why you are responsible for reconciliation, not the AAA.

To reconcile you must understand what happens to a voucher after it has been prepared. The original and copies are sent to the disbursing office. A copy is retained in the preparing office for its records and either (1) a copy is sent to the AAA or financial information processing center (FIPC) to record the obligations or (2) an obligation entry is made using your local AAA/FIPC automated system. The *Navy Comptroller Manual* states that an approved claim authorized by law is an obligation. Therefore, to maintain current obligations, the AAA/FIPC must receive and obligate advance copies of payment vouchers. Then, when a copy of the paid voucher is received from the disbursing officer, the claim payment is removed from the accounts payable and becomes classified as an expenditure.

Occasionally an AAA may not receive an advance copy of a payment voucher. In those rare instances, the AAA would have an immediate expenditure. At the end of each month, the AAA uses these entries to generate several accounting reports. One of these reports is the NAVCOMPT Form 2199A. This report gives cumulative figures for your claims authorization. If the cumulative obligtitions shown on the NAVCOMPT Form 2199A equal the cumulative amounts recorded in the memorandum accounting logbook, then they are in balance and reconciliation should normally be the case.

Reconcile by job order, First verify that the amount obligated in the job order is accurately reported. Then check the listing of unliquidated obligations to see what obligations have not yet been liquidated.

To reconcile, you need two reports from your AAA—a listing of expenditures processed against your authorization and a listing of all outstanding obligations. If you have not received the necessary reports from your AAA and the AAA will not cooperate, JAG should be advised. The AAA is responsible for cooperating in any way possible and responding to any reasonable requests.

NAVCOMPT FORM 2199A (REV. 9-74)
S/N 0104-LF-702-1995

TRIAL BALANCE REPORT

PAGE OF

FOR PERIOD ENDING

APPROPRIATION	SUBHEAD	PROGRAM ELEMENT/REIMBURSABLE ELEMENT	FROM UIC NO. (AAA OF OB HOLDER)	FOR UIC NO. (OB HOLDER)	TO UIC NO. (AAA OF OB GRANTOR)	FOR UIC NO. (OB GRANTOR)

ACCOUNT NUMBER AND TITLE	BALANCES PRIOR MONTH		BALANCES CURRENT MONTH		CHANGES FOR PERIOD	
	DEBIT	CREDIT	DEBIT	CREDIT	DEBIT	CREDIT
(1)	(2)	(3)	(4)	(5)	(6)	(7)
TOTAL						

CERTIFICATION:
I certify that the amounts herein reported are in accordance with 31 U.S.C. 200 and prescribed accounting procedures.

REPORTING FISCAL OFFICER (Signature and rank)

DATE

U.S. Government Printing Office: 1984—700-012/15907 2-1

Figure 12-9.—Sample NAVCOMPT Form 2199A, Trial Balance Report.

The two reports discussed previously are the primary reports needed to reconcile with the memoram.lum accounting logbook. All claims and corresponding amounts presently in the accounting system can be verified using them. If the claim is not shown as being recorded on one report, it must be shown on the other report or else it will not have been recorded in the system. Reconciliations means, therefore, that starting with one report, you go through it comparing its entries to the entries in the memorandum accounting logbook. If you do not find a voucher on one report, you should then go to the other report. If it is not on this report, it is not in the accounting system and you should note this fact. Repeat this process until all vouchers recorded in the accounting system arc reconciled against the memorandum accounting logbook. Besides verifying that all the vouchers have been recorded in the accounting system, you should also note the following items:

- Accounts recorded in the accounting system that are incorrect—both obligations and expenditures
- Canceled vouchers or vouchers improperly charged against a job order that are recorded in the accounting system-both obligations and expenditures

Report all errors to the appropriate person at your accounting activity.

NOTE: If you have access to an Integrated Disbursing and Accounting System terminal, you will be able to directly enter the obligations yourself. This should make reconciliation easier especially if you enter them in a timely manner.

You may also receive a weekly transaction listing. Although this enables a weekly reconcilitition, a monthly reconciliation is adequate—except at the end of the fiscal year when it is critical that fund status be closely monitored.

The key to effective accounting is a good relationship with the AAA—keep the lines of communication open and whenever a problem arises consult with them. Try to cooperate with them and keep them informed. It is not always easy but it is worthwhile to make an effort to adjust and establish appropriate procedures. Of course make allowances for geographical separation and the fact that you are not the only command served by the AAA.

UNLIQUIDATED OBLIGATIONS

You are not done managing Navy claims funds until all obligations have been liquidated. This means that you must establish procedures to review the status of unliquidated obligations. There also exists a category called unmatched disbursements that must be reviewed. Unmatched disbursements are expenditures against your authorization that have no corresponding obligation. You are required to prepare an annual report on your review of outstanding unliquidated obligations.

MEMORANDUM ACCOUNTING LOGBOOK

A sample format for the memorandum accounting logbook is shown in figure 12-10.

While funds are not authorized by type of claim, JAG recommends that you internally allocate specific amounts for each type of claim up to the amount of your authorization if you pay more than one type of claim. You should then enter this amount in the memorandum accounting logbook and adjust internally as needed. To facilitate reconciliation, number vouchers consecutively by job order as they are prepared. Use this number in the last four positions of the Navy standard document number assigned to the voucher. If a claimant is due additional funds (for example, a reconsideration), prepare a new voucher assigned the next consecutive voucher number to the voucher. If you do not enter the obligations yourself and vouchers are

CLAIMANT	DATE	VOUCHER #	AMOUNT	FUND INCREASE	BALANCE	REMARKS

Figure 12-10.—Sample format for memorandum accounting logbook page.

sent out in batches, always run a new total after each batch is sent out. This will facilitate reconciliation if the accounting activity has not recorded the last batches forwarded in the month, then you will need only to look through the memorandum accounting logbook for the last batch recorded for use as the point of reconciliation.

NOTE: The accounting activity can establish a cutoff date as to the last day in the month that documents can be forwarded to them for posting. This is to make sure all documents forwarded before that date will be posted on the report for that month. If you do not enter the obligations yourself, it is usually a good policy to stop sending vouchers to the accounting activity 3 working days before the end of the month. Of course this policy does not apply at the end of the fiscal year, when the allottee must coordinate with the AAA to make sure all obligations have been received and posted.

CORRECTIONS

Occasionally you may need to adjust the amount of a payment or deposit recorded in the accounting system. When this is necessary, your AAA should be contacted to make the necessary adjustments.

Incorrect payments or overpayments to claimants made using Claims, Navy funds should be deposited back into the operating budget out of which they were originally paid.

When a claim is paid out of the wrong account (for example, a personnel claim is paid citing the accounting data for a federal tort claim), contact your AAA to make the corrections. The only action required is to notify the AAA of the mistake. No adjustments need to be made in the memorandum accounting logbook. Handle refunds to carriers as if the carrier was a regular claimant and pay out of your own authorization. The entry in the memorandum accounting logbook is the same as a regular personnel claims payment.

To correct an erroneous payment of a federal tort claim out of Claims, Defense funds, send a letter to the Payment Branch, Claims Group, U.S. General Accounting Officer (GAO), 441 G Street, N.W., Washington, DC 20226-0007. The letter should state that due to an administrative error the claim was paid out of Claims, Defense funds. Then prepare a Transfer Between Appropriations, Standard Form 1080, citing the Claims, Navy funds (the accounting data should be the same as that of the erroneous payment). Forward the claim itself with the letter prepared in the same manner as any claim submitted to GAO with the necessary documental ion. Finally, include a copy of the paid voucher with the letter. Upon receipt of this package, GAO will effect the necessary corrections.

If adjustments after the end of the fiscal year are necessary, usc the following procedures. If the adjusted amount does not exceed the total unobligated balance, then the AAA/FIPC may make the adjustment authorizations locally and authorization holders need not notify JAG. If the adjusted amount exceeds the total unobligated balance, holders should notify JAG immediately so that appropriate action may be taken.

REPORTS

To provide information required by the Office of the Secretary of Defense, you will have to submit a report of the cumulative number and dollar amount of claims obligated as of the end of the report month for the current fiscal year (for each type of claim). This report must be received in JAG within 5 working days after the end of the month. Use the assigned reports control system for this reporting requirement

SUMMARY

Claims, claims management, and claims investigations are important office functions, and the total dollar amount involved in claims for or against the government is substantial. The importance of accurate recordkeeping should be the focus of claims management and you should strive for accurate records in your claims office procedures. Accurate, efficient claims processing not only serves the government but the claimant as well. The steps necessary to achieve this goal are your responsibility.