JACC provides specialized legal services supporting the investigation, settlement, and litigation of tort claims for and against the Air Force.
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Introduction

JAG Corps 21 began a journey to change the way we deliver legal services to our client, the Air Force. One of the major initiatives of JAGC21 was to centralize much of the specialized knowledge within AFLOA for the purpose of improving the quality of legal services and by providing the best possible support to JAGs, commanders and airmen throughout the world. By employing the most effective mix of people, technology, creative thinking, and organizational flexibility, the reach and speed of that support has never been better. The Claims and Tort Litigation Division (JACC) is an important part of that transformation and you are a vital member of our team.

The mission of JACC is to provide specialized knowledge and legal services to the investigation, settlement, and litigation of tort claims for and against the Air Force in aviation, medical, international, and general tort areas. Our job is to offer “reach-back” consultation and analysis to legal offices worldwide, instantly providing commanders’ personal legal staffs the additional training, skills, and specialized expertise they need when they need it.

There are no geographical limits to our office. This handbook is your travel guide. We urge you to reference it often. It is designed to guide you, step-by-step, through the process of adjudicating tort claims, and a resource to answer all of the most commonly-faced issues legal offices will encounter while handling tort claims.

It takes both JACC and wing legal offices to accomplish our mission. Specialized legal expertise and research skills within the FSC have no practical value unless applied to the field by judge advocates and paralegals with the people skills and resident savvy to find and interview important witnesses, locate and produce key documents, and coordinate the activities of litigators and investigators with the local community. Together we make an unbeatable team.

LANCE E. MATHEWS, Colonel, USAF
Chief, Claims and Tort Litigation Division
Handbook Overview

The primary purpose of this handbook is to guide JAG Corps personnel who have tort claims responsibility within the United States and its territories. This handbook also provides AFLOA/JACC personnel a broad yet concise statement of how JACC accomplishes its worldwide mission of adjudicating claims and defending lawsuits. In addition, all of us, whether at JACC or in the field, can use the handbook as a quick “gig line” check to ensure uniformity and consistency in the way we do things. We have included many sample documents and templates that we encourage members of the FSC and the field to use.

By and large, JACC personnel have tort claims responsibilities that once were the province of the base claims office. JACC assembles files, conducts research, writes memos, negotiates settlements, arranges payments and, when the transition of WebAFCIMS to a web-based system is complete, will even open the claims. However, JACC must rely on personnel at the base level to gather and forward the initial claims paperwork, and, where transfer to JACC is impractical, conduct local investigations and settle claims. The bulk of this handbook walks the claims practitioner through the tort claim process, step-by-step, from receipt to payment or denial. The handbook tries to answer the most common questions you may have at each step of the way. The handbook also gives you the big picture in tort litigation support, including the responsibilities of JACC, and some areas where we will most likely need help from you.

For the handbook to remain a valuable tool, those who use it must constantly look for ways to make it better. As you use this handbook, you will undoubtedly come across questions not answered, suggestions for improvement and innovative solutions to problems yet to be faced. We encourage you to “question, suggest and innovate” with us to continually improve this product. Send feedback to any JACC member found in the email contact list below.
I. The Foundation

If tort claims is a new responsibility for you, there are some things you should do first to make sure your office is prepared to accomplish your mission.

1. JACC Overview. Unlike many areas of law within the JAG Corps, claims practitioners in the field enjoyed a direct liaison with the headquarters even before JAGC21. While your base, NAF and MAJCOM SJAs may provide you with “Rules of Engagement” as to your communications with JACC, we have all the experts you will ever need to assist you with claims. FLITE Roster has more detailed contact information for JACC, but below you can find quick links to email many of the key players, divided into tort law specialties, that you may need to help you in your claims work.

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Joint Base Andrews, MD 20762

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DSN 612-5059

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Deputy Chief: daniel.g.lemieux.civ@mail.mil
Support Staff: layne.p.berryhill.civ@mail.mil (Office Manager)
               paul.m.braun.mil@mail.mil (NCOIC)
Aviation & Admiralty Law: edgar.g.parr.civ@mail.mil (Branch Chief)
                         michael.a.bordera.civ@mail.mil (Aviation Attorney)
                         jennifer.a.maceda.mil@mail.mil (Aviation Attorney)
                         brittany.r.wood3.mil@mail.mil (Aviation Paralegal)
General Torts: bradford.s.hunt.civ@mail.mil (Branch Chief)
               robert.k.coit.civ@mail.mil (Deputy Branch Chief)
               christin.n.sanders.civ@mail.mil (Torts Attorney)
               sara.j.carrasco.mil@mail.mil (Torts Attorney)
               ervin.n.harris.mil@mail.mil (Torts Attorney)
               toni.s.chism.civ@mail.mil (Torts Paralegal)
               christopher.a.frazier18.mil@mail.mil (Torts Paralegal)
               kelly.l.blankenship.mil@mail.mil (Torts Paralegal)

Pro-Government Torts: christin.n.sanders.civ@mail.mil
As a further benefit to the field, the General Torts Branch has assigned an attorney and paralegal team to each installation to act as your primary contact for general tort assistance. General torts are all those torts that are not aviation, medical, foreign, international or environmental. This geographic division of responsibility provides an established contact to installations and allows our general tort branch practitioners to become experts in the tort law of the states within your claims jurisdiction. Refer general torts questions first to your attorney/paralegal team, as they will be most familiar with tort law in your area. If you have a question about another area of tort law and don’t know where to go, your General Torts POC can point you in the right direction.

As for medical malpractice claims, the Medical Law Branch investigates, adjudicates, and settles all medical malpractice claims arising within the U.S, regardless of the dollar amount. At USAFE bases and at PACAF bases outside the 50 states, base legal offices investigate all medical malpractice claims and forward all claims files to the Medical Law Branch for final action.

Finally, JACC is responsible for many other legal missions, including staffing AIBs with legal advisors and recorders, supervision of Medical Law Consultants, and operating the Medical Cost Recovery Program (formerly known as the Hospital Recovery Program). While you probably will not have reason to be involved in these areas of law, it is helpful to be aware of JACC’s entire mission.
The general tort assignments are as follows:

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<thead>
<tr>
<th>Base</th>
<th>Assignee(s)</th>
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<tbody>
<tr>
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<td>Tinker AFB</td>
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<td>Wright-Patterson AFB</td>
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**Assignments by Federal Judicial Circuit or State:**

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<tr>
<td>Coit/Chism</td>
<td>1st, 2nd, 3rd, 4th, 7th &amp; D.C. Circuits</td>
</tr>
<tr>
<td>Harris/Frazier</td>
<td>9th Circuit, Kansas, New Mexico, Oklahoma</td>
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<tr>
<td>Hunt/Nakamoto</td>
<td>Colorado, Utah, Wyoming</td>
</tr>
<tr>
<td>Sanders/Chism</td>
<td>6th &amp; 8th Circuits</td>
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<tr>
<td>Sanders/Blankenship</td>
<td>Texas</td>
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</tbody>
</table>
2. Settlement Authority and Its Delegation. Settlement authority is the authority to bind the United States in tort claim settlements for a specific dollar amount. It also encompasses the authority to deny tort claims when the amount claimed is within the settlement authority’s dollar amount. Settlement authority is typically exercised by signing a settlement agreement or denial letter. For settlement authority purposes, a principal claim and any subrogation claims shall be treated as a single claim. That means if your settlement authority is $5,000 and you have a claim from an insurance company for $4,000 and one from its insured for $2,000 for the same incident, you do not have authority to settle either claim. In addition, there are certain types of claims that are not within the authority of installation-level SJAs, regardless of the amount claimed. These are discussed below.

**CONUS Claims Offices:** CONUS Staff Judge Advocates have $5,000 in tort settlement authority, subject to the limitations discussed below. They are responsible for investigating and adjudicating claims where the amount demanded is $5,000 or less. Forward claims above $5,000 immediately to JACC after properly receiving for them and opening/transferring them in WebAFCIMS, per the procedures below.

**PACAF Claims Offices within the United States:** Base-level claims offices in Alaska, Hawaii and Guam have $25,000 settlement authority, subject to the limitations discussed below. These bases are responsible for investigating and adjudicating claims up to that amount, as well as for conducting a full investigation into tort claims, regardless of the amount claimed. A notable exception is that installations in Alaska and Hawaii do not investigate claims alleging medical malpractice. These are transferred immediately to JACC after properly receiving for them and opening/transferring them in WebAFCIMS, per the procedures below. For claims that are fully investigated by PACAF installations, the base will forward the original to the TCSFC, and shall retain one copy at their base. Refer below for instructions on how to tab and organize the claim file.

**Delegation of Settlement Authority:** Staff Judge Advocates may delegate their full settlement authority to a subordinate Judge Advocate or civilian attorney. Paralegals are not authorized to settle or deny tort claims. They may sign letters offering to settle claims when authorized to do so by a settlement authority, but they may not sign denial letters or execute settlement agreements.

The SJA and claims officer should discuss how settlement authority will be exercised in your office. If the SJA chooses to delegate authority to a subordinate JAG or civilian attorney, it is typically done in one of two ways:

1) The SJA may sign a delegation of authority letter or memorandum, granting blanket authority to settle claims within parameters set by the letter. For example, a CONUS SJA may choose to delegate $2,500 to a subordinate attorney, while retaining authority to settle claims between $2,500 and $5,000. SJAs may also delegate their entire authority to settle claims while retaining the authority to deny claims. Or, a SJA may delegate his or her entire settlement authority to a subordinate attorney. Be sure delegation letters are maintained IAW records disposition.
schedules in official files. Even if superseded, keep prior delegation letters as long as the claim files they apply to are being maintained.

2) The Staff Judge Advocate may authorize settlement or denial of each individual case by signing the adjudication memo, concurring in the recommendation of the subordinate.

3. Disaster Preparedness. Undoubtedly, the most frantic time for a claims office will be when disaster strikes. Natural disasters, such as hurricanes or tornadoes, damaging the property of military and civilian employees, are covered by the Personnel Claims Act, and are overseen by the Claims Service Center at Wright-Patterson AFB, OH. This handbook does not address those scenarios. Tort-based disasters contemplated by this section are caused by Air Force activities. Common examples include aircraft accidents and large-scale fires caused by Explosive Ordinance Disposal or bombing range operations. Tort disaster response can have a powerful impact on base-community relations for both good and bad. In cases where the number of claims may overwhelm a base office’s manpower, JACC can send a disaster claims team quickly to augment your staff and provide on-site expertise to assist. However, your office may be alone for the first 24-48 hours after the disaster—probably the most critical period of the entire response. Here are some issues to work before a catastrophe strikes that will go a long ways towards disaster preparation.

Get a disaster kit ready: To know what to have ready, think through the most likely disaster scenarios to happen near your base. Is the area densely populated? Is weather a factor? Will you have immediate access to the internet from anywhere you might be located? Remember, you may be setting up a temporary claims office many hours from your base that will be open extended hours and serve a large volume of claimants. At a minimum, have the following ready to go on a moment’s notice:

- A laptop with basic word processing software (Word & Excel);
- Electronic copies of the following:
  - AFI 51-501
  - Tort Law and Claims Action Officer Handbook
  - Advance Payment Agreement Template
  - Standard Form 95
  - Standard Form 1034a
  - Settlement Agreement Templates for FTCA, MCA and NGCA claims
- Claimant Sign-in Log
- Local Maps
- Digital camera(s) and/or video camera(s)
- Portable printer that has been configured to the laptop plus extra toner
- Basic office supplies to get started (pens, copy paper, stapler)

Know the rules and procedures for advance payments: Probably the most critical need in the first 24 hours after a disaster is taking care of the immediate necessities of those most affected by the disaster. Review AFI 51-501, Chapter 1 on Advance Payments. You will immediately note that CONUS SJAs do not have advance payment authority. If you have a disaster and anticipate
the need to make advance payments, you will need to call JACC to get such authority delegated to you. You will also note that advance payments are limited to immediate necessities, such as food, shelter, medical care, and clothing, and that it requires the execution of an advance payment agreement.

**Know when to declare a National Defense Area:** Declaring a NDA may result in increased government liability, as it may be construed as a “temporary taking” of private property. Resist the urge to approve a commander’s desire to automatically declare a NDA without analyzing the situation. Review the principles of NDAs found within *The Military Commander and the Law*.

**Plan to devote resources to investigations:** Plan to devote substantial manpower when the disaster claims team is deployed. In cases where there are many potential claimants, it is helpful to send people out to begin documenting losses. Often, driving and walking through the affected area with a video recorder and camera as soon as practicable is time well spent by legal office personnel. Doing so will put a check on fraudulent claims.

**Plan for future needs:** Will you open a contingency claims office off base and near the disaster area? How will you get needed supplies? How will you handle incoming and outgoing mail? Don’t forget your reserve resources to augment or backfill your operations.

**Coordinate with Finance:** Coordination with your local finance office is necessary to ensure affected persons who have approved advance payments can get access to the money immediately. Will finance personnel be on site to disburse funds?

**Exercise your disaster claims response periodically:** For upcoming exercises where it makes sense, ask your JA Exercise Evaluation Team (EET) member to develop and test claims response scenarios. Get your claims team to deploy to a temporary site and see how well it can function. EET members may contact JACC for assistance on scenario inputs that are based on real-world experiences of other bases.

4. **Establish Connections with Key Offices.** Other offices on base will be essential for developing evidence for many of your claims. It is helpful to get to know three or four key people on base who will assist you most often.

**Security Forces:** You will often need copies of Security Force incident reports to properly investigate a claim. Get to know the person in charge in your Reports and Analysis office and educate them on your role. Once they understand that you have an “official use” for SFS reports, they will be quick to assist you. Reports and Analysis can also provide you with access to the daily blotter so you can be aware of potential claim incidents—both torts and G-claims.

**Transportation Office:** Your Transportation office (LGT) is the focal point for all vehicle operations on the base. LGT personnel have responsibility for every government vehicle on base, or know who the responsible officer is. They will have copies of all Standard Form 91, *Report of Vehicle Accident*, or will know how to get them. They will also have all repair documents for government vehicles to substantiate G-claims.
Civil Engineering: Find the person in civil engineering responsible for keeping records of work orders. This is crucial evidence for premise liability cases to prove whether the government had prior notice of defects, whether an independent contractor was responsible for creating a defect, and similar information. Civil engineering also can assist in calculating the overpressures and/or noise levels generated by Air Force flight activities and render an opinion as to whether they were strong enough to cause damages alleged in sonic boom and low overflight claims.

Flight Operations: Your flight operations will keep detailed records of all flights originating from your base. These will be crucial to adjudicating low overflight or sonic boom claims.

Commissary and AAFES: When a DeCA or AAFES customer is injured, an accident or incident report will usually be generated. Get to know the person in each of these organizations who is responsible for maintaining such reports.

5. Potential Claims. During your interaction with the key offices and others on base, you should ask them to keep you apprised of incidents that may give rise to tort liability. Not all potential torts require you to conduct an investigation, but take care to ensure key evidence is preserved. Air traffic control tower tapes and 911 recordings are normally kept for an extremely short duration, and Child Development Centers often suffer from frequent staff turnover. Immediately gathering evidence and interviewing witnesses may be necessary to ensure a vigorous defense is available to the Air Force years down the road. When gathering such short-lived evidence, obtain copies only and request in writing that the holding agency maintain the originals beyond their normal disposition date, until your office authorizes their disposition. If you become aware of any incident in your medical treatment facility that may result in a medical malpractice claim, notify the Medical Law Branch right away.

6. Interaction with Potential Claimants. Claimants may ask for assistance in filing a tort claim. Unlike household goods claims, the tort claim process is adversarial in nature. Air Force legal practitioners must remember their professional and ethical obligations in dealing with unrepresented persons and in avoiding conflicts of interest. Of course, tort claimants who are represented must only be contacted through their appointed counsel. Guidance that may be given to potential claimants is limited to the instructions and information contained on the Standard Form 95 and to the Air Force instructional handout. Under no circumstances should you advise or suggest to potential claimants how much they should claim or give them an opinion as to the merits of their claim or the likelihood of success.
II. When a Tort Claim is Filed

What follows is a step-by-step guide for every incoming claim:

1. **Annotate the claim.** For any document purporting to be a tort claim, annotate it with the date it was received, the initials of the person receiving it and the office symbol where it was received. See sample annotated SF 95 for an example. Annotate this information before making any determination whether the submission meets the criteria for a valid claim. Do this immediately upon receipt.

   **Practice Tip:** The annotation on the claim is crucial for statute of limitations purposes. Litigators may need to locate the person annotating the claim to assist in establishing an untimely claim defense. However, this information should be annotated on every claim, even if you believe there are no questions as to its timeliness.

   **Keep everything the claimant mailed to you!** Including the envelope.

2. **Is it a tort or a P-claim?** Whether a claim is a tort or personnel claim will dictate what you do with it. Personnel claims (P-claims) are filed directly with the Claims Service Center at Wright-Patterson AFB, OH, which adjudicates them under AFI 51-502, while torts are adjudicated either by your office or by JACC at Joint Base Andrews, MD. Because these claims follow very different procedural paths, spotting this issue early and setting the claimant on the right path from the beginning will cause the claim to be adjudicated more efficiently.

   As a general rule, a filing will be a P-claim (and filed directly with the Claims Service Center) if all the following are true:

   - The claimant is a federal employee (civilian or military); and
   - The loss or damage occurred incident to his or her federal employment; and
   - The claim does not arise out of a motor vehicle accident.

   Contact the Claims Service Center at DSN 986-8044 / (937) 656-8044 if you have a P-claim, or any questions regarding P-claims, such as whether a particular claim is “incident to service.”

   If it is does not fit within the above criteria as a P-claim, it should be considered as a tort claim. However, a claim that is not payable under one statute may be payable under another. Do not issue a final denial letter until the claim is evaluated under all cognizable claim statutes. For example, a motor vehicle accident filed by a military member is generally considered under the Military Claims Act. However, there may be reasons why it is not payable under the MCA. In that case, consider whether the Personnel Claims Act may apply before issuing a denial letter. If you believe it does, contact the CSC to discuss.
3. **Check to determine if the claim is a valid claim.** Only a valid claim tolls the statute of limitations. To be valid, only three requirements must be met. A valid claim must be:

   1) **In writing.** Tort claims cognizable within the United States must be submitted in writing. It does not, however, have to be submitted on a Standard Form 95. It can be submitted in the form of a letter or other writing.

   2) **Signed by the claimant.** Only a signed claim tolls the statute of limitations. A claim filed on behalf of a proper party (e.g., by an agent, attorney or executor) may toll the statute of limitations, but proof of authority to act on behalf of that party may be required before settlement can be made. Subrogees (e.g., insurance companies) are proper parties to the extent they have paid benefits to or on behalf of their insured.

   A claim signed by an improper party is not per se invalid; however, the claim may not be payable. For example, a child driving a car registered and titled to his parents is not the proper claimant for property damage to the car; but, if he has met the other requirements, he has filed a proper claim and it must be acted upon. Often, explaining to the claimant why he will not be paid will cause him to withdraw the claim and arrange for the true owner to file a tort claim.

   Insurance companies often send computer-generated form letters with no signature or a computer-generated signature. An agent of the insurance company must sign the demand in order for the claim to be valid.

   ![A digital signature is not an acceptable form of signature. There must be a signed signature on the form.](image)

   **Is there such a thing as an improper tort claimant?** Yes. Federal agencies, including NAFIs, cannot file a tort claim against another federal agency. In a FTCA lawsuit, the named defendant is the United States. Consequently, NAFIs and other federal agencies cannot file a tort claim against the Air Force as it would be tantamount to “suing itself.” For example, if an airman, in the scope of their employment, drives a GOV into a car owned by your outdoor recreation office, the NAFI cannot recover for those damages under any claims statute.

   3) **For a sum certain.** The claimant must demand a specific dollar amount. This is important because the claimant is statutorily prohibited from ever receiving more than the amount claimed. 28 U.S.C. §2675(b). Claims that state words like “to be determined,” or “unknown at this time” do not constitute a sum certain. The sum certain requirement is critical, as a plaintiff in an FTCA lawsuit may not recover more than the amount sought in the underlying administrative claim.

   Generally speaking, claims that add additional words to a dollar amount are valid claims. When litigated, the judge typically drops the modifying words, leaving the dollar amount as the sum certain. (e.g., “$3,000 plus future costs unknown at this time” will become a $3,000 sum certain tort claim).
Preferably, a claimant will fill in line 12d of the SF95. However, amounts in any of the other boxes in line 12 suffice for a sum certain. Whether a particular claim meets the sum certain requirement can be very fact-specific. If you have any questions about whether a claim meets this requirement, or any of these three requirements, please contact the appropriate JACC member for assistance.

Defective claims. If it is not a valid claim, maintain a copy of everything submitted in a potential claim file. Send a defective filing letter back to the claimant and return the original submissions. Place a copy of the defective filing letter in the potential claim file. Do not open the potential file in WebAFCIMS, but maintain it in your office until the end of the fiscal year after two years have passed from the date of alleged incident. If the claimant later perfects the claim, merge the potential claim information with the perfected claim file.

Do this right away! Courts are more likely to rule in our favor in statute of limitations disputes when we act promptly to inform a potential claimant of the defect in their claim. When judges note that the plaintiff attempted to file a claim within the statute of limitations, but was not informed of the defect for weeks or even months later, they will be more likely to excuse the delay as being the fault of the federal agency.

4. Determine which tort statute(s) apply.

Claims involving foreign military members or occurring in foreign countries: Claims arising in the United States are never cognizable under the Foreign Claims Act, and it will be rare when they are cognizable under the International Agreement Claims Act. Call the Foreign Claims Branch for questions regarding these claims or in situations in which the claimant or the alleged tortfeasor is a member of a foreign military. This Handbook only discusses the differences between the most prevalent tort statutes used within the United States—the Federal Tort Claims Act, the Military Claims Act and the National Guard Claims Act.

You will next need to determine under which claims statute(s) the claim is cognizable. A claim is cognizable under a specific statute if it merits consideration. Note that a cognizable claim is not necessarily a payable claim.

1) Federal Tort Claims Act (FTCA). Generally speaking, the FTCA is always cognizable for tort claim allegations that arise within the United States.

2) The Military Claims Act (MCA). A claim is cognizable under the MCA in two different scenarios.¹

¹ There is a third scenario, applicable only in foreign countries. The MCA also applies to claims by U.S. citizens for damages incurred outside the U.S. that are barred by the FTCA’s foreign claims exclusion. For claims personnel in foreign countries with single service claims jurisdiction, follow the general principles of the MCA, and contact JACC’s Foreign Claims Branch for guidance.
1 – Certain claims for negligence not covered by the FTCA, such as property damage claims by military members excluded from the FTCA by the *Feres* doctrine (“negligence clause”); or

2 – Claims for personal injury or property damage caused by “noncombat activities” of the military (“noncombat activities clause”)

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**What is a “noncombat activity?”** See the section on the MCA below.

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**A word about the *Feres* Doctrine:** In 1950, the Supreme Court ruled that military members may not recover under the FTCA for claims incurred incident to their service. This applies to claims for both property damage and personal injury. The Military Claims Act provides a partial remedy to this situation by permitting military members to recover for property damage incurred incident to their service. When cognizable, pay military members’ claims for property damage under the MCA. The MCA does not permit military members to recover for personal injury claims incident to their service, nor does it give them a judicial remedy if they disagree with our adjudication of their property damage claims.

The *Feres* doctrine does not bar military members from FTCA remedies when their personal injuries or property damages are NOT incident to their service; however, this scenario is rare. If a military member’s claim is not payable under the MCA, and you believe the damages were not incident to the claimant’s service, contact JACC. **Claims by military members may not be paid under the FTCA without prior approval of JACC.**

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3) **The National Guard Claims Act (NGCA).** A claim is cognizable under the NGCA when a claimant suffered personal injury or property damage because of a “noncombat activity” of a National Guard member who was performing duties under U.S. Code Title 32, §§115, 316, 502, 503, 504, or 505.

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**How do I determine under what statute the NG member was working?** Whenever a National Guard member performs federal duties, they will be on orders. Obtain a copy of their orders to determine whether they were working under Title 10 or Title 32 of the U.S. Code when the incident occurred. See sample orders of a National Guard member to see what you are looking for. When an ANG member is on Title 10 orders, they are treated the same as active duty members, so the NGCA will not apply. If the member was not on Title 10 or 32 orders, check here.

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**What if more than one tort statute applies?** In that case, evaluate the claim under the provisions of each applicable statute and regulations, in the following order:

1 – NGCA
2 – MCA “noncombat activities clause”
3 – FTCA
4 – MCA “negligence clause”

If the claim is not payable under the first applicable Act, move on to the next. Pay a claim according to the terms and settlement agreement of the first Act which applies. If a claim is not
payable under multiple Acts, each applicable Act must be cited in the denial letter. In short, pay a claim under the FIRST cognizable statute but deny a claim under ALL cognizable statutes. When drafting a settlement letter, there is no need to cite the reasons why a claim is not payable under a certain Act if it is payable under another. For example, do not cite Feres and the FTCA when a military member’s property damage claim is payable under the MCA. See sections on Settlement Procedures and Denial Procedures, for specific procedures in these cases.

So what if my National Guard member was NOT in a federal status?

National Guard members who are not in a federal status (performing duties under either Title 10 or one of the Title 32 sections listed above) are in “state status,” and they are deemed to be employees of the state. Since the claim was filed against the United States, it must be acted upon. Follow procedures to adjudicate and deny the claim, on the basis that the alleged tortfeasor was not an employee of the United States. The denial letter should include the address of the state guard office where the claimant may file a claim.

5. Open the claim in WebAFCIMS.

1) Open under proper statute: WebAFCIMS does not have the capability to open a claim under more than one claim statute. In cases where more than one statute applies, open it under the first statute to be considered, unless it is readily obvious the claim will not be payable under that first statute (e.g., property damage claims by military members should be opened as a MCA, not FTCA).

2) Open under correct claimant’s name: For thorough search capabilities of the database, be sure to open the claim under the proper name. For represented parties, always enter under the name of the claimant NOT the attorney. For insurance companies, enter the company name and the insured’s last name separated by “a/s/o” (as subrogor of) in the Last Name field, for example: “USAA a/s/o Jones.” When a husband and wife file separate claims from the same incident, open them each in WebAFCIMS, but if they file a single claim (such as when they are joint owners of a vehicle), make a single WebAFCIMS entry.

It is CRITICAL that claims be opened properly in WebAFCIMS. Often, we are able to dismiss litigation cases against the Air Force because the Plaintiff has failed to exhaust their administrative remedies. That is, they failed to file a claim before filing suit. We accomplish this in part by searching the WebAFCIMS database and filing an affidavit with the court attesting that no claim has been filed with the Air Force. As such, we rely on the integrity of the WebAFCIMS database. Entering every claim in WebAFCIMS and, in particular, entering the name properly is crucial to our ability to properly search the database and maintain our credibility with federal courts and the Department of Justice.

6. Tab the claim file.

For claims that you will investigate at your installation, use the tabbing system located at Figure 23. Every file will have Tabs A, B and C. The sub-tabs (A-1, A-2, etc.) are not mandatory, but may be used if it will assist in the organization of a large file or complex case.
By segregating information that is privileged (Tab A) from information that may be discoverable (Tab B) and from information provided by the Claimant (Tab C), the Air Force will be able to quickly and easily respond to discovery and FOIA requests and strengthen the defense of our privileges.

**What documents may be privileged?** The work–product privilege is the most common privilege you will encounter in tort claim investigations. Generally speaking, documents and photographs created by attorneys or paralegals during the course of a tort claim investigation, or in anticipation of a tort claim being filed, are protected from release by the work-product privilege provided the document is not shared with a non lawyer/paralegal. These documents should be placed under Tab A. Documents or photographs created by non-lawyers/paralegals or shared outside of legal channels are not protected by the work-product privilege and should be placed under Tab B.

Before transferring any claim (either to JACC or to another installation), please provide the basic Tabs (A, B and C) and place all of Claimant’s submissions under Tab C. This is critical as only you, the original recipient, will know exactly what documents were initially submitted by Claimant.

**7. Determine who is responsible to investigate and adjudicate the claim.**

General Principles Applicable to all U.S. Installations:

1) *Who is the alleged tortfeasor?* The agency that employs the alleged tortfeasor is responsible for investigating and adjudicating the claim. In most cases, this will be easy to determine. For car accidents, liability attaches to the driver, not the agency which owns the vehicle. If a tort was allegedly caused by another federal agency, forward the claim to that agency with a cover letter explaining the reason for the transfer, and send the claimant a letter with the contact information of the agency to which the claim was transferred. Transfer the claim to that agency immediately. Then transfer the claim in WebAFCIMS to the appropriate agency listed or “other agency.” Click [here for a sample letter](#) transferring a claim to another agency.

**Why the hurry to get a claim to the proper agency?** It is important to determine the correct agency to adjudicate the claim immediately. The statute of limitations does not toll until the claimant “shall have first presented the claim to the appropriate Federal agency” whose activities gave rise to the claim. 28 U.S.C. §2675(a). Any unreasonable delay in transferring a claim to the proper agency will likely be held against the United States in a statute of limitations challenge. See [Ahmed v. U.S.](#), 334 Fed. Appx. 512 (3rd Cir. 2009).
Here are links to the addresses and phone numbers for other military services’ claims offices.

Army:  
https://www.jagcnet.army.mil/8525752700444FBA/nav?openform&ewb=121411&est=F404E0AF5B3BE8A78525754500418E98

Navy-Marines:  

Coast Guard:  
http://www.uscg.mil/legal/organization.htm

If your claim involves another federal agency, JACC is happy to help you find the right place to send your claim. Most federal agencies’ websites have information on how to contact them. They will be able to give you the address of their general counsel’s office.

**Practice Tip:** You don’t need to tab claim files being sent to other agencies, just those staying within the Air Force, since we do not know how that agency wants their claim file organized.

2) *Where did the incident occur?* JACC has established a geographic division of claims jurisdiction for claims against the Air Force. A map and zip code listing are found on our website. Your settlement authority is limited to claims that arise within your installation’s geographical area of responsibility. If the alleged tort occurred outside of your area of responsibility, and is otherwise within the authority of another installation, forward the claim to that installation with a cover letter explaining the reason for the transfer, and send the claimant a letter with the contact information of the agency to which the claim was transferred. Then transfer the claim in WebAFCIMS to that installation.

If the claim happened outside of your area of responsibility, but otherwise belongs within the purview of JACC (e.g., above $5,000 or a medical malpractice claim), please forward it directly to us.

3) *For CONUS Installations:* JACC has centralized tort core competencies, while allowing for the practicality of keeping certain types of tort claims at the installation level. The answer to
two questions will tell you quickly whether a claim remains with your installation or whether it should be transferred to JACC

a) How much is claimed? Immediately transfer all claims alleging more than $5,000 to JACC for investigation and adjudication. Be prepared to assist JACC in the investigation.

b) What type of claim is alleged? Immediately transfer the following claims to JACC regardless of the amount claimed:

- Allegations of medical malpractice;
- Claims alleging personal injury;
- Allegations of legal malpractice
- Claims that occur in a navigable waterway
- Claims caused by the activities of the Civil Air Patrol
- Claims filed by your Wing Commander, Vice Wing Commander, JA Staff or families of any of the preceding.

A word about environmental tort claims. Claims that allege damages or injuries due to environmental discharge from Air Force activities are overseen by AFLOA/JACE. Base-level claims offices are responsible for conducting a thorough investigation and legal analysis of every environmental tort claim. While this handbook may be useful, contact AFLOA/JACE for specific guidance on environmental tort claims.

In addition, you must consult with JACC before adjudicating a claim in which anybody was injured, even if the claimant is not alleging personal injury, and claims arising from incidents likely to generate additional claims.

I really love tort claims! Can I keep a $6,000 claim and do it here? This division of tort claim responsibility between installation and JACC is not meant to be inflexible. JACC may act as a relief valve to handle claims otherwise within your authority under unusual circumstances. At the same time, should you wish to keep claims that otherwise would belong to JACC, we may be able to grant you that authority on a case by case basis.

4) For Claims Arising in Alaska, Hawaii and Guam:

Installations in Alaska, Hawaii and Guam are responsible to conduct a thorough investigation into every tort claim against the Air Force within their geographic jurisdictional area. The notable exception is that Alaska and Hawaii do not conduct investigations into medical malpractice claims, rather they forward them to JACC immediately after properly receiving for them, and opening and transferring them in WebAFCIMS.

Upon completion of their investigation, installations in Alaska, Hawaii and Guam may settle or deny claims within their settlement authority, except for the following, which must be forwarded to JACC, regardless of the amount claimed:
- Allegations of medical malpractice;
- Allegations of legal malpractice
- Claims that occur in a navigable waterway
- Claims caused by the activities of the Civil Air Patrol
- Claims filed by your Wing Commander, Vice Wing Commander, JA staff or families of any of the preceding.

**What do I do once the claim has been transferred?** For the most part, you’re done! But be prepared to assist JACC when needed.

8. **Send a receipt acknowledgement letter.** If the claim will be adjudicated by your office, send a receipt acknowledgement letter. See sample here. In the letter, notify the claimant of your contact information and the date the Air Force received the claim. The notification letter is also a great opportunity to request substantiating information, so take a moment to peruse the claimant’s filings and see what may be missing. To know what substantiation to ask for, see 28 CFR 14.4.

**Don’t Delay!** The eight steps above should be accomplished within 72 hours of the claim’s arrival.

9. **Adjudicate the Claim.** See next section for guidance on how to investigate and adjudicate your claim.

10. **Settling Claims.** If the settlement authority believes settlement is appropriate, extend a settlement offer to the claimant. You must obtain an executed settlement agreement before processing the claim for payment. Per the terms of the settlement agreement, a settlement is full and final for all claims that arise out of the incident in question. Claimants may not appeal, amend or supplement their claim once a settlement agreement has been executed. Sometimes, automobile estimates are not exact, and claimants incur additional expenses after the car goes into the shop. Claimants who are concerned about this have the option of settling their claim after it has been repaired.

    **Extending the Offer.** When extending the offer, explain in a letter how much is being offered. If it is less than the total amount claimed, a brief explanation of the legal or factual reasons why the full amount is not being offered can often help the claimant understand and accept the lower offer. See sample settlement offer letter. Include a settlement agreement with the offer letter. Do not sign the settlement agreement before it is sent out. Do not attempt to combine a settlement offer with a “conditional” denial letter if the offer is not accepted (e.g., “if you do not accept this offer, your claim is denied.”). Denying a claim is a separate step after settlement negotiations have been unsuccessful.

    **The Settlement Agreement.** Settlement agreement templates are found on our website and their use is mandatory to settle claims. There are slightly different settlement agreements,
depending on the type of claim (MCA, FTCA, NGCA) and the source of payment (NAFI vs. Appropriated Funds). The Department of Justice has authored these agreements and has not authorized us to modify them in any way, apart from entering the specifics of the claim. Electronic Funds Transfer (EFT) is the preferred method of making payments (with the exception of AAFES claims, which are only paid by check). Include the EFT payment attachment. Process payment by check only if specifically requested by the claimant.

Who Signs the Agreement? For claimants who are represented, the agreement must be signed by the claimant and the attorney. To settle claims for damage to property that is jointly owned, all joint owners should sign the agreement. Only in unusual cases may one spouse settle a claim for property jointly owned by both spouses. Persons having a claimant’s power of attorney may settle on behalf of the claimant if they have provided a copy of the document granting the power of attorney for the file. Tax ID numbers are required for both Claimants and the attorneys who represent them. The settlement authority does not sign the Attachment to the settlement agreement indicating where payment is to be sent. Do not sign the settlement agreement before mailing out; only sign it after all claimants and their attorneys have signed the agreement.

Claims on Behalf of Minors. For claims on behalf of minors or others legally incompetent, the parent, guardian or representative signs the agreement in that capacity (e.g., “Jane Doe, as parent of John Doe, Jr.”). Many state laws require state courts to approve tort settlements on behalf of minors. The Settlement Agreement requires claimants to comply with any applicable state laws to obtain such approval before payment may be made. Court approval, if required, is the responsibility of the claimant to obtain and is at claimant’s expense.

Payment Procedures. Once you have a properly executed settlement agreement, procedures depend on the type and amount of settlement you have:

1) FTCA Settlements above $2,500: These claims are submitted to the Judgment Fund, U.S. Treasury, for payment. Follow established procedures in AFI 51-501, or submit through the Judgment Fund Internet Claims Service, if your office is enrolled.

2) All MCAs and NGCAs, as well as FTCA Settlements of $2,500 and under: These claims are sent to the Claims Service Center for payment, along with a SF 1034, Public Voucher for Purchases and Services Other Than Personal. Generate the SF 1034 within WebAFCIMS to ensure the fund cite and other data are correct.

Settling Nonappropriated Fund Instrumentalities (NAFI) Claims. NAFI claims are those that arise from the negligent or wrongful acts of NAFI employees and are paid from non-appropriated funds. Most NAFI employees work for Air Force Services Agency or AAFES. Examples of NAFI activities on your base include tickets and tours, outdoor recreation and child development centers and auto hobby shops. But some appropriated fund employees may work in support of
some of these activities. It is important that you determine who the alleged tortfeasors are and whether they are employed by the Air Force or the NAFI. Remember that AAFES operates not only your BX, but also your gas station, auto service center and shoppette.

Settling NAFI claims requires three changes to the above procedures. 1) a copy of the claim is sent to the NAFI upon receipt so it can set aside funds for the potential payment; 2) The settlement agreement is different (sample NAFI settlement agreements are on our website); and 3) a copy of the SF95, legal memo and settlement agreement is sent for payment to the NAFI responsible for the employee who caused the incident (either AFSVA or AAFES). It will then issue payment directly to the claimant.

AAFES claims may be sent by email, fax or mail:

   email (to CPT Scott Woods): woodssc@aafes.com
   Fax: 214-465-2389
   Army & Air Force Exchange Service
   Office of the General Counsel (GC-G)
   P.O. Box 650062
   Dallas, TX 75265-0060

Send NAFI (other than AAFES) payments to:

   afsva.svl.distro@us.af.mil
   and
   betty.bennett.2@us.af.mil

  Notifying the Claimant of Settlement. Inform the claimant, by letter, when the claim has been forwarded for payment and that it may take up to 30 days for them to receive payment.

  11. Denial Procedures. When denying claims, issue a denial letter, follow the format found here for FTCA claims or here for MCA/NGCA claims. Do not attempt to condition a denial on claimant’s refusal to accept a settlement offer (for example “…if you do not accept this offer, your claim is denied.”). The denial letter must be a stand-alone document issued after all settlement offers have been rejected. A proper denial begins the clock on appeal, reconsideration or litigation deadlines. The following procedures for denying claims must be followed exactly to ensure that the clock starts running.
**Denying Claims because Claimant Failed to Provide Substantiation:** Think twice before denying a claim because of “lack of substantiation” by the Claimant. Although Claimant will have the burden of proving negligence during litigation, and 28 Code of Federal Regulations (CFR) §14.4 requests claimants provide substantiation, there is no judicial remedy available to the Air Force if claimant fails to do so at the administrative claim stage. The administrative claim stage is the opportunity for the Air Force to determine what happened. Claimant’s failure to provide the evidence to prove their case does not mean they won’t be able to during litigation and it does not excuse a less-than-thorough investigation on your part. You must assume that during the discovery phase of litigation, Claimant will request all relevant information held by the United States, and you should seek out all such information during the administrative claim stage to assist you in making the correct adjudication.

If claimant does not provide you with critical information that is only in their possession (such as a repair estimate, or medical records from a civilian provider), then denial for lack of substantiation may be appropriate after Claimant has been given every generous opportunity to provide the information.

**Mandatory Language:**

For all Claims: The full title and legal citation of the statute under which the claim was considered, typically in the opening paragraph, and the reasons for denial. The date it was mailed must be on the letter.

**FTCA Claims:** For claims denied under the FTCA, you must include the following language in the denial letter, typically in the closing paragraph:

“This is the final denial of your (or your client’s) claim. If you are (or your client is) dissatisfied with this decision you (he/she) may file suit in an appropriate U.S. District Court no later than six months after the date of mailing of this letter.”

**MCA/NGCA Claims:** For claims denied under the MCA or NGCA, you must include the following language in the denial letter:

“This is the final denial of your administrative claim. However, if you desire, you may appeal this decision. No particular form is necessary, but the appeal should be in writing, describe the reasons for appeal, provide any additional evidence to substantiate the claim, and arrive at this office within 60 days of the date of this letter.”

**Denying claims considered under both the FTCA and MCA:** If you will be denying a claim under both the MCA and FTCA, you will need to combine the mandatory denial language for both like this:

“This is the final denial of your (or your client’s) claim under the Federal Tort Claims Act. If you are (or your client is) dissatisfied with this decision you (he/she) may file suit in an appropriate U.S. District Court no later than six months after the date of mailing of this letter. This is also the final denial of your administrative claim under the Military Claims Act. However, if you desire, you may appeal this decision. No particular form is necessary, but the appeal should be in writing, describe the reasons for appeal, provide any additional evidence to substantiate the claim, and arrive at this office within 60 days of the date of this letter.”
**Is there a right to reconsideration under the FTCA?** Yes. Federal regulations permit reconsideration under the FTCA. See 28 CFR §14.9(b). We are not required to, nor as a matter of practice do we inform FTCA claimants of their right to reconsideration. However, if they request reconsideration, follow the procedures in Step 13 below.

*Keep a photocopy of the signed denial letter in the claim file.* This is necessary for evidentiary purposes to prove a claim was denied on a specific date.

**Mailing Procedures:** Mail the letter the same day it is dated. The FTCA (28 U.S.C. §2675(a)) mandates that all denial letters must be mailed through the U.S. Postal Service, and must be sent certified mail, return receipt requested. That means the letter will have the green certified mail bar code sticker affixed to the top edge of the envelope as well as the green return postcard affixed to the back. It should look like this. Follow these same procedures claims denied under the MCA, NGCA or any other claims statute.

When you deliver the letter to the USPS, post office personnel should fill out the certified mail receipt, stamp it with a dated postmark and return it to you as evidence they received the letter on a specific date. Staple the receipt to the photocopy of the denial letter in the file. Once you receive the green return receipt postcard that has been signed by the addressee, also staple it to the denial letter.

**But BITS doesn’t work this way.** Some BITS operations may initially be unwilling or unable to meet these specific requirements. If difficulties persist, you may wish to consider taking denial letters directly to a USPS post office.

**Why mail the denial letter the same day?** Note that the 6-month clock begins to run on the date the letter is mailed, not the date of the letter. To avoid confusion and to maintain credibility with the court, denial letters should be delivered to the post office the same day as the denial letter is dated.

**Denial Letter Delivery Problems:** If the denial letter is returned for any reason (claimant has moved, refuses to sign for the letter, address unknown, etc.) double check the address. If correct, keep the entire sealed envelope in the file (the envelope should be annotated by the post office with the reason it was undeliverable). Send a photocopy of the original denial letter (you should have a copy of the signed denial letter in the file) again by certified mail; also send a copy of the denial letter by regular mail. Do not issue a newly-dated denial letter. You may include a cover letter, explaining that the enclosed correspondence was returned to us undeliverable, but the cover letter must make clear that the deadlines began to run as of the date of the original denial letter, not the second attempt.

If you erroneously mailed it to the wrong address, provided insufficient postage or the denial letter was otherwise not deliverable through the fault of the Air Force, reaccomplish the denial
12. **Withdrawn claims.** A claimant may withdraw his or her claim in writing. Keep the written withdrawal letter in the file and withdraw it in WebAFCIMS. Keep the file in accordance with the disposition schedule for denied administrative claims.

13. **Close in WebAFCIMS.** After the claim has been resolved, close it in WebAFCIMS.

14. **Handling Appeals/Reconsiderations.** When a claimant appeals (MCA/NGCA) or asks for reconsideration (FTCA) of a claim you denied, first reopen the claim in WebAFCIMS (but do not assign a new claim number). Next, evaluate the claimant’s position and arguments. If you believe the appeal/reconsideration should be granted in full, or it warrants a compromise offer not previously extended, and is otherwise within your settlement authority, you may extend the offer. If the offer is refused, or you believe the appeal/reconsideration should be rejected, then forward the claim to JACC for final action, along with your recommendation. No settlement authority below JACC may deny an appeal/reconsideration. A claimant is entitled to only one appeal/reconsideration of a claim.

Can a claimant increase the amount of their demand on appeal or reconsideration? Yes.

### III. Adjudicating Tort Claims

1. **Tort Law Background.**

   *The Theory Behind Tort Law:* A tort is defined as a private or civil wrong, for which there is a remedy in the form of damages. (See Black’s Law Dictionary, 6th Ed., p. 1489). Tort law seeks to accomplish two goals: one is to compensate injured parties with money to make them whole when they suffer a loss at the hands of another; the second is to deter wrongful conduct by making tortfeasors financially responsible for the losses they cause.

   Not every injury or loss is compensable. Before evaluating the loss to the claimant, one must first establish that the defendant committed some wrong or breached some standard of acceptable behavior.

   Tort law asks whether the defendant violated some duty or accepted standard that caused a loss. In terms of the most common type of tort, negligence, the tort practitioner must ask: 1) What legal duty is owed to the claimant by the defendant? 2) Did the defendant breach that duty? and 3) Did that breach cause harm to the claimant? These questions provide the framework for deciding whether particular conduct constitutes negligence.

   Tort law rests heavily on policy issues to determine many of these questions. For example, in answering whether the act “caused” a particular harm, a finding that the action of the
defendant resulted in the harm is not enough. Tort law asks whether the defendant should be held legally responsible for the damages caused. This is the concept of “proximate cause.” Proximate cause asks such policy-type questions as whether the harm was foreseeable to the tortfeasor (avoiding liability for the “butterfly effect”), whether the injured party is of the class of persons tort law is designed to protect in this situation and whether the type of harm is that for which compensation is contemplated. It is these policy questions that create much of the debate and litigation in tort law.

The measure of damages in tort law seeks to restore claimants to the same position they were in before the accident. In many cases, the amount of damages is easy to calculate. A scratched automobile bumper costs a specific amount to repair and a destroyed home has a fair market value. But torts that involve personal injury cannot be quantified so easily. In truth, the court cannot restore someone’s health, bring someone back to life, or restore someone’s reputation. In these cases, monetary compensation is only an approximate substitute for the physical injury or defamed character and is not easily quantifiable, making the amount of compensation in these cases subject to much debate and litigation.

**Sovereign Immunity:** Sovereign immunity is the legal principle that a government (or sovereign) cannot be sued unless it consents to being sued. Since Air Force employees acting within the scope of their employment are agents of the Air Force (and thus agents of the United States government), torts arising from Air Force activities would not be compensable unless there was some waiver of that sovereign immunity. The United States government has waived sovereign immunity through the various tort statutes discussed herein (FTCA, MCA and NGCA) as well as others that fall outside the scope of this Handbook. The concept of sovereign immunity is important to remember because a claim against the Air Force may only be paid if it clearly falls within the space created by the limited waiver of sovereign immunity within the statute.

What follows next is a discussion of each of the major tort claims statutes. A full discussion of these statutes would take several volumes. This is meant only to give you a broad overview.

2. **The Federal Tort Claims Act (28 U.S.C §§1346(b), 2671-2680; AFI 51-501, Chapter 2).**

Prior to 1947, there was no statutory waiver of sovereign immunity, and courts universally refused to permit suit against the United States that sounded in tort. Individuals who suffered a tort loss at the hands of the government had to resort to petitioning congress to pass a private relief bill that appropriated money to the injured party.

The Federal Tort Claims Act was enacted in 1947 as a limited waiver of sovereign immunity for torts caused by employees of the United States government, acting within the scope of their employment. The FTCA has been amended over the years, but the general rule is that the United States waives sovereign immunity for torts to the same extent as a private person would be liable in the jurisdiction where the incident occurred. For this reason, knowledge of state tort law is important in order to adjudicate FTCA claims. In some cases, local ordinances may also define the extent of FTCA liability.
"Employee of the Government" / "Scope of Employment": For the U.S. to be liable, the act must have been caused by an employee of the United States. Employees of the U.S. include:

- Active duty and reserve military members
- Federal civil service employees, including NAF and AAFES employees
- National Guard members in a federal status (10 USC or 32 USC §§115, 316, 502, 503, 504 or 505)
- Volunteers

Those deemed not to be employees of the United States include:

- National Guard members in a state status
- JROTC instructors
- Members of private organizations

The employee must be acting within the scope of their employment in order for the U.S. to be liable. Each state has developed law to determine whether persons are acting within the scope of their employment such that their employers are liable for their actions. This is known as the doctrine of respondeat superior. While each state is different, generally speaking, the acts of employees must be authorized by their employer, be within the time and scope of their employment parameters, and be in furtherance of some interest of their employer.

Determining scope of employment is a very fact-specific exercise, and in automobile accident cases different rules will often apply depending on whether the driver is TDY/deployed or at the driver’s home station. If you are unsure whether a tortfeasor was acting within the scope of his or her employment, contact JACC, as we have amassed a significant body of cases in many jurisdictions that address the issue.

Exceptions to the FTCA: While the general rule is that the U.S. is liable in accordance with state tort law, the FTCA’s limited waiver of sovereign immunity creates several exceptions to that rule that shield us from liability. Some of the exceptions you are likely to encounter in the Air Force include:

- punitive damages are not payable (28 U.S.C. §2674)
- claims based upon acts that arise when a federal employee is complying with a federal law or regulation (28 U.S.C. §2680(a))
- claims arising from the seizure and holding of property by a law enforcement officer (28 U.S.C. §2680(c))
- claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, libel, slander, misrepresentation, or interference with contract rights (28
claims arising in a foreign country (28 U.S.C. §2680(k))

• another exception, created by a Supreme Court ruling, excludes claims by military members for personal injury or property damage incurred incident to their military service (Feres v. U.S., 340 U.S. 135 (1950))

Common State Tort Law Principles: While each state has its own unique variations on tort law, there are some principles that can be generalized and will be helpful to you when adjudicating the torts you are most likely to encounter. The General Torts Branch has assigned to each state attorney/paralegal teams having experience and expertise with the tort law of each of your jurisdictions. Should your legal research into your state tort law leave you with questions, call your tort claim liaison for help. Chances are we’ve dealt with your issue before.

• Measure of Damages: Tort law seeks to put the claimant in the same position he was in before the incident occurred. In most cases you will adjudicate, that simply means that the U.S. will reimburse the claimant the amount of money required to repair the property.

• Contributory / comparative negligence: A few jurisdictions (Alabama, D.C., Maryland, North Carolina & Virginia) still recognize the principle of contributory negligence, which is that a claimant can recover nothing if he is even one percent at fault in causing his damages. Every other state follows some version of comparative negligence, which states that claimants may recover even if they are partially at fault, but their recovery is reduced by the proportional amount of their own fault. This is probably one of the most used defenses to offset liability, and may be applicable in all but the most clear-cut cases of U.S. liability (such as hitting a parked car or rear-ending the claimant).

Most states have passed their own state version of the FTCA to waive sovereign immunity for state and local governments. These state tort claims acts statutes and cases interpreting them are irrelevant for our purposes. The FTCA makes us liable to the same extent as a private person, not a state/local government.

FTCA Procedure: The FTCA creates a right to sue the United States in Federal District Court. 28 U.S.C. §1346(b). State courts (including small claims court) have no jurisdiction to hear tort cases involving the United States. Before claimants can sue in federal court, they must fulfill the administrative prerequisite of filing an administrative tort claim. 28 U.S.C. §2675. A written administrative claim must be filed within two years of the date their claim accrued, usually the date they suffered the loss. Once they have filed a proper administrative claim with the agency whose activities gave rise to the claim (see above for requirements of a proper claim), the statute of limitations is tolled.

After filing a claim, the claimant may not file suit until the agency has issued a final denial of the claim. Once that denial is issued, the claimant must file suit within six months of the date of mailing of the denial letter. However, the FTCA does not require the claimant to wait
indefinitely for a final denial letter. Claimants may opt to file suit anytime after six months has passed since they filed their tort claim. 28 U.S.C. §2675(a). Thus, the agency is given a six-month “window” in which to investigate and adjudicate the administrative claim without threat of a lawsuit. This six month window is strictly enforced and suit may not be filed before then. See McNeil v. U.S., 508 U.S. 106 (1993). It is Air Force policy to investigate and resolve as many tort claims as possible within six months of the date of filing.

The FTCA does not impose any burden on claimants during the administrative investigation. However, Department of Justice regulations outline the information that claimants should provide in support of their claim. See 28 Code of Federal Regulations, §14.4. Courts have generally held that claimants are under no legal obligation to provide this information to meet their requirement to file an administrative claim. If a claimant fails to provide evidence to support his claim, that may be grounds to deny his claim administratively, but it will likely not prevent a lawsuit from proceeding. It is usually in our interests to request and wait for the substantiation during the administrative claim stage, rather than force a lawsuit and be subject to court-imposed deadlines during litigation.


The Military Claims Act permits the Secretaries of the military services to pay claims for property damage, personal injury or death caused by the negligence of military personnel and civilian employees acting within the scope of their employment, or incident to noncombat activities, that the FTCA does not cover. The MCA is purely an “act of grace,” that is, claimants may file an administrative claim, but there is no right to file a lawsuit if they disagree with the decision of the Air Force.

*Domestic MCA Claims:* For domestic claims offices, there are only two scenarios where you will pay claims under the MCA.

1) **Property damage suffered by military member.** Because the *Feres doctrine* prohibits military members from recovering for damages incident to their service, this allowance under the MCA is meant to lessen that impact by permitting military members to recover for property damage when caused by the wrongful acts or omissions of an Air Force employee within the scope of his or her employment. It does not permit recovery for the personal injury or wrongful death of military members. The scope of these claims is the same as a FTCA claim: consider the tort law of the state where the incident occurred.

2) **“Noncombat activities” of the Air Force.** Non-military members can recover for personal injury or property damage caused by the “noncombat activities” of the Air Force. “Noncombat activities” are those that are essentially military in nature and have little parallel in civilian pursuits; in other words, activities for which a private person would not be liable under state law. Common examples include operation of military aircraft and spacecraft, military maneuvers and EOD operations. Noncombat activities MCA claims permit the Air Force to pay without a showing of breach of a duty—all that is required is a showing of causation and damages. MCA claims based on noncombat activities are also eligible for advance payments. Except for sonic boom and low overflight claims, most claims arising
from noncombat activities will be well beyond your $5,000 settlement authority, and you are not authorized to make advance payments without the permission of JACC. Notify JACC immediately if you become aware of a noncombat incident that may result in high value tort claims.

3) Applicable Law for MCA cases: Refer to AFI 51-501, Chapter 3 for specific exclusions. Otherwise, apply the law of the place where the incident occurred. This is meant to have MCA cases mirror FTCA cases in the same jurisdiction. For this reason, you should research court decisions that interpret the FTCA exceptions and apply those standards to your MCA case.


The NGCA only applies when the following conditions are met:

1) The tortfeasor is a National Guard member performing duty on Title 32 orders; and

2) The tort was caused by a noncombat activity.

National Guard members who are performing duty under Title 10 have the same status as active duty members, and torts caused by them are governed by the MCA or FTCA as applicable.

The NGCA applies the same law as the MCA.

5. Miscellaneous Claims Statutes

Use of Government Property Claims Act (UGPCA) 10 U.S.C. §2737: The UGPCA allows payment for death, personal injury, or property damage, incident to an Air Force member or employee’s use of a government vehicle at any place or any other government property on base, which are not payable under any other statute. Payments under this statute are limited to $1,000.00. The claim is not payable under this statute if it is:

- Payable under any other provision of law;
- Caused wholly or partly by a negligent or wrongful act of the claimant, the claimant’s agent, or employee.
- A subrogated claim (from an insurance company).
- Recoverable from other sources such as an insurance policy.
- Recovered from action under Article 139, UCMJ.
- For pain and suffering.
These constraints mean the UGPCA will rarely be used. This act does not require proof there was government negligence or the operator was within the scope of employment. For example: An Air Force car drives over some gravel on a public highway. Through no negligence of the Air Force, a stone hits the claimant’s vehicle, cracking the windshield. Since the Air Force was not negligent, the claim cannot be paid under the Federal Tort Claims Act. The settlement authority may offer up to $1,000 under the UGPCA upon execution of a settlement agreement. All other filing procedures and the statute of limitations are the same as for the MCA. See AFI 51-501, Chapter 5 for more details.

**Admiralty Claims Statutes:** Within the Air Force, admiralty claims are adjudicated under the Air Force Admiralty Claims Act (AFACA), 10 U.S.C. §§9801-9804, 9806, and the Admiralty Extension Act (AEA), 46 U.S.C. app. §740. Often, admiralty claims arise when a fisherman’s nets are damaged by Air Force aircraft debris in the sea. However, there have also been claims involving a vessel which sought a “reward” for retrieving an AF drone; for damages incurred when an AF aircraft, traveling over a traditional maritime route, collided in mid-air with a civilian aircraft; and for damages caused by pleasure craft signed out from recreation services. These claims will be rare and does not merit a thorough treatment in this Handbook. Contact the Aviation and Admiralty Law Branch of JACC if you believe you have an admiralty claim.

**Article 139 Claims (10 U.S.C. §939):** This statute permits payment for property damage caused by “riotous, violent or disorderly conduct” of military members. It is unique in that upon complaint, the commander appoints a board to review the incident, and may require the offending member make financial restitution for the damages. The scope and procedures for Article 139 claims are detailed in AFI 51-502, Chapter 6. Any questions about its scope and application should be referred to JACC.

6. **Adjudicating the Claim: Legal Research.**

The first step to legal research is to read the implementing statute or regulations. That may sound obvious, but researchers often overlook it and skip straight to case law research. The FTCA, for example, has many defenses and exceptions written into the statute and you should become familiar with them before looking at cases interpreting them in the context of specific factual scenarios.

Before performing effective case law research, it is helpful to know something about the organization of our court system. Federal district courts are the trial-level courts for federal cases. All FTCA cases will be initially heard in a federal district court. Each state has at least one Federal Judicial District. Many states have multiple Districts. Decisions from district courts may be appealed to the Federal Judicial Circuit over that district. In the U.S., there are 12 Judicial Circuits with jurisdiction over FTCA cases—circuits numbered 1 through 11 and a District of Columbia Judicial Circuit. Decisions by the circuit courts are binding on all district courts within their circuits. From the circuit court, cases may be appealed to the U.S. Supreme Court—the highest court in the land—whose decisions are binding on all federal courts. See this [map](#) of the federal districts and circuits.
At the state level, each state has set up its own judicial system. Most follow the same pattern of the federal courts (trial court level, appellate court and supreme court), but often use different names. State courts are set up to decide cases involving questions of state law, including tort cases.

Precedential value refers to the weight of authority that a particular court decision carries when applied to similar cases in the future. Court decisions have precedential value for their own court and for any subordinate courts. For example, a decision by the Ninth Circuit Federal Court of Appeals has precedential value for all federal courts within the Ninth Circuit, but not for the District Court of Massachusetts. It may be persuasive and helpful, but courts outside of the Ninth Circuit are under no obligation to follow that decision. Similarly, a decision by a judge in the Eastern District of California is precedence for decisions in that same district, but not on a judge in the Northern District of California. The goal of legal research is to first find cases of precedential value, and then find cases of persuasive value that allow you to predict what a judge might rule if presented with the facts of your case. Once you know how a judge is likely to rule when confronted with the facts of your case, you can determine whether settlement or denial is appropriate.

For the FTCA, you need to remember that the source of judicial law is two-fold. One source is the decisions by federal courts that interpret the FTCA. The other source is state court decisions interpreting their state tort law as it applies to private individuals. Remember, FTCA cases are heard by federal judges, but they apply the tort law of the state where the incident occurred.

A good place to begin your legal research is your federal circuit where the incident happened. Look for FTCA cases with your particular issue, paying particular attention to Circuit decisions and decisions from your federal district for precedential value. If you find nothing on point, you may want to expand your search to all federal courts to see if other jurisdictions have decided your issue (persuasive value). Be sure to read cases involving facts similar to yours. The court will often cite other court decisions as support for its decision, and some of those cited cases may open a new path for research.

Your FTCA research should also include research into your state court decisions for cases similar to yours. You will likely find many more cases in your state law research than in federal courts. Although they will not be FTCA cases, those decisions will help you know the extent a private person is liable for torts in your jurisdiction, which is the legal standard by which U.S. liability is measured under the FTCA.

For more advanced training, arrange for WESTLAW representatives to provide specific legal research training on tort law issues to help refine your skills.

7. **Adjudicating the Claim: Factual Investigation.**

Adjudicating a claim is the process of determining the facts of the case and applying the law them to determine whether the United States is liable for the incident. So which do you do first: the factual investigation or the legal research? The answer is both. You need to have a general
idea of what the law is, so you know what facts and evidence you need to uncover to aid in your adjudication. But your investigation may uncover surprising facts that may bring a new legal issue into play. In truth, you usually cannot separate your investigation and research into two discrete, sequential steps. You will often need to bounce between them as new facts come to light and as you research relevant law.

**Witness Interviews:** Plan on interviewing every person who was involved in, or has information pertaining to, the incident. Prior to conducting an interview, it is important that the witness understands that you represent the Air Force. Conduct interviews either in person, over the telephone or via VTC. Do not interview or question witnesses via email or other written correspondence. Email is acceptable to communicate about logistics (date/time/location of the interview), but never to discuss substantive facts. Written correspondence between you and a potential witness is discoverable and must be turned over to the other side in litigation. For this reason, you must preserve all email correspondence in the claim file.

Do not record interviews, as the recording may be discoverable in litigation. If there is a need to preserve the witness testimony for some reason (such a witness who is terminally ill), contact JACC. If JACC grants permission to record the interview, be sure the recording is retained, and note in the interview memorandum that the interview was recorded. The original recording becomes a part of the claim file and must be kept IAW normal claim file disposition schedules. Take notes during the interview. Preserve the notes in the claim file, as well. A sample witness interview memo is found here.

If the interview causes you to suspect a witness may have engaged in criminal conduct, take a break from the interview and contact JACC for guidance. It may be necessary to advise military witnesses of their rights under Article 31, Uniform Code of Military Justice (UCMJ). It is generally not necessary to advise civilian witnesses of their rights under the Fifth Amendment of the U.S. Constitution, but government civilian employees may be entitled to notice of their Weingarten rights under 5 U.S.C. §7114(a)(2)(B). Consult with JACC or your supporting JA channels for labor law issues.

While the interview is still fresh in your mind, prepare an interview memorandum. You must include the following statement on every page of all witness interview memoranda:

>This memorandum has been prepared by an Air Force Judge Advocate (or paralegal) while investigating a claim or potential claim for damages against the United States. The attorney’s (or paralegal’s) impressions and observations summarized herein were obtained in anticipation of future litigation involving the same incident, and this memorandum would not have been prepared in the normal course of Air Force business activities, but for the possibility that litigation might ensue.

Incorporate into the memorandum the information obtained from the witness during the interview. Include information about the individual’s demeanor, such as whether you believe he or she would make a credible witness and what impression he or she is likely to leave on a judge. Is he hazy or sure of his statements? Does he appear to be trying to
be overly helpful to one party or another? Also include the witness’ full name, telephone number, and employment information. If the individual being interviewed is military, obtain the last four digits of that person’s social security number, home of record, and permanent change of station (PCS) information, if applicable. Witnesses you interview may not be subpoenaed to testify for several years and it is important that we have sufficient information to be able to locate them.

The claims investigator, not the witness, signs the memorandum. Do not give or show the witness a copy of the memorandum. The purpose of these restrictions is to ensure the interview documentation remains protected by the attorney work-product privilege. This privilege prevents disclosure if the document was created by an attorney or a paralegal. If the witness is allowed to review or create the interview memo, we may be forced to turn over your written product to the claimant’s attorney in discovery. For permission to deviate from this policy, contact JACC.

**Documentary and Other Tangible Evidence:** For documents, recordings and other tangible evidence in the possession of the Air Force, obtain copies and place them in the claim file. Do not take possession of the originals. The record custodian should maintain the originals. Ensure that the custodian maintains the evidence until the claim is closed and there is no reasonable expectation of litigation. For practical purposes, that means until a claim is settled, or more than six months have passed since it was denied and no litigation has been filed. That may require holding the evidence beyond the normal record disposition schedule for that item. For documents that have been sent to a records storage area, request records custodians to retrieve them and maintain them in their possession.

In some cases, documentary evidence may have very short disposition schedules, such as flight recordings or BX surveillance tapes. You should request such records be preserved, even if you have not yet received a tort claim, but merely suspect one may be filed.

The common claim scenarios, below, discuss some specific documentary and tangible evidence you should seek out. These scenarios are the most common ones for claims that will be within your claims settlement authority or for which JACC will ask you for assistance in gathering information.

**8. Common Claim Scenario: Motor Vehicle Accidents (MVAs).**

Usually, adjudicating MVAs require analysis of only a few legal issues.

**Scope of Employment:** Apart from proving negligence, you must ensure the federal employee was acting within the scope of his or her employment before making a settlement offer. If the member was driving a GOV, you should always get a copy of the Standard Form 91, Motor Vehicle Accident Report. Anytime a GOV is damaged, this form must be filled out. The SF91 can be obtained from your vehicle operations flight or the vehicle control officer for the car involved in the accident. Besides a narrative description of what happened that will indicate if the AF driver was at fault, you will want to carefully review Section X. In that section, the driver’s supervisor certifies whether the driver was acting in the scope of the driver’s
employment. Despite what Section X states, if there are any “red flags” that may lead you to believe that the member may not have been in the scope of his or her employment, (such as the time of day or location of the accident), you should interview the supervisor, other passengers and the driver.

*Amount of Damages:* Damages are usually measured by repair estimates or actual repair costs. For property damage claims over $1,000, claimants should provide two repair estimates, and you should pay the lower of the two estimates. For claims less than $1,000, only 1 repair estimate is required. For claims that the vehicle is totaled, you must determine the fair market value of the vehicle at the time of the accident. Websites such as Kelly Blue Book® ([www.kbb.com](http://www.kbb.com)) and National Automobile Dealers Association® ([www.nada.com](http://www.nada.com)) provide reasonable measures of used car values. Avoid relying on classified or online ads.

*Loss of Use (Rental Vehicle Cost):* Check your state law to determine whether Claimant may recover for the loss of use while the vehicle is in the shop, or while the claimant is looking for a replacement vehicle. This is generally measured by the cost of a comparable rental car. For repairs, the loss of use is equal to the number of reasonable days the car is in the shop and unavailable to the claimant. For totaled vehicles, allow a reasonable amount of time to find a suitable replacement. Generally speaking, three weeks from the date of accident is more than sufficient time to find a replacement vehicle.

*Diminished Value:* Some claimants seek payment for repair costs AND allege that the car is worth less even after repairs. This area of the law of damages is still undeveloped in most states. Do not pay both repair costs and loss of value unless clearly authorized under your state’s statutory or common law.

*Subrogation claims:* Some claimants may choose to obtain payment for their vehicle damage from their insurance company. The law permits an insurance company to pursue a claim against the tortfeasor for the amount it paid to repair the damage to its insured’s car. This is referred to as a subrogation claim, and the insurance company essentially stands in the shoes of its insured in pursuing a claim against the Air Force. That means we can assert against the insurance company any defenses we could have asserted against the vehicle’s owner. *Feres* bars FTCA claims by military members, so process insurance subrogation claims filed on behalf of military members under the MCA.

Insurance companies will sometimes attempt to collect their insured’s deductible in their claims. If the insurance company has waived its insured’s deductible, meaning, it has paid for the entire repairs without requiring its insured to pay the deductible, it may claim the full amount. If the insured paid a deductible, the insurance company does not have subrogation rights to that deductible and may only claim it on behalf of its insured if it provides written authorization from its insured to do so. The insured can always file a separate claim for the deductible.

9. **Common Claim Scenario: Sonic Boom**
Sonic boom claims allege that the extreme overpressures from an aircraft cause some structural or property damage to the claimant’s home.

Identify the Aircraft: The first step in investigating an aviation claim is to determine whether an Air Force aircraft was involved in the incident. The following sources are available to help identify the aircraft:

- Public Affairs Office (for noise complaints).
- Flying squadrons, base operations, air traffic controllers, and wing flying scheduler.
- Range Control Officer (if the incident occurred on or near a bombing range).
- Accident Investigation Board (AIB) Reports. When a claim arises out of an aircraft accident, check with AFLOA/JACC or your MAJCOM legal office to see whether an AIB investigation was conducted.
- Military Training Routes (MTRs). Often, claims arise from low-level and supersonic flights along MTRs. Low-level flight generally allows aircraft to fly between 300 to 500 feet above the terrain. Supersonic flight operations over land must be conducted at an altitude above 30,000 feet unless a lower altitude is approved by HQ USAF. Military aircraft must adhere to the airspeed, altitude, and other flight restrictions of the MTR. Aircraft flying along MTRs can be identified as follows:
  - Plot the location (latitude and longitude) of the incident on a Military Training Routes Area Planning Chart to identify the closest MTRs to the location of the alleged incident. Then, determine the scheduler for those MTRs by referring to the Flight Information Publication (FLIP) Area Planning Book. Each MTR has an individual scheduling agency that books aircraft into the MTRs. The charts and FLIP books can be found at base operations or at the flying squadrons.
  - Contact the MTR scheduler and provide the date and time of the incident and the name or identifying number of the MTR. The scheduler will determine whether any aircraft were in the area at the date and time alleged, and identify the unit, call sign, and type of aircraft involved.
  - Contact the unit and identify the crew members.
- Special Use Airspace. Special Use Airspace is a defined area that is routinely used for specified purposes such as air refueling, practice bomb drops, fighter intercept exercises, supersonic activity, etc. Some types of Special Use Airspace include Restricted Areas, Warning Areas, and Military Operations Areas. Activity in these areas is scheduled. Follow the same procedures described for MTRs above to identify the aircraft.
- FAA Military Liaison Officer. Every FAA Air Route Traffic Control Center (ARTCC) has a military liaison officer. See AFI 13-201, Airspace Management, for addresses and areas of responsibility for the various ARTCCs. Flight progress strips and radar data (indicating time, location, altitude, and call signs) may be obtained from the FAA through the military liaison officer; however, this information is usually only retained for 15 days.
- Interviewing Aircrews. Interview the aircrew regarding their mission at the time of the alleged incident. Altitude, airspeed, and route of flight information are critical in determining causation. In addition, request assistance from the aircrew to obtain any cockpit audio or video recordings or radar film, if available, that may indicate the altitude and position of the aircraft. Crewmembers frequently maintain their own personal logbooks, which may also be a source of information about the flight.
Interview Witnesses: Besides the claimant, interview neighbors and/or local police to confirm whether or not an incident occurred. For example, sonic boom claims may lack credibility if there is no damage in nearby homes.

Inspect the Property: Take a photographer, a civil engineer, and/or a veterinarian to assist in the inspection of the damaged property or injured animals. Obtain a detailed inspection report with findings from the civil engineer and/or veterinarian and include it in the claim file. The Army is responsible for providing the Air Force with veterinary services. Veterinary assistance can also be obtained from the Armstrong Laboratory, 2402 E. Drive, Brooks AFB, TX, 78235-5113

Obtain Engineering Calculations: The civil engineer can assist in calculating the overpressures and/or noise decibel levels generated by Air Force flight activity and render an opinion as to whether the overpressures or noise were strong enough to cause the alleged damage. Provide the engineer all data on the aircraft flight in question (altitude, airspeed, type of aircraft, type of engine, power setting, weather, distance from incident site), and request a written report for inclusion in the claim file.

Overpressure Damage Limits: Generally, Air Force supersonic flight activity at or above 30,000 feet above ground level (AGL) does not generate overpressures sufficient to damage automobile glass, protective glass, window seals without cracking the window panes, ceramic materials of commodes, television tubes, foundations, load-bearing walls, structural members, or driveways, walls or ceilings.

10. Common Claim Scenario: Involving TDY Rental Cars

When government employees rent a car on official business, there is a good chance that private liability insurance covers any accidents the member may have while driving it. The Defense Travel management Office (DTMO) administers an agreement with the major rental car companies that governs rental rates and provides insurance. The current agreement, No. 4, was implemented on 1 Oct 10 and apply to rentals on or after that date. You can find the agreement and other information at http://www.defensetravel.dod.mil/site/rental.cfm. Understanding the rental car agreement is an important issue-spotter because it affects how you process tort claims caused by employees driving a rental car.

Coverage: The easiest way to tell if the rental car is covered by this agreement by looking at the rental car receipt. If it is covered, there will normally be a line item charge labeled “GARS” or “Government Administrative Rate Supplement” of $5.00 per day. The member should have also rented it with his Government Travel Card (GTC) or Controlled Spending Account card (CSA). For rentals in foreign countries, check to see whether the company is listed under the country from where the car was rented in the OCONUS ceiling rates spreadsheet on the DTMO website, above. If the rental car company is listed under the country where the rental was obtained, then you should presume it is covered. If you are unsure, contact JACC for assistance.
Details of the Liability Coverage: The Agreement provides that the rental car company will cover all damage to the rental car provided the driver was not engaged in specific acts of misconduct, such as racing or DUI (See paragraph 18b of agreement No. 4). It also provides up to $25,000 coverage for property damage to a third party and personal injury coverage of $100,000 per person and $300,000 per occurrence.

Claims Procedures When There is DTMO Coverage: There are two types of claims you may receive when there is DTMO coverage: 1) Tort claims from third parties; and 2) Claims from the rental car company for damage to the rental car.

1) Tort Claims From Third Parties: If the claim does not fall within your settlement authority (i.e., more than $5,000 or alleges personal injury), forward it to JACC as you would any other claim. If the claim is within your authority, open the claim in WebAFCIMS and organize a claim file as you would normally, but conduct no investigation. Send a copy of the claim file (minus any privileged documents) to the rental car company point of contact with a cover letter. Send a letter to the claimant, informing them of the transfer. Carrier POCs are found at: http://www.defensetravel.dod.mil/Docs/CRAgreementPOCs.pdf. Follow up with the carrier four months after you received the claim if you have not been informed the claim has been resolved. If it is still not resolved, or if the carrier informs you at any time that it is refusing to acknowledge coverage for the incident, contact JACC immediately. Keep the transferred claim open in WebAFCIMS until resolved. If settled by the rental car company, obtain a copy of the settlement agreement for the claims file and close in WebAFCIMS on receipt. If the rental car company determines the claim is not meritorious or cannot negotiate a reasonable settlement, the settlement authority must issue a denial letter to the claimant and then close in WebAFCIMS. Contact JACC if you believe the rental car company denied a claim that should have been paid.

2) Claims From the Rental Car Company for Damage to the Rental Car: Often, claims processors for the rental car companies do not understand the agreement’s coverage and may seek reimbursement directly from the traveler or from claims offices by filing a tort claim. Assuming the agreement applies and driver was not engaged in misconduct, as defined in paragraph 18b of the agreement, and is below $5,000, then you may deny the claim, using the sample letter below. For claims above $5,000, follow the procedures to transfer the claim to JACC. If the rental car company is seeking reimbursement from the traveler directly, then you may send them a letter, advising them the claim is invalid. If the rental car company does not cease collection efforts, notify JACC immediately so that we may initiate procedures to enforce the agreement through DTMO. If the rental car company charged the member’s travel card for the damage to the rental car, the member should dispute the charge directly with VISA. The Agreement outlines procedures for the Air Force to deny liability based on the member’s misconduct (paragraph 18c). Only JACC may deny claims on this basis.

Claims Procedures When There is no DTMO Coverage: When there is no DTMO coverage, tort claims from third parties are treated like any other tort claim against the Air Force. You will most often see no DTMO coverage in two different situations: 1) the member rents a car on
orders but does not go through a participating SDDC franchise, or 2) the base contracting office rents a large number of vehicles under an umbrella contract. For claims of damage to the rental cars, procedures will depend on which of the following scenarios you are facing.

1) **Nonparticipating Rental Car Location:** When the franchise is not a party to the SDDC agreement, coverage for damage may also be available through the Government Travel card. However, the member must report it by calling the telephone number on the back of the GTC, usually within a very brief window. Details on the GTC coverage are available here. If GTC coverage does not apply, then damage to the rental car is handled through the member’s travel voucher, either reimbursing him the cost of the damage or paying it directly to the rental company. Funds are paid from the unit’s TDY funds.  

(See SAF/FM Memorandum, dated 25 Jan 05, found on the JACC website)

2) **Umbrella Contract Rentals:** When rented pursuant to an umbrella contract, damage to the rental car is a breach of contract, not a tort. Claims for damage are handled by the contracting officer. Umbrella contracts are often used when a large number of rental cars are needed, such as for air shows, exercises or large TDY groups

3) **Torts Involving Rentals Not Authorized on the Traveler’s Orders:** When a member is not authorized a rental car on orders but rents one anyway, claims filed against the Air Force will be handled like other tort claims. We will be liable for third party injury or damage if the driver was acting in the scope of employment at the time of the accident; however a claim from the rental car company for damage to the rental car is a breach of contract, not a tort. Since the member contracted for the car of his own accord, he will be responsible for the damage and the claim should be denied.

11. **Common Claim Scenario: Slip and Fall**

Most slip and fall claims will not be within your settlement authority; however, they are sufficiently common that you will be asked to assist JACC in its investigation. In some cases, the claimed amount will be small enough that you may be permitted to adjudicate them at base level. Some of the common issues to keep in mind are:

- **Independent Contractor Defense:** Many slip and fall claims involve areas that have been delegated to a contractor to maintain. Most Commissaries contract out for custodial services and many bases contract out snow and ice removal. Always ask the question: “Is a contractor responsible for maintaining the premises where the fall happened?” Then, obtain a copy of that contract to see if the duty that was allegedly breached has been delegated to the contractor.

- **Incident Reports:** Falls at Commissaries and the BX will usually generate an accident report. Obtain a copy of that report from the manager.

- **Work Schedules:** Soon after receiving a slip and fall claim, talk to the workplace supervisor and obtain a schedule or list of employees working the day of the accident and their contact information. Eyewitness testimony is often an important piece to defending slip and fall claims.
Medical Records: Claimants should provide all medical records in their possession, but often a slip and fall will result in an ambulance dispatch, even if the injured person is not a Tricare beneficiary. Obtain copies of the MTF medical records, including EMT reports. Consider interviewing the responding EMTs if anything suggests the injured person may have said something remarkable to them about the fall.


A legal memorandum is required before settling or denying a claim. The legal memorandum should state basic data about the claim, lay out the relevant facts, discuss applicable law and provide a recommended disposition for the settlement authority’s concurrence. For most claims within your settlement authority, you may use the Summary Adjudication Memorandum (SAM) template, found here. If, however, the SAM does not allow enough space for adequate treatment of the facts or law, an attachment or continuation page to the SAM may be used. Alternatively, another format may be used, but include all the information that would have appeared in the SAM. Settlement offers or denial letters should not be issued until the settlement authority signs the adjudication memorandum. The adjudication memorandum becomes a permanent part of the claim file. It is protected from released outside of legal channels by the attorney work-product privilege, even if it was prepared by a paralegal.

IV. In Support of JACC

Do you wanna gold star from JACC? Here’s the secret...Anticipate investigative needs! Even if a claim will be transferred to JACC for investigation and adjudication, you can anticipate the evidence that will need to be gathered from your installation and begin to gather it before being asked. However, do not delay the transfer to JACC while you gather the evidence.

1. Assisting with JACC Investigations.

JACC may still request your help to investigate a claim, even though it exceeds your settlement authority. Generally speaking, we will only ask you to assist in ways that makes use of your local presence and influence. For example, it is usually easier for base level personnel to obtain copies of police reports or air tower transcripts than for “someone in Washington” to cold call a unit on your base. We may also ask your assistance to get contact information for local witnesses.

We usually have some flexibility in establishing deadlines for the assistance we request from you, but please communicate regularly with us about the status of your project.

2. Providing Litigation Support

JACC will provide most litigation support to the Department of Justice for tort litigation defense. If you are served litigation paperwork that involves tort allegations, notify JACC immediately. Most of the information needed to support litigation defense will have been gathered during the claim investigation. However, there will be some scenarios we will not have
anticipated, or will require some follow up investigation with your help. The most common litigation scenarios are:

**Tort lawsuit filed against an Air Force employee personally:** The Westfall Act (28 U.S.C. §2679) provides that employees of the United States may not be sued personally for their negligent acts or omissions that occur during the scope of their employment, and provides procedures by which the Department of Justice may get the tort case against the employee dismissed and substitute legal proceedings against the United States under the FTCA. If an Air Force employee notifies you he is being sued for something that may have happened during the performance of his official duties, refer to AFI 51-301, paragraph 1.2 and 1.3. For lawsuits involving tort allegations, consult JACC immediately and forward copies of all papers received by the employee. Request the member being sued prepare a declaration, following the format of Figure 1.2 of AFI 51-301. Once it has been executed, submit it immediately to JACC. Refer to AFI 51-301, paragraph 1.3.4, if the employee requests legal assistance. For tort-based lawsuits, a request (figure 1.1) and supervisor’s declaration (figure 1.3) are NOT required and should not be obtained. The only document we usually need is the declaration of the employee (figure 1.2).

**Litigation Hold / Electronic Discovery:** Once we have reasonable notice that litigation may occur, we must ensure potentially-discoverable information is preserved. This includes information that may be privileged and includes electronically-stored information. If necessary, we will notify you of the steps you need to take to ensure we comply with this requirement.

**Discovery Responses:** JACC will be able to answer most discovery requests (interrogatories, requests for admission and requests for production) without any further assistance from you. In cases where we do need your assistance, we ask that you give our request the highest priority in your office. The Federal Rules of Civil Procedure place strict and tight deadlines on discovery responses and failure to answer in a timely manner can have a devastating impact on our ability to defend the case. The discovery phase of a tort litigation case is by far the most frenetic phase for JACC attorneys, and we need your full cooperation.

Some of our litigation and discovery requests to you may seem to be “overkill,” however discovery rules require that we make reasonable inquiries to disclose truthful information or suffer severe consequences. Often, that means we must ask questions the answer to which seems obvious, look for documents in unlikely locations and ask multiple people the same question. We ask for your diligence as we strive to meet our discovery obligations.

**Finding Witnesses:** Despite our best efforts, witnesses sometimes move without our knowledge and new witnesses are discovered. Your assistance may be needed to contact former associates and coworkers of lost witnesses who may be located on your base.

**Depositions:** Air Force attendance at depositions is not usually required. However, in some tort cases where the United States has been dismissed as a party, the plaintiff may be proceeding against a contractor or other third party defendant. Air Force employees may still be subpoenaed to appear at a deposition. We may ask an attorney from the base office to attend with the witness to protect Air Force neutrality, prevent the disclosure of privileged or classified information, and otherwise help the Air Force employee feel more comfortable by having Air Force counsel.
present. We will fully brief you on your duties during the deposition and provide you with a Deposition Guide for more detailed information on your role.

Mediation/Arbitration: Each District Court has its own local rule on the attendance at court-ordered mediations or arbitrations. Some judges require the attendance of a representative from the agency. While JACC often travels to attend these mediations and arbitrations, we cannot attend them all, and we may request assistance from the base to represent the Air Force at them. These can be a great experience for those wanting exposure to civil litigation. Since DoJ attorneys act as lead counsel for the Air Force during litigation, there is usually little preparation needed. These may also be ideal assignments for your reservists. JACC will fully brief you on the case posture, what to expect at the mediation and what will be required of you. We will also be on telephone standby during the mediation/arbitration.
V. Pro-Government “G” Claims (31 U.S.C. §3711; AFI 51-502, Ch. 4)

The Federal Claims Collection Act (37 U.S.C. §3711) gives the United States the right to recover from tortfeasors for loss or damage to government property. The law is not specific as to the extent of liability that will be imposed on tortfeasors, but you should assume, as with the FTCA, that the tortfeasor will be liable to the same extent as state law allows.

Base legal offices are responsible to assert all G-claims for damage to Air Force property that occur within their area of claims jurisdiction, and are authorized to collect and settle all claims where the tortfeasor has offered the full amount of the demand, regardless of the amount. Base level offices may compromise or waive G-claims only when the amount of loss or damage to the Air Force is less than $25,000.

1. Property Covered

Assert claims for damage to any property owned by the Air Force, including vehicles, gates, fences, real property, natural objects or equipment. Do not assert on behalf of AAFES property, unless you have a special local agreement in place. Also, be aware that many GOVs on AF installations are not, in fact owned by the Air Force. Many organizations will lease vehicles from the General Services Administration (GSA), another agency of the federal government. Most vehicles operated by Security Forces and Recruiting offices are GSA-owned vehicles. GSA vehicles can usually be identified by their license plate number beginning with a “G.” Do not assert G-claims for GSA vehicles, because GSA handles their own claims.

2. Claim Procedures

Identify potential claims: Look for potential claims by reviewing the Security Forces’ blotter and police reports. You may also learn of potential claims from squadron commanders, first sergeants, and base motor pool. When you become aware of damage or loss in excess of $10,000 where there exists a potential G-claim, report the incident to JACC.

Conduct Preliminary Investigation: Think of a G-claim as the flip-side of an FTCA claim: what information do you expect claimants to send to you to substantiate their claim? That is the same information you should be gathering to substantiate your G-claim. Upon learning of a potential affirmative claim, a preliminary investigation should be conducted to assess the amount of damage. In doing so you need to obtain photographs of the damage. Also obtain complete and accurate repair or replacement estimates from government officials or nongovernmental entity (i.e. off-base repair shop). If using an off-base repair shop, it is recommended that two (2) estimates be obtained. The estimate(s) should include overhead, labor, storage, and loss of use. Once an affirmative claim has been confirmed, a complete and thorough investigation shall be conducted.

Who caused the damage: If the damage is caused by an Air Force member or civilian employee and a Report of Survey is mandatory, then you cannot assert a claim. If a Report of Survey is not mandatory and the tortfeasor has insurance that may cover the loss, such as for a
motor vehicle accident, you may choose to assert a G-claim against the insurance company in lieu of a Report of Survey against the member.

**Resources available for recovery:** The ultimate goal of asserting a G-claim is to recover the money. Often, individuals do not have significant assets and cannot pay from their own pocket. Be sure to explore insurance policies, automobile, homeowner’s insurance and the like. For tortfeasors who may be under criminal investigation (such as DUI), you should promptly coordinate with prosecuting agency, as restitution may be included as a part of any sentencing or diversion. Similarly, Article 15 punishments may be suspended, conditional on satisfaction of the G-claim.

**Assessment:** You must evaluate the tortfeasor’s liability and balance the cost of collection against probable recovery.

**Assert the Claim:** G-claim litigation must be initiated within 3 years the claim accrued. For this reason, assert G-claims promptly so that options for litigation remain open. An action accrues when the government knew or should have known of the damage. The claim is asserted by sending a demand letter (for individuals or for insurance companies) via certified mail, return receipt requested. If you receive no reply within 30 days, send a follow up demand letter. If the tortfeasor fails to respond to two demand letters or claims personnel cannot obtain the full settlement for claims in the amount of $25,000.00 or more, the SJA shall forward the file to AFLOA/JACC with a memorandum, detailing the facts, evidence legal analysis and recommendation of disposition.

**Resolving Claims:** There are three ways to resolve a claim:

1) **Monetary Offer to settle the claim:** A full settlement offer should be accepted by your office. A compromise offer may be accepted if within your authority. There are many reasons why it may be advisable to accept a lesser offer. The collection costs may not justify enforced collection procedures (i.e., a small dollar claim), you may have difficulty proving the full amount of the claim, or liability may be in question. DO NOT compromise a claim when fraud, misrepresentation, or violation of antitrust laws has occurred without consulting JACC first. The Department of Justice must compromise those claims.

A tortfeasor may wish to pay the full amount, but cannot do so at one time. An installment payment plan is an acceptable if it will be a financial burden to pay the full amount in a lump sum. For all installment payments, prepare a confession of judgment (promissory) note, which details the repayment schedule, and have the tortfeasor sign it. Make a copy of the signed confession of judgment for the tortfeasor and keep the original in the claims file. All claims under an installment payment schedule must be carefully followed to ensure the tortfeasor makes payments according to the schedule. The file must be kept until the tortfeasor has made full payment. If the tortfeasor fails to make a scheduled payment and becomes delinquent, you must write a demand letter reminding the tortfeasor of the obligation to pay.
2) Repairs in Kind: Because of the fiscal law restrictions on how many types of G-claim collections may be spent, repair-in-kind is often preferable. Repair-in-kind refers to the arrangement of a third party (such as an auto repair shop, fence contractor, or the like) to prepare a repair estimate, and submit it directly to the tortfeasor, and you requesting settlement be made payable to the contractor. One disadvantage to this method is that because settlement is often delayed, your client will be without the use of the property until all these steps can be coordinated. If your client requires immediate repair of the property, then repair-in-kind may not be the best solution, and the responsible unit will have to pay out of its funds to repair the property immediately. The ensuing G-claim collections will not be able to be used by them to reimburse their fund.

3) Terminate the claim: A claim for $25,000 or less may be terminated by the settlement authority when the government is unable to collect after exhausting collection methods; the tortfeasor is unable to be located; the claim is without legal merit or the evidence does not substantiate the claim, or collection costs would exceed recovery. Provide a written justification from the settlement authority in the file that supports the decision to terminate collection efforts.

**Depositing Funds Collected:** There are stringent laws and restrictions on how G-claim collections may be spent. In general, funds collected should be deposited into the US Treasury Miscellaneous Receipts Account 57*3019 (Insert the last digit of the current fiscal year for the *) unless it falls into one of the categories listed below:

1) **Damage to Real Property:** Deposit these collections into the account that paid for or will pay for the repairs (10 U.S.C. §2782) **BUT ADVISE THE CLIENT THAT THE FUNDS CANNOT BE SPENT UNLESS CONGRESS SPECIFICALLY AUTHORIZES USE OF THE FUNDS.**

2) **Family Housing:** Deposit these funds in the DoD Family Housing Management Account 57*7045(Insert the last digit of the current fiscal year for the *).

3) **Air Force Industrial Fund (AFIF):** Deposit these funds in the appropriate industrial fund account.

4) **NAFI Property:** Deposit these funds in accordance with AFI 51-502 paragraph 1.4.8.

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**The tortfeasor’s insurance company wants me to sign a release, can I do that?**

Yes, but there are some restrictions. You cannot agree to indemnify or to hold anyone harmless in the agreement. These clauses may violate the Antideficiency Act. Otherwise, you may sign a reasonable settlement agreement proposed by the tortfeasor. Consult with JACC or your fiscal law SME if you have questions about a proposed release.
3. Litigation

If 18 months after the date of incident or reasonable collection efforts have been unsuccessful, the responsible SJA should consider whether referral for litigation is warranted. Factors to consider include the amount in controversy, strength of the liability case and the resources/assets available to the tortfeasor to satisfy a judgment. If you believe litigation is warranted, discuss the matter with the Pro-Government Tort Attorney at AFLOA/JACC. If JACC concurs in referring the file for litigation, forward the file to JACC with a legal memorandum outlining the facts of the case, relevant legal issues, copies of all necessary substantiation, and contact information for all relevant witnesses. If the Department of Justice initiates litigation, you should ensure a litigation hold is placed on all documents relevant to the case. JACC will coordinate efforts with your office to respond to litigation demands, including discovery requests and witness depositions.
Appendix – Sample Documents and References

Figure 1: Advance Payment Agreement

ADVANCE PAYMENT AGREEMENT

I, ___________________________________(name) of ____________________________________________
__________________________________________ (address)
agree to accept the sum of $_________ (or amount in foreign currency if paying under the Foreign
Claims Act) as an advance payment under the provisions of Title 10, United States Code, Section
2736, in partial settlement of, and to alleviate hardships for death, personal injury or property
damage incurred as a result of an incident on _______________________(date), arising out of
__________________________________________
__________________________________________

I understand this payment is made in advance of the administrative settlement of a claim under
the provisions of the (Military Claims Act, Title 10, United States Code, Section 2733) (Foreign
Claims Act, Title 10, United States Code, Section 2734) (National Guard Claims Act, Title 32,
United States Code, Section 715). I intend to file a claim with the US Air Force for the above
damages or injuries as soon as I know the extent and amount. (OR I have filed a claim with the
US Air Force for the above damages or injuries.) The amount of this advance payment will be
deducted from the award in final settlement of my claim.

If the final award is less than the advance payment received, I agree to refund to the US Air
Force the portion of the advance payment in excess of the final award. If no award is made or no
claim is filed within the statutory period, I agree to refund the entire advance payment.

I understand this advance payment is not an admission by the United States of liability for the
above incident.

I authorize this advance payment to be made to __________________ on my behalf. (Optional)

________________________________________      ___________________________
(Signature)        DATE

WITNESS:

________________________________________      __________________________
(Signature)        DATE

PRINTED NAME         ADDRESS

Tort Law and Claims AO Handbook—Domestic Ed. (as of 1 Nov 12Mar 14) 49
Figure 2: Instructional Handout

FILING A STANDARD FORM 95 (SF 95), “Claim for Damage, Injury, or Death”*

GENERAL GUIDANCE:
- Read the entire SF 95 claim form thoroughly, especially the instructions on its reverse.
- The SF 95 must be signed in Block 13a by the claimant or duly authorized agent and must have a “Sum Certain” in Block 12d.
- The claim must be presented to the appropriate federal agency within **two years** after the claim accrues. Claims can be submitted to:

  (insert local claims office address here)

- Items not payable under the Federal Tort Claims Act (FTCA) or Military Claims Act (MCA) include costs of preparing and presenting a claim, such as copying charges, appraisals, and attorneys’ fees.

AUTHORITY TO FILE CLAIM:
- If you are presenting and signing the SF 95 as a duly authorized agent or other legal representative on behalf of an individual or corporate claimant, you should sign Block 13a and, immediately after your signature, insert your title or legal capacity and provide documentation of your authority to act.

SUBSTANTIATION:
- In support of your claim, you may be required to submit the following evidence or information. In some cases, additional evidence may be required:

  - **All Claims.**
    - A copy of any report(s) filed in connection with your damages (i.e. police, security forces, or accident report)
    - Any other evidence or information which may have a bearing on the responsibility of the United States for damages being claimed.

  - **Property Damage.**
    - Proof of ownership (i.e. vehicle registration, title, property deed, etc.)
    - A detailed statement of the amount claimed with respect to each item of property.
    - Photographs of the damage.
    - Where repair is economical, an itemized receipt of payment for necessary repairs or an itemized estimate for the cost of such repairs (two if over $1,000.00).
    - If repair is not economical, a statement listing date of purchase, purchase price, and salvage value.

  - **Personal Injury.**
    - Copies of all medical records regarding treatment you received.
    - A written report from your attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.
      - **If the prognosis reveals future treatment required, a statement of expected expenses for such treatment**
✓ Itemized bills and/or receipts for medical, dental, and hospital expenses incurred.
✓ If a claim is made for loss of time from employment, a written statement from your employer showing actual time lost, whether you are a full or part-time employee, wages or salary actually lost, and tax returns.
✓ If a claim is made for loss of income and you are self-employed, documentary evidence showing the amounts of earnings actually lost.

INSURANCE:
➤ Sometimes Claimants elect to file with their insurance provider to have repairs completed immediately. The insurance company may then file a claim against the government to recoup what they have paid. Your deductible is not automatically payable to the insurance company; you must give them written authorization to collect this amount on their behalf or file a separate claim for it.

*The aforementioned is a claimant’s guide for submitting a claim against the United States Air Force (USAF). Nothing in this document should be construed as legal advice from the USAF, nor shall any cause of action arise nor shall any liability be imposed on the USAF for anything contained in the instructions herein. Neither these instructions nor any statement made by any USAF personnel should be construed to mean that a claim, if submitted, will be approved. Types and amount of documentation vary from claim to claim, but this reference is in accordance with Title 28 of the Code of Federal Regulations (CFR), Part 14.4.
**Figure 3: SF 95** (double click to open this 2-page document in .pdf)

<table>
<thead>
<tr>
<th>CLAIM FOR DAMAGE, INJURY, OR DEATH</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INSTRUCTIONS:</strong> 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.</td>
</tr>
<tr>
<td><strong>FORM APPROVED</strong></td>
</tr>
<tr>
<td>OMB NO. 1105-0008</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1. Submit to Appropriate Federal Agency.</th>
<th>2. Name, address of claimant, and claimant’s personal representative if any. (See Instructions on reverse). Number, Street, City, State and Zip code.</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ MILITARY</td>
<td></td>
</tr>
<tr>
<td>□ CIVILIAN</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. BASIS OF CLAIM</th>
<th>9. PROPERTY DAMAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).</td>
<td>NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>10. PERSONAL INJURY/WRONGFUL DEATH</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11. WITNESSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12. AMOUNT OF CLAIM (in dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12a. PROPERTY DAMAGE</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>13a. SIGNATURE OF CLAIMANT (See Instructions on reverse side).</th>
<th>13b. PHONE NUMBER OF PERSON SIGNING FORM</th>
<th>14. DATE OF SIGNATURE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</th>
</tr>
</thead>
<tbody>
<tr>
<td>The claimant is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)</td>
</tr>
</tbody>
</table>

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NSN 7540-00-634-4646

STANDARD FORM 95 (REV. 2/2007)

PRESCRIBED BY DEPT. OF JUSTICE

28 CFR 14.2

| Tort Law and Claims AO Handbook—Domestic Ed. (as of 1 Nov 12 Mar 14) | 52 |
Figure 4: Annotated SF95

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 sheets if necessary. See reverse side for additional instructions.

1. Name, address of claimant and claimant’s personal representative, if any. (See instructions on reverse.) (Name, street, city, State, and Zip Code)
   Mr. John Doe
   234 W. Main St.
   Ogden, UT 84404

2. Type of Employment
   Military □ Civilian ✓
   1/1/70
   Single
   5/25/08
   10:00 AM

3. Date of Birth
   5/25/08

4. Date and Place of Accident
   5/25/08
   Ogden, UT 84404

5. Days of Accident
   (Give date of accident the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the date thereof. Use additional pages if necessary.)
   My car was hit by an Air Force driver.

6. Name and Address of Owner, If Other Than Claimant
   (Name, street, city, State, and Zip Code)

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

   Damage to left rear side of car. 2008 Toyota Camry.

   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.
   None.

11. WITNESSES

   NAME
   ADDRESS (Number, street, city, State, and Zip Code)

12. Cost of Claim (in dollars)

   PROPERTY DAMAGE
   $3,675.97

   PERSONAL INJURY

   INJURIOUS DEATH

   TOTAL

   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.

   SIGNATURE OF CLAIMANT
   (See instructions on reverse side)

   CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM
   (See 31 U.S.C. 275)

   CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS
   (See 31 U.S.C. 275)

   PREPARED BY
   (Signature)
   9 Jun 09

   (Address)

   (City, State, Zip Code)

   (Phone)

   (Home)

   (Work)

   (Other)

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   (Fax)

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Figure 5: Defective Filing Letter

HQ AFLOA/JACC
1501 Wilson Blvd, Ste 835
Arlington, VA 22209-2403

Re: Your client, XXX.

Dear XXXXX,

This is in response to your submission of a Standard Form 95 on behalf of the above-referenced client. I cannot acknowledge receipt of a valid claim, as (it does not specify a sum certain in block 12) (is not signed in Block 13), as required by law. Consequently, I am returning your submission to you.

Please be aware that a claim for injury, damage or death against the United States must be received by the agency whose actions gave rise to the claim within 2 years of the date your claim accrued. I also direct your attention to 28 C.F.R. §14.4, for substantiation to be submitted with a tort claim against the United States.

Truly yours,

Amy Hartleben, MSgt, USAF
Paralegal, General Torts Branch
Claims and Tort Litigation Division
Air Force Legal Operations Agency
MEMORANDUM FOR U.S. ARMY CLAIMS SERVICE

FROM: AFLOA/JACC
1501 Wilson Blvd., Room 835
Arlington VA 22209-2403

SUBJECT: John Doe, Deceased
Claim of Mae Doe and Linda Doe

The attached file was received in our office on 9 Mar 09. The claim arises out of an allegation of wrongful death caused by a collision with a military vehicle in California. Because our preliminary inquiry revealed that the alleged tortfeasor is an employee of the Army, the claim is being forwarded to your office for appropriate action. If you have any questions, please feel free to contact me at DSN 426-9055 or (703) 696-9055.

Claimant's attorney has been advised in writing of the transfer and been given your agency contact information.

TONI CHISM
Paralegal, General Torts Branch
Claims and Tort Litigation Division

Attachments:
1. Ltr to Atty
2. Claim Information
3. SF 95
Re: Administrative Tort Claim of Your Client, John Doe

Dear Mr. Jones,

Your correspondence, dated February 5, 2009 (attached), was received Air Force Tort Claims Field Support Center March 9, 2009. The letter and attachments were transferred to the U.S. Army Claims Service for action, as the alleged tortfeasor was an employee of the Army.

All future inquiries or correspondence concerning the claims should be directed to the address listed below.

U.S. ARMY CLAIMS SERVICE

Sincerely

ROBERT K. COIT
Staff Attorney, General Torts Branch
Claims and Tort Litigation Division

Attachment:
Your letter, dated February 5, 2009
Figure 8: Letter to Claimant Re: Transfer to Another Base

HQ AFLOA/JACC
1501 Wilson Blvd., Room 835
Arlington VA 22209-2403

John Doe
<<address>>

Re: Your Personal Property Claim

Dear Mr. Doe,

This is to acknowledge that your claim against the United States was received by our office on April 28, 2008. The claim has been transferred to the Office of the Staff Judge Advocate at Moody Air Force Base, GA for investigation. All future inquiries or correspondence concerning the specific claim should be directed to the address listed below:

23 WG/JAD
23 FLYING TIGERS WAY STE 241
MOODY AFB GA 31699-1592

Sincerely,

BRYAN W. HALL, Capt, USAF
Staff Attorney, General Torts Branch
Claims & Tort Litigation Division
Re: Your client, Moe Lingerer, AF Claim No.: Hill AFB 08-111

Dear Mr. Doe,

This is to acknowledge that the Air Force received your client’s claim on 28 October 2007. As I begin my investigation, I direct you to 28 C.F.R. §14.4 for information that is to be provided by the Claimant in support of personal injury claims filed under the Federal Tort Claims Act. Specifically, the CFR requires the following substantiation be provided:

1. A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

2. Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

3. If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

4. If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

5. If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.

6. Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

Please review the above requirements and supplement your claim with whatever responsive information that will assist me in evaluating your client’s claim. Should you have any questions, you may contact me by telephone at (703) 696-9055. Should you need to fax any additional information, you may do so at (703) 696-9009, or may mail it to me at the above address.

Truly yours,
§14.3

(a) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant’s option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant’s option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of the amendment.


§14.3 Administrative claims; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent’s estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.


§14.4 Administrative claims; evidence and information to be submitted.

(a) In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent’s employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent’s survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent’s general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician’s detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent’s physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) Personal injury. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant’s written request provided that he has, upon request, furnished the report referred to in the first sentence of this paragraph and has made or agrees to make available to the
This is where you will find statutory authority for NG duty

Check here to make sure tort happened during period of orders
Figure 12: Federal District/Circuit Court Map
Figure 13: Sample Witness Interview Memo

MEMORANDUM FOR RECORD

DATE:  14 March 2007

SUBJECT:  Witness Interview of SSgt Jane Doe, FTCA Claim of John Roe, Hill AFB 09-111

Contact information:  work:  555-987-6543 (works swing shift)
                     cell: 555-123-4567


On the night of the incident, SSgt Doe was sitting on the back porch with her friend, Mary (NFI...still living at Hill AFB…will provide phone number to me). They heard yelling and screaming that sounded like it was coming from across the street. She heard a female and a male voice, but primarily heard a female voice yelling hysterically. She heard the female say “I’m going to hurt myself,” or words to that effect. She called 911 and told them what they had heard and the general area from where they heard it. She saw the police car going by, but didn’t hear anything anymore. A few minutes later, she heard the yelling start up again, but this time, it sounded like it was coming from in front of her house. She and Mary went around the front of the house to see what was happening. She saw the police cars in front of the Roe’s house, but didn’t hear anything from the inside. She had never met John or his wife and didn’t know their names. She then saw the EMTs come to the house, go inside, and bring the wife out on a gurney. She was sitting up, holding a bandage around her arm. She assumed she had tried to kill herself. She recalls John bringing his wife home a few days later and everything seemed fine. She doesn’t recall any incidents after that, but does recall that there were prior domestic incidents, but can’t say for sure when they happened.

RYAN V. HASLAM, Capt, USAF
Staff Attorney, General Torts Branch

This memorandum has been prepared by an Air Force Judge Advocate (or paralegal) while investigating a claim or potential claim for damages against the United States. The attorney's (or paralegal's) impressions and observations summarized herein were obtained in anticipation of future litigation involving the same incident, and this memorandum would not have been prepared in the normal course of Air Force business activities, but for the possibility that litigation might ensue.
### Figure 14: Summary Adjudication Memo

<table>
<thead>
<tr>
<th>Claimant’s Name: Cowell, Simon</th>
<th>Sex: [ ] Male [ ] Female</th>
<th>SUMMARIZED ADJUDICATION MEMORANDUM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim Number: McGuire 8-15</td>
<td>Amount Claimed: $4,256.31</td>
<td>Claim Type: [ ] FTCA [ ] MCA [ ] NGCA [ ] Int'l [ ] Other:</td>
</tr>
<tr>
<td>Incident Date: 21 Nov 07</td>
<td>Incident Place: New York City, NY</td>
<td>Claimant’s Attorney: [ ] None</td>
</tr>
<tr>
<td>Date Filed: 21 Nov 07</td>
<td></td>
<td>Date Filed: 21 Nov 07</td>
</tr>
</tbody>
</table>

**Synopsis of the Facts:**

Claimant's vehicle was struck from behind by AF employee, Mr. Randy Jackson, civilian employee of 66 CES. Jackson was driving GOV while in the scope of his employment, as documented in the SF91. Per telephone interview with him, Jackson stated he was talking to co-worker Paula Abdul when she told him she was contemplating quitting her job. This news distracted Mr. Jackson and he did not see Claimant stopped. Claimant not alleging personal injury, there were no other passengers in Claimant's car and no other vehicles damaged by the accident.

**Opinion:**

- Air Force is liable
- Air Force is not liable
- Liability is in question
- Liability is with a third party
- Other:

**Personal Injury/Property Damage:**

2 repair estimates provided. 1 for $4256.31 and 1 for $3894.78. Repair work to be done by estimates general area of damage done in the accident.

- I recommend denial.
- I recommend settlement.
- I concur.

**Bases:**

- [ ] Feres
- [ ] FECA
- [ ] Statute of Limitations
- [ ] Independent Contractor
- [ ] Damages not substantiated
- [ ] Standard of Care met
- [ ] Other

**Settlement Range:**

- Initial offer: $3,894.78
- to $3,894.78

**Adjudicated by:** SSgt Carrie Underwood

**Approval authority:** Capt Ryan Secrest

**Signature:**

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<th>Approval authority: Capt Ryan Secrest</th>
<th>Signature: Date: 5 Feb 08</th>
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<th>I concur.</th>
<th>I do not concur.</th>
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Figure 15: Sample Settlement Offer Letter

<<Letterhead>>

HQ AFLOA/JACC
1501 Wilson Blvd., Rm. 835
Arlington, Virginia  22209-2403

Ms. Minnie Mouse
39 Main St.
Anytown, USA 12345

Re: Your Claim for Damages

Dear Ms. Mouse,

The Air Force received your claim for damages in the amount of $3,701.13 on 11 October 2007. After careful review, your claim is approved for $3,550.34. The amount approved is equal to the amount of one of your repair estimates. The law requires us to reimburse you the cost to repair your vehicle and Daffy Repairs is willing to do that for $3,550.34

In order to finalize payment of your claim, please sign the attached settlement agreement in ink, then return it to me at the address listed above. Upon receipt of the properly completed agreements, we can process the claim for payment.

The U.S. Treasury Department now requires that settlement payments be made by direct deposit unless another method is justified. Therefore, please provide the information for the appropriate account in the spaces provided on Attachment 1 to the settlement agreement. In addition, Title 31 U.S. Code Section 3325(d) requires that the Taxpayer Identification Number of each payee be included on the voucher we send to the Treasury Department for payment. If you have any questions regarding the foregoing, please contact me at 703-696-9055.

Sincerely

MERVIN JORDAN
Staff Attorney, General Torts Branch
Claims and Tort Litigation Division
Air Force Legal Operations Agency

Attachment:
Settlement Agreement
Figure 16: Sample Denial Letter, Ready to be Mailed
(double-click image below to open 2-page .pdf)
Re: Your client XXXX. Air Force Claim No: XXXX

Dear XXXX,

Under the provisions of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680, I have considered your client’s claim for damage to his vehicle which happened on 1 October 2009. After a careful review of the facts and applicable law, I regret that I must deny your claim.

Our investigation revealed that the your client caused the accident when he turned right on a red light in front of the Air Force driver. Because the FTCA has only waived sovereign immunity for the negligent or wrongful acts of employees of the United States, I cannot approve your client’s claim. Our investigation revealed that the Air Force driver did not act negligently or wrongfully.

This is the final denial of your client’s claim. If he is dissatisfied with this decision, he may now file suit in an appropriate United States District Court not later than six months after the date of mailing of this letter.

Sincerely,

BRADFORD S. HUNT
Chief, General Torts Branch
Claims and Tort Litigation Division
Air Force Legal Operations Agency
AFLOA/JACC  
1501 Wilson Blvd, Ste 835  
Arlington, VA 22209-2403

SSgt Stephen Colbert  
<<Address of Claimant>>

Re: Your Claim for Injuries, AF Claim No: Nellis AFB 09-123

Dear SSgt Colbert

I have considered the above-referenced claim for the loss of your computer when it was seized by OSI during the course of a criminal investigation, under the provisions of the Military Claims Act (MCA), Title 10, United States Code, Section 2733. After careful review of the facts and applicable law, I must deny the claim. The MCA excludes liability that arises out of “the detention of any goods or merchandise by any...US law enforcement officer.” AFI 51-501, paragraph 3.7.2.

While I regret the loss and inconvenience to you, there is no legal basis, in light of the facts and the law, to approve your claim. This is the final denial of your administrative claim. However, if you desire, you may appeal this decision. No particular form is necessary, but the appeal should be in writing, describe the reasons for appeal, provide any additional evidence to substantiate the claim, and arrive at this office within 60 days of the date of this letter.

Sincerely,

BRADFORD S. HUNT  
Chief, General Torts Branch  
Claims and Tort Litigation Division  
Air Force Legal Operations Agency
Ms. XXXX
Alamo Rent-A-Car, LLC
Federal Government Account Manager
1200 North Fayette Street
Alexandria, VA 22314

Re: Claim of Albert Pujols
Our Claim Number: Scott AFB 08-123

Dear Ms. XXXX,

Enclosed please find a claim filed against the United States by Albert Pujols for damage to his vehicle when he was struck by a rental car, owed by Alamo, and driven by Colonel Ronald McDonald, United States Air Force. Col McDonald was authorized by the United States to rent the vehicle while he was on official travel in the St. Louis, MO area.

Pursuant to paragraph 18 of the U.S Government Rental Car Agreement, of which Alamo is a party, we are forwarding a copy of this claim, together with the substantiation submitted by Mr. Pujols, to your attention for action and settlement under the terms of coverage of that agreement. I am the Air Force attorney assigned to this claim and can be contacted at (703) 696-9055. I respectfully request that you periodically inform me of the status of this claim and, if settled, we ask that you include the United States, United States Air Force and Ronald McDonald on any release executed in connection with this claim.

Please note that the claim was received by the Air Force on October 1, 2009. Under federal law, we have six months from that date to resolve this claim before Mr. Pujols has a right to file a lawsuit. Do not hesitate to contact me should you need any additional information. Thank you in advance for your assistance.

Truly yours,

ROBERT K. COIT
Staff Attorney, General Torts Branch
Claims and Tort Litigation Division
Air Force Legal Operations Agency

Attachments:
As noted
Figure 20: Letter to Claimant Re: Forwarding Claim to Rental Car Co.

HQ AFLOA/JACC
1501 Wilson Blvd., Room 835
Arlington VA 22209-2403

John Doe
<<address>>

Re: Your Personal Property Claim

Dear Mr. Doe,

This is to acknowledge that your claim against the United States was received by our office on October 1, 2009. Because the Air Force driver was driving a rental car at the time of the accident, the rental car company had previously agreed to provide insurance coverage for injury or damage arising out of the use of the rental car. Consequently, your claim has been forwarded to the rental car company at the address listed below:

Alamo Rent-A-Car, LLC
Federal Government Account Manager
1200 North Fayette Street
Alexandria, VA 22314

Sincerely,

KEITH ALICH
Staff Attorney, General Torts Branch
Claims & Tort Litigation Division
Figure 21: Denial Letter to Rental Car Co.

HQ AFLOA/JACC
1501 Wilson Blvd, Ste 835
Arlington, VA 22209-2403

Mr. Jay Leno
Claims Examiner
Stik It To Em Claims
1234 Wilshire Blvd,
Hollywood, CA

Re: Claim on behalf of Alamo Rent-A-Car. Air Force Claim No: Nellis AFB 09-123

Dear Mr. Leno,

Under the provisions of the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680, I have considered your client’s claim for damage to his vehicle which happened on 1 October 2009. After a careful review of the facts and applicable law, I regret that I must deny your claim.

You claim for damage to your rental car, caused by Staff Sergeant Beetle Bailey while he was in possession of the rental car. Please be aware that SSgt Bailey was on official government business at the time of the rental and was authorized to rent the vehicle for his official travel. Consequently, the rental is governed by the U.S. Government Rental Car, to which Alamo is a party. I have included a copy of that agreement for your reference.

Paragraph 18(b) of that agreement states that the rental car company shall bear the entire risk of loss to the rental car from any cause whatsoever. Consequently, the United States is not liable for the loss or damage to the rental car. Should you have any questions about the applicability of this agreement, I refer you to the Alamo representative for the government account manager, Ms. XXXX, who has been cc’d to this letter.

This is the final denial of your claim. If you are dissatisfied with this decision, you may now file suit in an appropriate United States District Court not later than six months after the date of mailing of this letter.

Sincerely,

BRYAN W. HALL, Capt, USAF
Staff Attorney, General Torts Branch
Attachment:
U.S. Government Rental Car Agreement

CC:
Ms. XXXX
Alamo Rent-A-Car, LLC
Federal Government Account Manager
1200 North Fayette Street
Alexandria, VA 22314
Figure 22: Letter to Rental Car Co. Re: Their Claim Against Traveler

<<Letterhead>>

HQ AFLOA/JACC
1501 Wilson Blvd, Ste 835
Arlington, VA 22209-2403

(SX) Sixt GmbH & Co
Autovermietung KG
AAFES Department
Zugspitzstrasse 1
D-82049 Pullach Germany
Attention: David Hasselhoff

Re: Your claim for damages against Tom Hanks, #0111333915

Dear Mr. Hasselhoff,

I am in receipt of your correspondence to Captain Tom Hanks regarding damage to a rental car he obtained under contract number 271625382. Please be aware that Capt Hanks was on official United States government business, and was authorized to rent the vehicle at government expense.

I point out that Sixt GmbH is a party to an agreement between the United States government and several rental car agencies known as the U.S. Government Rental Car Agreement No. 3. I have included a copy of that agreement for your review. According to the terms of that agreement at paragraph 18(b), Sixt GmbH & Co. agreed to assume the risk of any loss or damage to the rental vehicle under this situation. Should you have any questions about the terms of this agreement as it applies to Capt Hank’s rental car, you may contact Ms. XXXX, the Sixt GmbH & Co. representative to the U.S. Government agreement, who has been courtesy copied on this letter.

In light of the terms of this agreement, I respectfully ask that you stop efforts to collect on this claim from Capt Hanks and confirm that intention in writing to him at the address listed below. Thank you for your understanding and cooperation.

Truly yours,

RYAN V. HASLAM, Capt, USAF
Staff Attorney, General Torts Branch
Claims and Tort Litigation Division

| Tort Law and Claims AO Handbook—Domestic Ed. (as of 1 Nov 12Mar 14) | 73 |
cc:

(SX) Sixt GmbH & Company
Autovermietung KG
AAFES Department
Zugspitzstrasse 1
D-82049 Pullach Germany
Attention: Ms. XXXX
Manager AAFES Department

Capt Tom Hanks
1122 Toy Story Lane
Andy’s Room, VA 12345
**Figure 23: Claim File Organization**

**Tab A: Privileged Material**  
A-1: Legal Memo  
A-2: Witness Interviews  
A-3: Expert opinions  
A-4: Photographs  
A-4: Correspondence  
A-5: Other

**Tab B: Non-Privileged Material**  
B-1: Photographs  
B-2: Regulations and Directives  
B-3: Correspondence  
B-4: Medical and Personnel Records  
B-5: Investigative Reports  
B-6: Contracts  
B-7: Other

**Tab C: Claimant Submissions**  
C-1: Claim  
C-2: Repair Estimates  
C-3: Medical Records  
C-4: Other
MEMORANDUM FOR STATE FARM INSURANCE COMPANY
ATTENTION: CLAIMS DEPARTMENT

FROM: 5 BW/JA
300 Summit Dr Suite 211
Minot AFB ND 58705-5038

SUBJECT: Notice of Claim-Damage to Government Property
Your Insured: Ms. Daisy Duck; Policy No.

1. In accordance with the provisions of Title 31, United States Code, Sections 3701, 3711-3719, the United States is entitled to recover, and does hereby make claims for reasonable costs for damage to property of the United States Government under circumstances which indicate your legal liability.

2. The following information is provided:

   Air Force Claim Number: Minot AFB xx-xx
   Date of Incident: 01 January 2010
   Type of Property Damaged: 2005 Ford F-250 truck, Lic#12A34567
   Amount of Claim: $

3. The circumstances indicate that on 01 January 2010 your insured’s 2005 Mercedes E320 (License No. xxx-xxx), driven by Ms. Daisy Duck, was involved in a motor vehicle accident on Mickey Boulevard near Pluto Street in Minot, North Dakota. Ms. Duck entered Mickey Boulevard and attempted to change lanes in front of the Air Force vehicle when she was struck. This accident caused damage to government vehicle No. 12A34567. The Air Force driver was unaware of Ms. Duck’s action and struck the vehicle as she drove into the lane of the Air Force vehicle. The cost of repair is $

4. Please send your check or draft made payable to “<<Name of Repair Shop>>”, to:

   5 BW/JAD
   300 SUMMIT DRIVE SUITE 211
   MINOT AFB ND 58705-5038

   Check to made in the amount of $
5. If you have any questions regarding this notice of claim, please contact <<Name>> at <<Telephone Number>>

DONALD DUCK, TSgt, USAF
NCOIC, General Law Division
MEMORANDUM FOR <<Tortfeasor’s Name >>>

<<Address>>> 

FROM:  5 BW/JA
300 Summit Dr Suite 211
Minot AFB ND 58705-5038

SUBJECT: Notice of Claim

1. In accordance with the provisions of Title 31, United States Code, Sections 3701, 3711-3719, the United States is entitled to recover, and does hereby make claims for reasonable costs for damage to property of the United States Government under circumstances which indicate your legal liability to pay therefore.

2. The following information is provided:

   Air Force Claim Number: xx-xx
   Date of Incident: 01 January 2010
   Type of Property Damaged: 2005 Ford F-250 truck, Lic#12A34567
   Amount of Claim: $

3. The circumstances indicate that you were involved in a motor vehicle accident and damaged the above property on 01 January 2010. The cost of repair is $

4. If you have insurance that provides coverage for this accident, please forward this letter to your insurance company immediately and provide me with your insurance company, policy number and contact information.

5. Send your check or draft made payable to “U.S. AIR FORCE-CLAIMS”, to:

   5 BW/JAD
   300 SUMMIT DRIVE SUITE 211
   MINOT AFB ND 58705-5038

   Check to made in the amount of $

6. If you have any questions regarding this notice of claim, please contact <<Name>> at <<Telephone Number>>
MEMORANDUM FOR <<Tortfeasor’s Name >>>

<<Address>>>

FROM:  5 BW/JA
300 Summit Dr Suite 211
Minot AFB ND 58705-5038

SUBJECT:  Notice of Claim

1. On <<Date>> we sent you a demand letter asserting a claim for damages the United States incurred <<describe the circumstances of the loss.>>  As of the date of this letter, this office has not received a response from you.

2. The following information is provided:

   Air Force Claim Number: Minot AFB xx-xx
   Date of Incident: 01 January 2010
   Type of Property Damaged: 2005 Ford F-250 truck, Lic#12A34567
   Amount of Claim: $

3. Promptly send a check or draft made payable to “U.S. AIR FORCE-CLAIMS”, to:

   5 BW/JAD
   300 SUMMIT DRIVE SUITE 211
   MINOT AFB ND 58705-5038

   Check to made in the amount of $

4. If you do not respond within 30 days, this claim will be forwarded to the United States Attorney for further action. If you have any questions regarding this notice of claim, please contact <<Name>> at <<Telephone Number>>.

DONALD DUCK, Lt Col, USAF
Staff Judge Advocate
PROMISSORY NOTE CONTAINING AGREEMENT FOR JUDGMENT

Date:

Total Amount Owed: $

For value received, I, ______________, promise to pay to the order of the US AIR FORCE-CLAIMS the sum of $________ in monthly installments of $________ each, payable at ______________, (insert name of legal office) on or before the 20TH of each calendar month until such obligation is fully paid. If any such installment shall remain unpaid for a period of ten days, the entire amount of this obligation, less payments actually made, shall thereupon become immediately due and payable at the option of the United States Attorney for the ___ District of _____________ without demand or notice, said demand and notice being hereby expressly waived.

IMPORTANT NOTICE

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

I do hereby authorize and empower the said United States Attorney, any of its assistants, or attorney of any court of record, State or Federal, to appear for me and to enter and confess judgment against me for the entire amount of this obligation, less payments actually made, at any time after the same becomes due and payable, as herein provided, in any court of record, Federal or State; to waive the issuance and service of process upon me in any suit on this obligation; to waive any venue requirement in such suit; to release all errors that may intervene in entering such judgment or in issuing any execution thereon; and to consent to immediate execution on said judgment.

I hereby ratify and confirm all that said attorney may do by virtue thereof.

____________________
Printed Name

____________________
Signature

____________________
Date