DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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IN REPLY REFER TO

JAGINST 5890.1A
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JAG INSTRUCTION 5890.1A

From: Judge Advocate General

Subj: ADMINISTRATIVE PROCESSING AND CONSIDERATION OF CLAIMS ON BEHALF OF AND AGAINST THE UNITED STATES

Ref: (a) JAGINST 5800.7D, Manual of the Judge Advocate General (JAGMAN)

Encl: (1) Procedures for Processing Federal Tort Claims Act Claims
(2) Procedures for Processing Military Claims Act Claims
(3) Procedures for Processing Foreign Claims Act Claims
(4) Procedures for Processing Claims Involving Non-appropriated Fund Activities and Their Employees
(5) Procedures for Processing Nonscope Claims
(6) Procedures for Processing Personnel Claims
(7) Procedures for Processing Affirmative Claims

1. Purpose

a. To provide general information about the supervision and management of the Navy's claims program and the processing of claims under various Federal claims statutes. For admiralty claims, see Chapter XII of reference (a).

b. To supplement the provisions of reference (a) concerning the investigation of incidents giving rise to claims for or against the United States. For information and guidance in conducting an investigation of an incident or event likely to result in claims or civil litigation against or for the Department of the Navy (DON) or the United States, see Chapter II of reference (a).

c. To provide, in the enclosures, detailed explanations of the procedures for adjudicating claims filed under the various claims statutes. See Enclosures (1)-(7).

2. Cancellation. JAGINST 5890.1

3. Information

a. Responsibilities

(1) The Judge Advocate General is responsible for the administration and supervision of the resolution of claims involving the DON, or where the Navy has single-service responsibility, arising under the Federal Tort Claims Act, the Military Claims Act, the Foreign Claims Act, the Nonscope Claims Act, the Military and Civilian Employees' Personnel Claims Act, the International Agreements Claims Act pertaining to cost sharing of claims pursuant to international agreements, the Medical Care Recovery Act, the Federal Claims Collection Act of 1966, and postal claims.

(2) The Deputy Assistant Judge Advocate General (Claims, Investigations and Tort Litigation) is the functional manager of the Navy claims system established to evaluate, adjudicate, and provide litigation support for claims arising under the acts listed above and is responsible to the Judge Advocate General for the management of that system. The claims system consists of field activities delegated claims processing and adjudicating authority and the attorneys and support personnel assigned to the Claims, Investigations and Tort Litigation Division of the Office of the Judge Advocate General (OJAG Code 15). For purposes of this instruction, Naval Legal Service Offices and Naval Legal Service Office Detachments or Branch Offices are referred to as Naval Legal Service Command activities.

b. Claims--Generally

(1) Claims against the United States. Claims against the United States shall receive prompt and professional disposition. Every effort will be made to ensure an investigation is thoroughly and accurately completed, the claimant's allegations evaluated promptly, and where liability is established, payment issued as quickly as possible to prevent further harm to a meritorious claimant. Similarly, claims not payable will be processed promptly and the claimant advised of the reasons for the denial.

(2) Claims in favor of the United States. Potential claims in favor of the United States will be critically evaluated and, where appropriate, promptly asserted and aggressively pursued.

(3) Assistance to claimants. Claimants or potential claimants who inquire about their rights or the procedures to be followed in the resolution of their claims will be referred to a claims attorney. The attorney will provide claims forms, advise where the forms should be filed, and inform the requester of the type of substantiating information required. Claims attorneys may provide advice on the claims process but shall not provide advice or opinions about the merits or the wisdom of filing a particular claim. While claims attorneys have a responsibility to provide general information about claims, they must consider 18 U.S.C. § 205, which makes it a crime for an officer or employee of the United States to act as an agent or an attorney in the prosecution of any claim against the United States.

c. Claims--Proper Claimants

(1) Damage to property cases. A claim for damage to, or destruction or loss of, property shall be presented by the owner of the property or a duly authorized agent or legal representative. "Owner" includes a bailee, lessee, or mortgagor, but does not include a mortgagee, conditional vendor, or other person having title for security purposes only.

(2) Personal injury and death cases. A claim for personal injury shall be presented by the person injured or a duly authorized agent or legal representative, or, in the case of death, by the properly appointed legal representative of the deceased's estate or survivor where authorized by state law.

(3) Subrogation. A subrogor and a subrogee may file claims jointly or separately. When separate claims are filed and each claim individually is within local adjudicating authority limits, they may be processed locally, even if the aggregate of such claims exceeds local monetary jurisdiction, if they do not exceed the sum for which approval of the Department of Justice is required (currently, $200,000.00) under the Federal Tort Claims Act. If adjudicating authorities determine that the value of the damages exceeds their authority, they

should refrain from engaging in settlement negotiations and forward the complete claim file to OJAG, Code 15.

(4) Limitation on transfers and assignment. All transfers and assignments made of any claim upon the United States, and all Powers of Attorney, orders, or other authorities for receiving payment of any such claim, are null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. See 31 U.S.C. § 3727. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, corporation, administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

4. Claims--Single-Service Responsibility

a. The Department of Defense has assigned single-service responsibility for processing claims in foreign countries under the following acts. The service and country assignments are listed in Department of Defense Directive 5515.8 of 9 June 1990 as amended.

(1) Foreign Claims Act (10 U.S.C. § 2734);

(2) Military Claims Act (10 U.S.C. § 2733);

(3) International Agreements Claims Act (10 U.S.C. §§ 2734a - 2734b), on the pro-rata cost sharing of claims pursuant to international agreement;

(4) North Atlantic Treaty Organization (NATO) Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements;

(5) Medical Care Recovery Act (42 U.S.C. §§ 2651-2653) claims for reimbursement for medical care furnished by the United States;

(6) Nonscope Claims Act (10 U.S.C. § 2737), claims not cognizable under any other provision of law;

(7) Federal Claims Collection Act (31 U.S.C. § 3701, § 3702, and § 3711), claims and demands by the United States Government; and

(8) Advance or emergency payments (10 U.S.C. § 2736).

b. Single-service assignments for processing claims mentioned above are as follows:

(1) Department of the Army: Austria, Belgium, El Salvador, the Federal Republic of Germany, Grenada, Honduras, Hungary, Korea, Iraq, Kuwait, Latvia, Lithuania, the Marshall Islands, the Netherlands, Poland, Romania, Slovakia, Slovenia and Switzerland, and as the Receiving State Office in the United States under 10 U.S.C. §§ 2734a - 2734b and the NATO Status of Forces Agreement, and other Status of Forces Agreements with countries not covered by the NATO agreement. Claims arising from Operation Joint Endeavor, including the former Yugoslavia, Hungary, Slovakia and the Czech Republic, as well as the Rwanda Refugee Crisis Area are also assigned to the Army.

(2) Department of the Navy: Bahrain, Greece, Iceland, Israel, Italy, Spain and the United Arab Emirates.

(3) Department of the Air Force: Australia, Azores, Canada, Cyprus, Denmark, India, Japan, Luxembourg, Morocco, Nepal, Norway, Pakistan, Saudi Arabia, Tunisia, Turkey, the United Kingdom, Egypt, Oman, and claims involving, or generated by, the United States Central Command (CENTCOM) and the United States Special Operations Command (SOCOM), that arise in countries not specifically assigned to the Departments of the Army and the Navy.

c. United States Forces Afloat Cases Under $2,500.00. Notwithstanding the single-service assignments above, the Navy may settle claims under $2,500.00 caused by personnel not acting within the scope of employment and arising in foreign ports visited by United States forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims.

5. Specific Claims Processing Procedures. The enclosures establish detailed procedures for processing claims filed under the various Federal claims statutes.

6. Action. The commanding officers and officers in charge of Naval Legal Service Command activities shall ensure compliance with this instruction.

J. E. MCPHERSON

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PROCEDURES FOR PROCESSING FEDERAL TORT CLAIMS ACT CLAIMS

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1. SCOPE. This enclosure provides information regarding the administrative processing and consideration of claims against the United States under the Federal Tort Claims Act (FTCA). The FTCA is a limited waiver of sovereign immunity. Under the FTCA, a claimant can seek money damages for personal injury, death, or property damage caused by the negligent or wrongful act or omission of an employee of the Government acting within the scope of employment. As discussed in paragraph 4c below, "Government employee" is a legal term that is defined by Federal statute. The FTCA also provides for compensation for injuries caused by certain intentional, wrongful conduct. The liability of the United States is determined in accordance with the law of the State where the alleged act(s) or omission(s) occurred.

2. STATUTORY/REGULATORY AUTHORITY. The statutory provisions of the FTCA are at 28 U.S.C. §§ 1346(b), 2671-2672, and 2674-2680. The Attorney General of the United States has issued regulations on administrative claims filed under the FTCA at 28 C.F.R. Part 14. If the provisions of this enclosure conflict with the Attorney General's regulations, the Attorney General's regulations prevail.

3. EXCLUSIVENESS OF REMEDY.

a. The Federal Employees Liability Reform and Tort Compensation Act of 1988, P.L. 100-694 (amending 28 U.S.C. §§ 2679(b) - 2679(d)), provides that the exclusive remedy for damage or loss of property, or personal injury or death arising from the negligent or wrongful acts or omissions of all Federal employees, acting within the scope of their employment, will be against the United States. This immunity from personal liability does not extend to allegations of constitutional torts, nor does it extend to allegations of violations of statutes specifically authorizing suits against individuals.

b. Other statutory provisions create immunity from personal liability for specific categories of Federal employees whose conduct, within the scope of their employment, gives rise to claims against the Government. Department of Defense (DOD) health care providers are specifically protected by 10 U.S.C. § 1089, the Gonzalez Act. DOD attorneys are specifically protected by 10 U.S.C. § 1054.

4. DEFINITIONS.

a. Negligent Conduct. Generally, negligence is the failure to exercise that degree of care, skill, or diligence a

reasonable person would exercise under similar circumstances. Negligent conduct can result from either an act or a failure to act. The law of the place where the conduct occurred will determine whether a cause of action lies against the Government. 28 U.S.C. §§ 1346(b) and 2674.

b. Intentional Torts. Although any employee who commits an intentional tort is normally considered to be acting outside the scope of employment, the FTCA does allow claimants to seek compensation for injuries arising out of the intentional torts of assault, battery, false imprisonment, false arrest, abuse of process, and malicious prosecution, if committed by a Federal investigative or law enforcement officer. An "investigative or law enforcement officer" is any officer of the United States empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law. 28 U.S.C. § 2680(h).

c. Government Employees.

(1) General. "Employee of the Government," defined at 28 U.S.C. § 2671, includes officers or employees of any Federal agency, members of the United States military or naval forces, and persons acting on behalf of a Federal agency in an official capacity.

(2) Government contractors. Government contractors (also referred to as independent contractors), are those individuals or businesses who enter into contracts with the United States to provide goods or services. Because the definition of "Federal agency," found at 28 U.S.C. § 2671, specifically excludes "any contractor with the United States," the United States is generally not liable for the negligence of Government contractors. There are, however, three limited exceptions to the general rule, under which a cause of action against the United States has been found to exist in some jurisdictions. They are: (1) where the thing or service contracted for is deemed to be an "inherently dangerous activity"; (2) where a nondelegable duty in the employer has been created by law; or, (3) where the employer retains control over certain aspects of the contract and fails to discharge that control in a reasonable manner. Additionally, in cases involving the provision of medical services, the contractor may be deemed to be a "personal services provider" as defined by 10 U.S.C. § 1091. In these cases, a contractor is considered a Government employee for FTCA purposes.

(3) Employees of Non-appropriated Fund Instrumentalities (NAFI). NAFIs are entities established and operated for the benefit of military members and their dependents, and have been judicially determined to be "arms" of the Federal Government. These entities operate from self-generated funds rather than from funds appropriated by Congress. Examples of NAFIs include Navy and Marine Corps Exchanges, officer or enlisted clubs, and recreational services activities. A claim arising out of the act or omission of an employee of a NAFI not located in a foreign country, acting within the scope of employment, is an act or omission committed by a Government employee and will be handled in accordance with the FTCA. See Enclosure (4) of the basic instruction, and paragraph 14b(5) below.

d. Scope of Employment. Whether a Government employee acted within the scope of employment is defined by the law of the state where the act or omission occurred under the legal principle of respondeat superior (i.e., master and servant). Although 28 U.S.C. § 2671 states that acting within the scope of employment means acting in the line of duty, the converse is not always true. For administrative purposes, a Government employee may be found to be "in the line of duty," yet not meet the criteria for a finding that the employee acted "within the scope of employment" under the law of the place where the act or omission occurred. Additionally, 28 C.F.R. § 50.15 provides that the Attorney General or a designee may, at their discretion, provide representation for Government employees found to be acting in the scope of employment. Accordingly, Navy attorneys may not make binding scope of employment determinations on claims that exceed their settlement authority. For further guidance, consult OJAG Code 15.

5. SCOPE OF LIABILITY.

a. Territorial Limitations. The FTCA does not apply to any claim arising in a foreign country. See 28 U.S.C. § 2680(k) and Beattie v. United States, 756 F.2d 91 (D.C. Cir. 1984).

b. Exclusions from Liability. Statutes and case law have established categories of exclusions from FTCA liability.

(1) Statutory exclusions. Section 2680 of Title 28 lists claims not cognizable under the FTCA. They include:

(a) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;

(b) Admiralty claims under 46 U.S.C. §§ 741-752 or 781-790, will be referred to the Office of the Judge Advocate General, Admiralty Division (OJAG Code 11) for adjudication. Admiralty claims against the Navy shall be processed under Chapter XII of the Manual of the Judge Advocate General (JAGMAN);

(c) Most claims arising from intentional torts; and

(d) Claims arising from the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(2) Additional claims not payable. Although not expressly statutorily excepted, the following types of claims shall not be paid under the FTCA:

(a) Claims for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty. Compare United States v. Johnson, 481 U.S.C. 681 (1987), and Feres v. United States, 340 U.S.C. 135 (1950), with Brooks v. United States, 337 U.S.C. 49 (1949);

(b) Claims by military personnel or civilian employees of the Navy paid from appropriated funds for personal property damage occurring incident to service or Government employment that are cognizable under 31 U.S.C. § 3721 and implementing regulations (see Enclosure (6) of this instruction);

(c) Claims by employees of NAF activities for personal property damage occurring incident to Government employment, which are processed pursuant to the guidelines in Enclosure (4);

(d) Claims for personal injury or death that are covered by the Federal Employees' Compensation Act (5 U.S.C. § 8116c);

(e) Claims for personal injury or death that are covered by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 905 and 5 U.S.C. § 8171);

(f) That portion of any claim for personal injury or property damage caused by the negligence or fault of a Government contractor, to the extent that such contractor may have assumed liability under the terms of the contract (see

United States v. Seckinger, 397 U.S.C. 203 (1969), and paragraph 4c(2) above);

(g) Claims against the Department of the Navy (DON) by another Federal agency (Government property is not owned by any one Government agency or department, and the Government does not reimburse itself for the loss of its own property except where specifically provided for by law); and

(h) Claims for damage to vehicles rented pursuant to travel orders. See the Rental Car Agreement published by the Surface Deployment and Distribution Command, the Joint Federal Travel Regulations (JFTR) for active duty personnel and the Joint Travel Regulations (JTR) for civilian government employees, Vols. 1 and 2. Note that this exception does not apply to third-party claims. Consult OJAG Code 15 for further guidance in this area.

6. THE ADMINISTRATIVE CLAIM.

a. Proper Claimant. See paragraph 3c of the basic instruction.

b. Claim Presented by Agent or Legal Representative. A claim filed by an agent or legal representative must be filed in the name of the claimant, signed by the agent or legal representative with the representative's title or legal capacity and evidence of their authority to file a claim on behalf of the claimant. Claims filed that do not meet these basic requirements should be returned immediately for correction with notification of the deficiency.

c. Proper Claim. The claim must be "presented" to the appropriate administrative agency for adjudication. A claim is a notice in writing to the appropriate Federal agency of an incident giving rise to Government liability under the FTCA. It must include a demand for money damages in a definite sum for property damage, personal injury, or death alleged to have occurred by reason of the incident. Also, the claim must include sufficient information for the Department of the Navy to investigate the claim. The Attorney General's regulations specify that the claim be filed on a Standard Form 95 (see Appendix 1-a-(1)) or other written notification of the incident. If a letter or other written notification is used, it is essential that it set forth the same basic information required by Standard Form 95. Failure to do so may result in a determination that the administrative claim is incomplete. A

suit may be dismissed on the ground of lack of subject matter jurisdiction based on a claimant's failure to present a proper claim as required by 28 U.S.C. § 2675(a).

d. Presentment. A claim is deemed presented when received by the Navy in proper form and not when it is mailed by the claimant. See 28 U.S.C. § 2401(b) and paragraph 16a below. See also, Moya v. United States, 35 F.3d at 504 (10th Cir. 1994), and Bailey v. United States, 642 F.2d 344, 346 (9th Cir. 1981). A claim against another agency that is mistakenly addressed to or filed with the Navy shall be transferred to the appropriate agency, if ascertainable, or returned to the claimant. A claimant presenting identical claims with more than one agency should identify every agency to which the claim is submitted on every claim form presented. Claims attorneys shall coordinate with all other affected agencies and ensure a lead agency is designated. See 28 C.F.R. § 14.2.

e. Counterclaims, Cross-Claims, and Third-Party Claims. Section 2675(a) of title 28, United States Code provides that the administrative exhaustion requirement does not apply to "claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim or counterclaim." As it relates to counterclaims, this provision applies only to compulsory counterclaims that arise out of the same transaction or occurrence as the opposing party's claim. See Spawr v. United States, 796 F.2d 279 (9th Cir. 1986), Maddox v. Kentucky Fin. Co., Inc., 736 F.2d 380 (6th Cir. 1984), Northridge Bank v. Community Eye Care Center, Inc., 655 F.2nd 832 (7th Cir. 1981), and Gaudet v. United States, 517 F.2d 1034 (5th Cir. 1975). The administrative exhaustion process is mandatory for parties wishing to file permissive counterclaims.

f. Class Action Claim Requirements. An administrative claim and sum certain must be presented for each claimant regardless of the size of the class of individuals filing claims arising out of the same incident. See In re Agent Orange Product Liability Litigation, 818 F.2d 194 (2d Cir. 1987), Keene Corp. v. United States, 700 F.2d 836, 841 (2nd Cir. 1983), cert. denied, 464 United States 864 (1983), Lunsford v. United States, 570 F.2d 221, 224-27 (8th Cir. 1977), Caidin v. United States, 564 F.2d 284 (9th Cir. 1977) and Commonwealth of Pennsylvania v. National Ass'n of Flood Insurers, 520 F.2d 11, 23-25 (8th cir. 1977).

7. INFORMATION AND SUPPORTING DOCUMENTATION.

a. Proper Documentation. Depending on the type of claim presented, claimants may be required to submit information, as follows:

(1) Death.

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

(b) The decedent's employment or occupation at the time of death including monthly or yearly earnings and the duration of last employment;

(c) Full names, addresses, birth dates, relationship, and marital status of the decedent's survivors including identification of survivors who were dependent upon the decedent for support at the time of death;

(d) The degree of support provided by the decedent to each survivor at the time of death;

(e) The decedent's general physical and mental condition before death;

(f) Itemized bills for medical and burial expenses;

(g) If damages for pain and suffering are claimed, a physician's detailed statement specifying the injuries suffered, the duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition during the interval between the injury and death; and

(h) Any other evidence or information that may affect the liability of the United States.

(2) Personal injury.

(a) A written report by the attending physician or dentist on the nature and extent of the injury, the nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period(s) 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 any Federal agency. Upon written request,

a copy of the report of the examining physician shall be provided to the claimant, provided the claimant agrees to make or have made available any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of the claim;

(b) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments of such expenses;

(c) A statement of expected expenses for future treatment;

(d) If a claim is made for lost wages, a written statement from the employer itemizing the actual time and wages lost;

(e) If a claim is made for lost self-employed income, documentary evidence showing the amount of earnings actually lost, including past Federal income tax forms for the previous five years. Estimates of future losses must be discounted to present value at a discount rate of one to three percent after deducting for income taxes. When a medical trust providing for all future care is established, personal consumption may be deducted from future losses; and

(f) Any other evidence or information that may affect the liability of the United States for the personal injury or the damages claimed.

(3) Property damage.

(a) Proof of ownership, or an insurable interest by a subrogee;

(b) A detailed statement of the amount claimed for each item of property;

(c) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of repairs;

(d) A statement listing the date of purchase, the purchase price, and the salvage value where repair is not economical; and

(e) Any other evidence or information that may affect the liability of the United States for the property damage claimed.

b. Failure to Submit Necessary Documentation. If a claimant fails to provide sufficient supporting documentation with the claim, the claimant should be notified of the deficiency. If after notice of the deficiency, which should reference 28 C.F.R. § 14.4, the information is still not supplied, two follow-up requests should be sent by certified mail to the claimant with return receipt requested. If after a reasonable period of time the claimant still has not provided the information, the appropriate adjudicating authority should deny the claim.

8. AMENDMENT OF THE CLAIM. A claimant may amend a proper claim at any time prior to the settlement or denial of the claim, or the filing of a suit. An amendment must be submitted in writing and must be signed by the claimant or a duly authorized agent or legal representative. No finally denied claim for which reconsideration has not been requested under paragraph 11 of this enclosure may be amended.

9. INVESTIGATION AND EXAMINATION. Chapter VIII of the JAGMAN requires an investigation for every incident that may result in a claim against or in favor of the United States. Where a previously unanticipated claim is filed against the Government and an investigation has not already been conducted, the appropriate claims attorney shall immediately request an investigation. See Chapter VIII of the JAGMAN for specific action required by an adjudicating authority.

10. DENIAL OF THE CLAIM. The final denial of an administrative claim must be in writing and sent by certified mail with return receipt requested to the claimant or a duly authorized agent or legal representative. The notification of the final denial of the claim shall include the reasons for the denial and a statement informing the claimant of the right to file suit in the appropriate Federal district court not later than six months after the date the notification was mailed. See 28 C.F.R. § 14.9(a).

11. RECONSIDERATION.

a. Request. Prior to the commencement of suit and prior to the expiration of the six-month period for filing suit, a claimant or a duly authorized agent or legal representative may present a request for reconsideration to the authority who denied the claim. The request shall be in writing and shall state the reasons for the requested reconsideration. A request

for reconsideration is presented on the date it is received by the DON. See 28 C.F.R. § 14.9(b).

b. Proper Basis. A request for reconsideration shall set forth the claimant's reasons for the request and shall include any supplemental supporting evidence or information. Any writing communicating a desire for reconsideration that reasonably appears to have been presented solely for the purpose of extending the statutory period for filing suit, shall not be treated as a request for reconsideration. The claimant or a duly authorized agent or legal representative shall be notified promptly that the writing is not considered a proper request for reconsideration.

c. Effect of Presentment of Request. Upon the timely filing of a request for reconsideration, the Navy has six months from the date of the filing in which to make a final disposition of the claim. The claimant may not file suit until the expiration of this six-month period, or until after the date the final denial of the request for reconsideration was mailed. The final denial of a request for reconsideration shall be accomplished in the manner prescribed in paragraph 10, above. See 28 C.F.R. § 14.9(b).

12. SUITS UNDER THE FTCA.

a. Venue. Venue is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred. See 28 U.S.C. § 1402.

b. Jury Trial. There is no right to trial by jury in suits brought under the FTCA. See 28 U.S.C. § 2402.

c. Settlement. The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA. See 28 U.S.C. § 2677. See also paragraph 14 below.

d. Litigation Support.

(1) Who provides. The adjudicating authority holding a claim at the time suit is filed is responsible for providing necessary assistance to the Department of Justice (DOJ) official or United States Attorney responsible for defending the Government's interests.

(2) Litigation report. A litigation report shall be furnished to the appropriate Department of Justice (DOJ) official or United States Attorney. The report shall include:

(a) The claimant's name, the claim number, the dollar amount of the claim, the date and place it was presented and any information concerning amendments to the claim;

(b) The type of claim with a citation to the statute that authorizes the claim;

(c) Address of the claimant (if represented by an attorney, the name, address and telephone number of the attorney);

(d) A chronological statement of relevant facts, beginning with the date, time, and place of the incident from which the claim arises;

(e) An explanation of any applicable federal, state or local laws, emphasizing the anticipated litigation issues; and

(f) Liability and damage analysis and a recommendation as to disposition of the lawsuit. Adjudicating authorities may contact OJAG Code 15 to obtain a sample litigation report. This litigation report is separate from and in addition to any Litigation-Report Investigation required by JAGMAN Chapter II.

(3) Pretrial discovery. Complete and timely responses to discovery requests are vital to the effective defense of tort litigation. Subject to existing personnel and resources available, appropriate assistance shall be provided to DOJ or the Assistant United States Attorney. OJAG Code 15 should be notified promptly when special problems are encountered in providing the requested assistance.

(4) Preservation of evidence. Tort litigation is often accomplished over an extended period of time. Accordingly, every effort shall be made to preserve files, documents and other tangible evidence that may bear on litigation. Destruction of such evidence, even in accordance with routine operating procedures, undermines the future defense of a case.

13. DAMAGES.

a. Generally. The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between state law and applicable Federal law, the latter controls. See 28 U.S.C. § 1346(b).

b. Limitations on Liability. The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof for actual or compensatory damages. See 28 U.S.C. § 2674.

c. Setoff. The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including TRICARE payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. §§ 101-800) must be considered. See Brooks v. United States, 337 U.S.C. 49 (1949).

d. Suit. Any damage award in a suit brought under the FTCA is limited to the amount claimed administratively unless it is based on newly discovered evidence. See 28 U.S.C. § 2675(b). The plaintiff must prove any increased demand is based on facts that were not reasonably discoverable at the time the claim was presented or that the increased demand is based on intervening facts relating to the claim amount.

14. SETTLEMENT AND PAYMENT.

a. Settlement. See 28 U.S.C. § 2672, 28 C.F.R. §§ 14.2(b)(3) and 14.10(b).

(1) Settlement agreement.

(a) When required. A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either (1) settled for less than the full amount claimed or (2) the claim was not presented on a Standard Form 95. See Appendices 1-b through 1-e of this enclosure for model settlement agreements.

(b) Contents. Every settlement agreement must contain language indicating that payment is in full and final settlement of the claim. Each settlement agreement must also contain language indicating that acceptance of the settlement amount by the claimant or an agent or legal representative is final and conclusive on the claimant or the agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented. Each settlement agreement must also include language stating that the agreement constitutes a complete release of any claim against the United States and against any Government employee whose conduct gave rise to the claim by reason of the same subject matter. See 28 C.F.R. § 14.10(b). All settlement agreements shall also contain a recitation of the applicable statutory limitation of attorney fees. See 28 U.S.C. § 2678.

(c) Claims involving minors and incompetents. Generally, only the legal representative, court-appointed representative, or a person performing a similar function under court supervision, may execute a binding settlement agreement on a minor's/incompetent's claim. The DOJ requires the minor's/incompetent's representative to obtain state court approval of the negotiated agreement before it is executed. The law of the state where the minor/incompetent resides or is domiciled will determine the nature and type of court approval that is needed. If it is believed that the foregoing requirement is impeding settlement of the claim, the adjudicating authority should contact OJAG Code 15 to request that DOJ waive the required court approval in appropriate cases.

(d) Structured settlements. Structured settlements which include a reversionary interest in favor of the United States are encouraged in appropriate cases. They provide a means of achieving a fair settlement that protects the injured person while not requiring an excessive payment on the part of the United States. The insurer may rate a claimant actuarially as having an age much greater than the individual's chronological age, thereby allowing for a high monthly or annual payment to the beneficiary or to a reversionary trust for the beneficiary's life (which will protect the beneficiary) at a relatively modest cost to the United States. The reversionary interest in favor of the United States will protect the United States in the event funds are not needed for contingent future expenses, such as future medical costs and expenses. See Appendix 1-e.

(2) DON role in settlement negotiations involving lawsuits. The DOJ (normally a United States Attorney) generally seeks agency concurrence prior to settlement of lawsuits involving the DON. DOJ requests for concurrence in lawsuit settlement proposals shall be referred to the appropriate DON adjudicating authority that had primary responsibility for adjudicating the administrative claim and is now providing litigation support. Although paragraph 17 of this enclosure requires adjudicating authorities to consult with OJAG Code 15 concerning proposed settlements of administrative claims in excess of their settlement authority, Code 15 does not need to be consulted regarding DOJ lawsuit settlement proposals, regardless of the settlement amount. The adjudicating authorities shall, however, consult with Code 15 on DOJ lawsuit settlements for cases that may have broad legal or policy implications for the DON, or involve widespread public interest or sensitive matters. Moreover, any request from DOJ or a United States Attorney's office that seeks DON's recommendation on whether or not to appeal a verdict or a damage award must also be referred to Code 15.

b. Payment of a Claim.

(1) Statutory authority. Pursuant to 28 U.S.C. § 2672 and in accordance with 28 C.F.R. § 14.6(a), the Secretary of the Navy or designee, acting on behalf of the United States, may compromise or settle any FTCA claim filed against the United States Navy, provided any award, compromise, or settlement by the Navy in excess of $200,000.00 may be effected only with the prior written approval of the Attorney General or designee. Title 28 C.F.R. § 14.6 requires consultation with the DOJ prior to the compromise or settlement of a claim in any amount when:

(a) A new precedent or a new point of law is involved;

(b) A question of policy is or may be involved;

(c) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim;

(d) The compromise of a particular claim will or may control the disposition of a related claim in which the amount to be paid may exceed $200,000.00; or

(e) The DON is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

(2) Specific delegation and designation. See Appendix 1-f for payment authority and Appendix 1-g for specific territorial responsibility.

(3) Funding. Claims approved for $2,500.00 or less are paid from DON appropriations. Claims approved in excess of $2,500.00 are paid from the judgment fund and must be forwarded for payment under 31 U.S.C. § 1304 to: Judgment Fund Group, Department of the Treasury (DOT), Financial Management Service, Prince George's Metro Center 2, 3700 East-West Highway, Rm 6F03, Hyattsville, MD 20782. See 28 C.F.R. § 14.10(a). The required payment documents are in Appendix 1-h or can be found in the DOT website www.fms.treas.gov/judgefund. They are as follows:

(a) The original signed Judgment Fund Voucher for Payment (FMS Form 197), which must contain the payee's taxpayer identification number (social security number for individuals). If the claimant is represented by an attorney, the voucher must contain the taxpayer identification numbers of both the claimant and attorney;

(b) A completed Judgment Fund Transmittal (FMS Form 194);

(c) A completed Judgment Fund Award Data Sheet (FMS Form 196);

(d) A copy of the settlement agreement which states that attorney fees will not exceed 20% of the settlement amount per 28 U.S.C. 2678;

(e) A copy of the SF 95 or other written demand;

(f) When applicable, evidence showing that the representative has authority to act on behalf of the claimant; and

(g) Written proof of DOJ's approval when the payment exceeds $200,000.00.

(4) Internet tracking of judgment fund payments. The DOT has implemented a database that will assist in tracking the

receipt and payment of settlements by the Judgment Fund Section. The system can be accessed via internet at www.fms.treas.gov/judgefund/reports.asp. [Select agency at the prompt; skip the "Agency Reference Number" box; provide the date the settlement was mailed and the current date (e.g., "From: 10/11/2003 To: 11/05/2003"; and then click "Submit Query".]

(5) Non-appropriated Fund Instrumentality (NAFI) claims. Claims arising out of the operation of NAFIs and approved for payment shall be forwarded to the appropriate NAFI for payment.

15. ATTORNEY'S FEES. Under 28 U.S.C. § 2678, an attorney's fees are limited to either 20 percent of the settlement amount of an administrative claim or 25 percent of any judgment rendered in favor of a plaintiff or of any settlement of a suit. Questions involving attorney's fees occasionally arise in connection with a structured settlement utilizing an annuity. The maximum attorney's fee should be calculated on the basis of the final, total cost to the government at the time of settlement. The fee should not be based on either the investment value equivalent or the total annuity payout. With respect to an annuity, the actual cost, by definition, represents the present value of the flow of periodic or other scheduled payments. See Wyatt v. United States, 783 F.2d 45 (6th Cir. 1986). These amounts are to be paid out of the amount awarded and are not in addition to the award.

16. TIME LIMITATIONS.

a. Administrative Claim. Every claim filed against the United States under the FTCA must be presented in writing within two years after the claim accrues. See 28 U.S.C. § 2401(b). Federal law determines the date of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act or omission giving rise to the claim. In computing the statutory time period, the day of the incident is excluded and the day the claim was presented included.

b. Amendments. Upon timely filing of an amendment to a pending claim, the DON shall have six months to make a final disposition of the claim as amended, and the claimant's option to file suit under 28 U.S.C. § 2675(a) shall not accrue until six months after the presentment of an amendment. See 28 C.F.R. § 14.2(c).

c. Suits. A civil action is barred unless suit is filed against the United States not later than six months after the date the notice of the final denial of the claim is mailed. See

28 U.S.C. § 2401(b). The failure of the DON to make final disposition of a claim within six months after it is presented shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. See 28 U.S.C. § 2675(a).

17. ADJUDICATION AND DELEGATION OF INCREASED SETTLEMENT AUTHORITY BY OJAG CODE 15.

a. Original Adjudications. OJAG Code 15 conducts original adjudications only on claims that Code 15 specifically requests from a field office. Code 15 may request a claim for any of a number of reasons, e.g., the DOJ requests that Code 15 adjudicate the claim; the claim has high visibility; or the claim is one of a group of claims that Code 15 has decided to adjudicate together. Unless Code 15 specifically requests a claim, all original adjudications of FTCA claims should be done by the cognizant Naval Legal Service Office or one of the single-service designees.

b. Estimated Value of a Claim Exceeds Settlement Authority. Once adjudicating authorities determine there is Government liability in a particular claim, they must then determine if the claim can be settled within their settlement authority (see Appendix 1-d). This requires a full analysis of the substantiated damages, as outlined in 32 C.F.R. 170.27. If the adjudicating authorities determine that the value of the damages exceeds their authority, they should refrain from engaging in settlement negotiations and forward the complete claim file to OJAG Code 15. OJAG Code 15 will then provide litigation support to the DOJ or the appropriate United States Attorney if the claimant thereafter files suit.

c. Requests for Delegation of Increased Settlement Authority. If an adjudicating authority initially determined a claim could be settled within their authority but after settlement negotiations determines the claim warrants settlement at a value higher than their delegated authority but within OJAG Code 15's $200,000.00 settlement authority, the adjudicating authority can forward a memorandum of law to OJAG Code 15 requesting delegation of increased authority to settle that claim. As with any other memorandum of law, it must include all evidence necessary to substantiate liability and damages. Code 15 will independently assess liability and the value of the claim and will either grant or deny the request. Claims attorneys and adjudicating authorities shall not commit to a settlement amount that exceeds their settlement authority. If the claim does not settle, and subsequently goes into

litigation, the Naval Legal Service Office will provide litigation support to the DOJ.

CLAIM FOR DAMAGE, INJURY, OR DEATH	INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.	FORM APPROVED OMB NO. 1105-0008 EXPIRES 6-30-91

1. Submit To Appropriate Federal Agency:	2. Name, Address of claimant and claimant's personal representative, if any. *(See instructions on reverse.) (Number, street, city, State and Zip Code)*

3. TYPE OF EMPLOYMENT ☐ MILITARY ☐ CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME *(A.M. OR P.M)*

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

9. PROPERTY DAMAGE

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

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

10. PERSONAL INJURY/WRONGFUL DEATH

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

11. WITNESSES

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

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

12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL *(Failure to specify may cause forfeiture of your rights.)*

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

13a. SIGNATURE OF CLAIMANT *(See instructions on reverse side.)*	13b. Phone number of signatory	14. DATE OF CLAIM

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM	CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS
The claimant shall forfeit and pay to the United States the sum of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the United States. *(See 31 U.S.C. 3729.)*	Imprisonment for not more than five years and shall be subject to a fine of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the United States. *(See 18 U.S.C.A. 287.)*

95-108
Previous editions not usable

NSN 7540-00-634-4046

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

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

INSTRUCTIONS

Complete all items – Insert the word NONE where applicable

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

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

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

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

The amount claimed should be substantiated by competent evidence as follows:

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

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

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

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

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

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

and to the
Office of Management and Budget
Paperwork Reduction Project (1105-0008)
Washington, DC 20503

INSURANCE COVERAGE

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

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

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

17. If deductible, state amount

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

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

SF 95 (Rev. 7-85) BACK

* U.S. GOVERNMENT PRINTING OFFICE: 1989--241-175

Instructions for Stipulation For Compromise Settlement and Release ("Stipulation") for Cash Administrative FTCA Settlements - Electronic Funds Transfer

The attached Model Stipulation (2003 Edition ***must*** be used for cash settlements of Federal Tort Claims Act (FTCA) administrative claims where the payment is by Electronic Funds Transfer (EFT). Prior editions are obsolete and should not be used in negotiating or drafting a Stipulation. Do ***not*** use this Model for any other type of FTCA settlement or form of payment.

Except as provided below, the Model Stipulation may ***not*** be changed or modified in any substantive respect without the prior approval of the Department of Justice's FTCA Staff.

- **Paragraph No. 1**: Insert a brief description of the factual nature of the administrative claims.
- **Paragraph No. 2**: Insert the amount of the settlement.
- **Paragraph No. 8**: Insert the wire transfer information where indicated in Paragraph 8. In most cases, the settlement amount will be transmitted to the attorney's client trust account. Do ***not*** make the payee a qualified settlement fund or 468B fund or a special needs trust.
- **Paragraph No. 10**: Each claimant, which is defined in the introduction to the Stipulation to include any individual waiving and releasing past, present, or future claims, even if such individual has not submitted an administrative claim, must sign the Stipulation, along with counsel for each claimant and counsel for the United States. The full name of each individual signing the Stipulation should be typed below the signature line for that individual. To the extent the individual is signing in a representative capacity, the nature of that representative capacity should be included.

If you have any questions regarding the Model Stipulation or desire assistance in drafting, please contact Roger D. Einerson, Assistant Director, Torts Branch, at 202-616-4250 or at roger.einerson@usdoj.gov.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2672
[Use only for administrative cash settlement payable by EFT]

It is hereby stipulated by and between the undersigned claimants (meaning any person, other than the United States, signing this agreement), and the United States of America, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claims, e.g., **[insert brief statement regarding factual nature of administrative claims]**, under the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay the sum of **[INSERT SUM ($xxxxxxx)]**, which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which claimants or their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Claimants and their guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known

and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the administrative claims, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Claimants and their guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by claimants or their guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the plaintiffs. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the claimants will be paid out of the settlement amount and not in addition thereto.

6. It is also understood by and among the parties that pursuant to Title 28, U.S.C. Code, Section 2678, attorney's fees for services rendered in connection with this matter shall not exceed 20 per centum of the amount of the compromise settlement.

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement. In the event any claimant is a minor or legally incompetent adult, the claimants must obtain State Court approval of the settlement at their expense. Claimants agree to obtain such approval in a timely manner: time being of the essence. Claimants further agree that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event claimants fail to obtain such State Court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

8. Payment of the settlement amount will be made by government wire transfer as per the following:

A. Name of Bank:
B. Street Address of Bank:
C. City, State and Zip Code of Bank:
D. Federal Reserve Number:
E. Routing Number:
F. Name of Account:
G. Account Number:

Claimants' attorney agrees to distribute the settlement proceeds among the claimants.

9. The parties agree that this Stipulation for Compromise Settlement and Release, including all the terms and conditions of this compromise settlement and any additional

agreements relating thereto, may be made public in their entirety, and the claimants expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

10. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

Executed this day of , 2 .

Attorney for United States of America

Executed this day of , 2 .

Attorneys for Claimants

Executed this day of , 2 .

Claimant

Instructions for Stipulation For Compromise Settlement and Release ("Stipulation") for Cash Administrative FTCA Settlements – Payment by Check

The attached Model Stipulation (2003 Edition) ***must*** be used for cash settlements of Federal Tort Claims Act (FTCA) administrative claims where the payment is by check. Prior editions are obsolete and should not be used in negotiating or drafting a Stipulation. Do ***not*** use this Model for any other type of FTCA settlement or form of payment.

Except as provided below, the Model Stipulation may ***not*** be changed or modified in any substantive respect without the prior approval of the Department of Justice's FTCA Staff.

- **Paragraph No. 1**: Insert a brief description of the factual nature of the administrative claims.
- **Paragraph No. 2**: Insert the amount of the settlement.
- **Paragraph No. 8**: Insert the amount of the check, the payee(s), and the address of the person(s) who will be receiving the check(s). In most cash settlements, the settlement check will be made payable to the claimant(s) and the claimant's attorney and sent to the attorney. Do ***not*** make the payee a qualified settlement fund or 468B fund or a special needs trust.
- **Paragraph No. 10**: Each claimant, which is defined in the introduction to the Stipulation to include any individual waiving and releasing past, present, or future claims, even if such individual has not submitted an administrative claim, must sign the Stipulation, along with counsel for each claimant and counsel for the United States. The full name of each individual signing the Stipulation should be typed below the signature line for that individual. To the extent the individual is signing in a representative capacity, the nature of that representative capacity should be included.

If you have any questions regarding the Model Stipulation or desire assistance in drafting, please contact Roger D. Einerson, Assistant Director, Torts Branch, at 202-616-4250 or at roger.einerson@usdoj.gov.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2672
[Use only for administrative cash settlements payable by check]

It is hereby stipulated by and between the undersigned claimants (meaning any person, other than the United States, signing this agreement), and the United States of America, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claims, e.g., **[insert brief statement regarding factual nature of administrative claims]**, under the terms and conditions set forth in this Settlement Agreement.

2. The United States of America agrees to pay the sum of **[INSERT SUM ($xxxxxxxx)]**, which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which claimants or their guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Claimants and their guardians, heirs, executors, administrators or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and

nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the administrative claims, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Claimants and their guardians, heirs, executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by claimants or their guardians, heirs, executors, administrators or assigns against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the plaintiffs. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the claimants will be paid out of the settlement amount and not in addition thereto.

6. It is also understood by and among the parties that pursuant to Title 28, U.S.C. Code, Section 2678, attorney's fees for services rendered in connection with this matter shall not exceed 20 per centum of the amount of the compromise settlement.

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement. In the event any claimant is a minor or legally incompetent adult, the claimants must obtain State Court approval of the settlement at their expense. Claimants agree to obtain such approval in a timely manner: time being of the essence. Claimants further agree that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event claimants fail to obtain such State Court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

8. Payment of the settlement amount will be made by check drawn on the United States Treasury for dollars ($) and made payable to and , claimants, and , claimants' attorney. The check will be mailed to claimants' attorney at the following address: . Claimants' attorney agrees to distribute the settlement proceeds among the claimants.

9. The parties agree that this Stipulation for Compromise Settlement and Release, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the claimants expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

10. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

Executed this day of , 2 .

Attorney for United States of America

Executed this day of , 2 .

Attorneys for Claimants

Executed this day of , 2 .

Claimant

Instructions for Stipulation For Compromise Settlement and Release ("Stipulation") for FTCA Administrative Structured Settlements Without a Reversionary Trust

The attached Model Stipulation (2003 Edition) ***must*** be used for Federal Tort Claims Act (FTCA) administrative claims structured settlements without a reversionary medical care trust. Prior editions are obsolete and should not be used in negotiating or drafting a Stipulation. Do ***not*** use this Model for any other type of FTCA settlement or form of payment.

Except as provided below, the Model Stipulation may ***not*** be changed or modified in any substantive respect without the prior approval of the Department of Justice's FTCA Staff.

- **Paragraph No. 1**: Insert a brief description of the factual nature of the administrative claims.
- **Paragraph No. 3.a**: Insert the name of the structured settlement broker, the broker's bank account and wire transfer information, the settlement amount, and a description of the disbursements to be made by the broker. In most structured settlements, the settlement provides for one wire transfer to the broker's bank account and the broker in turn distributes the settlement amount to the respective payees, which are usually the claimants' attorney's client trust account and the annuity company or companies issuing the annuity contract(s). Do ***not*** make the payee a qualified settlement fund or 468B fund or a special needs trust.
- **Paragraph No. 3.b**: Insert a detailed description of the annuity payments, including the amount or amounts to be paid to each payee. Sample provisions attached at Exhibit A. The structured settlement broker should provide this information and verify its accuracy after this provision is completed.
  The **last paragraph of Paragraph 3.b** provides sample language where any annuity payments remaining at the time of the death of the payee are to be paid to the United States Treasury. Often in structured settlements without a reversionary trust, the negotiations result in remaining annuity payments being paid to the Estate of the payee (or to someone designated by the payee during the payee's life to receive the remaining payments upon the payee's death). Sample provisions attached at Exhibit A, including sample language where the Postal Service in Postal Service cases or Health and Human Services in community health center cases will receive any remaining payments.
- **Paragraph No. 10**: Each claimant, which is defined in the introduction to the Stipulation to include any individual waiving and releasing past, present, or future claims, even if such individual has not submitted an administrative claim, must sign the Stipulation, along with counsel for each claimant and counsel for the United States. The full name of each individual signing the Stipulation should be typed below the signature line for that individual. To the extent the individual is signing in a representative capacity, the nature of that representative capacity should be included.

- If you have any questions regarding the Model Stipulation or desire assistance in drafting, please contact Roger D. Einerson, Assistant Director, Torts Branch, at 202-616-4250 or at roger.einerson@usdoj.gov.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2672
[Use only for administrative structured settlements without reversionary trust]

It is hereby stipulated by and between the undersigned claimants (meaning any person, other than the United States of America and the structured settlement broker, signing this agreement), and the United States. of America, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claims, e.g., **[insert brief statement regarding the factual nature of administrative claims]**, under the terms and conditions set forth in this Settlement Agreement.

2. This Stipulation For Compromise Settlement And Release is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the claimants. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act.

3. The United States agrees to pay the cash sums set forth below in paragraph 3(a) and to purchase the annuity contract(s) described below in paragraph 3(b).

a. As soon as it is practicable after the execution of this Stipulation For Compromise Settlement And Release, the United States will pay by wire transfer to **[name of structured settlement broker's trust account]** trust account **[include name and address of broker's**

bank, broker's bank account number and bank's ABA number if money is to be wire transferred], the sum of Dollars ($)(hereinafter "settlement amount"), out of which the following disbursements will be made by **[name of structured settlement broker's company]** from said trust account:

[Describe in detail the disbursements]

The parties agree that any attorney's fees owed by the claimants shall not exceed 20% of the settlement amount (28 U.S.C. § 2678) and must be paid out of the settlement amount and not in addition thereto.

b. The United States will purchase an annuity contract(s) to make the following payments: **[Set forth details of payment schedule and payees]**

The annuity contract(s) will be owned solely and exclusively by the United States and will be purchased as soon as practicable following the execution of this Stipulation For Compromise Settlement And Release. The parties stipulate and agree that the United States only obligation with respect to said annuity contract(s) and any annuity payments there from is to purchase the annuity contract(s), and they further agree that the United States does not guarantee or insure any of the annuity payments. The parties further stipulate and agree that the United States is released from any and all obligations with respect to the annuity contract(s) and annuity payments upon the purchase of the annuity contract(s).

The parties stipulate and agree that the annuity company that issued the annuity contract(s) or its assignee(s) shall at all times have the sole obligation for making all annuity payments. The obligation of the annuity company to make each annuity payment shall be discharged upon the mailing of a valid check in the amount of such payment to the address

designated by the party to whom the payment is required to be made under this Stipulation For Compromise Settlement And Release. Checks lost or delayed through no fault of the annuity company shall be promptly replaced by the annuity company, but the annuity company is not liable for interest during the interim.

The parties stipulate and agree that the annuity payments cannot be assigned, accelerated, deferred, increased, or decreased by the parties, that no part of any annuity payments called for herein or any assets of the United States or the annuity company are subject to execution or any legal process for any obligation in any manner, and that the claimants shall not have the power or right to sell, assign, mortgage, encumber, or anticipate said annuity payments, or any part thereof, by assignment or otherwise.

Claimants and their guardians, heirs, executors, administrators or assigns do hereby agree to maintain with the annuity company and the United States a current mailing address, and to notify the annuity company and the United States of the death of any beneficiary of said annuity contract(s) within ten (10) days of death.

In the event of the death of a beneficiary of an annuity contract during a period of certain payments, all remaining certain payments shall be made payable to the United States Treasury and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

4. Claimants and their guardians, heirs, executors, administrators, or assigns do hereby accept the cash sums set forth above in paragraph 3(a) and the purchase of the annuity contract(s)

set forth above in paragraph 3(b) in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including any future claims for wrongful death and any claims for fees, costs and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which the claimants or their heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants and employees on account of the same subject matter that gave rise to the administrative claims. Claimants and their guardians, heirs, executors, administrators, and assigns do hereby further agree to reimburse, indemnify and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to or resulting or arising from the acts or omissions that gave rise to the administrative claims, including claims or causes of action for wrongful death.

5. This compromise settlement is specifically subject to each of the following conditions:

a. An agreement by the parties on the terms, conditions, and requirements of this Stipulation For Compromise Settlement And Release and the annuity contract(s). The parties stipulate and agree that the Stipulation For Compromise Settlement And Release and the compromise settlement are null and void in the event the parties cannot agree on the terms, conditions and requirements of this Stipulation For Compromise Settlement And Release and the annuity contract(s). The terms, conditions and requirements of this Stipulation For Compromise Settlement And Release are not severable and the failure to agree, fulfill or comply with any

term, condition, or requirement renders the entire Stipulation For Compromise Settlement And Release and the compromise settlement null and void. The authorization by the Attorney General or the Attorney General's designee to negotiate and consummate a settlement for the amount agreed upon by the parties does not make the settlement binding upon the United States unless and until the other terms, conditions and requirements of this Stipulation For Compromise Settlement And Release have been completely agreed upon in writing.

b. Each beneficiary of the annuity contract(s) set forth above in paragraph 3(b) must be alive at the time of the purchase of said annuity contract(s). In the event of the death of any beneficiary prior to the purchase of said annuity contract(s), the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

c. In the event any claimant is a minor or legally incompetent adult, the claimants must obtain State Court approval of the settlement at their expense. Such court approval must be obtained prior to the purchase of the annuity contract(s) set forth above in paragraph 3(b). Claimants agree to obtain such approval in a timely manner: time being of the essence. Claimants further agree that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event claimants fail to obtain such State Court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

6. Claimants' attorney agrees to distribute the settlement proceeds among the claimants.

7. The parties agree that this Stipulation for Compromise Settlement and Release, including all the terms and conditions of this compromise settlement and any additional

agreements relating thereto, may be made public in their entirety, and the claimants expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

8. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

Executed this day of , 2 .

Attorney for United States of America

Executed this day of , 2 .

Attorneys for Claimant

Executed this day of , 2 .

Claimant

Executed this day of , 2 .

[name of structured settlement broker]

SAMPLE LANGUAGE FOR

Instructions for Stipulation For Compromise Settlement and Release ("Stipulation") for FTCA Administrative Structured Settlements With a Reversionary Trust

The attached Model Stipulation (2003 Edition) ***must*** be used for Federal Tort Claims Act (FTCA) administrative claims structured settlements with a reversionary medical care trust. Prior editions are obsolete and should not be used in negotiating or drafting a Stipulation. Do ***not*** use this Model for any other type of FTCA settlement or form of payment.

Except as provided below, the Model Stipulation may ***not*** be changed or modified in any substantive respect without the prior approval of the Department of Justice's FTCA Staff.

- **Paragraph No. 1**: Insert a brief description of the factual nature of the administrative claims.
- **Paragraph No. 3.a**: Insert the name of the structured settlement broker, the broker's bank account and wire transfer information, the settlement amount, and a description of the disbursements to be made by the broker. In most structured settlements, the settlement provides for one wire transfer to the broker's bank account and the broker in turn distributes the settlement amount to the respective payees, which are usually the claimants' attorney's client trust account and the annuity company or companies issuing the annuity contract(s). Do ***not*** make the payee a qualified settlement fund or 468B fund or a special needs trust.
- **Paragraph No. 3.b**: Insert a detailed description of the annuity payments, including the amount or amounts to be paid to each payee. Sample provisions attached at Exhibit A. The structured settlement broker should provide this information and verify its accuracy after this provision is completed.
  The **last paragraph of Paragraph 3.b** provides sample language where any annuity payments remaining at the time of the death of the payee are to be paid to the United States Treasury. Often in structured settlements without a reversionary trust, the negotiations result in remaining annuity payments being paid to the Estate of the payee (or to someone designated by the payee during the payee's life to receive the remaining payments upon the payee's death). Sample provisions attached at Exhibit A, including sample language where the Postal Service in Postal Service cases or Health and Human Services in community health center cases will receive any remaining payments.
- **Paragraph No. 3.c**: Insert the name of the Reversionary Trust beneficiary, which should be identical to the name as it appears in the Reversionary Trust. Do NOT change the reversionary interest language in the last paragraph of Paragraph 3.c. The United States retains the entire reversionary interest. In Postal Service cases or in community health center cases, the language will have to be modified from Treasury to either the Postal Service or Health and Human Services. Sample provisions attached at Exhibit B.

- **Paragraph No. 10**: Each claimant, which is defined in the introduction to the Stipulation to include any individual waiving and releasing past, present, or future claims, even if such individual has not submitted an administrative claim, must sign the Stipulation, along with counsel for each claimant and counsel for the United States. The full name of each individual signing the Stipulation should be typed below the signature line for that individual. To the extent the individual is signing in a representative capacity, the nature of that representative capacity should be included.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2672
[Use only for administrative structured settlements with annuities and reversionary trust]

It is hereby stipulated by and between the undersigned claimants (meaning any person, other than the United States of America and the structured settlement broker, signing this agreement), and the United States of American, by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claims, e.g., **[insert brief statement regarding the factual nature of administrative claims]**, under the terms and conditions set forth in this Settlement Agreement.

2. This Stipulation For Compromise Settlement And Release is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the claimants. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act.

3. The United States agrees to pay the cash sums set forth below in paragraph 3(a), to purchase the annuity contract(s) described below in paragraph 3(b), and to establish the Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust described below in paragraph 3(c).

a. As soon as it is practicable after the execution of this Stipulation For Compromise Settlement And Release, the United States will pay by wire transfer to **[name of structured settlement broker's trust account]** trust account **[include name and address of broker's bank, broker's bank account number and bank's ABA number if money is to be wire transferred]**, the sum of Dollars ($)(hereinafter "settlement amount"), out of which the following disbursements will be made by **[name of structured settlement broker's company]** from said trust account:

[Describe in detail the disbursements]

The parties agree that any attorney's fees owed by the claimants shall not exceed 20% of the settlement amount (28 U.S.C. § 2678) and must be paid out of the settlement amount and not in addition thereto.

b. The United States will purchase an annuity contract(s) to make the following payments: **[Set forth details of payment schedule and payees]**

The annuity contract(s) will be owned solely and exclusively by the United States and will be purchased as soon as practicable following the execution of this Stipulation For Compromise Settlement And Release. The parties stipulate and agree that the United States only obligation with respect to said annuity contract(s) and any annuity payments therefrom is to purchase the annuity contract(s), and they further agree that the United States does not guarantee or insure any of the annuity payments. The parties further stipulate and agree that the United States is released from any and all obligations with respect to the annuity contract(s) and annuity payments upon the purchase of the annuity contract(s).

The parties stipulate and agree that the annuity company that issued the annuity contract(s) or its assignee(s) shall at all times have the sole obligation for making all annuity payments. The obligation of the annuity company to make each annuity payment shall be discharged upon the mailing of a valid check in the amount of such payment to the address designated by the party to whom the payment is required to be made under this Stipulation For Compromise Settlement And Release. Checks lost or delayed through no fault of the annuity company shall be promptly replaced by the annuity company, but the annuity company is not liable for interest during the interim.

The parties stipulate and agree that the annuity payments cannot be assigned, accelerated, deferred, increased, or decreased by the parties, that no part of any annuity payments called for herein or any assets of the United States or the annuity company are subject to execution or any legal process for any obligation in any manner, and that the claimants shall not have the power or right to sell, assign, mortgage, encumber, or anticipate said annuity payments, or any part thereof, by assignment or otherwise.

Claimants and their guardians, heirs, executors, administrators or assigns do hereby agree to maintain with the annuity company and the United States a current mailing address, and to notify the annuity company and the United States of the death of any beneficiary of said annuity contract(s) within ten (10) days of death.

In the event of the death of a beneficiary of an annuity contract during a period of certain payments, all remaining certain payments shall be made payable to the United States Treasury and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888,

Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

c. The United States will establish, as the grantor, an Irrevocable Reversionary Inter Vivos Medical Care Trust for the use and benefit of **[name of beneficiary]**, a copy of which is attached hereto and incorporated by reference.

Claimants and their successors, assigns, or guardians agree to provide to the trustee of said trust any information, documentation, authorizations, or signatures required by the terms of the trust or by the trustee in administering the terms of the trust. The parties agree that the failure to provide such information, documentation, authorizations, or signatures may result in the denial, in whole or part, of payments from the trust estate, depending on the terms of the trust.

Claimants and their heirs, executors, administrators, or assigns do hereby agree to maintain with the trustee and the United States a current mailing address, and to notify the trustee and the United States of any event upon which the right of payments from the trust estate may depend, including the death of any beneficiary of said trust, within ten (10) days of the date of such event.

Upon the death of the beneficiary of said trust, the trustee shall, to the extent permitted by the terms of said trust, pay allowable charges, expenses, and benefits, and liquidate and distribute the remaining trust estate to the United States by check made payable to the United States Treasury and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

4. Claimants and their guardians, heirs, executors, administrators, or assigns do hereby accept the cash sums set forth above in paragraph 3(a), the purchase of the annuity contract(s) set forth above in paragraph 3(b), and the establishment of the Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust set forth above in paragraph 3(c) in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including any future claims for wrongful death and any claims for fees, costs and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which the claimants or their heirs, executors, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants and employees on account of the same subject matter that gave rise to the administrative claims. Claimants and their guardians, heirs, executors, administrators, and assigns do hereby further agree to reimburse, indemnify and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to or resulting or arising from the acts or omissions that gave rise to the administrative claims, including claims or causes of action for wrongful death.

5. This compromise settlement is specifically subject to each of the following conditions:

a. An agreement by the parties on the terms, conditions, and requirements of this Stipulation For Compromise Settlement And Release, the annuity contract(s), and the Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust. The parties stipulate and agree that the Stipulation For Compromise Settlement And Release and the compromise

settlement are null and void in the event the parties cannot agree on the terms, conditions and requirements of this Stipulation For Compromise Settlement And Release, the annuity contract(s), or the Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust. The terms, conditions and requirements of this Stipulation For Compromise Settlement And Release are not severable and the failure to agree, fulfill or comply with any term, condition, or requirement renders the entire Stipulation For Compromise Settlement And Release and the compromise settlement null and void. The authorization by the Attorney General or the Attorney General's designee to negotiate and consummate a settlement for the amount agreed upon by the parties does not make the settlement binding upon the United States unless and until the other terms, conditions and requirements of this Stipulation For Compromise Settlement And Release have been completely agreed upon in writing.

b. Each beneficiary of the annuity contract(s) set forth above in paragraph 3(b) and the Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust set forth above in paragraph 3(c) must be alive at the time of both the purchase of said annuity contract(s) and the funding of said Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust by the actual transfer of the amount set forth above in paragraph 3(c) into a separate account opened by the trustee of said trust for the beneficiary. In the event of the death of any beneficiary prior to both the purchase of said annuity contract(s) and the funding of said Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

c. In the event any claimant is a minor or legally incompetent adult, the claimants must obtain State Court approval of the settlement at their expense. Such court approval must be obtained prior to both the purchase of the annuity contract(s) and the funding of the Irrevocable Reversionary Inter Vivos Grantor Medical Care Trust set forth above in paragraphs 3(b) and 3(c). Claimants agree to obtain such approval in a timely manner: time being of the essence. Claimants further agree that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event claimants fail to obtain such State Court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

6. Claimants' attorney agrees to distribute the settlement proceeds among the claimants.

7. The parties agree that this Stipulation for Compromise Settlement and Release, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the claimants expressly consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

8. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

Executed this day of , 2 .

Attorney for United States of America

Executed this _____ day of _____, 2_____.

Attorneys for Claimant

Executed this _____ day of _____, 2_____.

Claimant

Executed this _____ day of _____, 2_____.

[name of structured settlement broker]

SAMPLE LANGUAGE FOR PARAGRAPH 3.B

1. Annuity Description

Paragraph 3.b of the Stipulation requires a detailed description of each annuity payment to be made by the annuity company(ies). Below is sample language where the settlement resulted in two different annuity contracts being purchased by the United States paying two different payees. In some cases there may be only one annuity contract making payments to one payee or there may be multiple contracts paying multiple payees.

b. The United States will purchase the following annuity contracts:

i. To pay to the Reversionary Trust described below in paragraph 3.c, an installment refund annuity contract(s) to pay the total sum of $[] per month for the life of John Doe, beginning thirty days after the date the contract(s) is purchased, increasing at [] % compounded annually.

ii. To John Doe II, the sum of $[] per month for the life of John Doe II, beginning thirty days after the date the contract is purchased, for [] months certain, increasing at []% compounded annually. In the event the cost of this annuity has increased or decreased at the date the contract is purchased, the monthly payment shall be adjusted upward or downward accordingly to ensure that the total cost of the annuity contract in this paragraph 3.b.ii shall not be more or less than $[].

iii. To Mary Doe, the sum of $[] per month for the life of Mary Doe, beginning thirty days after the date the contract is purchased, for [] months certain, increasing at []% compounded annually. In the event the cost of this annuity has increased or decreased at the date the contract is purchased, the monthly payment shall be adjusted upward or downward accordingly to ensure that the total cost of the annuity contract in this paragraph 3.b.iii shall not be more or less than $[].

NOTE: In the event the terms of the settlement provide that an annuity contract will pay for a specified period of time, the language describing the annuity payments should use the word "certain" rather than "guarantee" in describing the specified period of payments. In the example above, the annuity contract in paragraph b.i was an installment refund contract instead of one with a specified period of payments certain, as was done in paragraphs b.ii and b.iii, above. Your structured settlement broker can explain the differences and the reasons to use one type of contract or the other in a particular case.

2. Remainder Interest

Whenever an annuity is purchased that will make payments for a specified period of time or an installment refund contract is purchased, the parties will have to negotiate the issue of who will be entitled to any payments remaining at the time of the death of the payee. In cases where the United States is purchasing an installment refund contract, the refund is paid to the United States. In cases where the United States is purchasing an annuity contract to pay for a specified period of time, the issue of remainder interest can be negotiated. However, the United States usually insists that any payments remaining on an annuity making payments into a reversionary trust belong to the United States. Conversely, the United States rarely has the negotiating leverage to receive the remainder interest on annuities paying the claimants or plaintiffs. In those cases, the remaining payments are usually paid to the Estate of the payee.

Below is sample language taken from the same settlement used for the example above. This settlement was typical in that the United States has the remainder interest on the reversionary trust annuity and the Estate of the claimant/plaintiff has the remainder interest on the annuity paying the claimant/plaintiff.

> In the event of the death of John Doe during any period of installment refunds specified in paragraph 3.b.i, above, all remaining installment refund payments from the annuity purchased pursuant to paragraph 3.b.i, above, shall be made payable to the United States Treasury and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address. In the event of the death of John Doe during a period of certain payments specified in paragraphs 3.b.ii-iii, above, all remaining certain payments from the annuity purchased pursuant to paragraphs 3.b.ii-iii, above, shall be made payable to the Estate of the respective payees, or to any secondary beneficiary designated by the respective payees during his or her lifetime, provided that any such designation shall be in writing and in a form acceptable to the United States and the annuity issuer.

In FTCA matters involving the Postal Service or community health center case under 42 U.S.C. § 233(k), the funding source will be the Postal Service or the Department of Health and Human Services, respectively. In those types of FTCA matters, the remainder interest is not payable to the United States Treasury. Rather, in Postal Service matters, the remainder interest is payable to the United States Postal Service and sent to the Claims Division, Law Department, United States Postal Service, P.O. Box 66640, St. Louis, MO 63166-6640, unless the Postal Service designates an alternative address. In community health center matters, the remainder interest is

payable to Health Resources and Services Administration, Department of Health and Human Services, and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

SAMPLE LANGUAGE FOR PARAGRAPH 3.C

The United States retains the entire remainder or reversionary interest in reversionary trusts. The standard language is set forth below:

> Upon the death of the beneficiary of said trust, the trustee shall, to the extent permitted by the terms of said trust, pay allowable charges, expenses, and benefits, and liquidate and distribute the remaining trust estate to the United States by check made payable to the United States Treasury and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

In some cases, the "terminating event" is not necessarily the death of the trust beneficiary. The terminating event may be the expiration of a period of time the trust is available to pay Allowable Benefits. In those cases, the introductory clause set forth above will need to be modified to state the "terminating event."

In most cases, the settlement is paid by the Judgment Fund. In those cases, the standard language quoted above is correct. However, in FTCA matters involving the Postal Service or community health center case under 42 U.S.C. § 233(k), the funding source will be the Postal Service or the Department of Health and Human Services, respectively. In those types of FTCA matters, the remainder interest is not payable to the United States Treasury. Rather, in Postal Service matters, the remainder interest is payable to the United States Postal Service and sent to the Claims Division, Law Department, United States Postal Service, P.O. Box 66640, St. Louis, MO 63166-6640, unless the Postal Service designates an alternative address. In community health center matters, the remainder interest is payable to Health Resources and Services Administration, Department of Health and Human Services, and sent to the Torts Branch, Civil Division, United States Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, D.C. 20044, or, upon written notice, any subsequent change of address.

TABLE OF DELEGATED AND DESIGNATED AUTHORITY TO PAY A CLAIM

A. DELEGATED AND DESIGNATED AUTHORITY	FEDERAL TORT CLAIMS ACT
SECRETARY OF THE NAVY	$200,000
JUDGE ADVOCATE GENERAL	$200,000
DEPUTY JUDGE ADVOCATE GENERAL	$200,000
ASSISTANT JUDGE ADVOCATE GENERAL (CIVIL LAW)	$200,000
DEPUTY ASSISTANT JUDGE ADVOCATE GENERAL (CLAIMS, INVESTIGATIONS AND TORT LITIGATION)	$200,000
DEPUTY DIRECTOR (CLAIMS, INVESTIGATIONS AND TORT LITIGATION)	$200,000
HEAD, TORT BRANCH, (CLAIMS, INVESTIGATIONS AND TORT LITIGATION DIVISION)	$100,000
COMMANDING OFFICERS OF NAVAL LEGAL SERVICE OFFICES MID-ATLANTIC, CENTRAL AND SOUTHWEST; OFFICERS IN CHARGE OF NAVAL LEGAL SERVICE OFFICE DETACHMENTS WHEN SPECIFICALLY DESIGNATED BY COGNIZANT COMMANDING OFFICERS	$100,000

The authority to settle Federal Tort Claims is shown above. All of the above adjudicating authorities may deny Federal Tort Claims in any amount. Approval from DOJ is required for settlement amounts exceeding $200,000.

TABLE OF TERRITORIAL RESPONSIBILITY FOR PAYMENT OF TORT CLAIMS

RESPONSIBLE COMMAND	TERRITORY
NLSO MIDLANT	All of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Azores, Bermuda, Greenland, Iceland, all Atlantic Ocean, Caribbean Sea and Arctic Ocean areas and islands not otherwise assigned.
NLSO CENTRAL	All of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Texas, Wisconsin, that portion of Mexico east of the states of Chihuahua, Durango, Nayarit, Jalisco, and Colima, the Gulf of Mexico, and the Central American countries of Belize, Costa Rica, Guatemala, Nicaragua, and Panama.
NLSO SOUTHWEST	Alaska, Arizona, California, Colorado, Guam, Kansas, Hawaii, Idaho, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, Wyoming, that portion of Mexico including and west of the states of Chihuahua, Durango, Nayarit, Jalisco, and Colima, Ecuador, Peru, Chile, and the Pacific and Arctic areas and islands east of the International Date Line.
NLSO EURSWA	May be asked to assist in the adjudicating authority in processing various aspects of MCA, FCA, and MCRA claims cases arising in Europe, the Mediterranean Sea, the African Continent, the Eurasian Continent and Indian Ocean areas and islands.

*NLSO - Naval Legal Service Office

Judgment Fund Transmittal

Date: _____
Department of the Treasury
Financial Management Service
Judgment Fund Branch
3700 East-West Highway, Room 6E15
Hyattsville, Maryland 20782
Telephone: (202) 874-6664

Claimant/Plaintiff Name: _____

Address: _____

Claimant/Plaintiff Counsel's Name: _____

Telephone Number: ___ ___ ___ - ___ ___ ___ - ___ ___ ___ ___

Name of Agency Subject to Claim: _____

E-mail Address (required for electronic payment confirmation): _____

Telephone Number: ___ ___ ___ - ___ ___ ___ - ___ ___ ___ ___

Brief Description of Facts Giving Rise to Claim: _____

_____

Check One If Applicable:

☐ Contract Disputes Act ☐ No FEAR Act ☐ Firefighters Fund

Dear Sir or Madam:

I am an authorized representative of the United States in the above captioned matter. As described in the enclosed documentation, I certify that all pertinent criteria required by law for the approval of this claim have been satisfied. If an administrative claim, the settlement was made with the United States in this matter and any portions of the agreement required to be paid from the agency funds will be or have been paid from those funds. If a litigative claim, the award made in the enclosed judgment or settlement is payable by the United States and any portions of the award required to be paid from other parties or sources will be or have been paid from those parties or sources. The United States will not seek further judicial review of this award and I have obtained all approvals necessary for its referral for payment.

I believe that this award qualifies for payment pursuant to 31 U.S.C. § 1304. Accordingly, I request that you certify this award for payment from the Judgment Fund established by that law. Enclosed are completed copies of **FMS Form 196**: *Judgment Fund Award Data Sheet*; **FMS Form 197**: *Judgment Fund Voucher for Payment*; the judgment or settlement agreement; and any other enclosures required by FMS. Unless payment by electronic funds transfer is indicated, please have the check sent to the check address provided on **FMS Form 197**.

_____
Submitting Agency Authorized Signature

_____
Name and Title (*print or type*)

_____
Submitting Agency E-mail Address (*required for electronic payment confirmation*).

_____
Agency File Number

_____
Street Address

_____
City, State and Zip Code

General Instructions: Use this form, FMS 194, to transmit a request to certify an administrative or litigative award against the United States for payment from the Judgment Fund under 31 U.S.C. § 1304.
Enclosures: **FMS Form 196** and **FMS Form 197**. *Incomplete submissions will be returned to the submitter without action.*

FMS FORM 11-03 **194** (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Judgment Fund Award Data Sheet

ITEMIZATION OF AMOUNT PAYABLE FROM THE JUDGMENT FUND	AMOUNT TO BE PAID	CITATION TO LEGAL AUTHORITY
1. Principal		
2. Attorney Fees		
3. Costs		
4. Interest		
Starting and Ending Dates for Interest Accrual	Start Date	End Date
5. Total Amount Payable from the Judgment Fund		
COMPLETE ONLY IF DEDUCTIONS ARE TO BE MADE FROM THE AMOUNT PAYABLE FROM THE JUDGMENT FUND*		
6. Agency Name and Agency Location Code (ALC) to Receive Offset	Amount to be Deducted	Reasons for Deductions, and Entity to Receive Deductions
	a.	
	b.	
	c.	
7. Total Amount to be Deducted		
8. Net Amount Payable to Claimant		

If amount for fees, costs, or interest was included in the principal amount (stated on line 1) as part of a "lump sum award," enter "INCLUDED ABOVE" on lines 2 through 4. Enter "NONE" for any of those items (principal, fees, costs, or interest) for which no amount was awarded/included.

1. Enter the principal amount payable (excluding attorney fees, costs, and interest) and cite the legal authority for that award (for instance, "FTCA, 28 U.S.C. 2672" or "5th Amendment Taking").
2. Enter the attorney fees payable (if any) and cite legal authority for that award [for instance, "Freedom of Information Act, 5 U.S.C. 552(a)(4)(E)"].
3. Enter the costs payable (if any) and cite the legal authority for that award [for instance, "28 U.S.C. 2412(a)"].
4. If the interest was calculated by the submitting agency, enter the amount and cite the legal authority for that award [for instance, "Back Pay Act, 5 U.S.C. 5596(b)(2)"]. If the Judgment Fund is to calculate the interest, list only the dates that interest accrual starts and ends.
5. Total the amounts shown in lines 1 through 4 and enter.
6. Enter any deduction specified in the judgment or settlement agreement, or debts to be set off under 31 U.S.C. 3728. Indicate the reason for the deduction (for instance, "FTCA withholding" or "debt setoff pursuant to 31 U.S.C. 3728") and the payee agency's name and ALC. If this deduction is a "debt setoff" pursuant to 31 U.S.C. 3728, you must attach a copy of the judgment or the plaintiff's agreement to the debt setoff. Otherwise, FMS must seek the claimant's consent to the setoff and may only withhold from payment an amount sufficient to pay the debt plus the cost of litigation. Litigation will be required to effect the setoff if there is no judgment of debt, or if the claimant declines consent to the setoff. If there are more than three deductions, attach additional copies of this form. If there are no deductions, enter "NONE." ***Administrative debts that have been certified to the Secretary of the Treasury through the Treasury Offset Program will be set off automatically.**
7. Total the amounts shown in all columns of line 6 (a, b and c) and enter.
8. Subtract the amount in line 7 from that in line 5. If greater than zero, enter the difference. If the difference is zero or less, enter "NONE."

FMS FORM 11-03 **196** (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Judgment Fund Voucher for Payment

1. **Total Amount:** ___,___,___.___

2. **Submitting Agency Contact Name:** _____
   Telephone Number: ___-___-_____

3. **Electronic Funds Transfer (EFT) Information:**
   a) Payee Account Name: _____
   b) American Banking Association (ABA) Routing Number (9 digits): _____
   c) Payee Account Number: _____
   d) Checking: ☐ Savings: ☐
   e) Financial Institution Name, City, State: _____

4. **Interagency Payment System Information:**
   a) Agency Name: _____
   b) Agency Location Code (ALC) Number (8 digits): _____
   c) Standard General Ledger (SGL) Number (4 digits): _____
   d) Treasury Account Symbol (TAS) _____

5. **Mailing Address for Check:** *(Payee name not to exceed 32 characters.)*
   a) Payee Name: _____
   b) Payee Name: _____
   c) Address Line 1: _____
   d) Address Line 2: _____
   e) City: _____ State: _____ Zip Code: _____

6. **Taxpayer Identification Number (s):**
   a) _____ b) _____

7. **Reimbursement Information for Contract Disputes Act, No FEAR Act and Firefighters Fund:**
   a) Agency Name: _____
   b) Contact Name: _____
   c) Contract Number (CDA cases): _____
   d) Telephone Number: ___-___-_____
   e) Address: _____
   f) City: _____ State: _____ Zip Code: _____

8. **If payment will be made in a Foreign Currency, please provide the following information:**
   Country: _____ Currency: _____

9. **FOR USE BY JUDGMENT FUND BRANCH ONLY:**
   Z Number: _____ J/D Number: _____ GLOWS Code/Agency: _____

   _____ _____ _____
   Claim Analyst *Signature and Date* Amount to Pay Appropriation Code

   _____
   Claims Reviewer *Initials and Date*

FMS FORM 11-03 197 PAGE 1 OF 2 (PREVIOUS EDITIONS ARE OBSOLETE)

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE

Judgment Fund Voucher for Payment

10. Acceptance by Claimants:

NOTE: For use ONLY where the settlement is (i) for cash, (ii) in an amount that does not exceed $200,000, and (iii) a court order approving the settlement is not warranted. For all other situations, a final judgment or a standard Department of Justice *Stipulation For Compromise Settlement and Release* must be attached.

Each claimant/plaintiff and his/her guardians, heirs, executors, administrators, and assigns agree to and do accept this settlement in full settlement and satisfaction and release of any and all claims, demands, rights, and causes of action of any kind, whether known or unknown, including without limitation any claims for fees, costs, expenses, survival, or wrongful death, arising from any and all known or unknown, foreseen or unforeseen bodily injuries, personal injuries, death, or damage to property, which they may have or hereafter acquire against the United States of America, its agents, servants, or employees, on account of the subject matter of the administrative claim or suit, or that relate or pertain to or arise from, directly or indirectly, the subject matter of the administrative claim or suit, or that relate or pertain to or arise from, directly or indirectly, the subject matter of the administrative claim or suit. Each claimant/plaintiff and his/her guardians, heirs, executors, administrators, and assigns further agree to reimburse, indemnify, and hold harmless the United States of America, its agents, servants, and employees, from and against any and all claims, demands, rights, and causes of action of any kind, whether known or unknown, including without limitation claims for subrogation, indemnity, contribution, or lien of any kind, or for fees, costs, expenses, survival or wrongful death, that relate or pertain to or arise from, directly or indirectly, any act or omission that relates to the subject matter of the administrative claim or suit.

(SIGN ORIGINAL ONLY)

_____

Date _____

_____

(Claimant(s) sign above)

11. AGENCY APPROVING OFFICIAL: This claim has been fully examined in accordance with Statutory Citation _____ and approved in the amount of $ _____

Authorized Signature: _____

Title: _____

Date: _____

Judgment Fund
Instructions for FMS Form 197: Voucher for Payment
Please note that FMS Form 197 is a two-page form

Item 1: Provide the amount due payee (requests for separate payments require separate FMS Forms 197).

Item 2: Provide the name and telephone number for the Federal agency or office that submitted the claim(s).

Item 3: Provide information to enable the payment by means of Electronic Funds Transfer (EFT). This information should be provided unless the payment is to be made by check. **Note: 31 C.F.R. § 208.4 directs agencies to make payments by EFT whenever cost-effective, practical, and consistent with the law, and adds that the Treasury Department may require agencies to justify the use of non-EFT payment mechanisms. All fields in Item 3 must be completed.**

Item 4: Provide the name of the Federal agency, Agency Location Code (ALC), and Standard General Ledger (SGL) code.

Item 5: Provide information to enable the payment to be issued by check and to be mailed by the U.S. Postal Service either to the Submitting Agency or directly to the claimant/plaintiff.

Item 6: Provide the Taxpayer Identification Number (TIN) for each payee.

Item 7: Provide this item for Contract Disputes Act (CDA), No FEAR Act, and Firefighters Fund payments. The address for the Chief Financial Officer (CFO) should be provided for No FEAR Act payments.

Item 8: Provide this item if the payment is to be made in a foreign currency.

Item 9: To be completed by the Judgment Fund Branch.

Item 10: This part need not be completed when another, separate, legally sufficient settlement agreement is signed by the claimant and a copy is submitted with the payment request.

Item 11: To be completed by the agency approving official, if FMS Form 197 is used as the settlement agreement.

PROCEDURES FOR PROCESSING MILITARY CLAIMS ACT CLAIMS

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APPENDIX 2-a SAMPLE SETTLEMENT AGREEMENT

1. SCOPE. This enclosure prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage, loss, or destruction of property caused by military personnel or civilian employees of the Department of the Navy (DON) (hereinafter DON personnel). For the purposes of this enclosure, DON personnel includes all military personnel of the Navy and Marine Corps, some volunteer workers, other persons serving as employees of the DON with or without compensation, and members of the National Oceanic and Atmospheric Administration or of the Public Health Service when serving with the DON. DON personnel does not include DON contractors or their employees.

2. STATUTORY AUTHORITY. Section 2733 of title 10, U.S. Code, as amended, is commonly referred to as the Military Claims Act (MCA). This provision implements DoD Directive 5515.3, *Settlement of Claims Under 10 U.S.C. §§ 2733 - 2734*, 18 August 1965, and DoD Directive 5515.8, *Single-Service Assignment of Responsibility for Processing of Claims*, 9 June 1990.

3. CLAIMS PAYABLE.

a. General. The MCA authorizes the administrative settlement and payment of certain claims, but does not permit suits against the United States. Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property is payable under the MCA when:

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment; or

(2) Incident to noncombat activities of the DON, whether or not such injuries or damages arose out of negligent or wrongful acts or omissions. A claim may be settled under this provision if it arises from authorized activities essentially military in nature, having little parallel in civilian pursuits, and in which the United States has historically assumed a broad liability even if not shown to have been caused by any particular act or omission by DON personnel while acting within the scope of their employment. Examples include practice firing of missiles and weapons, sonic booms, training and field exercises, and maneuvers that include operation of aircraft and vehicles, use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether or not occurring in time

of war, and activities or operations involving DON personnel during civil disturbances are excluded.

b. Specific Claims Payable. Claims payable by the DON under subparagraphs 3a(1) and 3a(2) above shall include, but not be limited to:

(1) Registered or insured mail. Claims for damage to, loss, or destruction (even if by criminal acts) of registered or insured mail while in the possession of DON authorities are payable under the MCA. This provision is an exception to the general requirement that compensable damage, loss, or destruction of personal property be caused by DON personnel while acting within the scope of their employment or otherwise incident to noncombat activities of the DON. The maximum award to a claimant under this section is limited to that to which the claimant would be entitled from the Postal Service under the registry or insurance fee paid. The award shall not exceed the cost of the item to the claimant regardless of the fees paid. Claimant may be reimbursed for the postage and registry or insurance fees.

(2) Property bailed to the DON. Claims for damage to or loss of personal property bailed to the DON, under an express or implied agreement are payable under the MCA, even though legally enforceable against the United States Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if in the best interest of the United States Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims.

(3) Real property. Claims for damage to real property incident to the use and occupancy by the DON, whether under an express or implied lease or otherwise, are payable under the MCA even though legally enforceable against the DON as contract claims. Claims filed under this paragraph may, if in the best interest of the United States Government, be referred to and processed by the Office of the General Counsel, DON, as contract claims.

(4) Property of United States military personnel. Claims of United States military personnel for property lost, damaged or destroyed under conditions in subparagraphs 3a(1)and (2), which are not payable under the Military Personnel and Civilian Employees' Claims Act, are payable under the MCA.

(5) Health care and legal assistance providers. Claims arising from the personal liability of DON health care and legal assistance personnel for costs, settlements or judgments for negligent acts or omissions while acting within the scope of assigned duties or employment are payable under the MCA. See paragraph 14 of this enclosure.

c. Territorial Limitation. There is no geographical limitation on the application of the MCA, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. § 2734), the claim shall be processed under that statute. See Chapter VIII, Part B of the Manual of the Judge Advocate General (JAGMAN), enclosure (3) of this instruction and 10 U.S.C. § 2733(b)(2).

4. CLAIMS NOT PAYABLE. The following are not payable under the MCA:

a. Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, or claimant's agent or employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstance, and then only to the extent permitted by that law;

b. Any claim resulting from action by the enemy or resulting directly or indirectly from any act by armed forces personnel engaged in combat;

c. Any claim for reimbursement of medical, hospital or burial expenses furnished at the expense of the United States, either directly or through contractual payments;

d. Any claim cognizable under:

(1) The Military Personnel and Civilian Employees' Claims Act, as amended. See 31 U.S.C. § 3721.

(2) The Foreign Claims Act. See 10 U.S.C. § 2734.

(3) See 10 U.S.C. § 7622, relating to admiralty claims. See also Chapter XII of the JAGMAN.

(4) The Federal Tort Claims Act. See 28 U.S.C. §§ 2671-2672, and 2674-2680.

(5) The International Agreements Claims Act. See 10 U.S.C. §§ 2734a-2734b.

(6) The Federal Employees' Compensation Act. See 5 U.S.C. §§ 8101-8150.

(7) The Longshore and Harbor Workers' Compensation Act. See 33 U.S.C. §§ 901-950.

e. Any claim for damage to or for the loss or destruction of real or personal property founded in written contract, except as provided in subparagraphs 3b(2) and 3b(3) above;

f. Any claim for rent of real or personal property, except as provided in subparagraphs 3b(2) and 3b(3) above;

g. Any claim involving infringement of patents;

h. Any claim for damage, loss, or destruction of mail prior to delivery by the Postal Service to authorized DON personnel or occurring due to the fault of, or while in the hands of, bonded personnel;

i. Any claim by a foreign national, or a corporation controlled by a foreign national, of a country in armed conflict with the United States or of an ally of such country, unless the claimant is determined to be friendly to the United States;

j. Any claim for the personal injury or death of a member of the Armed Forces or civilian employee that is incident to service. See 10 U.S.C. § 2733(b)(3);

k. Any claim for damage to or for the loss of bailed property when the bailor specifically assumes such risk;

l. Any claim for taking private real property by a continuing trespass, or by technical trespass such as overflights of aircraft;

m. Any claim based solely on compassionate grounds; or

n. Any claim to which the exceptions in 28 U.S.C. § 2680 apply.

5. FILING A CLAIM.

a. Who May File. Under the MCA, specifically, the following are proper claimants:

(1) United States citizens and inhabitants;

(2) United States military personnel and civilian employees, except for personal injury or death incident to service;

(3) States and their political subdivisions (including agencies);

(4) Prisoners of war for personal property (but not for personal injury); and

(5) Subrogees, to the extent they paid the claim.

b. Who May Not File.

(1) Inhabitants of foreign nations for loss or injury occurring in the country they inhabit;

(2) United States Government agencies and departments; and

(3) Governments of foreign nations, their agencies and political subdivisions.

c. When to File/Statute of Limitations. Claims against the DON must be presented (as required by subparagraph 5(e) below) in writing within two years after they accrue. In computing the two-year period, the day the claim accrues is excluded and the day the claim is presented is included. If the incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within two years after the incident's occurrence, an MCA claim, on good cause shown, may be presented within two years after the war or armed conflict is terminated. For MCA purposes, the date of the termination of the war or armed conflict is the date established by concurrent resolution of Congress or by the President. See 10 U.S.C. § 2733(b)(1).

d. Where to File. A claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if it is known. Otherwise, it shall be submitted to the commanding officer of any naval activity, but preferably the

one nearest to which the incident occurred. A claim may also be submitted to the Office of the Judge Advocate General, Claims, Investigations and Tort Litigation, 1322 Patterson Avenue SE, Suite 3000, Washington D.C., 20374-5066.

e. Claim Form. A claim is correct in form if it constitutes written notification of an incident, is signed by the claimant or by a duly authorized agent or legal representative, and specifies a claim for money damages in a sum certain. A claim filed on Standard Form 95 is preferred. A claim must be substantiated to be paid. See 10 U.S.C. § 2733(b)(5).

f. Amendment of Claim. Claimants may amend their claim at any time prior to the final denial or payment of the claim. An amendment shall be submitted in writing and signed by the claimant or by a duly authorized agent or legal representative.

g. Payment. Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. If the Secretary of the Navy considers that a claim in excess of $100,000.00 is meritorious and would otherwise be covered by 10 U.S.C. § 2733 and paragraph 3 of this enclosure, the Secretary may make a partial payment of $100,000.00 and refer the excess to the Judgment Fund for payment from appropriations provided therefore.

h. Settlement Agreement. See Appendix 2-a.

6. APPLICABLE LAW.

a. Claims Arising within the United States, Territories, Commonwealth, and Possessions. The law of the place where the act or omission occurred determines liability and the effect of contributory or comparative negligence on a claimant's right of recovery under the MCA.

b. Claims Arising within Foreign Countries.

(1) Where a claim is for personal injury, death, or damage to or loss or destruction of real or personal property caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment, liability is assessed under general principles of tort law common to the majority of American jurisdictions.

(2) The law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant determines the relative merits of the claim. If there is no foreign law on contributory or comparative negligence, traditional rules of contributory negligence apply. Foreign rules and regulations on operation of motor vehicles (rules of the road) apply to the extent those rules are not specifically superseded or preempted by United States Armed Forces traffic regulations.

c. Principles Applicable to All MCA Claims.

(1) "Scope of employment" is determined in accordance with Federal law. Reported FTCA cases provide guidance on this determination;

(2) Claims for emotional distress will be considered only from the injured person or members of the injured person's immediate family. Claims from the injured person's immediate family will be considered only if such claimants were in the "zone of danger" (i.e., immediate vicinity of the incident) and the claimant substantiates the claim with proof of the physical manifestation(s) of the emotional distress; and

(3) Claims under the MCA do not include the principles of absolute liability and punitive damages.

d. Clarification of Terms. Federal law determines the meaning and construction of the MCA.

7. MEASURE OF DAMAGES FOR PROPERTY CLAIMS. The law of the place where the incident occurred determines the measure of damages in property claims arising in the United States or its territories, commonwealth, or possessions. For property claims arising overseas, general principles of American tort law determine the measure of damages. Those principles are stated as follows:

a. If the property has been or can be economically repaired, the measure of damages is the actual or estimated net cost of the repairs necessary to substantially restore the property to the condition that existed immediately prior to the incident. Damages shall not exceed the value of the property immediately prior to the incident less its value immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through

the repair shall be deducted from the actual or estimated gross cost of repairs. The amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, if such adjustments are sufficiently substantial in amount to warrant consideration. Estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

b. If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less its value immediately after the incident. Estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

c. The loss of the use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage. Compensation for such loss is limited to the reasonable expense actually incurred for appropriate substitute property, for such period reasonably necessary for repairs, as long as idle property of the claimant was not employed as a substitute. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but not obtained and used by the claimant, loss of use is normally not payable.

8. MEASURE OF DAMAGES IN INJURY OR DEATH CASES.

a. Where an injury or death arises within the United States or its territories, commonwealth, or possessions, the measure of damages is determined under the law of the location where the injury arises.

b. Where an injury or death arises in a foreign country and is otherwise cognizable and meritorious, general principles of American tort law determine damages. The following guidance applies:

(1) Measure of damages for overseas personal injury claims. Allowable compensation includes reasonable medical and hospital expenses necessarily incurred, lost earnings and

services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(2) Wrongful death claims arising in foreign countries.

(a) Allowable compensation includes that in subparagraph 8b(1) above, burial expenses, loss of support and services, loss of companionship, comfort, society, protection, consortium, and loss of training, guidance, and education, as applicable.

(b) The claim may be presented by or on behalf of the decedent's spouse, parent, child, or dependent relative. Claims may be consolidated for joint presentation by a representative of some or all of the beneficiaries or may be filed by a proper beneficiary individually.

9. DELEGATIONS OF ADJUDICATING AUTHORITY.

a. Settlement/Denial Authority.

(1) The Secretary of the Navy may settle or deny claims in any amount. On settlement of a claim, the Secretary may pay the first $100,000.00 and report the excess to the Comptroller General for payment under 31 U.S.C. § 1304. See 10 U.S.C. § 2733(d).

(2) The Judge Advocate General has delegated authority to settle claims for $100,000.00 or less, and has denial authority in any amount.

(3) The Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), the Deputy Assistant Judge Advocate General (Claims, Investigations and Tort Litigation), the Deputy Director (Claims, Investigations and Tort Litigation), and the Head, Military and Foreign Claims Branch (Claims, Investigations and Tort Litigation) have delegated authority to settle claims for $25,000.00 or less, and have denial authority in any amount.

(4) Commanding Officers of Naval Legal Service Office Mid-Atlantic, Central, Southwest, Europe and Southwest Asia, and Pacific, and the Officer in Charge, United States Sending State Office for Italy, have delegated authority to settle claims for $25,000.00 or less, and have denial authority in any amount.

(5) Naval Legal Service Office commanding officers with settlement authority under subparagraph 9a(4) above, may re-delegate all or a part of their settlement authority. Such delegation must be in writing.

b. Sensitive Cases. Naval Legal Service Office officials with settlement/denial authority must notify the Deputy Assistant Judge Advocate General (Claims, Investigations, and Tort Litigation) before making an offer to settle any case that may involve widespread public interest or sensitive matters.

c. Appellate Authority. Adjudicating authorities have the same authority as delegated in paragraph 9a to act upon appeals. No appellate authority below the Secretary of the Navy may deny an appeal of a claim that the appellate authority had previously denied.

10. ADVANCE PAYMENTS.

a. Scope. This paragraph applies exclusively to the payment of amounts not to exceed $100,000.00 under 10 U.S.C. § 2736 in advance of the submission of a claim.

b. Statutory Authority. Title 10 U.S.C. § 2736 authorizes the Secretary of the Navy or designee to pay an amount in advance of the submission of a claim or, if such claim is submitted, in advance of the final settlement of the claim, to or for any person, or the legal representative of any person, who was injured or killed or whose property was damaged or lost under circumstances for which allowance of a claim is authorized by law. The amount of such a payment may not exceed $100,000.00. Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or legal representative for injury, death, damage, or loss attributable to the accident concerned.

c. Officials Authorized to Make Advance Payments.

(1) The Secretary of the Navy, up to $100,000.00.

(2) The Judge Advocate General has delegated authority up to $100,000.00.

(3) The Deputy Assistant Judge Advocate General (Claims,

Investigations, and Tort Litigation) has delegated authority up to $25,000.00.

(4) Commanding Officers, Naval Legal Service Office Mid-Atlantic, Central, Southwest, Europe and Southwest Asia, and Pacific, and the Officer in Charge, United States Sending State Office for Italy, have delegated authority up to $5,000.00.

d. Conditions for Advance Payments. Prior to making an advance payment under 10 U.S.C. § 2736, the adjudicating authority shall ascertain that:

(1) The injury, death, damage, or loss would be payable under the MCA (10 U.S.C. § 2733);

(2) The payee, insofar as can be determined, would be a proper claimant, or is the spouse or next of kin of a proper claimant who is incapacitated;

(3) The provable damages are estimated to exceed the amount to be paid;

(4) The person who suffered the injury, damage or loss, or the family of a person who was killed, has an immediate need for food, clothing, shelter, medical expenses, burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(5) The prospective payee has signed a statement that it is understood that payment is not an admission of liability by the Navy or the United States for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(6) No payment under 10 U.S.C. § 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 U.S.C. § 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss was caused by a member or employee of the DON acting within the scope of employment or occurred "incident to noncombat activities" of the DON as defined above.

11. FINAL DISPOSITION.

a. Claimant Notified. The adjudicating authority shall notify the claimant, in writing, of the action taken on the claim.

b. Final Denial. A final denial, in whole or in part, of any MCA claim shall be in writing and sent via certified or registered mail, return receipt requested, to the claimant or the claimant's attorney or legal representative. The notification shall contain the reason for the denial and shall inform the claimant of the right to appeal that action. The notification shall also inform the claimant:

(1) Of the title of the appellate authority who will act on the appeal and that the appeal will be addressed to the adjudicating authority who last acted on the claim;

(2) That the grounds for appeal should be set forth fully; and

(3) That the appeal must be submitted within 30 days of receipt by the claimant of notice of action on the claim.

12. APPEAL.

a. A claimant may appeal a decision to disapprove the claim in whole or in part at any time within 30 days after receiving notification of the disapproval. Such appeal must be in writing and must state the grounds for the appeal. An appeal is not an adversary proceeding and a hearing on the appeal is not authorized. A claimant may, however, obtain and submit additional evidence or a written statement for consideration by the appellate authority.

b. Upon receipt of an appeal, the adjudicating authority must examine the appeal, determine whether it complies with this regulation, and review the claims investigative file to ensure it is complete. If the evidence in the file, including any evidence the claimant submitted with the appeal, indicates that the appeal should be approved, the adjudicating authority will attempt to settle the claim. If a settlement cannot be made, the adjudicating authority will forward the appeal, together with the underlying claim, the complete investigative claim file, and a memorandum of law, to the authority in the chain of command with equal or greater claims settlement authority. That authority will be the appellate authority on the claim.

c. The appellate authority shall notify the claimant in writing of the determination on the appeal, that such determination constitutes the final administrative action on the claim, and that the claimant has no right under the MCA to sue the United States.

13. CROSS-SERVICING.

a. See paragraph 4 of the basic instruction for information about single-service claims responsibility under DOD Directive 5515.8 of 9 June 1990.

b. Claims Settlement Procedures. Where a single-service has been assigned a country or area claims responsibility, that service will adjudicate claims cognizable under the MCA under the regulations of that service. The command forwarding the claim to the single-service adjudicating authority shall provide any necessary assistance in the investigation and adjudication of such claims.

14. PAYMENT OF COSTS, SETTLEMENTS, AND JUDGMENTS RELATED TO CERTAIN MEDICAL OR LEGAL MALPRACTICE CLAIMS.

a. General. Requests for reimbursement/indemnification of costs, settlements, and judgments cognizable under 10 U.S.C. § 1089(f) (for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists)) or 10 U.S.C. § 1054(f) (for damages for injury or loss of property caused by any attorney, paralegal, or other member of a legal staff) while acting as DON personnel may be paid if:

(1) The alleged negligent or wrongful actions or omissions arose in connection with either providing health care functions or legal services and occurred within the scope of employment; and

(2) Such personnel furnish prompt notification and delivery of all process served or received, and other documents, information, and assistance as requested; and cooperate in defending the action on the merits.

b. Requests for Indemnification. All requests for indemnification for personal liability of DON personnel for acts or omissions arising out of assigned duties shall be forwarded

to the Deputy Assistant Judge Advocate General (Claims, Investigations, and Tort Litigation) for action.

15. ATTORNEY'S FEES. Attorney's fees that are not in excess of 20 percent of any settlement amount may be payable under the MCA. Such fees are paid out of the amount awarded and not in addition to the award. These fee limitations must be incorporated in any settlement agreement negotiated with a claimant.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF MILITARY CLAIMS ACT CLAIMS PURSUANT TO 10 U.S.C. § 2733

It is hereby stipulated by and between the undersigned claimant, _____, and the UNITED STATES OF AMERICA, by and through their respective attorneys and representatives, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claim, e.g., the crash of a United States Navy . . . . . , on August 27, 1998, under the terms and conditions set forth in this Settlement Agreement.

2. This Stipulation For Compromise Settlement And Release is not, is in no way intended to be, and should not be construed as an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the claimant. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Military Claims Act.

3. The United States agrees to pay _____ the cash sum of $_____.

4. Claimant and its employees, agents, servants, administrators, or assigns do hereby accept the cash sum set forth above in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including any future claims for wrongful death and any claims for fees, costs and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which the claimant or its employees, agents, servants, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants and employees on account of the same subject matter that gave rise to the administrative claim. Claimant and its employees, agents, servants, administrators, and assigns do hereby further agree to reimburse, indemnify and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to or resulting or arising from the acts or omissions that gave rise to the administrative claim, including claims or causes of action for wrongful death.

5. This compromise settlement is specifically subject to an agreement by the parties on the terms, conditions, and requirements of this Stipulation For Compromise Settlement And Release. The parties stipulate and agree that the Stipulation For Compromise Settlement And Release and the compromise settlement are null and void in the event the parties cannot agree on the terms, conditions and requirements of this Stipulation For Compromise Settlement And Release. The terms, conditions and requirements of this Stipulation For Compromise Settlement And Release are not severable and the failure to agree, fulfill or comply with any term, condition, or requirement renders the entire Stipulation For Compromise Settlement And Release and the compromise settlement null and void. The authorization by the Secretary of the Navy or the Secretary's designee to negotiate and consummate a settlement for the amount agreed upon by the parties does not make the settlement binding upon the United States unless and until the other terms, conditions and requirements of this Stipulation For Compromise Settlement And Release have been completely agreed upon in writing.

6. Claimant's representative agrees to distribute the settlement proceeds to the claimant.

7. The parties agree that this Stipulation For Compromise Settlement And Release, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the claimant expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

Executed this _____ day of _____, 2004.

_____	_____
Authorized Representative of Claimant	Attorney for the United States of America

PROCEDURES FOR PROCESSING FOREIGN CLAIMS ACT CLAIMS

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APPENDIX 3-a SAMPLE SETTLEMENT AGREEMENT

1. SCOPE. Foreign claims are demands against the United States by inhabitants of foreign countries for property damage, personal injury, or death occurring outside the United States that is caused either by members or civilian employees of the United States armed forces or by the noncombat activities of these forces in foreign countries.

2. STATUTORY AUTHORITY

a. General. The Foreign Claims Act (FCA), 10 U.S.C. § 2734, authorizes filing, investigating, processing, and settling foreign claims under such regulations as the service Secretary shall prescribe. The regulations in this chapter implement the FCA within the Department of the Navy.

b. Purpose. The purpose of the FCA is to "promote and maintain friendly relations through the prompt settlement of meritorious claims" in foreign countries.

c. Construction. These regulations should be broadly construed to carry out the statutory purpose. The United States generally accepts responsibility for damage, injury, or death to local inhabitants caused by members of the United States armed forces or by the noncombat activities of our armed forces in foreign countries. Proof of fault is not required. Rather, causation of the harm is determinative. Meritorious claims should be settled fairly and promptly, without regard to whether the acts giving rise to them are mistaken, negligent, intentional, or even criminal.

3. FILING THE CLAIM

a. General. A claim must be presented in writing to the appropriate United States military authorities within 2 years after the incident giving rise to the claim. It must: (1) state time, date, place, and nature of the incident; (2) state the nature and extent of any injury, loss, or damage; and (3) request compensation in a definite amount, in the local currency.

b. Presentation of the Claim. A claim may be presented to any United States authority or to foreign government authorities if authorized under a Status of Forces Agreement or other applicable treaty or agreement. Claims shall be promptly transferred to the appropriate authorities for processing.

c. Appropriate Authorities.

(1) General. The commanding officer of the organization or individual(s) whose activities gave rise to the claim, or the commanding officer of the Naval Legal Service Command activity servicing the area in which the claim arose, has authority to process claims under these regulations, subject to the restrictions of subparagraphs (2) through (4) of this section. A commander who receives a claim subject to the restrictions of subparagraphs (2) through (4) shall forward the claim promptly to the appropriate authority and shall provide assistance necessary to investigate and adjudicate the claim.

(2) Claims arising in Italy. The Officer in Charge of the United States Sending State Office for Italy has authority to process all claims under the Foreign Claims Act arising in Italy.

(3) International agreements. Article VIII of the NATO Status of Forces Agreement and similar provisions of status of forces agreements with individual foreign countries may restrict the use of the FCA by authorizing foreign government officials to process claims that would otherwise be cognizable under the FCA. Accordingly, pertinent directives of the area commander shall be consulted. Claims shall not be processed under these regulations until it has been determined that such action is authorized.

(4) Single-service claims responsibility. DOD Directive 5515.8 assigns "single-service claims responsibility" to individual military departments for processing claims in specified foreign countries. These assignments supersede regulations in this chapter. Claims shall not be processed under this chapter until it has been determined that such action is authorized in accordance with DOD Directive 5515.8. See paragraph 4 of the basic instruction for a list of the assignments for each military department.

(5) Claims within admiralty jurisdiction. Admiralty claims arising in foreign countries may be adjudicated under the FCA provided that the claim is otherwise cognizable under applicable admiralty statutes and regulations. In particular, the reciprocity provisions of the Public Vessels Act (46 U.S.C. §§ 781 and 785) must be met. Prior authorization by the Judge Advocate General is required. See JAGMAN § 1216a.

d. Form of the claim. The claim must be filed on Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it is essential

that it set forth the same basic information required by Standard Form 95. A claim may be signed by either the injured party or an authorized agent. A claim filed by an agent or legal representative will be filed in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of their authority to sign the claim on behalf of the claimant. A claim may be considered if it describes the incident in sufficient detail to give reasonable notice of the time, place, circumstances, and resulting harm.

e. Amending the claim. A claim may be amended at any time prior to final settlement or denial. Amendments must be written and signed by the claimant or an authorized agent.

f. Statute of limitations. A claim must be filed within 2 years after it accrues. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the incident giving rise to the claim. Generally, to compute the statutory time period, the day the claim accrued should be excluded and the day the claim was filed should be included.

4. CLAIMS PAYABLE

a. General. For a claim to be payable under the FCA, both the claimant and the incident giving rise to the claim must be covered by the statute.

b. Covered Claimants. The FCA applies only to "inhabitants" of foreign countries, who are defined as persons, corporations, or other Government or business entities, whose usual place of abode or activity is in a foreign country. The claimant need not be an inhabitant of the particular country in which the claim arose. Foreign citizenship or legal domicile is not required; it is a matter of actual residence. Examples of covered claimants are:

(1) Foreign nationals residing in a foreign country;

(2) United States citizens residing in a foreign country, if they are inhabitants of a foreign country and are not there as United States service members or civilian employees (or their sponsored dependents);

(3) A corporation or other organization doing business in a foreign country on a permanent basis, even if organized under United States law; and

(4) Foreign governments and their political subdivisions, including the equivalents of State, county, and city governments, unless excluded by waiver provisions of an international agreement.

c. Covered Incidents. Unless otherwise prescribed, a claim for personal injury, death, or damage or loss of real or personal property may be settled under these regulations if the incident occurred outside the United States and was caused by either the noncombat activities of the United States armed forces or the actions of a member or civilian employee of those forces. Negligence is not a prerequisite. Only causation is required.

d. Scope of Employment. As a general rule, scope of employment is immaterial. If, however, a claim arises from the act of a United States employee who is an indigenous person, prisoner of war, or interned enemy alien, scope of employment is a prerequisite to United States responsibility. Claims arising from the operation of a United States armed forces vehicle by a United States employee who is an indigenous person, prisoner of war, or interned enemy alien should be settled if local law imposes liability on the owner of the vehicle under the circumstances.

5. CLAIMS NOT PAYABLE

a. Claims of insurers and other subrogees.

b. Claims of sponsored dependents accompanying members and civilian employees of the United States armed forces, or United States national civilians employed by either the United States Government or a civilian contractor performing under an agreement or contract with the United States Government.

c. Claims of foreign military personnel suffering injury or death incident to a joint military mission or exercise with United States armed forces, or as a result of the actions of a member or civilian employee of the United States armed forces, acting within the scope of employment, unless a treaty specifically provides for recovery.

d. Claims of civilian employees of the United States, including local inhabitants, injured incident to their employment. Compensation for such injuries is separately provided in Federal statutes and agreements with foreign governments.

e. Claims of national governments or their political subdivisions engaging in combat with the United States or its allies.

f. Claims of a national or a nationally controlled corporation of a country engaging in combat with the United States or its allies, unless it is determined that the claimant is friendly.

g. Claims resulting from combat activities, except that claims arising from an accident or malfunction incident to aircraft operations, including airborne ordnance, occurring while preparing for, going to, or returning from a combat mission may be paid.

h. Claims previously paid or denied.

i. Claims purely contractual in nature.

j. Claims involving private contractual and domestic obligations of individuals.

k. Claims based solely on compassionate grounds.

l. Claims for paternity or illegitimacy.

m. Claims payable under other Federal statutes.

n. Claims for damage caused by naval vessels, unless payment is specifically authorized by the Judge Advocate General under JAGMAN § 1216a.

6. COMPUTATION OF THE AMOUNT OF PAYMENT

a. General. The local laws, standards, and customs of the country where the incident occurred, control when computing damages for personal injury, death, or damage to property.

b. Compensation. An appropriate award is generally limited to reasonable compensation for the injury, death, or property damage or loss only, and does not extend to payment of punitive damages, interest, costs, attorney's fees, bail, or any other such charges, regardless of whether they are allowed by local laws, standards, or customs. In cases of personal injury or death, compensation may include medical expenses, pain and suffering, burial expenses, loss of society and companionship, and lost income. In cases of permanent disability, compensation

may also include diminished earning capacity and costs of medical care in the future. In cases of property damage, compensation may include cost of repair, cost of replacement or diminished value, and loss of use of the property.

c. Apportionment. When there are multiple claimants or beneficiaries for a single award, the amount approved should be apportioned among them in the proportions prescribed by local laws, standards, and customs.

d. Joint Liability. When two or more parties are liable for causing the same harm, they may be jointly liable for payment of compensation. Any amount paid by or on behalf of such a party should be deducted from the amount allowed under these regulations.

e. Insurance. Only insurance coverage that has been paid or is reasonably likely to be paid to the claimant by or on behalf of the United States by reason of the same injury, death, or damage or loss, should be deducted from the amount allowed under these regulations. Otherwise, insurance coverage should not be considered.

f. Claimant's Negligence. A claimant's negligent or wrongful act contributing to the injury, death, or damage that is the basis of the claim, may bar the claim entirely (contributory negligence) or diminish the claim proportionately (comparative negligence). The local laws, standards, and customs of the place where the incident occurred should be applied to determine whether and in what amount to allow a claim.

g. Currency. The amount of the award should be computed in the local currency of the place where the incident occurred or in the local currency of the place where the claimant presently resides, if different from the place where the incident occurred.

7. FOREIGN CLAIMS COMMISSIONS

a. Purpose. The purpose of a Foreign Claims Commission (Commission) is to settle meritorious claims fairly and promptly. A Commission shall deny or pay (in full or in part) all claims referred to it or, when required under these regulations, forward adjudication recommendations to appropriate higher authorities.

b. Authority to Appoint.

(1) All commanding officers of the Navy and Marine Corps have authority to appoint a Commission, unless restricted by a competent superior commander.

(2) For the purpose of the FCA and these regulations, the following officers are considered commanding officers: the Judge Advocate General of the Navy; the Officer in Charge of the United States Sending State Office for Italy; Chiefs of Naval Missions (including chiefs of the naval section of military missions); Chiefs of Military Assistance Advisory Groups (including chiefs of the naval section of such groups); and naval attaches.

c. Claims Presented. A Commission may be appointed to consider each claim as presented or a standing Commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented shall refer the claim to a Commission appointed under these regulations.

d. Composition of the Commission. A Commission shall be composed of either one or three members. Alternate members may be appointed where circumstances require, and may be substituted for the principal members for specific cases by order of the appointing authority. The appointing orders should clearly indicate which member is president of a three member Commission.

e. Qualifications of Members.

(1) Members appointed to serve on a Commission shall be commissioned officers of the United States Navy or United States Marine Corps of sufficient grade and experience to carry out the purpose of the Commission, consistent with the FCA.

(2) Whenever possible, at least one member of the Commission should be a judge advocate. An officer of another armed force may serve on a Navy or Marine Corps Commission only with the consent of the Secretary of that armed force, or a designee, and will perform duties according to these regulations. When an officer of the United States Navy or Marine Corps is requested to serve on a Commission of another armed force, the immediate commanding officer of such officer may determine availability pursuant to 10 U.S.C. § 2734(a).

f. Adjudicating Authority.

(1) General. Although a Commission may consider claims in any amount, the Commission may only deny a claim seeking an amount within the limits of the Commission's adjudication

authority. Similarly, a Commission may only pay a settlement amount that is within the limits of the Commission's adjudication authority. Therefore, a Commission may settle a claim that seeks an award in excess of the Commission's authority, if the Commission settles the claim for a mutually agreed settlement amount that is within the limits of the Commission's adjudication authority. The Commission shall forward recommendations to appropriate higher authorities to deny claims in excess of their authority, or to pay (in full or in part) an amount that exceeds the limits of their authority.

(2) Claims up to $20,000.00. The Commission may deny or pay (in whole or in part) claims within the following limitations:

(a) One officer Commission: $5,000.00.

(b) One officer Commission (judge advocate): $10,000.00.

(c) Three officer Commission: $10,000.00.

(d) Three officer Commission with at least one judge advocate: $20,000.00.

(3) Claims in excess of limits or $20,000.00. Recommendations of a Commission for payment or denial of claims in excess of the limits of their adjudicating authority or in excess of $20,000.00 shall be forwarded through the appointing authority as required under JAGMAN § 0816, and shall be subject to the approval of appropriate higher authorities under the delegations of authority in JAGMAN § 0817.

8. PROCESSING OF CASES

a. Action by the Staff Judge Advocate. The staff judge advocate of the commanding officer receiving a claim for action is responsible to provide advice, guidance, and review to the commanding officer, Commission, and claims investigating officer on the policies and procedures in these regulations. This assistance may also be provided by the Naval Legal Service Command activity servicing the area in which the claim arose. Commands without a staff judge advocate assigned should request assistance from the cognizant Naval Legal Service Command activity, the next superior command with a staff judge advocate, or the nearest command with a staff judge advocate or any judge advocate assigned.

b. Action by the Appointing Authority. The commanding officer to whom a claim is presented, and who is authorized to take action under this chapter, is the appointing authority for the Commission to adjudicate the claim. The appointing authority shall: detail appropriately qualified members and appoint them in writing; convene an appropriate investigation or obtain the report of investigation, if one has already been conducted; refer the claim with the investigative report of the incident to the Commission for adjudication; and if required under these regulations, receive a recommendation from the Commission, review it with appropriate legal advice, and take action or forward it as appropriate under these regulations.

c. Action by the Claims Investigating Officer. There is no formal procedure for conducting an investigation of a foreign claim. The requirements of Chapter II of the JAGMAN may be followed as a guide. A transcript of witness testimony is not required. Only the substance of witness statements must be recorded. The formal rules of evidence need not be followed, and any relevant evidence, regardless of form, may be received to establish the essential facts of the incident. A report of the investigation shall be submitted to the convening authority as soon as practicable.

d. Action by the Commission.

(1) Review the claim and the investigation and, if necessary, initiate or request further investigation.

(2) Adjudicate and deny or pay (in full or in part) the claim if the amount claimed (for a denial), or the mutually agreed settlement award (for an approved claim) is within the limits of the Commission's adjudication authority. The decision of the Commission shall be determined by a majority vote.

(3) Negotiate with the claimant for settlement of the claim within the limit of adjudicating authority.

(4) Report its decision or recommendation and the reasons therefor to, or through, the appointing authority, as required under these regulations.

(5) Prepare the settlement agreement and release on the form at Appendix 3-a of this enclosure, when approving the claim. Claimant must agree to accept the amount paid in full satisfaction of the claim.

(6) Prepare the written notification to the claimant, explaining its decision to deny or pay (in full or in part) the claim, or explaining the Commission's referral of the claim to higher authority.

(7) If within the limits of the Commission's adjudication authority, pay the mutually agreed settlement amount in the currency of the country where the claimant resides.

(8) Obtain a signed release upon payment of any claim and forward same through the appointing authority to the disbursing officer.

9. REPORTS REQUIRED

a. The Commission shall make a written report of each claim, to include:

(1) Appointing order and any modifications.

(2) Claim document.

(3) Investigative report.

(4) Summaries of witness testimony or witness statements signed by the witness if possible.

(5) Proposed settlement agreement and release when payment is being made or recommended.

(6) Proposed notification to the claimant.

(7) Memorandum containing the following information:

(a) Dates of the proceedings.

(b) Amount claimed, stated in the local currency and the conversion into United States currency at the official rate of exchange on the date of initial consideration of the claim.

(c) Brief summary of essential facts, including: date of incident, date claim was filed, circumstances of incident, nature and extent of injury or damage, and basis for determining whether the claim is payable.

(d) Brief evaluation of the applicable local laws, standards, and customs.

(e) Date of adjudication by the Commission.

(f) Amount of any award or recommended award, stated in the local currency and the conversion into United States currency at the official rate of exchange on the date of the adjudication.

(g) Statement of the decision or recommendation of the Commission and an explanation of the basis.

b. Forwarding Reports.

(1) Claims Within Adjudicating Authority. When a Commission pays or denies a claim within its adjudicating authority, the original of the report and all related papers shall be forwarded to the appointing authority.

(2) Claims in Excess of Adjudicating Authority. When a Commission recommends payment or denial of a claim in excess of its adjudicating authority, the original of the report and all related papers shall be forwarded to the appointing authority to retain, and a copy shall be forwarded through the appointing authority to the appropriate higher authority for action under the delegations of authority in JAGMAN § 0817.

10. ACTION ON FORWARDED CLAIMS

a. Claims in Excess of Adjudicating Authority. When payment or denial of a claim in excess of the adjudicating authority of the Commission is recommended, the following officers may approve or disapprove the recommendation and the claim, in whole or in part, pay the claim, or return the claim with instructions to the appointing authority or the Commission:

(1) Claims up to $50,000.00. The Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), or the Deputy Assistant Judge Advocate General (Claims, Investigations, and Tort Litigation), or, with respect to claims arising in Italy, the Officer in Charge of the United States Sending State Office for Italy;

(2) Claims from $50,000.00 through $100,000.00. The Judge Advocate General; and

(3) Claims in excess of $100,000.00. The Secretary of the Navy may pay the first $100,000.00 and report the excess to the Comptroller General for payment. See 10 U.S.C. § 2734(d).

11. NOTIFICATION TO THE CLAIMANT. Claimant shall be notified promptly by the Commission in writing of approval or denial of claims within the adjudicating authority of the Commission, or of referral of claims in excess of the adjudicating authority of the Commission to higher authority. Notification should inform claimant of the approved recommendation or action of the Commission and briefly explain the reasons therefor. When resources permit, the letter of notification should be translated into claimant's language, preferably using the interlinear method. When an officer, superior to the appointing authority of the Commission, takes final action on a claim, the notification letter should be forwarded through the appointing authority, with a copy to the Commission. Claimant shall not be informed of the amount of recommendations to higher authority for payment and shall not be shown the report of the Commission.

12. RECONSIDERATION, APPEAL, AND SUIT

a. Reconsideration.

(1) A claim may be reconsidered by the original Commission, a successor Commission, or a newly appointed Commission, upon written request from the claimant, upon the original Commission's own initiative, or upon instructions from a superior officer authorized to take action on the claim, when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or based on evidence subsequently received.

(2) If the Commission concludes that the original action was incorrect, it will modify the decision, or forward a supplemental recommendation to or through the appointing authority for action. If the Commission concludes that the original action was correct, it will affirm the decision, and forward a memorandum for information to or through the appointing authority. Notification to claimant will be as prescribed in these regulations.

(3) Claimant's request for reconsideration of the decision of the Commission or the action of a higher authority should indicate the legal or factual basis asserted as grounds for relief. When action on reconsideration has been completed and approved, the appointing authority shall notify the claimant that such action is final and conclusive by law. See 10 U.S.C. § 2735.

b. Appeal or Suit. There is no right of appeal under this statute.

c. Suit. The United States has not consented to be sued under this statute.

13. PAYMENT

a. Documentation. When payment has been authorized by the Commission or the appointing authority, or when a larger award has been approved by appropriate higher authority, the appointing authority shall submit the original and one copy of the approved report of the Commission to the nearest Navy or Marine Corps disbursing officer for payment of the claim. If no Navy or Marine Corps disbursing officer is reasonably available, then the nearest United States disbursing officer of any agency may be requested to pay the claim.

b. Voucher. The command adjudicating the foreign claim is responsible for immediately mailing a legible copy of every voucher to: The Office of the Judge Advocate General (Code 64), 1322 Patterson Ave SE, Washington Navy Yard, DC 20374-5066.

c. Accounting Data. Foreign claims are paid from a centrally managed budget with a fund citation from the NAVCOMPT Manual, Vol. II, para 023304. The Standard Document Number (SDN) that must appear on every Foreign Claim Voucher is: "N00013$$MDA1001" (where "$$" equals the last two digits of the fiscal year when the deposit is actually made). The Line of Accounting Data (LOA) that must appear on every Foreign Claim Voucher is: "AA 17+1804.12TL 420 00013 H 068892 2D +##### 00013+A1001X" (where "+" is the last digit of the fiscal year when the deposit is actually made, and where "#####" is the five digit UIC of the command making the deposit).

d. Release. A settlement and release agreement shall be obtained from the claimant when payment of an award is accepted. See Appendix 3-a.

e. Advance Payments. Advance payments may be paid under this section.

f. Currency. All payments under this chapter shall be made in the local currency of the country in which the claim arose or in the currency of the country where the claimant resides at the time such payment, if different from the country where the claim arose, due to Federal currency restrictions.

SETTLEMENT AGREEMENT

File Reference: _____

I, _____ [claimant], hereby agree to accept the sum of _____[amount] ($ [or equivalent] _____) in full satisfaction and final settlement of any and all claims which I have—individually, on behalf of the next of kin of _____ [injured party], and on behalf of the estate of _____ [injured party]—or may have against the United States, its officers, agents and employees, for property damage, personal injury, wrongful death, [whichever applicable] and associated losses arising from _____ [brief details of incident], and for any and all damages, injuries and losses proximate and consequent thereto.

In consideration hereof, I hereby release and forever discharge the United States, its officers, agents and employees, from all liability, claims and demands of whatsoever nature arising from the said incident.

It is understood that the amount tendered is accepted in full satisfaction and final settlement and that the award is made pursuant to the Foreign Claims Act, 10 U.S.C. § 2734, which provides for the administrative settlement of disputed claims against the United States arising from its activities, and is not to be construed as an admission of liability on the part of, but as a release of, the United States, its officers, agents and employees.

_____	_____
DATE	[claimant]

WITNESSES:

_____	_____
NAME	ADDRESS
_____	_____
NAME	ADDRESS

PROCEDURES FOR PROCESSING CLAIMS INVOLVING NON-APPROPRIATED FUND ACTIVITIES AND THEIR EMPLOYEES

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1. SCOPE. This enclosure explains how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operations of non-appropriated fund instrumentalities.

2. AUTHORITY. Policy governing the administrative processing of claims arising out of the operation of non-appropriated fund activities is established by DOD Directive 5515.6.

3. DEFINITIONS

a. Non-appropriated Fund Instrumentality (NAFI). An instrumentality of the Federal Government established to generate and administer non-appropriated funds for programs and services contributing to the mental and physical well being of Department of Defense personnel and their dependents. A NAFI is not incorporated under the laws of any State and enjoys the privileges and immunities of the Federal Government.

b. Non-appropriated Funds. Funds generated through the use and patronage of NAFIs, not including funds appropriated by Congress.

c. Employees of NAFIs. Personnel employed by NAFIs whose salaries are paid from non-appropriated funds.

4. NOTIFICATION

a. Some NAFIs, such as flying clubs, carry private commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Commander, Naval Supply Systems Command determine whether NAFIs within their cognizance shall carry liability insurance or become self-insurers, in whole or in part.

b. The Marine Corps requires mandatory participation in the Morale, Welfare and Recreation (MWR) Composite Insurance Program by the following operations: MWR operations and retail services, food and hospitality, recreation; and special NAFI activities including flying clubs, rod and gun clubs, Interservice Rifle Fund, Marine Corps Marathon and Dependent Cafeteria Fund. The following organizations may also participate in the MWR Composite Insurance Program, if desired: child welfare centers, billeting funds, chapel funds, and civilian welfare funds.

c. When the operations of NAFIs result in property damage or personal injury, the insurance carrier, if any, should be given immediate written notification. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability by the activity.

5. RESPONSIBILITY. All claims resulting from non-appropriated fund activities (NAFI) should be submitted to the command having cognizance over the NAFI involved. The claim will then be forwarded to the Naval Legal Service Office or single-service authority that has cognizance over claims arising in that area of responsibility. Normally, the Naval Legal Service Office has primary responsibility for the negotiation and settlement of NAFI claims. This is because NAFIs are Federal agencies within the meaning of the Federal Tort Claims Act (FTCA)(28 U.S.C. §§ 1346(b), 2671-2672, 2674-2680) if they are charged with an essential function of the DON and if the degree of control and supervision by the Navy is more than casual or perfunctory. Compare United States v. Holcombe, 277 F.2d 143 (4th Cir. 1960) and Scott v. United States, 226 F. Supp. 846 (D. Ga. 1963). Consequently, to the extent sovereign immunity is waived by the FTCA, the United States remains ultimately liable for payment of NAFI claims.

6. INVESTIGATION. Claims arising out of the operation of NAFIs, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated fund activities. JAGMAN Chapter II provides guidance in conducting an investigation of an incident or event likely to result in claims or civil litigation against or for DON or the United States.

7. NEGOTIATION

a. General. Claims from NAFIs should be processed primarily through procedures, regulations and statutes applicable to appropriated fund activity claims.

b. When The NAFI Is Insured. When a NAFI is insured, the insurer or the contracted third-party claims administrator (TPA) will normally conduct negotiations with claimants. The Naval Legal Services Office shall monitor the negotiations conducted by the insurer or TPA. Monitoring is normally limited to ascertaining someone has been assigned to negotiate, to obtain periodic status reports, and to close files on settled claims. Any dissatisfaction with the insurer's or TPA's handling of the

negotiations should be referred directly to OJAG Code 15 for appropriate action. If requested by the insurer or TPA, the Naval Legal Service Office may conduct negotiations. If the Naval Legal Service Office negotiates a final settlement, however, request for payment will be forwarded to the insurer or TPA for payment. Concurrence by the insurer or TPA in the amount of the settlement is not necessary.

c. When The NAFI Is Not Insured. When there is no private commercial insurer and the NAFI has made no independent arrangements for negotiations, the appropriate Naval Legal Service Office or single-service authority is solely responsible for conducting negotiations. When an appropriate settlement is negotiated by the Navy, the final settlement award will be forwarded to the NAFI for payment from non-appropriated funds.

8. PAYMENT

a. Payment of Substantiated Claims. A tort claim must be paid with non-appropriated funds when the negligent act or omission giving rise to liability was committed by a non-appropriated fund employee. Liability arising from acts or omissions of appropriated fund employees or active duty military members is payable with appropriated funds. When the negligent act or omission giving rise to liability was jointly committed by a non-appropriated fund employee and an appropriated employee, liability may be apportioned and the claim paid with appropriated and non-appropriated funds according to the percentage of negligence assigned to each tortfeasor.

b. Claims That Can Be Settled for Less than $1,500.00. A claim not covered by insurance (or not paid by the insurer), that can be settled for $1,500.00 or less, may be adjudicated by the Naval Legal Service Office or single-service authority and forwarded to the commanding officer of the activity concerned or designee for payment out of funds available to the commanding officer. The Naval Legal Service Office or single-service authority will obtain the required release from the claimant.

c. Claims that Are Settled for More than $1,500.00. A claim negotiated by the Navy, not covered by insurance, that is for more than $1,500.00 will be forwarded to the appropriate non-appropriated fund headquarters command for payment from its non-appropriated funds.

d. When Payment is Possible under Another Statute. In some cases, neither the NAFI nor its insurer may be legally

responsible. In those instances when there is no negligence, and payment is authorized under some other statute, such as the Foreign Claims Act, 10 U.S.C. §§ 2734-2736 (1982), the claim may be considered for payment from appropriated funds or may be referred to OJAG Code 15 for appropriate action.

e. Other Claims. A NAFI's private insurance policy is usually not available to cover losses that result from some act or omission of a mere participant in a non-appropriated fund activity. In the event the NAFI declines to pay the claim, the file shall be forwarded to OJAG Code 15 for determination.

9. DENIAL. Claims resulting from non-appropriated fund activities may be denied only by the Naval Legal Service Office. The denial will begin the six-month limitation on filing suit against the United States for claims filed under the FTCA. Denial of a claim shall be in writing and in accordance with enclosure (1) or (2) of this instruction, as appropriate. The Naval Legal Service Office should not deny claims that have initially been processed and negotiated by a non-appropriated fund activity, its insurer or TPA until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend the claim in court.

10. CLAIMS BY EMPLOYEES

a. Property. Claims by employees of NAFIs for loss, damage, or destruction of personal property incident to their employment shall be processed and adjudicated in accordance with enclosure (6) of this instruction. The claims will then be forwarded to the appropriate NAFI for payment from non-appropriated funds.

b. Personal Injury or Death.

(1) Personal injury or death of citizens or permanent residents of the United States employed anywhere, or foreign nationals employed within the continental United States. Compensation is provided by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) for employees of NAFIs who have suffered injury or death arising out of and in the course of their employment (5 U.S.C. § 8171). That Act is the exclusive basis for Government liability for such injuries or deaths that are covered (5 U.S.C. § 8173). A claim should first be made under that Act if there is a substantial possibility the injury or death is covered under the Act's provisions.

(2) Personal injury or death of foreign nationals employed outside of the continental United States. Employees who are not citizens or permanent residents, and who are employed outside the continental United States, may be protected by private insurance of the NAFI or by other arrangements. When a non-appropriated fund activity has elected not to obtain insurance coverage or to make other arrangements, compensation is separately provided by federal statute, military regulations, and agreements with foreign countries. See 5 U.S.C. 8172, DoD 1401.1-M, Personnel Policy Manual for Non-appropriated Fund Instrumentalities and BUPERINST 5300.10A, NAF Personnel Manual.

PROCEDURES FOR PROCESSING NONSCOPE CLAIMS

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APPENDIX 5-a SAMPLE SETTLEMENT AGREEMENT

1. SCOPE. This enclosure provides information on payment of claims against the United States, not payable under any other statute, caused by the act or omission, negligent, wrongful, or otherwise involving fault, of DON military and civilian personnel (hereinafter DON personnel) acting outside the scope of their employment.

2. STATUTORY AUTHORITY. Section 2737 of title 10, United States Code, provides authority for the administrative settlement in an amount not to exceed $1,000.00 of any claim against the United States not cognizable under any other provision of law for damage, loss, or destruction of property or for personal injury or death caused by military personnel or a civilian official or employee of a military department incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation. There is no right to sue. Settlement shall be final and conclusive pursuant to 10 U.S.C. § 2735. There are no territorial limitations and the Act has worldwide application.

3. DEFINITIONS

a. Civilian Official or Employee. Any civilian employee of the DON paid from appropriated funds at the time of the incident.

b. Vehicle. Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land. See 1 U.S.C. § 4. Government vehicles, for purposes of this instruction, do not include rental cars.

c. Government Installation. Government installations include any Federal facility having fixed boundaries and owned or controlled by the United States Government. It includes both military bases and non-military installations.

d. Scope of Employment. The law of respondeat superior (i.e., master and servant) of the place where the act or omission occurred defines scope of employment.

4. CLAIMS PROCEDURES

a. The general provisions of paragraph 3 of the basic instruction and JAGMAN Chapter VIII shall apply in determining what is a proper claim, who is a proper claimant, and how a

claim is to be investigated and processed under 10 U.S.C. § 2737 and this enclosure.

b. A claim is presented when the DON receives from a claimant or the claimant's duly authorized agent, written notification of the nonscope claim incident accompanied by a demand for money damages in a sum certain.

c. A claimant may amend a claim at any time prior to final action. Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

d. Claims submitted under the provisions of the Federal Tort Claims Act (FTCA) or Military Claims Act (MCA) shall be considered automatically for an award under this part when payment would otherwise be barred because the DON personnel were not acting in the scope of their employment at the time of the incident.

e. Nonscope claims for damages caused by local national DON employees overseas are also payable under this enclosure if the injury was caused by the use of Government equipment.

f. Payment may not be made on a nonscope claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement. See Appendix 5-a. If claimant refuses payment, then the claim will be denied pursuant to the rules applicable to the statute under which it was submitted.

g. Payment for a nonscope claim adjudicated by field commands will be effected through local disbursing offices by use of funds obtained from the Office of the Judge Advocate General, Code 64.

h. Claims submitted solely under 10 U.S.C. § 2737 shall be promptly considered. If a nonscope claim is denied, the claimant shall be informed of the reasons in writing and advised of the right to appeal in writing to the Secretary of the Navy (Judge Advocate General) provided the appeal is received within 30 days of the notice of denial. The provisions of paragraph 11 of enclosure (2) also apply to denials of nonscope claims.

5. STATUTE OF LIMITATIONS

a. A claim must be presented in writing within two years after it accrues. It accrues at the time the claimant

discovers, or in the exercise of reasonable care should have discovered, the existence of the act or omission for which the claim is filed.

b. In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was presented.

6. OFFICIALS WITH AUTHORITY TO SETTLE. The following officials may settle nonscope claims: Judge Advocate General; Deputy Judge Advocate General; Assistant Judge Advocate General (Civil Law); Deputy Assistant Judge Advocate General (Claims, Investigations and Tort Litigation); Deputy Director, OJAG Code 15 (Claims, Investigations and Tort Litigation), Head, Federal Tort Claims Branch, OJAG Code 15 (Claims, Investigations and Tort Litigation), Head, Military and Foreign Claims Branch, OJAG Code 15 (Claims, Investigations and Tort Litigation) and commanding officers of Naval Legal Service Offices. A Naval Legal Service Office commanding officer with settlement authority may re-delegate all or part of that authority. Such delegation must be in writing.

7. SCOPE OF LIABILITY

a. Subject to the exceptions in paragraph 8 of specific claims not payable under this enclosure, the United States shall not pay more than $1,000.00 for a claim against the United States that is not cognizable under any other provision of law except claims asserted under Article 139, UCMJ.

b. Article 139, UCMJ, 10 U.S.C. § 939, is not preemptive. The prohibition in 10 U.S.C. § 2737 on paying claims "not cognizable under any other provision of law" applies only to laws authorizing claims against the United States. Article 139 authorizes claims against service members. See JAGMAN Chapter IV.

8. CLAIMS NOT PAYABLE

a. Claims for damage, loss, or destruction of property or personal injury or death caused wholly or partly by negligent or wrongful acts of claimants or their agents or employees;

b. Claims, or any part thereof, that are legally recoverable by claimants under an indemnifying law or indemnity contract; and

c. Subrogated claims.

9. MEASURE OF DAMAGES. Generally, the measure of damages provisions under the MCA are used to determine the extent of recovery for nonscope claims. Compensation is computed in accordance with paragraphs 7 and 8 of enclosure (2) of this instruction, except payment of damages for personal injury or death under this enclosure shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF NONSCOPE CLAIMS PURSUANT TO 10 U.S.C. § 2737

It is hereby stipulated by and between the undersigned claimant, _____, and the UNITED STATES OF AMERICA, by and through their respective attorneys and representatives, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the administrative claim, e.g., the crash of a U.S. Navy . . . . . , on the _____ day of _____, 2004, under the terms and conditions set forth in this Settlement Agreement.

2. This Stipulation For Compromise Settlement And Release is not, is in no way intended to be, and should not be construed as an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the claimant. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Nonscope Claims Act.

3. The United States agrees to pay _____ the cash sum of $_____.

4. Claimant and its employees, agents, servants, administrators, or assigns do hereby accept the cash sum set forth above in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including any future claims for wrongful death and any claims for fees, costs and expenses, arising from, and by reason of, any and all known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to property, and the consequences thereof, which the claimant or its employees, agents, servants, administrators, or assigns may have or hereafter acquire against the United States, its agents, servants and employees on account of the same subject matter that gave rise to the administrative claim. Claimant and its employees, agents, servants, administrators, and assigns do hereby further agree to reimburse, indemnify and hold harmless the United States and its agents, servants, and employees from and against any and all such claims, causes of action, liens, rights, or subrogated or contribution interests incident to or resulting or arising from the acts or omissions that gave rise to the administrative claim, including claims or causes of action for wrongful death.

5. This compromise settlement is specifically subject to an agreement by the parties on the terms, conditions, and requirements of this Stipulation For Compromise Settlement And Release. The parties stipulate and agree that the Stipulation For Compromise Settlement And Release and the compromise settlement are null and void in the event the parties cannot agree on the terms, conditions and requirements of this Stipulation For Compromise Settlement And Release. The terms, conditions and requirements of this Stipulation For Compromise Settlement And Release are not severable and the failure to agree, fulfill or comply with any term, condition, or requirement renders the entire Stipulation For Compromise Settlement And Release and the compromise settlement null and void. The authorization by the Secretary of the Navy or the Secretary's designee to negotiate and consummate a settlement for the amount agreed upon by the parties does not make the settlement binding upon the United States unless and until the other terms, conditions and requirements of this Stipulation For Compromise Settlement And Release have been completely agreed upon in writing.

6. Claimant's representative agrees to distribute the settlement proceeds to the claimant.

7. The parties agree that this Stipulation for Compromise Settlement and Release, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the claimant expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

Executed this _____ day of _____, 2004.

_____	_____
Authorized Representative of Claimant	Attorney for the United States of America

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APPENDIX 6-d MEMORANDUM OF UNDERSTANDING ON LOSS AND DAMAGE RULES

1. SCOPE

a. General. This enclosure prescribes procedures and substantive bases for administrative settlement of claims submitted by Department of the Navy (DON) military and civilian personnel under the Military Personnel and Civilian Employees' Claims Act (PCA).

b. Purpose. To authorize the payment of claims for the fair market value of personal property lost, damaged or destroyed incident to service. Personal property is defined as any type of tangible property that is not real property. Personal property includes, but is not limited to, household goods, unaccompanied baggage, pets, potted plants, privately owned vehicles (POV's), mobile homes, and boats. The PCA is a gratuitous payment statute. Congress intended to lessen the hardships of military life by providing prompt and fair recompense for certain types of property losses. The statute provides that the administrative settlement of claims is final and conclusive; there is no judicial remedy.

c. Maximum Amount Payable. The maximum amount payable for loss or damage arising from a single incident is $40,000.00. Where the loss of or damage to personal property arose from emergency evacuations or other extraordinary circumstances, the maximum is $100,000.00. Paragraph 7 of this enclosure identifies PCA Adjudicating Authorities and their payment limits.

d. Additional Instructions. The Judge Advocate General may issue additional instructions or guidance as necessary to give full force and effect to this enclosure.

e. Preemption. The PCA and the provisions of this enclosure preempt other claims regulations. Claims not cognizable under the PCA may, however, be cognizable under another claims act.

2. STATUTORY AUTHORITY. The PCA, 31 U.S.C. 3721 (2004), authorizes the payment of claims for the fair market value of

personal property lost, damaged, or destroyed incident to service.

3. CONSTRUCTION. The provisions of this enclosure and the PCA provide limited compensation to service members and civilian employees of the DON for loss and damage to personal property incurred incident to service. This limited compensation is not a substitute for private insurance. Although the PCA does not compensate every loss or damage to personal property, its provisions shall be broadly construed to provide reasonable compensation for meritorious claims. Adjudications must be based on common sense and the reasoned judgment of the claims examiner, giving the benefit of realistic doubt to the claimant.

4. CLAIMANTS

a. Proper Claimants. Entitlement to present a claim is based on a claimant's status at the time the claim accrued. Separation from the service or termination of employment shall not bar former military personnel or civilian employees from filing claims or bar designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise falling within the provisions of these regulations when such claim accrued prior to the claimant's separation or termination from the Navy or Marine Corps.

(1) Members of the DON. The PCA covers all Navy and Marine Corps active duty members and reservists on active duty for training under Federal law whether commissioned, enrolled, appointed, or enlisted. A retired member may only claim under the PCA if loss or damage occurred while the claimant was on active duty or in connection with the claimant's last movement of personal property incident to service.

(2) Civilian employees of the Navy. The PCA also applies to Federal employees who are paid from appropriated funds. This does not include Red Cross employees, United Services Organization (USO) personnel, or employees of Government contractors (including technical representatives). By agreement among the services, a claim brought by a civilian employee transferring from one service to another is processed and paid by the gaining service.

(3) Claims by Non-appropriated Fund Instrumentality (NAFI) employees. NAFI employees are employees whose salaries are paid from NAFIs. Persons paid from appropriated funds but assigned to NAFIs are not NAFI employees. Claims by employees

of Navy and Marine Corps NAFIs for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this enclosure and forwarded to the appropriate local NAFI that employs the claimant for payment from non-appropriated funds.

(4) DOD Dependents Schools teachers. By agreement among the services, the claim of a DOD Dependents Schools (DODDS) teacher is processed by the service operating the installation where the teacher is employed. If the claim is presented by a DODDS teacher who is leaving DODDS employment, the service operating the installation where the teacher was last employed should process the claim.

(5) Agents or legal representatives. The authorized agent or legal representative of a proper claimant may file on behalf of the claimant if the agent provides a power of attorney that complies with local law. A letter of authorization is insufficient. Payment is made in the claimant's name and sent to the address of record. The legal guardian of a minor or claimant declared incompetent by a court may file a claim on the claimant's behalf. Certain relatives of a deceased proper claimant may file any claim the claimant could have filed. The PCA identifies these relatives in order of priority. If multiple persons listed by the statute as equal in priority file separate claims, the first claim settled extinguishes the rights of the other claimants. The estate of a deceased proper party claimant is not a proper claimant, nor is an executor or personal representative who cannot file as a survivor. The PCA ranks surviving relatives in the following order of priority:

(a) Spouse;

(b) Child or children;

(c) Father, mother, or both;

(d) Brother, sister, or both.

b. Improper Claimants. Insurance companies, assignees, subrogees, vendors, lienholders, contractors, subcontractors and their employees, and other third parties are not proper claimants under the PCA. If the property owner could have presented a claim for the loss under the PCA, whether or not the property owner actually presented the claim, the claim is

cognizable under the PCA and these third parties are not proper claimants. This is especially common in paint overspray cases.

5. CLAIMS PAYABLE. Claims for loss, damage, or destruction of property may be considered as set out below if the loss was incident to service, possession of the property was reasonable and useful under the circumstances and the loss did not result from the claimant's negligence. The following are examples of more common claims filed by claimants. While not all situations that may result in a claim can be covered in this instruction, the processes described in the examples on how to approach, investigate, and adjudicate claims are applicable to all claims filed under the PCA.

a. Losses at Assigned Quarters or Other Authorized Places. Damage or loss caused by fire, explosion, theft, vandalism, lightning, flood, earthquake, or unusual occurrence is cognizable under the PCA. A number of "incident to service" rules apply to these types of losses. For example, a loss by a member visiting another member's quarters is not cognizable as a loss incident to the visitor's service. Assigned quarters are Government-owned or leased housing assigned or otherwise provided in kind to the claimant. However, the PCA specifically provides that within a State or the District of Columbia, losses from quarters that are not assigned or provided in kind by the Government are not cognizable. Losses from authorized as well as assigned quarters outside the United States are cognizable, except when the claimant is considered a local inhabitant. An active duty sailor is never deemed to be a local inhabitant. In an overseas area, a civilian employee who is not a United States citizen is normally deemed to be a local inhabitant. A United States citizen who is hired as a civilian employee while residing abroad or after moving abroad to reside with a foreign spouse or relative is also deemed to be a local inhabitant. A loss from overseas quarters occupied by a sailor's family is not compensable if the sailor is permanently stationed elsewhere.

(1) Losses from temporary quarters that the claimant is authorized to occupy in the performance of temporary additional duty (TAD) are cognizable wherever those quarters are situated. Permissive TAD, which is not at Government expense, is not considered temporary duty. Losses from temporary quarters while a member is on leave are not compensable under the PCA.

(2) "Other authorized places" are defined as any other places on the installation where the claimant is authorized to store property of the type that was lost or damaged, or where the claimant was directed or required to store the property by competent authority.

b. Unusual Occurrence. The PCA covers loss or damages resulting from serious events and natural disasters not expected to take place in the normal course of events and hazards outside the normal risks of day-to-day living and working. Two types of incidents may be considered "unusual occurrences": those of an unusual nature such as a lightning bolt striking and destroying a vehicle, and those of a common nature that occur to an unexpected degree of severity such as baseball-sized hail striking and denting a vehicle. Other examples of unusual occurrences include structural defects in quarters, termite or rodent damage and Government use of toxic chemicals that contaminates personal property resulting in a possible hazardous health condition. Examples of occurrences that are not considered unusual include potholes or foreign objects in the road, ice and snow sliding off a roof onto a vehicle, a rock thrown by a lawn mower, and tears, rips, snags, or stains on clothing.

c. Fire. Losses caused by fire are compensable. Claims examiners must exercise care in fire claims to determine if the claimant, or the claimant's family members or guests, may have been negligent. The adjudication of such claims requires an independent determination based on the totality of the circumstances. In adjudicating such claims, examiners must seek information from a variety of sources, such as the fire marshal or other experts, police officials, the claimant, witnesses or any other relevant sources.

d. Flood. Losses due to flooding in quarters are compensable. In areas plagued by frequent flooding, the claimant is expected to store items off the floor. Few items are destroyed merely by becoming wet, and claimants have a duty to mitigate, or lessen, damage by drying out wet items promptly; deterioration caused by failure to do so is not compensable.

e. Lightning, Power Surge, and Power Failure. Storms, power surges and power outages are not considered unusual occurrences, and damage caused by such incidents is normally not compensable. Claims that electrical or electronic devices were damaged by a power surge may be paid when lightning has actually struck the claimant's residence or objects outside the

residence, such as a transformer box, or when power company records or similar evidence shows that a particular residence or group of residences was subjected to a power surge of unusual intensity. In areas subject to frequent thunderstorms or power fluctuations, claimants are expected to use surge suppressors to protect delicate electronic items such as computers, videocassette recorders, and Digital Video Device (DVD) players. It is virtually impossible to distinguish damage caused by a mechanical defect from "surge damage" by inspecting the item. A repair firm's statement or a claimant's honest belief that the loss occurred as a result of a power surge during a storm may not be sufficient to show what caused the damage.

f. Power Outage. Claims that electrical or electronic devices were damaged by a power outage are not compensable. However honest a claimant's belief that damage was caused by a power outage, an outage not accompanied by a power surge will not damage a properly designed electrical or electronic device. Claims that food was spoiled by a power outage may be considered if the outage was of unusual duration. What constitutes "unusual duration" is determined by how long it normally takes food to spoil under local climactic conditions. In tropical countries, this might be less than one full day; otherwise, the United States Department of Agriculture (USDA) reports that a full freezer left closed will keep food frozen for about two days and a half-full freezer left closed will keep food frozen for about one day.

g. Termite and Other Insect or Rodent Infestation. In areas where these pests are common, such as tropical zones, infestation is not considered an unusual occurrence. Claims for damages to items outside the home/storage areas, such as rodents chewing car wires, are payable when the claimant has followed recommendations of the Public Works Center for keeping the area clean.

h. Ice and Snow. In regions subject to very cold weather, ice and snow sliding off a roof onto a vehicle or collapsing the roof of a utility shed is not considered an unusual occurrence. In areas where this may be considered unusual, claims examiners must apply a negligence analysis to determine whether it was reasonable for the claimant to park in the location where the damage occurred. It is also not considered an unusual occurrence for a vehicle to slide off a road during bad weather.

i. Hail. While a hailstorm is normally not considered an unusual occurrence, an exceptionally severe hailstorm based on a region's history may be considered unusual. A hailstorm of baseball-size or larger hail is considered unusual for any region.

j. Paint Overspray and Airborne Emission. Damage from paint overspray or airborne emissions is compensable if the sprayer/emitter is a Navy employee and the claimant is a proper claimant, even if the overspray/emission occurred as a result of a maritime tort such as painting a ship or lighting off engines resulting in smokestack emission. Airborne emissions are smokestack emissions from ships or buildings, or fuel dumped/leaked from military aircraft. The definition does not include rocks or other projectiles. When contractor personnel cause an overspray, claims examiners shall refer a claimant to the contractor for compensation. Where the sprayer/emitter is an independent contractor and the claimant is a proper claimant, the claimant must first file against the contractor. If the contractor does not act immediately to resolve the matter, the claims examiner should coordinate with the contracting officer to have money due under the contract offset and paid to the claimant. If the matter has been pursued through the contracting officer and not resolved by the contractor, or will be inordinately delayed, the claim may be settled as a loss incident to service so long as all other requirements are met (i.e., there is no claimant negligence, the claim is fully substantiated, etc.).

k. Baseballs, Golf Balls, and Rocks Thrown by Lawn Mowers or Vehicles. Balls "escaping" from ball fields and golf courses, and rocks thrown up by lawn mowers, weed-eaters or vehicles are not unusual occurrences. Such incidents are paid under the PCA only when the vehicle was being used under orders for the convenience of the Government, and the claim is otherwise meritorious (see paragraph 5(t)(2)). For incidents not involving damage to a vehicle used for the convenience of the Government, claims examiners should consider the possible application of the Federal Tort Claims Act (FTCA) or Military Claims Act (MCA) (see enclosures (1) and (2) of this instruction).

l. Potholes and Other Road Hazards. Damage to moving vehicles caused by defects or a foreign object in the road is not considered the result of an unusual occurrence. Such incidents may be paid under the PCA only when the claimant used the vehicle under orders for the convenience of the Government

and the claim is otherwise meritorious as a PCA claim (see paragraph 4(t)(2)).

m. Collisions. Collisions are not considered "unusual occurrences" and are normally not payable under the PCA. This includes hit-and-run incidents and collisions involving animals or shopping carts. It does not matter if the vehicle was not moving at the time it was struck by an animal or shopping cart. Collisions are not unusual occurrences. For example, it is not an unusual occurrence for a parked vehicle to be struck by a shopping cart in a commissary parking lot or by a hit-and-run driver, nor is it an unusual occurrence for a motor vehicle to strike a deer on the base. Claims for damages arising from collisions may be paid under the PCA only when the vehicle was being used under orders for the convenience of the Government.

n. Wind. Wind is not considered an unusual occurrence unless the wind has risen to the degree that it is considered a tornado, hurricane, or other like phenomena, or it fits the definition of unusual occurrence. In areas subject to high winds, notices in installation publications should be used to publicize that most wind damage is not compensable and personnel should consider purchasing insurance for protection against losses by wind damage.

o. Falling Trees and Branches. While falling branches are not unusual, it is unusual for a large, healthy tree or a significant portion of one to fall. Claims that the Government failed to take appropriate action to protect personnel and their property from harm caused by falling branches, such as claims that a dead tree was reported to Public Works and no action was taken to remove or trim the tree, are processed under procedures for the FTCA or MCA, as applicable.

p. Clothing and Articles. Repairs/replacement of clothing and articles damaged while being worn on a military installation or in the performance of official duty may be paid if loss is caused by fire, flood, hurricane, theft, or vandalism, or other unusual occurrence. This section shall be broadly construed in favor of compensation, but see paragraph 4b for the definition of unusual occurrence. Articles being worn include hearing aids, eyeglasses, and items the claimant is carrying, such as a briefcase. Normal hazards of day-to-day living and working, such as paint, battery acid, ink and oil spilled on clothing, are not covered. Spillage while handling such materials is not an unusual occurrence, even if the claimant's normal duties do not include painting or transporting batteries. For example, it

is not unusual for line handlers to get grease or grime on their uniforms while conducting their duties. Similarly, it is not unusual for members painting a building to drip paint on their clothing. It is unusual for a member not engaged in painting to be splashed by a bucket of paint while walking past an open window. Tears, rips, or snags in clothing are usually considered normal hazards of daily living and working. Such damage is not considered unusual, even if the claimant does not normally perform the task that resulted in the damage.

q. Contamination. Contamination of personal property by toxic chemicals is considered an unusual occurrence. Toxic chemicals are those that are highly poisonous and do not include common chemicals such as paint, battery acid, ink, or oil.

r. Theft. Theft incurred incident to service is compensable, although failure to report the theft immediately or as soon as practicable or fully cooperate in the investigation of the loss may be deemed a failure to prove a loss occurred.

(1) Reasonable measures to safeguard property. Losses due to theft may be paid only if the claimant took reasonable measures to safeguard the property and the theft occurred as a result of forced entry. Some claims, however, are payable even if there is no sign of forced entry. Claimants are expected to secure the windows and doors of their barracks rooms, family quarters, wall lockers, and other storage areas so that a thief must force an entry. If a police report states that there were no signs of forced entry and the claimant asserts with absolute certainty that the area was in fact secure, the claims file must reflect that the examiner considered whether forced entry would have left visible signs. For example, claims examiners should consider evidence that there was easy access to master keys, or that the doors and window latches were of a type that may be forced with a credit card or putty knife without leaving visible marks. Normally, the police investigator who examined the scene should be questioned about this and the investigator's observations recorded in the file. Examiners should apply a "totality of the circumstances test" which appropriately considers whether the claimant took reasonable steps to protect the property. For example, examiners should question whether all doors and windows were locked, whether stolen items were left in plain view or secured or hidden in some manner, etc. (e.g., on top of a bureau?). If the examiner is convinced the theft occurred as a result of forced entry, the claim may be paid. If the examiner finds, however, that the loss was due to the claimant's negligence, or the negligence of the claimant's

agents, then the claim is not payable. See paragraph 6.r. of this enclosure for a definition of negligence.

(2) Extra measures for certain items. Claimants are expected to take extra measures to protect cash, valuable jewelry, and similar small, high value, easily pilferable items. Claimants are expected to store valuables in a locked container within a secured room. The locked container should be large enough that it is not convenient for a thief to carry. The double lock rule generally applies when evaluating claims for thefts of items from barracks rooms. However, a claim should not be denied solely because the claimant did not follow the "double lock" rule. If an item is too large to fit into a wall locker, claims examiners should apply the "totality of the circumstances" test to determine whether or not a claimant exercised due care under the circumstances to protect the property. Relevant questions may include whether there was a locked storage room available for the claimant's use and whether an applicable barracks rule or regulation required certain items to be stored during extended absences (e.g., an unsecured television in a barracks room).

(3) Money and easily pilferable items in shipment. Money, which should never be shipped with baggage or household goods, and small, easily pilferable items (e.g., jewelry) that are not shipped with the member's household goods should be secured during the pickup and delivery of other household goods. While it is preferable for claimants to hand-carry such items, it is not negligent to ship them. If claimants ship these items, however, claimants are expected to remain present at the residence while carriers pack the items to ensure the items are actually packaged and that the inventory specifically and accurately reflects the tender of each of the items. Normally, claims for the loss of such items are denied if the claimant cannot substantiate that they were shipped. The loss of items that were not part of the shipment at delivery (hand-carried items) is considered a theft from quarters. Example: A claimant elected to hand-carry a TV and placed it in the house during the delivery of the remainder of the household goods and then later discovers it to be missing. If this loss occurred in assigned quarters (see paragraph 5.a. of this enclosure), the loss may be compensable but the claims examiner must determine if the claimant exercised due care under the circumstances to protect the property.

(4) Theft in gyms. Theft of property from on-base gym lockers is considered a loss incident to service for service members even if it occurred after normal duty hours. Theft of property belonging to civilian employees would be considered incident to service only if the loss occurred during duty hours. Theft from gym lockers in use by family members, however, is not compensable because their loss is not considered incident to service. Again, in determining whether a claim is compensable, examiners must determine whether a claimant exercised reasonable care under the circumstances to protect the property.

(5) Theft from claimant's person. A theft from the person of a claimant is reimbursable if the theft occurred by use of force, violence, or threat to do bodily harm, or by snatching or pickpocketing, and at the time of theft the claimant was either on a military installation, utilizing a recreation facility operated or sponsored by the Department of Defense (DOD) or any agency thereof, or acting in the performance of official duties. Claimants are expected to report theft losses to appropriate police authorities as soon as practicable and cooperate in the investigation of the theft. A claimant's failure to report the theft in a reasonable time may be considered a failure to substantiate the loss. Also, the claimant's possession of the property at the time of the theft, in both quality and quantity, must be reasonable.

s. Vandalism. Vandalism is intentional damage. Damages caused by accident, such as marks on a car caused by children playing nearby or rocks kicked up by a mower, are not vandalism. Such incidents also are not considered unusual occurrences. Some incidents of vandalism may have sufficient indicators of intent to be more readily compensable (e.g., an expletive scratched into the hood of the car or painted on a picnic table), but a claimant's discovery of scratches or damage to personal property may not alone be sufficient evidence of vandalism. Vandalism to vehicles, because of their mobility, requires a high degree of evidence that the vandalism occurred at a quarters or other authorized location. Statements by a claimant that damage was not present when the vehicle was last parked is insufficient to establish a payable claim without some showing that the damage is the type the claimant would have noticed at the time the vehicle was parked or that the damage occurred at that location. If, for example, a vehicle had apparently been "keyed" and a police report identifies that paint peelings were found on or around the vehicle during the investigation, that would be an indicator that the damage occurred at that location.

t. Vehicle Losses.

(1) Vehicles. "Vehicles" includes automobiles, motorcycles, all terrain vehicles, mopeds, utility trailers, camping trailers, boat trailers, boats, trucks, mounted camper bodies, motor homes, jet skis, bicycles, and aircraft. Mobile homes and other property used as dwellings are not considered vehicles.

(2) Used in the performance of duty. Losses incurred while a vehicle is used in the performance of military duty are compensable if such use was authorized or directed for the convenience of the Government and the travel did not include commuting to or from the claimant's permanent place of duty or rise from mechanical or structural defects of the vehicle. There is no requirement that the loss be due to fire, flood, hurricane, or other unusual occurrence, or to theft or vandalism. As a general rule, however, travel is not considered to be for the convenience of the Government unless it was pursuant to written orders specifically authorizing such use. For example, a claimant's travel off an installation without written orders is deemed to be for the convenience of the Government only if the claimant was authorized mileage reimbursement for the travel. Also, a claimant's travel to other buildings on an installation is not considered to be under orders for the convenience of the Government. Finally, for collision damage to be payable, the claimant must be free from negligence. The maximum payments authorized by the Allowance List-Depreciation Guide still apply to a loss or damage to vehicles and their contents.

(3) Shipped at Government expense. Losses incurred while a vehicle is shipped at Government expense are compensable if the loss or damage did not arise from a mechanical or structural defect of the vehicle. Damage that is caused during shipment at the claimant's expense or while an agent of the claimant is moving the vehicle to or from a port is not compensable.

(4) Located at a quarters or other authorized place of lodging. A loss or damage incurred while a vehicle is located at claimant's quarters or other authorized place of lodging, including garages, carports, driveways, assigned parking spaces, is compensable if the loss or damage is caused by fire, flood, hurricane, theft, vandalism or other unusual occurrence. Losses or damages incurred while vehicles are located at places other than quarters but on a military installation are compensable if

the losses or damages are caused by fire, flood, hurricane, theft, vandalism or other unusual occurrence. The term "military installation" is used broadly to describe any fixed land area, wherever situated, controlled or used by military activities or the DoD. A vehicle that is properly on an installation should be presumed to be used incident to the claimant's service when evaluating a claim. A vehicle that is not properly insured or registered in accordance with local regulations, however, is not properly on the installation. Similarly, a vehicle left for an undue length of time in a remote area of an installation that is not a designated long-term parking area is presumed not to be on the installation incident to service. Claims examiners must check the Allowance List-Depreciation Guide to compute the maximum compensable amount.

(5) Property inside a vehicle. A loss resulting from a theft of property stored inside a vehicle is compensable if it was reasonable for the claimant to have the property in the vehicle and neither the claimant nor the claimant's agents were negligent in protecting the property. Claimants are expected to lock doors and windows to secure and protect their property. Neither the passenger compartment nor the trunk of a vehicle is considered a proper place for the storage of property unconnected with the use of the vehicle. Normally, it is considered negligent to store such items in a vehicle overnight or for longer periods, even in the trunk. The passenger compartment of a vehicle does not provide adequate security for articles that are of high value or easily pilferable. Except for maps, child car seats, a reasonable number of audiotapes or CDs and similar items kept in the passenger compartment for immediate use, claimants are expected to remove their property when exiting a vehicle. Car covers may be payable if they are bolted or secured to the vehicle with a wire locking device. A claimant is also expected to bolt or permanently affix to the vehicle items that are not factory-installed, such as tape and CD players, speakers, CB radios, and similar accessories. Such items are not secured merely by mounting them on a slide. An item may be considered permanently affixed if tools or a key is needed to detach it. Most thefts of property from vehicles are covered by homeowners/renters insurance policies and claims examiners must make the proper inquiries regarding insurance coverage.

(6) Rental vehicles. Damage to rental vehicles is never payable under the PCA. If a member or employee is TAD and authorized a rental vehicle on orders, the vehicle must be from

a company that participates in the program administered by the Surface Deployment and Distribution Command (SDDC). All rental companies participating in this program have agreed to absorb the cost of loss or damage to the rental vehicle if caused by simple negligence on the part of the Government driver. See Joint Federal Travel Regulations (JFTR) U3415 (military members) or Joint Travel Regulations (JTR) C2102 (civilian employees).

u. Transportation and Storage Losses.

(1) Transportation or storage at Government expense. Losses to property incurred during transportation or storage under orders and at Government expense are compensable. Opportune lifts, when a member ships personal property using excess space on a vessel at no cost to the member or to the Government, are not transportation under orders and are not compensable. If a claimant has household goods stored at Government expense, but the Government Bill of Lading (GBL) expires and the storage converts to claimant's expense, the following rules apply:

(a) If personal goods are delivered from storage at Government expense, and the delivering carrier failed to make a rider (a separate accounting of any new damages discovered by the carrier upon pick-up at the warehouse and verified by the warehouseman) or take exceptions, the loss/damage will be presumed to have occurred while in the custody of the last carrier and will be payable. The claim will not be denied solely because the GBL expired.

(b) If the delivering carrier made a rider or takes exceptions at the warehouse prior to pick up for delivery from storage, the claimant has the burden of proving that the loss/damage occurred prior to the storage that converted to the claimant's expense (i.e., prior to the expiration of the GBL). Normally, a claimant can satisfy this burden only if the claimant went to the warehouse, inspected the goods, and listed the loss/damage with the warehouse prior to storage converting to the claimant's expense. When considering a claim for damages such as rust, mildew, mold, etc., the claims examiner must consider the length of time in storage at the claimant's expense versus the length of time at Government expense. For example, if goods were stored at Government expense for 180 days, and at the claimant's expense for 20 days, the examiner may presume that severe rust damage occurred while stored at Government expense.

(2) Travel. Losses of personal property that are incurred during travel under orders, including temporary duty, are compensable regardless of the method of conveyance. As a general rule, travel is considered as being in the performance of duty if the Government will be reimbursing the claimant for the costs of travel.

(3) Do-It-Yourself (DITY) moves. In certain circumstances, loss or damage to property during a DITY move is compensable if claimants substantiate the fact of loss or damage in shipment. Claimants who do not prepare adequate inventories would have difficulty substantiating thefts. In addition, unless the evidence shows that something outside the claimant's control caused the damage, breakage is presumed to be the result of improper packing by the claimant or an agent. For example, if a drunk driver rear-ends a claimant's truck during a DITY move, it may be considered out of the claimant's control. If the claimant was not negligent, a claim may be filed for the damaged goods.

(4) Transportation or storage at claimant's expense. The Government will not compensate a claimant for loss or damage that occurs to a claimant's property if the property is shipped or stored at the claimant's expense, even if the Government reimburses the claimant for the shipment or storage fees. As there is no contract (GBL) between the Government and the carrier, the claimant must seek damages against the carrier.

v. Mobile Homes and Contents in Shipment. Claims for damage to mobile homes and contents in shipment are payable unless the damage was caused by structural or mechanical defects in the mobile home or by the claimant's negligence in securing the mobile home or packing its contents. (See also paragraph 10.g. of this enclosure on mobile homes.)

w. Borrowed Property (Including Vehicles). Loss or damage to borrowed property is compensable if the property was borrowed for the claimant's use or for the use of the claimant's dependents. If the claimant paid money for the use of the property, then the property is not considered to be borrowed. The claimant and the owner of the property will be required to provide a statement attesting to the claimant's use of the property. Property that a claimant stored or transported to accommodate another person is not considered to be borrowed property and is not compensable.

x. Personal Property Held as Evidence or Confiscated Property. The loss or damage to property belonging to a claimant who is a crime victim and which is lost, destroyed or damaged as a result of its use as evidence in a criminal proceeding may be compensable. A claim for the temporary loss of the use of property that is held as evidence for an extended period of time (in excess of two months) may be considered for payment if the temporary loss will work a grave hardship on the claimant. This provision will not apply, however, unless the claimant or the claims examiner has made every effort to determine whether secondary evidence (e.g., photographs) may be substituted as evidence for the property. No compensation is allowed to a claimant suspected of an offense for property seized from the claimant in the investigation of that offense regardless whether the claimant is ever charged, tried, or convicted of the offense. Claims for property a foreign government confiscates, or claims for the surrender or abandonment of property resulting from the application of a foreign law, are also not compensable under the PCA.

y. Property Used for the Benefit of the Government. Compensation is authorized where property is damaged or lost while being used in the performance of Government business at the direction or request of superior authority or by reason of military necessity.

z. Money Deposited for Safekeeping, Transmittal, or Other Authorized Disposition. Compensation is authorized for the loss of personal funds delivered to and accepted by military and civilian personnel who are authorized by an appropriate official (e.g., a Commanding Officer) to receive the funds for safekeeping, deposit, transmittal, or other authorized disposition.

aa. Fees.

(1) For obtaining certain documents. The fees for replacing birth certificates, marriage certificates, college diplomas, passports, or similar documents may be payable if the original or a certified copy of such documents is lost or destroyed incident to service. In general, compensation will only be allowed for replacing documents with a raised seal that are official in nature. No compensation will be allowed for documents that are representative of value, such as stock certificates, or for personal letters or records.

(2) Estimate fees. An estimate fee is a fixed cost charged by a person in the business of repairing property to provide an estimate of the cost to repair property. An estimate fee in excess of $50 should be examined with great care to determine whether it is reasonable. A person is obligated to pay an estimate fee when the estimate is prepared. An estimate fee should not be confused with an appraisal fee, which is normally not compensable. (See paragraph 6.1.) A reasonable estimate fee is compensable if it will not be credited toward the cost of repair. If it is to be credited toward the cost of repair, it is not compensable regardless of whether the claimant chooses to have the repair done. When an estimate fee is claimed, the file must reflect whether the fee is to be credited.

bb. Computers.

(1) Internal damage. Internal, operating problems may occur in computers or computerized devices following transportation and may be due to rough handling. Without signs of exterior damage, however, claims for internal damage should not be paid unless the claimant provides sufficient evidence that the reason the item is not working was due to a covered compensable event such as rough handling in transportation or a lightning strike at the claimant's quarters.

(2) Documenting the cause of damage. Claimants must submit electronic repair forms unless the repair estimate specifically lists the type and cause of the damage. As with any estimate, especially those for internal damage, statements indicating "shipment damage" are of little or no value in adjudicating the claim. If the estimate does not contain precise information as to what the damages are and what may have caused them, claims examiners should contact the repair firm for the information. While cracked or physically damaged internal parts may be a result of rough handling in shipment, repairs for loose components or "ceased functioning"/"burned out" parts do not establish rough handling and will not be payable. The claimant also needs to provide a statement attesting to knowledge of the working condition of the item prior to shipment for the Government to be successful in any subsequent recovery action against the carrier. For example, a claimant making a claim for internal damages to a computer may be able to provide a statement that establishes that the claimant or family members were on the computer during the packing of the household goods. If sufficiently specific as to time and operation, this type of statement will assist the claims examiner in making a

determination that the computer worked immediately prior to the shipment and that damage to the computer occurred during the shipment. To be of value in claims adjudication, statements of this type need to be precise and specific to the items for which a claimant seeks payment.

(3) Obsolescence. As reflected by the rapid depreciation of computers and related hardware, computers rapidly become obsolete. When deciding the replacement value of computers, claims examiners should look at the capabilities of the computer being replaced. Claimants are entitled only to the value of an item with specifications similar to the computer being replaced.

(4) Software. Software corporations allow registered owners (license holders) of their software to replace lost software free or at reduced rates. Compensation for software is only for licensed software. The cost for replacement of software that a claimant may have loaded onto a computer or similar device from another source without the purchase of the license is not compensable. "Shareware," which are programs available on the internet for general public access and use, is not compensable absent a showing by the claimant that the claimant purchased a program that contained the shareware and that the claim is for the lost program and not for a program loaded on a computer hard drive. A license is not tangible personal property; a user does not lose the license even if the disc that contained the program is lost. Computer games do not provide for registration of the game and fall within the maximum amounts allowable for computers/peripherals/software, line 58 in the Allowance List-Depreciation Guide.

6. CLAIMS NOT PAYABLE

a. Losses in Unassigned Quarters in the United States. Claims for property damaged or lost at quarters occupied by the claimant within the United States that are not assigned or otherwise provided in kind by the Government.

b. Currency or Jewelry Shipped or Stored in Baggage or Household Goods. Small, valuable, highly pilferable items, such as expensive jewelry or coin collections, and items of great sentimental value such as photo albums, should normally be packed in the member's suitcase and hand-carried rather than being shipped.

(1) If expensive or valuable jewelry is shipped, each item of expensive jewelry must be listed and described on the inventory for its loss to be payable. Each item must also be listed as missing at the time of delivery on the DD Form 1840. If not noted as missing at the time of delivery, the claimant must satisfactorily explain why.

(2) Inexpensive jewelry can be shipped or stored as part of a household goods shipment, and a claim for its loss could be payable even if each piece of jewelry was not itemized on the inventory.

c. Enemy Property or War Trophies. This includes property that was originally enemy property or a war trophy that passed into the hands of a collector and was then purchased by a claimant.

d. Unserviceable or Worn-out Property. This property is not considered to have any fair market value.

e. Loss or Damage to Property to the Extent of any Available Insurance Coverage. Except for claims for loss or damage to household goods or privately-owned vehicles (POVs) while shipped or stored at Government expense, when the property lost, damaged, or destroyed is insured, the claimant must make a demand for payment against the insurance company under the terms of the insurance policy.

(1) Claims for household goods or POVs shipped or stored at Government expense. The Government can file a claim against a moving company for the amount paid to a claimant for loss or damages to the claimant's household goods or POVs shipped or stored at Government expense. Therefore, claimants can decide whether or not to file a claim with their insurance companies or to file a claim directly with the Government for these losses. Claimants should be advised that the Government can pay compensation only for the fair market value of any items lost or destroyed, while their private insurance policy may provide for recovery of full replacement value. The claimant should also be advised that the Government claim is restricted by maximum allowable payments for certain types of property and a statutory maximum amount payable per claim. If the claimant elects to file with the Government, all other rules for the adjudication and payment of PCA claims apply. If the claimant decides to file with the insurance company, the Government will adjudicate the PCA claim after the insurance company has made payment. The claim will then be processed in accordance with the procedures

set forth in the next paragraph. Claimants who have purchased full replacement value insurance from the carrier, however, must first file a claim with the carrier.

(2) All other claims. The claimant's demand on the claimant's insurance company should be made prior to payment of any claim filed with the Government unless the amount claimed is clearly less than the policy deductible. Except for claims for the loss or damage to household goods or POVs that are shipped or stored at Government expense, if a claimant chooses not to file with the insurance company, the value of any payment made on a claim will be reduced by the amount the claimant would have recovered from the insurance company.

(a) The standard rules for adjudication of PCA claims apply. The claim must be fully substantiated and the claims examiner must adjudicate each line item on the DD Form 1844 as if the member did not have insurance. The examiner will look to the insurance line item breakdown to determine the replacement cost to be used when adjudicating each line item on the DD Form 1844.

(b) The examiner must also determine the total amount paid by the insurance company for each line item. The total amount paid is determined by adding the amount allowed by the insurance company to the amount listed in the "holdback" column. Even when a claimant has full replacement value insurance, the company pays fair market value and "holds back" the amount that would equal full replacement value of the item until the claimant proves replacement of the item. At that time, the amount of the "holdback" is paid to the claimant. [Example. The insurance company has determined the adjudicated value of a claim to be $3,700. One of the items is a two-year-old 51" projection television with a replacement cost of $1,700 but a fair market value of $1,000. The insurance company allows $1,000 for the television and holds back the $700 until the claimant can show replacement of the TV. The total amount allowed by the insurance company for all line items, minus the holdback, is $3,000. The claimant has a $500 deductible; therefore, the claimant receives a check for $2,500 from the insurance company. To determine the total paid for all line items, add the total amount of the holdback to the check. The holdback of $700 added to the insurance payment of $2,500 means a total amount paid by the insurance company of $3,200 ($700 plus $2,500). The examiner then compares the total amount insurance paid with the total amount the Government would have paid for these same items if the member did not have insurance. If the amount the Government would have paid is less than the total amount paid by the insurance company

($3,200 - amount allowed, plus amount of "holdback", minus deductible) no additional payment can be made to the claimant. If the amount is greater, the member may be paid the difference.]

(c) In most cases, if the insurance company determines that the value of the loss exceeds the limits of the insurance policy, it will not issue a line item breakdown. In this case, the examiner adjudicates the entire claim to determine what the Government would have paid if there was no insurance coverage. If this amount is greater than the insurance payment, claimant will be paid the difference. [Example. The claimant submitted a claim for $70,000. The amount the Government would have paid if there was no insurance is $55,000. The insurance company paid $50,000, the maximum limits of the policy. The claims office will pay the claimant $5,000 ($55,000 adjudicated value minus $50,000 paid by insurance).]

f. Consequential Damages, and Claims for Inconvenience or Loss of Use. Expenses arising from late delivery of personal property, including but not limited to expenses for food, lodging, furniture rental, loss of use, interest, carrying charges, attorney's fees, telephone calls, additional costs of transporting the claimant or family members, time spent in preparation of the claim, or the costs of insurance are not compensable. These items are not personal property. Members should be referred to the Personal Property Office for assistance in filing inconvenience claims against the carriers.

g. Items of Speculative Value. Payment for loss or damage to theses, manuscripts, unsold paintings, or similar creative or artistic works is limited to the cost of materials only as the value of such items is speculative. Compensation for a utilitarian object made by the claimant, such as a quilt or bookcase, is limited to the value of an item of similar quality.

h. Business Property. Losses of items acquired for resale or use in a private business are not compensable as the possession of the property would not be considered incident to service. If property is acquired for both business and personal use, compensation will not be allowed if the business use is the primary purpose for which the item was designed or intended.

i. Motor Vehicles. Collision damage is not payable unless it meets the criteria established in paragraph 5(t)(2) of this enclosure.

j. Violation of Law or Directives. The loss or damage to property acquired, possessed, or transported unlawfully or in violation of competent regulations or directives is not payable.

k. Sales Tax and Drayage Charges. Sales tax and drayage charges (pick up and delivery) associated with repair or replacement costs are not payable unless the claimant provides proof that the charges were incurred.

l. Appraisal Fees. An appraisal, as distinguished from an estimate of replacement or repair, is defined as a valuation of an item provided by a person who is not in the business of selling or repairing that type of property. Normally, claimants are expected to obtain appraisals of expensive items at their own expense, but appraisal fees may be paid if the claims examiner deems an appraisal reasonably necessary and useful. When a high value item that was appraised prior to shipment is subsequently damaged, but is repairable, an appraisal done after the repair to determine the extent of any loss of value to the item is compensable. [Example. A claimant has a painting that was appraised one month before shipment at $5000. The painting arrived with a hole in a corner of the painting. The painting was repaired for $200 and an appraisal of the repaired painting shows a value now of $4,500. The appraisal cost $45. The claimant may be paid the $200 repair cost, the $500 LOV, and the $45 appraisal fee.]

m. Quantities of Property Not Reasonable or Useful Under the Circumstances. In evaluating claims that come within this category, factors to be considered are the claimant's living conditions, family size, social obligations, the claimant's need for more than average quantities, and the actual circumstances surrounding the acquisition and loss.

n. Intangible Property. The loss of intangible property (i.e., property that has no intrinsic marketable value such as bankbooks, checks, promissory notes, non-negotiable stock certificates, bonds, baggage checks, insurance policies, money orders, travelers checks, and licenses for software, etc.) is not compensable. When such documents are lost, the owner retains the property rights they represent. (See paragraph 5(bb)(4) of this enclosure on software licenses.)

o. Property Owned by the United States, Except Where the Claimant is Responsible to an Agency of the Government Other Than the DON. The loss must not have been caused by the claimant's negligence.

p. Contractual Coverage. Losses, or any portion thereof, that have been recovered or are recoverable pursuant to a contract are not compensable.

q. Real Property. The loss or damage to real property (i.e., land, crops, garden flowers, trees, and other things permanently joined to a house or land) is not compensable. Claimants will sometimes claim damage done to a house during either the packing or delivery of household goods. [Example. A carrier delivering a dresser drops the dresser down the stairs causing damage to the dresser and to the stairs. The claim for damage to the dresser is cognizable under the PCA, but a claim for damage to the stairs is not. The claimant should be directed to contact the carrier for resolution of the claim for damage to the stairs.]

r. Negligence of the Claimant. A loss caused in whole or in part by the failure of the claimant, or the claimant's agent, to exercise the degree of care expected under the circumstances is not compensable. Claims examiners must apply the "totality of the circumstances test" to determine whether the claimant exercised the degree of care that a reasonable and prudent person would have exercised under the circumstances and whether the claimant's negligence, or the negligence of the claimant's agent, was the proximate cause of the loss. If negligence attributable to the claimant was the proximate cause of the loss (i.e., if the loss would not have occurred but for the negligence) then claim is not payable.

s. Other Claims. Claims arising from the operation of a ship's store, laundry, dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487, Ship's Store Afloat, paragraph 8202. The NAVSUP publication, and other relevant publications, can be found at the Naval Supply Systems Command website: www.navsup.navy.mil.

7. ADJUDICATING AUTHORITIES

a. Claims by Navy Personnel

(1) The following officials are authorized to adjudicate and authorize payment of PCA claims up to $100,000:

(a) Judge Advocate General;

(b) Deputy Judge Advocate General;

(c) Any Assistant Judge Advocate General; and

(d) Deputy Assistant Judge Advocate General (Claims, Investigations and Tort Litigation);

(2) Commanding Officers of Naval Legal Service Offices are authorized to adjudicate and authorize payment of PCA claims up to $40,000.

(3) The following individuals are authorized to adjudicate and authorize payment of PCA claims up to $5,000:

(a) Officers in Charge of Naval Legal Service Office Detachments;

(b) The Staff Judge Advocate, Naval Air Station, Keflavik; and

(c) Any person attached to a Naval Legal Service Office when specifically designated by the Commanding Officer of that Naval Legal Service Office.

(4) Any individual, when personally designated by the Deputy Assistant Judge Advocate General (Claims, Investigations and Tort Litigation), may adjudicate and authorize payment of PCA claims up to any delegated amount not to exceed $40,000.

b. Claims by Marine Corps Personnel.

(1) The following officials are authorized to adjudicate and authorize payment of PCA claims up to $40,000:

(a) Commandant of the Marine Corps;

(b) Deputy Commandant, Manpower and Reserve Affairs Department;

(c) Director, Personal and Family Readiness Division;

(d) Head, Military Personnel Services Branch;

(e) Head, Personal Property Claims Section; and

(f) Any individual personally designated by the Commandant of the Marine Corps may adjudicate and authorize payment of PCA claims up to any delegated amount not to exceed $40,000.

(2) The Assistant Head, Personal Property Claims Section is authorized to adjudicate and authorize payment of PCA claims up to $25,000.

(3) Any individual at Marine Corps Field Transportation Management Office (TMO)/Claims Activities, when personally designated by the Director, Personal and Family Readiness Division, may be authorized to adjudicate and authorize payment of personnel claims up to any delegated amount not to exceed $40,000.

8. PRESENTMENT OF CLAIM

a. General. A PCA claim shall be submitted in writing and, if practicable, be presented to the claims office or personal property office serving the installation where the claimant is stationed, or nearest to the point where the claimed loss or damage occurred. If such submission is impractical under the circumstances, the claim may be submitted in writing to any installation or establishment of the Armed Forces, which will then forward the claim to the appropriate Navy or Marine Corps claims office for processing. To constitute a filing under this regulation, a claimant must present a claim in writing to one of the military departments. Incomplete claims shall be accepted and logged in as received. Claimants submitting such claims, however, shall be informed in writing that properly completed forms or necessary substantiation must be received within a fixed period of time (normally 30 days) or the claim will be denied or paid only in the amount substantiated.

b. Statute of Limitations (SOL). A claim must be presented in writing to a military installation within two years after it accrues. "Presented" means the claim must be received at a military installation; it is not enough to be postmarked within two years after the claim accrued. This is a statutory requirement and may only be waived if a claim accrues during time of armed conflict or an armed conflict intervenes before the two years have run, and the claimant can show good cause. In this situation, however, a claim must still be presented not later than two years after the cause no longer exists or the end of the armed conflict, whichever is earlier. Also, if the claimant is held as a prisoner of war or as a hostage, examiners

will exclude such time when computing the two year SOL. A claim accrues on the day the claimant knows or should know of the loss. For losses that occur in shipment of personal property, normally the day of delivery of each shipment or the day the claimant loses entitlement to storage at Government expense (whichever occurs first) is the day the claim accrues. If a claimant's entitlement to Government storage terminates, but the property is later delivered at Government expense, the claim normally accrues on the day of delivery. In computing the two-year SOL, examiners will exclude the first day (the day of delivery or the day of the incident that gives rise to a loss or damage) and include the last day. If the last day falls on a non-workday, examiners will extend the two-year SOL to the next workday. These rules apply to each personal property delivery regardless of whether the claimant has multiple deliveries.

c. Substantiation. The claimant is responsible for substantiating ownership or possession of the item claimed as lost or damaged. In the case of a shipment loss, the claimant must prove that the item was tendered to the carrier for shipment. The claimant must also substantiate that the item was lost or damaged, and must substantiate the value of the property with documentation from competent authority. Claimants are expected to report losses promptly. The greater the delay in reporting a loss, the more substantiation the claimant may be required to provide.

(1) Missing items not noted at time of delivery on the DD Form 1840. Claimants are expected to list missing inventory items and obvious damage to their personal property on the DD Form 1840 at the time of delivery. The function of the DD Form 1840R is to provide notice to the carrier of damaged or missing inventory items discovered after delivery. Unless the missing item is so large (e.g., a piano, sofa, etc.) that the claimant should have noticed it was missing at time of delivery, as long as the item is listed on the DD Form 1840R then payment will not be denied solely because the claimant failed to note it on the DD Form 1840 at the time of delivery. If the item is so large that the claimant would reasonably be expected to have noticed its absence at time of delivery, then the claimant must provide a statement that explains why the claimant failed to notice the missing item at the time of delivery and note it on the DD Form 1840.

(2) Later-discovered shipment loss or damage. A claimant has 70 days to unpack, discover, and report a loss or damage that is not obvious at the time of delivery. In most

cases, a loss or damage that is discovered later and reported in a timely manner will be considered to have been incurred during shipment. If a claimant fails to submit the DD Form 1840R to the carrier or a personal property office or claims office within 70 days after the delivery date, the claim may still be payable. If the claimant submits the DD Form 1840R to the carrier, personal property office or claims office on or before day 75 and that office was able to dispatch it before the close of business on day 75, the claim will still be adjudicated with no deduction for lost carrier recovery. The Government is required to dispatch a notice of loss or damage to the carrier within 75 days after delivery. If the claimant does not turn in the DD Form 1840R directly to the carrier, the claimant is required to turn in the DD Form 1840R to the personal property office or claims office within 70 days after delivery in order to give the Government at least 5 days to complete a dispatch of notice to the carrier. If the claimant submits the DD Form 1840R on or between days 70 and 75 and block 9 of the DD Form 1840 has a carrier fax number, personnel in the office receiving the DD Form 1840 will fax the form (both sides) and any continuation sheets to the carrier. A confirmation sheet that shows the date, time, and carrier receipt will be attached to the DD Form 1840. Personnel in most claims offices will dispatch the DD Form 1840R at the time it is submitted and give the claimant a copy before the claimant leaves the office. As long as the Government dispatches the DD Form 1840R before the expiration of day 75, claims examiners should take no deduction for lost potential carrier recovery. Note, however, that while the carrier is entitled to notice of the loss or damage, that notice can be in any format and does not have to be on DD Forms 1840/1840R.

(3) Damage to POVs in shipment. Persons shipping POV's are expected to list shipment damage on DD Form 788 (Private Vehicle Shipping Document for Automobiles) when they pick up the vehicle. Obvious external damage to POVs that is not listed on DD Form 788 is not payable. Damage the claimant could not reasonably be expected to notice at the pickup point (i.e., "hidden damage" such as a broken interior compartment or seat bracket) should be considered if the claimant reports the damage to the claims office within a reasonable time (e.g., three days) after leaving the Vehicle Processing Center. Failures due to wear and tear or due to faulty repairs or maintenance are considered to be mechanical defects and are not payable. The vehicle's age, condition, and odometer reading can provide insight as to whether a failure was due to damage or a mechanical defect. Statements by the claimant that the claimed

damage or mechanical failure occurred during shipment are insufficient to allow payment on the claim. To substantiate a claim for mechanical problems, the claimant must show that the failure is due to damage to the vehicle or the carrier's negligence. Members may settle small claims for damages directly with contractors and submit claims to the Government for payment of other items.

(4) Credibility. Factors that may indicate a claimant's credibility is questionable include amounts claimed that appear to be exaggerated in comparison with the costs of similar items, claims for insignificant or almost undetectable damages, claims for a number of items with very recent purchase dates, and statements that appear incredible. Such claimants should be required to provide specific evidence for each item claimed.

(a) Fraudulent claims discovered before payment. Claims examiners will continue to deny individual line items that are tainted by fraud. In addition, the Commanding Officer of a Naval Legal Service Office may completely deny a claim that is "substantially tainted by fraud." This action is independent of any other adverse action, administrative or judicial, that appropriate officials may take against a claimant who submits a fraudulent claim. The term "substantially tainted by fraud" is not susceptible to a complete definition, but it would include a claim submitted with altered estimates, a claim for numerous missing items that the claimant clearly never owned, and a claim in which the claimant intentionally and substantially misrepresented the ages or the condition of claimed items.

(b) Fraudulent claims discovered after payment. If fraud is detected after payment has been made, the claims examiner should re-examine the claim and determine whether to pay any items or whether to deny the claim entirely. The examiner should send a letter to the claimant demanding re-payment of the "over payment" within 30 days. The letter should warn the claimant that failure to repay will result in the matter being referred to the claimant's command for action. If the claimant still refuses to repay even after any intervention efforts by the command, examiners should submit DD Form 139 (Pay Adjustment Authorizations) to direct the Defense Finance and Accounting Service to withhold the money from the member's pay and credit it to OJAG claims funds.

(c) Criminal action. The above administrative actions will be taken regardless whether or not criminal charges are brought against the claimant.

(5) Inspections. Whenever a question arises about damage to property, the best way to determine a proper payment is to examine the item closely to determine the nature of the damage. For furniture, examiners should inspect undersurfaces and the edges of drawers and doors to determine whether the material is solid hardwood, fine quality veneer over hardwood, veneer over pressed wood, or other types of material. If the inspection is conducted at the claimant's quarters, the examiner should observe the general quality of property owned by the claimant. Examiners should routinely direct claimants to bring in vehicles and small broken items of value (such as figurines) for inspection. Observations by repairmen and transportation inspectors may also be valuable for claims adjudication purposes, but when possible examiners should personally inspect items. Such inspections are necessary to reduce the number of reconsiderations and fraudulent claims.

9. FORM OF CLAIM. The claim should be submitted on DD Form 1842 (Claim for Personal Property)(see Appendix 6-a) accompanied by DD Form 1844 (Schedule of Property)(see Appendix 6-b). Any writing will be accepted and considered, however, if it substantially describes the facts necessary to support a claim cognizable under these regulations. The claim must be signed by a proper claimant (see paragraph 4 above) or by a person with an appropriate Power of Attorney from a proper claimant. The claim must include a copy of the Power of Attorney.

a. Documents for Transportation Loss Claims. Claims office personnel must have the following documents to adjudicate a claim. These documents can be obtained from the claimant or from the transportation office.

(1) A copy of the GBL or other document used for shipment or storage. Claims offices can now access most GBLs through the DoD Electronic Data Access (EDA) web site at http://eda.ogden.disa.mil/. Only registered users have access to that site; the Head, Affirmative and Personnel Claims Branch, OJAG Code 15, coordinates registration requests for Navy and Marine Corps claims personnel;

(2) A copy of the inventory;

(3) A copy of the DD Form 1840 and DD Form 1840R;

(4) Where storage in transit was extended from 180 days to 270 days, a copy of the authorization from the transportation office allowing this extension at Government expense;

(5) Any other documents prepared throughout the moving process that can assist the examiner in adjudicating the claim. For example, a copy of DD Form 1164, Service Order for Personal Property, from the transportation office may show that a special service such as crating a grandfather clock or piano was required for the move and the DD Form 619-1, Statement of Accessorial Services Performed, may show that the crate for a grandfather clock was constructed and billed to the Government. The information supplied by those documents would be sufficient to substantiate payment for the loss of a grandfather clock that did not appear on the inventory; and

(6) For POV shipments, a copy of the DD Form 788.

b. Documents for Other Claims. Most claims are settled based on documents the claimant provides. The evidence must be sufficient to show that a loss has occurred and the value of the loss. Claimants should provide items such as police reports, barracks high-value items inventory sheets, statements from family members or roommates, credit card receipts, bank statements, sales receipts, and any other documents that are relevant to substantiate the claim. Examiners must use common sense when deciding which documents are needed to assist in the adjudication of the claim. For example, if a claimant is claiming for a theft from quarters, the claimant's failure to file a police report at the time of the theft may make it difficult for him to substantiate that the event occurred. But examiners should also consider that a claimant's filing of a police report alone will not prove a theft occurred.

10. COMPUTATION OF PAYMENT. OJAG Code 15 periodically publishes an Allowance List-Depreciation Guide that specifies rates of depreciation and maximum payments applicable to certain categories of property. The Allowance List-Depreciation Guide is binding on all DON claims examiners. The value of a loss is first determined and then adjusted to reflect payments, repairs, or replacement by carriers or insurance companies, or lost potential insurance or carrier recoveries.

a. Repair of Items. For items that can be economically repaired, the cost of repair is the measure of the loss. The cost of repair may be the actual cost as demonstrated by a paid bill, or may be reasonable estimated costs as demonstrated by an estimate of repair prepared by a person in the business of repairing that type of property. Navy policy is that repair estimates are not required for repair costs that are less than $100. This policy was adopted for administrative purposes only.

Claims examiners have a right and a duty to request repair estimates whenever they determine that the repair cost claimed exceeds the damages described.

(1) Loss of Value (LOV).

(a) Minor damage not worth repairing. An LOV, rather than repair cost, should be paid when an item incurs minor damage that is not economical to repair but the item remains useful for its intended purpose. An LOV payment is particularly appropriate when the item is not of great value and has preexisting damage (PED). An LOV payment is also appropriate to compensate claimants for minor damage, such as a chip or surface crack to a figurine or knickknack. [Example. An inexpensive, fiberboard coffee table with extensive PED is scratched, and repair of the scratch would exceed the value of the table. Under the circumstances, an LOV payment would be appropriate.]

(b) Damage to upholstered furniture. If damage can be repaired imperceptibly by cleaning or reweaving, the claimant is entitled only to payment of the repair cost. If repairs would be noticeable but the damage is to an area not normally seen, repair costs plus an LOV adjustment would be appropriate. Alternatively, if repairs would be noticeable but the item is of no significant value and has already incurred PED, repair costs and an LOV adjustment could be appropriate even if the damage is to an obvious area. If repairs would be so noticeable as to destroy the usefulness of the item, however, the item should be reupholstered or replaced. What is considered to be noticeable will depend on the nature and value of the item and the nature of the damage.

(c) Cosmetic damage to non-decorative items. An LOV payment may also compensate claimants for cosmetic damage to items that were not purchased for purposes of display or decoration. [Example. The casing of a washing machine is dented. The washing machine is not decorative in nature and still functions perfectly. An LOV payment, rather than replacement of the washing machine or the casing, would be an appropriate measure of the claimant's loss.]

(2) Pre-existing damage (PED) to repairable items. PED is damage to an item that predates the incident giving rise to a claim. PED is most commonly identified by the use of symbols on inventories. Whenever PED is listed on an inventory, examiners must determine whether the PED did in fact exist and whether the

cost of repairing the item includes repairing PED. The fact that a claimant signed the inventory that listed PED is conclusive evidence that PED did exist unless the member has taken written exceptions on the inventory to the carrier's description of PED. However, the claimant can rebut this conclusion with clear and convincing evidence that the damage was not pre-existing (e.g., the claimant produces pictures showing fresh wood exposed in the gouges). These findings are essential for carrier recovery purposes. Often, inspecting the item or calling the repairman who prepared the estimate is the only way for an examiner to make an effective determination.

(a) Estimates that do not include repair of PED. If an estimate does not include repair of PED, even if PED is listed on the inventory, examiners will make no deduction in adjudicating the claim. Examiners should record this fact on the chronology sheet in the claims file.

(b) Estimates that include repair of PED. If repair of PED is included in the estimate, examiners will deduct a percentage that is attributable to repair of PED in adjudicating the claim.

(c) Repairs to new damage that cannot be made without repairing PED. While it is best that any repair estimate identify that the repairs being made will repair an area of PED, a determination by the examiner that PED will also be repaired in order to repair the new damage will support a decision not to deduct for PED. [Example. An inventory shows PED of scratches and gouges on a table leg and the table leg is broken off in the new move. Payment may be made for the replacement of the leg without taking a deduction for the PED, as the repair of the new damage necessitated the repair of the PED.]

(3) Mechanical defects. Damage resulting from a manufacturer's defect or from normal wear and tear is not compensable. Damage to the engine or transmission of an old vehicle during shipment is probably due to a mechanical defect or normal wear and tear. Internal damage to older appliances, such as televisions, is also often due to a mechanical defect or normal wear and tear, particularly when there is no external damage to the item. Examiners should assess claims for internal damage to small appliances that are not normally repaired (e.g., toasters or hair dryers), based on damage to other items in the carton and the shipment, the age of the item, the honesty of the claimant, and whether there are loose parts inside the

appliance. If the evidence suggests rough handling caused the damage, the examiner should pay the claim. There is no need to require the claimant to get an estimate of repair for these small items. A repairman should evaluate internal damage to larger items such as televisions or stereos. Evidence that suggests rough handling, such as smashed boards, provides a basis for payment. Evidence that suggests a fault in the item, such as burned-out circuits, does not support payment. Deterioration because an item in storage was not used for a long time, rather than because the item was mishandled or the conditions of storage were improper, is also considered due to normal wear and tear and is not compensable.

(4) Wrinkled clothing. Clothing wrinkled in shipment presents special problems. Unless the wrinkling is so severe as to amount to actual damage, the cost to press wrinkles out of clothing after a move is not compensable. The mere fact that clothing was "wadded up" or "used as packing material" is not in itself sufficient to establish a payable claim. The wrinkling must be such that professional pressing is necessary to make the clothing usable. This determination will depend on the extent of the wrinkling and the nature of the material.

(5) Wet and mildewed items. A claimant has a duty to mitigate damages by drying wet items to prevent further deterioration. Items that have been wet are not necessarily damaged and claimants who throw them away have difficulty substantiating that a loss has occurred. Although a deeply seated mildew infestation is almost impossible to remove completely, items lightly infested can often be cleaned. Claimants must provide evidence of their attempt to clean these items before any replacement can be considered.

(6) Carrier estimates. Carriers may submit estimates of repair for damaged property that claims examiners may use when adjudicating the claim. Examiners must evaluate itemized carrier estimates in the same manner as estimates received from the claimant.

(a) If the carrier submits an itemized repair estimate within 45 calendar days of delivery, examiners must use that estimate if it is the lowest overall and the repair firm selected by the carrier can and will perform the repairs for the price stated based upon the repair firm's reputation for timely and satisfactory performance.

(b) If the carrier submits an itemized repair estimate more than 45 calendar days after delivery but before the claim has been adjudicated and the estimate is the lowest overall, examiners should use that estimate if the repair firm selected by the carrier can and will perform the repairs for the price stated based upon the repair firm's reputation for timely and satisfactory performance.

(c) Examiners may reject a carrier's estimate received in a timely manner for many of the same reasons that a claimant's estimate would be rejected. For example, examiners should not use the estimate if the repair firm chosen by the carrier has a reputation for incompetence, does not provide an itemization of repairs to be made, lacks the skill to do any specialized repairs required, cannot perform the work in a timely manner, or is known to provide unreliable estimates. If the carrier provides an estimate from a repair firm that cannot perform the repairs in the claimant's home and is located a considerable distance from the claimant, examiners should consider excessive drayage costs in determining whether a carrier's estimate should be used in the adjudication process. Examiners who do not use a carrier estimate when adjudicating a claim must annotate the file identifying the reason why the carrier estimate was not used.

(d) If a claimant uses a repair firm selected by the carrier for repairs but ends up dissatisfied with the result, examiners should investigate and determine whether there is an objective basis for the dissatisfaction. Examiners must distinguish between competent workman-like repairs and the "perfect" repairs that an unreasonable claimant may demand. If the repairs are not adequate, the examiner should so advise the carrier and the carrier's repair firm. If the carrier and the carrier's repair firm are afforded an opportunity to correct the problem and cannot or will not do so, the examiner should take whatever remedial action is appropriate based on the particular facts, which may include payment based on a higher repair estimate.

b. Replacement of Items. A claimant is entitled to the fair market value of missing or destroyed items. An item that has sustained damage is considered destroyed if it is no longer useful for its intended purpose and the cost of repairing it exceeds its fair market value. Fair market value is the measure of damages under the PCA. There are many ways to establish fair market value, including the following:

(1) Similar used items. If there is a regular market for used items of the particular type for which a PCA claim is submitted, the loss may be measured by the cost of a similar item of similar age. Prices obtained from industry guides or estimates from dealers in that type of property are acceptable to establish value. There is a regular market for used cars and the value of used automobiles is always determined by consulting the National Automobile Dealer's Association (N.A.D.A.) Official Used Car Guide rather than the depreciated replacement cost. Similarly, the Mobile Home Manufactured Housing Replacement Guide may be used to value a destroyed mobile home. Where there is no regular market in a particular type of used item, however, examiners should avoid obtaining or using estimates from dealers in "collector's items." Similarly, while use of on-line auction services may provide some guidance on market value for used items, such services are not normally in the business of selling items (they simply provide the platform for others) and examiners should use those services only as a last resort after first searching other methods to determine value.

(2) Depreciated replacement cost. A catalog or store price for a new item that is similar in size and quality is depreciated using the Allowance List-Depreciation Guide to reflect wear and tear on the missing or destroyed item. The replacement cost for identical items--particularly decorative items--should be used whenever the item is readily available in the local area, but a claimant who is eligible to use the NEX and the NEX Mail Order Catalog should not be allowed a higher replacement cost of an item from a specialty store when the NEX carries an item comparable in size, quality, and features from another manufacturer (e.g., a television).

(3) "Fair and Reasonable" (F&R) payments. A fair and reasonable payment method should be used sparingly when other measures would compensate a claimant appropriately. A F&R payment for a missing or destroyed item should reflect the value of an item similar in quality, description, age, condition, and function to the greatest extent possible. A F&R payment for a damaged item should reflect the amount a firm would charge for repair of the item. Whenever a F&R payment is made, examiners should explain its basis on the chronology sheet, in the comments block of DD Form 1844 (Schedule of Property), or in a separate memorandum for the file. A F&R payment may be appropriately considered in the following instances:

(a) The item is obsolete but has some value.

(b) The claimant cannot replace the item in the local area.

(c) The claimant cannot replace the item at any cost.

(d) Repair costs or replacement costs are excessive for the item and an LOV adjustment is not appropriate.

(e) The claimant has substantiated a loss in some amount but has failed to substantiate a loss in the amount claimed.

c. Depreciation. The measure of damages under the PCA is the fair market value of the loss. Except in unusual cases, a used item that has been lost or destroyed is worth less than a new item of the same type. The price of a new replacement item is depreciated to award the claimant the fair market value of the lost or destroyed item. Average yearly and flat rates of depreciation have been established to determine the fair value of used property in various categories. These rates are listed in the Allowance List-Depreciation Guide. The listed depreciation rate should be adjusted if an item has been subjected to more or less wear and tear than normal or if the replacement cost the claimant provides is for a used item rather than a new one. Yearly depreciation is not taken during periods of storage and normally no depreciation is taken on repair costs or on replacement costs for items less than 6 months old, excluding the month of purchase and the month the claim accrued, but see subparagraph (3) below.

(1) Depreciating replacement parts. Examiners should take no depreciation on replacement parts for damaged items unless they are parts separately purchased or normally replaced during the useful life of the items.

(2) Depreciating fabric for reupholstry. When upholstered furniture is reupholstered because the damage is too severe to be repaired and an LOV payment is not appropriate, the cost of new fabric is depreciated at the rate reflected in the Allowance List-Depreciation Guide. If the item has been reupholstered since it was purchased, depreciation is measured from the date the item was last reupholstered rather than from the date the item was originally purchased. Labor costs are allowed as claimed. If the estimate does not list separate

costs for fabric and labor, the labor costs may be assumed to be 50 percent of the total bill.

(3) Rapidly depreciating items. Tires, most clothing items, and most toys rapidly lose their value, as the high depreciation rate for these items reflects. Examiners should take depreciation on such items even when they are less than 6 months old. As a general rule, examiners should take half of the normal yearly or flat rate depreciation on such items when they are between three and six months old at the time of the loss.

(4) Obsolescence. Even though depreciation is not taken during periods of storage, examiners should consider obsolescence for those items that have lost value because of changes in style or technological innovations. For instance, a computer that is placed in storage for three years does not "depreciate." If a claimant proves damage to the computer after three years of storage, however, the computer will have lost value due to obsolescence. Thus, the calculation of the computer's fair market value will require a depreciation deduction.

(5) Military uniforms. Examiners will normally take no depreciation on military uniforms. Examiners should take a depreciation deduction, however, on military uniform items that are being phased out or that belong to persons separating from the service. Socks and underwear are not considered military uniform items.

d. Salvage Value and Turn-in to the Carrier. On Continental United States (CONUS) domestic shipments, the carrier may choose to salvage items where it has agreed to pay the full fair market value to the Government. Pursuant to a Joint Military-Industry Memorandum on Salvage, items that are hazardous, such as mildewed items or broken glass (except items such as figurines and crystal with a per item value of more than $50) may be disposed of as the claimant chooses. Pursuant to the Memorandum on Salvage, the carrier has until the end of the inspection period or 30 days after receipt of the Government demand, whichever is greater, to identify items for salvage, contact claimants, and pick-up the items from the claimant. If the carrier has been unable to contact the claimant or the claimant refuses to cooperate with the carrier, the carrier will contact the claims office that adjudicated the claim for assistance in resolving the conflict. Examiners should remind the claimant that they must cooperate or risk having to pay the

Government back the money received for the specific item the carrier desires to salvage.

e. Standard Abbreviations. The claims examiner's intent in adjudicating claims should be clearly reflected in the "Remarks" section of the DD Form 1844. Examiners will use the following standardized abbreviations in completing that section, and no others. Whenever one or more of these abbreviations will not adequately explain how the claimant has been compensated, examiners must insert a brief explanation in the remarks section of the DD Form 1844, the comments section on the bottom of the DD Form 1844, or on the chronology sheet in the claims file.

(1) AC--amount claimed. The amount claimed was paid to the claimant. This abbreviation is not used if the claimant has presented an estimate of repair.

(2) AGC--agreed cost of repairs. The claimant did not present an estimate but instead, after discussing the matter with the examiner, agreed to an amount that represents the claimant's estimate of how much it would cost to repair the damaged item. The examiner may accept this amount as a fair estimation of the cost of repair based on the amount of damage, the value of the item, and the cost of similar repairs in the area.

(3) D--depreciation. Yearly depreciation was taken on the destroyed or missing item in accordance with the appropriate Depreciation Guide in effect at the time of the loss. Examiners must explain any deviations from standard rates.

(4) DV--depreciated Value. The depreciated value was awarded because the repair costs exceeded the value of the item. Whenever a claimant claims a repair cost that appears to be very high relative to the age and probable replacement cost of the item, examiners should obtain the replacement cost and determine the depreciated value of the item. Examiners will not depreciate the original purchase price.

(5) ER--estimate of repair. The claimant provided an estimate of repair that was used to value the loss. If multiple estimates were provided, they should be numbered and referred to as exhibits.

(6) EX--exhibit. When numerous documents have been provided to substantiate a claim, they should be numbered and referred to as exhibits.

(7) FR--flat rate depreciation. Flat rate depreciation was taken on an item in accordance with the Depreciation Guide in effect at the time of the loss. Examiners must explain any deviations from the norm.

(8) F&R--fair and reasonable. A F&R payment was made. (See paragraph 9(b)(3) above.)

(9) LOV--loss of value. A LOV payment was made. (See paragraph 9(a)(1) above.)

(10) MA--maximum allowance. The adjudicated value, listed in the "Amount Allowed" column, exceeds a maximum allowance.

(11) N/P--not payable. The item is not payable. Examiners will explain the reason for this comment (i.e., "no proof of tender to the carrier").

(12) OBS--obsolescence. A percentage was deducted for obsolescence.

(13) PCR--lost potential carrier recovery. A deduction was made for lost PCR. Lost PCR is a deduction of the amount that the Government could have recovered from the carrier but for the action or in-action of the claimant or an authorized agent. The most common reason for deduction of PCR is failure of the claimant to file the DD Form 1840/R (Appendix 6-c) in a timely manner and failure of the claimant to list all damages or missing items on either the DD Form 1840 or DD Form 1840/R. See Appendix 6-d for a copy of the recovery MOU.

(14) PED--preexisting damage. A deduction was made for PED. (See paragraph 10(a)(2) above.)

(15) PP--purchase price. The purchase price was used to value the loss. Normally, the purchase price is not an adequate measure of the claimant's loss. If the claimant used the replacement cost of a dissimilar item or otherwise failed to substantiate the replacement cost, however, examiners may use a recent purchase price of less than one year if a true replacement cost is not available.

(16) NEX--Navy Exchange replacement cost. A replacement from the NEX was used.

(17) RC--replacement cost. A replacement cost was used. Examiners should list the store or catalog from which the replacement cost was taken.

f. Sets. When component parts of a set are missing or destroyed, normally the claimant is entitled to only the replacement cost of the missing or destroyed components. In some instances, however, a claimant would be entitled to replacement of the entire set or to payment of an LOV for the set in addition to replacement cost of the missing/destroyed component. Some claimants will assert that all of the items in a room are part of a set. Pieces sold separately, however, are ordinarily not considered parts of a set, and pieces that merely complement other items, such as a loveseat purchased to complement a particular hutch, are never considered part of a set. When a component part of a set is missing or destroyed and cannot be replaced with a matching item, or has to be repaired so that it no longer matches other component parts of the set, the following rules apply:

(1) The set is no longer useful for its intended purpose. When a set is no longer useful for its intended purpose because component parts are missing or destroyed, the entire set may be replaced. Note that several firms will match discontinued sets of china and crystal and that replacement of the set is not authorized if replacement items can be obtained. Generally, with china and crystal the value of the set as a whole is not destroyed unless more than 25 percent of the place settings are unusable. Exceptions may be made if the claimant can demonstrate a particular need for a certain number of place settings because of family size or social obligations. In those rare instances when an entire set is replaced, the claimant will be required to turn in undamaged pieces.

(2) The set is still useful for its intended purpose. When missing pieces cannot be matched and there is measurable decrease in the value of the set, but the set is still useful for its intended purpose, the claimant is awarded the value of the missing pieces plus an amount for the diminution in value of the set as a whole. The amount awarded as an LOV will vary depending on the exact circumstances.

(3) Mattresses and box springs. A mattress and box spring set is covered by sheets or blankets during normal use. Such sets are still useful for their intended purpose if one piece of the set is lost or has to be re-covered in a different fabric. No award will be made for the undamaged piece.

(4) Furniture sets re-upholstered. When one piece of a set of upholstered furniture suffers damage that cannot be repaired or re-upholstered in matching fabric, re-upholstering the entire set, or re-upholstering the damaged piece plus LOV should be considered. Factors to take into account include the value of the set, PED to the set, the nature of the current damage, and the extent to which the claimant's furniture is already mismatched.

g. Mobile Homes. Mobile homes present special problems. Most mobile homes, particularly larger ones, are not built to withstand the stress of multiple long moves. While the Mobile Home One-Time Only rate solicitation program (effective 1 November 1987) may have reduced the incidence of loss and damage by encouraging carriers to use extra axles when necessary, mobile home shipments can result in enormous, uncompensated losses for servicemembers and present unusual difficulties for claims examiners.

(1) Latent defects. Many carriers will attempt to escape liability by attributing all damage to latent manufacturing defects. A loss due to such a defect, like a loss due to any other mechanical defect, is not considered incident to service. When an engineer's report or other evidence shows that damage was caused by a defect rather than by the carrier's failure to take the necessary care, the following rules apply:

(a) If both the carrier and the claimant knew or should have known of the defect, and if the claimant took no corrective action and had the mobile home shipped anyway, the claim is not payable.

(b) If the carrier knew or should have known of the defect, and the claimant could not reasonably have been expected to know of it, the claim is payable and liability should be pursued against the carrier.

(c) If neither the claimant nor the carrier could reasonably be expected to know of the defect, the claim is not payable.

(2) Substantiation. Prior to adjudication of such claims, the mobile home should be inspected and the following evidence obtained, if possible:

(a) DD Form 1800 (Mobile Home Shipment Inspection at Destination). This document shows the condition of the home at

origin prior to shipment. This document is prepared by the Transportation Office (TO) and is signed by the servicemember, the carrier's representative, and the Government inspector. It is vital and a claim should not be paid without it. At destination, damages noted at delivery should be annotated and the form dated and signed by the driver and the servicemember. Damages may be listed on this form or on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery).

(b) DD Form 1840/1840R. Since 1 November 1987 (see Appendix 6-d), later-discovered damages must be listed on DD Form 1840R and dispatched to the carrier within 75 days of delivery. Timely notice on mobile home shipments differs slightly from such notice on other shipments. Item 306 of the carrier's rate solicitation provides that "upon delivery by the carrier, all loss of or damage to the mobile home shall be noted on the delivery document, the inventory form, the DD Form 1800, and/or the DD Form 1840. Late(r) discovered loss or damage, including personal property within the mobile home, will be noted on the DD Form 1840R not later than 75 days following delivery and shall be accepted by the carrier as overcoming the presumption of correctness of delivery receipt."

(c) DD Form 1412 (Inventory of Items Shipped in Housetrailer). The carrier is required to prepare this form in coordination with the servicemember.

(d) DD Form 1841 (Government Inspection Report). If a Government representative does not inspect the mobile home at time of delivery, examiners should request an inspection.

(e) Driver's statement. Examiners should request the mobile home carrier to provide (within 14 days) a statement from the driver of the towing vehicle explaining the circumstances surrounding the damage as well as detailed travel particulars. If the mobile home carrier does not respond, the examiner should so annotate the file.

(f) Owner's statement. The claimant should provide a statement concerning the age of the mobile home, the date and place purchased, any prior damage or repairs, all prior moves, and all prior claims relating to the mobile home.

(g) Estimates of repair. When possible, the claimant should be required to obtain two estimates of repair from firms in the business of repairing, rather than selling, mobile homes. Such estimates should list the approximate value

of the home before and after damage, a detailed breakdown of the repairs needed and their cost, and the cause of damage.

(h) Engineer's statement. Where the facts indicate the possibility of a latent defect, the claims examiner should assist the claimant in obtaining a statement from a qualified engineer or experienced mobile home maintenance professional that explains the cause of damage. When possible, the examiner should coordinate in advance with facilities engineers or with local reserve units that have members with engineering expertise to provide such inspection.

(3) Compensable damage. In adjudicating the claim, examiners may pay a claimant for loss of or damage to the mobile home except when the damage is due to a latent defect, to the claimant's failure to place the home in fit condition to ship, or to the claimant's failure to have the roof resealed. The claimant may also be compensated for the reasonable cost of repair estimates provided by firms in the business of mobile home repair and for opinions prepared by qualified engineers. The claimant may not be compensated for services the carrier failed to perform or performed improperly or for other incidental expenses. The examiner should refer the claimant to the transportation office for assistance with those claims. Such services (listed on DD Form 1843 and the GBL correction notice) include:

(a) Escort or pilot services, ferry fees, tolls, permits, overdimension charges, or taxes.

(b) Storage costs or parking fees en route.

(c) Expand charges and charges for anti-sway devices, brakes and brake repairs, or adding or replacing axles, tubes, or tires.

(d) Wrecker service.

(e) Connecting or disconnecting utilities.

(f) Blocking, unblocking, or removing or installing skirting.

(g) The cost of separating or reassembling and resealing a doublewide mobile home.

11. PAYMENTS AND COLLECTIONS. Payment of approved personnel claims and deposit of checks received from claimants as returns for incorrectly paid amounts will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose.

12. PARTIAL PAYMENTS

a. Emergency Partial Payments when Hardship Exists. When a claimant has suffered a significant, compensable loss of items that are needed for daily living, and can demonstrate a need for immediate funds to replace some of those items (e.g., food, clothes, baby items, etc.) the adjudicating authority may authorize a partial payment of an appropriate amount, normally one-half of the estimated total payment. The member must sign a DD Form 1842 (where practicable) detailing the circumstances of the loss, and estimate the amount of the loss in the "amount claimed" block. When a partial payment is made, a copy of the payment voucher and all other information related to the partial payment shall be placed in the claim file. Action shall be taken to ensure the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

b. Marine Hardship Payments. The Marine claimant's TMO shall ensure compliance with all requirements of subparagraph (a) above, and may request authority for payment by message from the Commandant of the Marine Corps (MRP-2).

c. Effect of Partial Payment. Partial payments are to be subtracted from the adjudicated value of the claim before payment of the balance due. Overpayments must be recouped.

13. RECONSIDERATION AND APPEAL

a. General. When a claim is denied either in whole or in part, the claimant shall be given written notice of the initial adjudication and of the right to submit a written request for reconsideration to the original adjudicating authority within six months from the date the claimant received notice of the initial claim adjudication. If a claimant requests reconsideration and if it is determined that the original action was erroneous or incorrect, that action shall be modified by the original adjudicating authority and, when appropriate, a supplemental payment shall be approved. If the original adjudicating authority does not grant full additional payment,

the file shall be forwarded for reconsideration to the next higher adjudicating authority. The next higher adjudicating authority is defined as that person in the chain of command who has the next higher dollar amount of adjudicating authority. If an official outside the Naval Legal Service Command originally adjudicated the claim (i.e., an authorized Staff Judge Advocate), the next higher adjudicating authority will be an official within the servicing NLSO. The decision by the next higher adjudicating authority is final. For claims originally adjudicated by a Commanding Officer of a NLSO, the files will be forwarded to OJAG Code 15 for final action. The claimant shall be notified of this action either by letter or by copy of the letter forwarding the file to the next higher adjudicating authority. The forwarding letter shall include a synopsis of the action taken on the file, the reasons for the action or denial on the claim, and a recommendation on any further action or denial on the claim. If partial payment on the claim is warranted, that action should be taken at the local level before forwarding the file to the next higher adjudicating authority.

b. Files Forwarded to OJAG. For files forwarded to OJAG Code 15 in accordance with paragraph 13.a. above, the forwarding endorsement shall include the specific reasons why the requested relief was not granted and shall individually address the specific points or complaints raised by the claimant's request for reconsideration. The forwarding endorsement shall also contain a specific recommendation for further action.

c. Appeals Procedure for Claims Submitted by Marine Corps Personnel. If Marine Corps adjudicating authorities do not grant the relief a claimant requests, or otherwise do not resolve the claim to the claimant's satisfaction, the claimant's request for reconsideration shall be forwarded by MRP-2 to OJAG Code 15 along with the entire original file and the adjudicating authority's recommendation.

14. FORWARDING FILES FOR CARRIER RECOVERY ACTION. To maximize the amount of money the Navy can recover from a moving company, claims office personnel must send all files to the OJAG Code 15 Carrier Recovery Claims Branch in Millington, Tennessee, as soon as possible. If a claims examiner determines that a claimant is likely to request reconsideration and may receive a substantial additional payment in response to that request, the examiner should hold the file until the reconsideration period (six months) expires. Examiners will immediately forward those claim files for which the claimant was paid the amount requested or was paid the amount requested minus depreciation.

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

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

1. NAME OF CLAIMANT *(Last, First, Middle Initial)*	2. BRANCH OF SERVICE	3. RANK OR GRADE	4. SOCIAL SECURITY NUMBER

5. HOME ADDRESS *(Street, City, State and Zip Code)*	6. CURRENT MILITARY DUTY ADDRESS *(If applicable) (Street, City, State and Zip Code)*

7. HOME TELEPHONE NO. *(Include area code)*	8. DUTY TELEPHONE NO. *(Include area code)*	9. AMOUNT CLAIMED

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

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

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

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

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

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

17. SIGNATURE OF CLAIMANT *(or designated agent)*	18. DATE SIGNED *(YYYYMMDD)*

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

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

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

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

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

DD FORM 1842, MAY 2000 PREVIOUS EDITION IS OBSOLETE.

PRIVACY ACT STATEMENT

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

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

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

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

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

(3) Investigation of possible fraudulent claims.

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

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

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

INSTRUCTIONS TO CLAIMANTS

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

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

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

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

5. You are entitled to claim the following:

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

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

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

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

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

25. SIGNATURES

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

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

a. TYPED NAME	b. GRADE	b. SIGNATURE	c. DATE SIGNED (YYYYMMDD)

DD FORM 1842 (BACK), MAY 2000

1. NAME OF CLAIMANT (Last, First, Middle Initial)			3. PICK-UP DATE (YYYYMMDD)	LIST OF PROPERTY AND CLAIMS ANALYSIS CHART (Items 14 through 31 to be filled out by Claims Office)			
2. CLAIMANT'S INSURANCE COMPANY (If applicable)			4. DELIVERY DATE (YYYYMMDD)	14. ORIGIN CONTRACTOR	17. 2ND CONTRACTOR	21. CLAIM NUMBER	22. NET WT/MAX CAR
a. NAME	b. POLICY NO.						
5. LINE NO.	6. QTY	7. LOST OR DAMAGED ITEMS (Describe the item fully, including brand name, model and size. List the nature and extent of damage. If missing, state "MISSING.")	8. INV NO.	9. ORIGINAL COST	10. MM/YYYY PURCHASED	11. AMOUNT CLAIMED a. Repair Cost b. Replacement Cost	15. INVENTORY DATE (YYYYMMDD)
							16. EXCEPTIONS

18. EXCEPTION SHEET DATE (YYYYMMDD)	19. INV NO.	20. EXCEPTIONS	23. GBL NUMBER	24. LOT NUMBER	25. AMOUNT ALLOWED	26. ADJUDICATOR'S REMARKS	27. ITEM WT	28. HOUSE LIABILITY	29. CARRIER LIABILITY

12. REMARKS	13. TOTAL	$		30. TOTAL AMOUNT ALLOWED	$		31. THIRD PARTY LIABILITY	$	$

DD FORM 1844, MAY 2000 PREVIOUS EDITION IS OBSOLETE. Page of Pages

JOINT STATEMENT OF LOSS OR DAMAGE AT DELIVERY

Privacy Act Statement

AUTHORITY: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 31 U.S.C. 3721 et seq., 31 U.S.C. 3711 et seq., and EO 9397, November 1943 (SSN).

PRINCIPLE PURPOSE(S): The information requested is to be used in evaluating claims.

ROUTINE USE(S): The information requested is used in the settlement of claims for loss, damage or destruction of personal property and recovery from liable third parties.

DISCLOSURE: Voluntary; however, failure to supply the requested information or to execute the form may delay or otherwise hinder the payment of your claim.

GENERAL INSTRUCTIONS - The carrier's/contractor's representative will complete and sign DD Form 1840 and obtain the signature of the member or member's agent. The member or member's agent will not, under any circumstances, sign a blank or partially completed DD Form 1840. These completed copies of DD Form 1840 and blank DD Forms 1840R will be provided the member or member's agent by the carrier's/contractor's representative for each shipment. If no loss or damage is involved, write "NONE" in description column.

SECTION A - GENERAL (To be completed jointly by carrier/contractor's representative)

1. NAME OF OWNER (Last, First, Middle Initial)	2. SOCIAL SECURITY NO.	3. RANK OR GRADE	4. NET WT. OF SHIPMENT

5. ORIGIN OF SHIPMENT (City and State/Country)	6. DESTINATION OF SHIPMENT (City and State/Country)

7. PPGBL/ORDER NUMBER	8. PICKUP DATE	9. NAME AND ADDRESS OF CARRIER/CONTRACTOR

10. CODE OF SERVICE	11. SCAC	12. CARRIER/CONTR. REF. NO.

SECTION B - RECORD OF LOSS OR DAMAGE (To be completed jointly by member and carrier's/contractor's representative)

13. Notice is hereby given to the carrier/contractor to whom this statement is surrendered that the shipment was received in condition as shown below and the claim, if any, will be made for such loss or damage as indicated subject to further inspection and notification to the claims office within 70 days by DD Form 1840R found on the reverse side hereof. THE VALUE INDICATED IN BLOCK 14c IS TO BE USED FOR QUALITY CONTROL ONLY.

a. INV. NO.	b. NAME OF ITEM	c. DESCRIPTION OF LOSS OR DAMAGE (If missing, so indicate)

14. ACKNOWLEDGMENT BY MEMBER OR AGENT (X and complete as applicable and sign below)

a. I RECEIVED MY PROPERTY IN APPARENT GOOD CONDITION EXCEPT AS INDICATED ABOVE. A CONTINUATION SHEET (X ONE)
[ ] WAS [ ] WAS NOT USED

b. UNPACKING AND REMOVAL OF PACKING MATERIAL, BOXES, CARTONS, AND OTHER DEBRIS
[ ] IS [ ] IS NOT WAIVED

c. I ESTIMATE THE AMOUNT OF MY LOSS AND/OR DAMAGE AT
$

d. I have received three copies of this form. (I understand that I have 70 days to list any further loss and/or damages on the back of this form and give this to the nearest claims office, and failure to do so may result in my being paid a smaller amount on a claim.)

e. Telephone Number | f. Date Signed

g. Signature

15. ACKNOWLEDGEMENT BY CARRIER'S/CONTRACTOR'S REPRESENTATIVE (X and complete as applicable and sign below)

[ ] a. PROPERTY WAS DELIVERED IN APPARENTLY GOOD CONDITION EXCEPT AS OTHERWISE NOTED ABOVE

[ ] b. I WILL INITIATE TRACER ACTION FOR MISSING ITEMS

c. Name of delivering carrier/agent/contractor

d. Storage in transit? [ ] Yes [ ] No

e. Signature | f. Date Signed

DD Form 1840, Jan 86 *Previous editions are obsolete* PAGE OF PAGE

BEFORE USING - REVERSE CARBONS

NOTICE OF LOSS OR DAMAGE

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

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

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

a. Name of Member *(Last, First, Middle Initial)*	b. PPGBL Order Number	c. Date of Delivery

d. Origin of Shipment *(City and State/Country)*	e. Destination of Shipment *(City and State/Country)*

f. You are further notified that property owner intends to present a claim for this loss and/or damage. You are hereby extended an opportunity to inspect the property.

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

a. Inv. No.	b. Name of Item	c. General Description of Loss or Damage *(If missing, so indicate)*

SECTION B - *(To be completed by claims office)*
(NOTE: Mail original to home office of carrier / contractor listed in item 9 on DD Form 1840)

3. TO *(Home Office of Carrier/Contractor)*

a. Name and Address *(Street Address, City, State, and ZIP Code)*	b. Date of Dispatch

4. YOUR REPRESENTATIVE MAY CONTACT THIS CLAIMS OFFICE FOR ASSISTANCE

a. Name and Address of Claims Officer	b. Signature	
	c. Date Signed	d. Telephone Number

DD Form 1840R, JAN 88 *Previous editions are obsolete* PAGE OF PAGES

Military-Industry Memorandum of Understanding on Loss and Damage Rules

To establish the fact that loss or new transit damage to household goods owned by members of the military was present when the household goods were delivered at destination by the carrier.

I. Notice of Loss and Damage.

(A) Upon delivery of the household goods, it is the responsibility of the carrier to provide the member with three copies of the DD Form 1840/1840R and to obtain a receipt therefore in the space provided on the DD Form 1840. It is the joint responsibility of the carrier and the member to record all loss and transit damage on the DD Form 1840 at delivery. Later discovered loss or transit damage, including that involving packed items for which unpacking has been waived in writing on the DD Form 1840, shall be listed on the DD Form 1840R. The carrier shall accept written documentation on the DD Form 1840R, dispatched within 75 calendar days of delivery to the address listed in block 9 on the DD Form 1840, as overcoming the presumption of correctness of the delivery receipt. (1)

(B) Loss of or damage to household goods discovered and reported by the member to the claims office more than 75 calendar days after delivery will be presumed not to have occurred while the goods were in the possession of the carrier unless good cause for the delay is shown, such as officially recognized absence or hospitalization of the service member during all or a portion of the period of 75 calendar days from the date of delivery. In case of recognized official absences, the appropriate claims office will provide the carrier with proof of the officially recognized absence with the demand on carrier.

(C) The carrier's failure to provide the DD Form 1840/1840R to the military member and to have proof thereof will eliminate any requirement for notification to the carrier. Written notice, using DD Forms 1840/1840R, is not required by the carrier in the case of major incidents described by Paragraph 32 of the Tender of Service which requires the carrier to notify Headquarters, Military Traffic Management Command and appropriate PPSO's of the details of fires, pilferage, vandalism, and similar incidents which produce significant loss, damage or delay.

II. Inspection by the Carrier

(A) The carrier shall have [redacted] which ever is later, to inspect the shipment for loss and/or transit damage.

Military-Industry Memorandum of understanding on Loss and Damage Rules

(B) If the member refuses to permit the carrier to inspect, the carrier must contact the appropriate claims office within [illegible] to facilitate an inspection of the goods. It is agreed that if the member causes a delay by refusing inspection, the carrier [illegible] provided with an equal number of days to perform the inspection/estimate (45 days plus delays [illegible] caused by member).

III. Repair Estimate Submitted by the Carrier

(A) Subject to the procedures in this Memorandum of Understanding, the military services shall evaluate itemized repair estimates submitted by a carrier from a qualified an responsible firm in the same manner as any estimate submitted by a claimant from a repair firm not associated with or retained by the carrier.

(B) Carrier estimates:

(1) If the appropriate claims office receives an itemized repair estimate from the carrier within 45 calendar days of delivery, the claims office will use that estimate if it is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based upon the repair firm's reputation for timely and satisfactory performance. If the carrier's estimate is the lowest overall estimate and is not used, the claims office will advise the carrier in writing of the reason the lowest overall estimate was not used in determining the carrier's liability.

(2) The claims office will also use [illegible] estimate received more than 45 calendar days after delivery if the claim has not already been adjudicated and that estimate is the lowest overall, and the repair firm selected by the carrier can and will perform the repairs adequately for the price stated, based on the firm's reputation for timely and satisfactory performance. [illegible] the carrier's estimate is the lowest overall estimate and is not used, the claims office will advise the carrier in writing of the [illegible] estimate was not used in determining the carrier's liability.

(3) If the carrier provides the appropriate claims office with an low repair estimate after the demand on carrier has been dispatched to the carrier's home office, it will be considered in the carrier's recovery rebuttal or appeal process if lower than the estimate used by the claims office and if it establishes that the estimate used by the member was unreasonable in comparison with the market price in the area or that the price was unreasonable in relation to the value of the goods prior to being damaged.

(4) If a carrier has made an inspection/estimate based upon a DD Form 1840, and a DD Form 1840R is received, the carrier is authorized to make an additional inspection/estimate. The carrier will contact the claims office to determine if they will authorize a deduction of $50.00 from the carrier's liability for performing the second inspection/estimate.

(5) When a carrier makes an estimate, copies will be provided in a reasonable time to the military claims office and to the member, if requested. The carrier agrees to do the repairs in a reasonable time if requested by the member or the military claims office. Carrier and member estimates provided by firms that do not perform repairs will not be accepted.

(C) No claim shall be denied solely because of the carrier's lack of opportunity to inspect prior to repair, an essential item that is not in operating condition such as a refrigerator, washer, dryer, or television requiring immediate repair. In such cases, the carrier will be provided with copies of the repair estimate/receipt attached to the demand.

IV. Carrier Settlement of claims by the Government

(A) The carrier shall pay, deny, or make a firm settlement offer in writing within 120 calendar days of receipt of a formal claim from the Government. If a carrier makes an offer within 90 calendar days of receipt of a formal claim which is not accepted by the Government, a written response to the offer will be made prior to offset action.

(B) It is agreed that the claim will be limited to items indicated on the DD Form 1840 and 1840R, except as indicated paragraphs I (B) and I (C) above. The claim for loss and/or damage shall not be limited to the general description of loss or damage to those item noted on the DD Form 1840 and 1840R.

V. Effective Date This memorandum of understanding will be effective on January 1, 1992 and will apply to shipments picked up/loaded on or after that date. It supersedes the Joint Military-Industry Memorandum of Understanding on Loss and Damage Rules of 20 April 1984, except that the Memorandum, of April 20, 1984 will apply to shipments picked up and loaded prior to January 1, 1992.

VI. Filing The original of this Memorandum of Understanding shall be retained by the American Movers Conference, which shall provide conformed copies to all signatories and other interested parties.

Military-Industry Memorandum of understanding on Loss and Damage Rules

NOTE:

1/ Although the carrier shall accept written documentation on the DD Form 1840R as overcoming the presumption of correctness of the delivery receipt, the inventory prepared at origin is valid evidence which the military claims services shall consider in determining whether or not a claimant has sustained loss and/or damage in shipment. If for example, a claimant wrote on the DD Form 1840R that a kitchen table not listed on the inventory was missing in shipment, that claimant would have to prove by convincing evidence that he or she owned and tendered to the carrier for shipment a kitchen table. An item like a kitchen table would normally be listed on the inventory. Note, however, that if a kitchen table not listed on the inventory was delivered in a damaged condition and noted on the DD Form 1840/1840R, the fact that the carrier delivered the kitchen table would establish the claimant owned and tendered to the carrier a kitchen table.

For: Household Goods Forwarders
Association of America, Inc.
Donald H. Mensch
President

American Movers Conference
Joseph M. Harrison
President

Household Goods Carriers' Bureau
Joseph M. Harrison
President

Independent Movers Conference
John T. McBrayer
Executive Director

Independent Government Movers
James P. Coleman
President

National Moving and Storage
Association
Gary Frank Petty
President

Department of the Army
Joseph C. Fowler, Jr.
Colonel, USA
Commander

Department of the Navy
Milton D. Finch
Captain, USN
Deputy Assistant JAG (Claims)

Department of the Air Force
Robert G. Douglass
Colonel, U.S. Air Force
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Litigation Division
Air Force Legal Services Agency

U.S. Coast Guard
William B. Thomas
Captain, U.S. Coast Guard
Chief, Claims and Litigation Div.
Office of Chief Counsel

PROCEDURES FOR PROCESSING
AFFIRMATIVE CLAIMS

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SCOPE: This enclosure is divided into two sections. Section A describes how to assert, administer and collect claims for damage to or loss of Government property through negligent or wrongful acts under the Federal Claims Collection Act (FCCA) and the implementing regulations at 31 C.F.R. Chapter IX. Section B describes the assertion and collection of claims for medical care under the Medical Care Recovery Act (MCRA) and 10 U.S.C. § 1095. The MCRA provides that when the Federal Government provides treatment or pays for treatment of an individual who is injured or suffers a disease, the Government is authorized to recover the reasonable value of that treatment from any third party who is legally liable for the injury of disease. Section 1095 allows for the collection of these amounts through automobile insurance coverage.

SECTION A: PROPERTY DAMAGE CLAIMS

1. STATUTORY AUTHORITY

a. General. With the exception of MCRA and § 1095 claims, affirmative claims for damage to or loss of Government property in favor of the United States are processed in accordance with the FCCA (31 U.S.C. § 3711), as amended by the Debt Collection Act of 1982, PL 97-365, 96 Stat. 1749 (25 October 1982), PL 101-552, 104 Stat. 2736 (15 November 1990), and the Debt Collection Improvement Act of 1996, PL 104-134, 110 Stat. 1321, 1358 (26 April 1996).

b. Statute of Limitations (SOL). Subject to specific provisions in other statutes, there is a general three year SOL for these types of affirmative Government tort claims 28 U.S.C. § 2415(b).

2. REGULATORY AUTHORITY. 31 C.F.R. Chapter IX, Federal Claims Collection Standards (Department of the Treasury-Department of Justice), controls the assertion and collection of affirmative claims. This instruction supplements the material contained in those regulations. If this instruction conflicts with materials and procedures published in 31 C.F.R. Chapter IX, now or at a later date, the C.F.R. provisions control.

3. CLAIMS THAT MAY BE COLLECTED

a. Against Responsible Third Parties for Damage to Government Property or the Property of Non-appropriated Fund Activities. This includes all property, real or personal. As a general rule, do not seek payment from service members or

Government employees for damages caused by their simple negligence while acting within the scope of their employment.

b. Other Claims. Any other claim for money or property in favor of the United States cognizable under the FCCA not specifically listed.

c. Contract Claims. Claims arising out of contract are not asserted by the Naval Legal Service Offices. These claims will be referred to the servicing Office of the General Counsel (OGC).

4. ASSERTION OF CLAIMS AND COLLECTION PROCEDURES

a. General. The controlling procedures for administrative collection of claims are found in 31 C.F.R. Chapter IX (§ 901).

b. Officials Authorized to Pursue Claims. The following personnel are authorized to pursue, collect, compromise, or terminate affirmative claims in favor of the United States:

(1) The Judge Advocate General;

(2) The Deputy Judge Advocate General;

(3) Any Assistant Judge Advocate General;

(4) The Deputy Assistant Judge Advocate General (Claims, Investigations and Tort Litigation); and

(5) Commanding Officers of Naval Legal Service Offices, except if located in a country where another service has single service responsibility in accordance with DOD Directive 5515.8.

c. Determining Liability. Most recovery actions are based on the negligent or wrongful acts or omissions of a third party. These acts or omissions must constitute a tort as determined by the law of the state were the act or omission occurred. Liability and damages must be determined in accordance with the law of the state in which the damage occurred, including applicable traffic laws, elements of tort, and possible defenses.

d. Assertion of Claim.

(1) Assertion of the claim is accomplished by mailing a "Notice of Claim" to the tortfeasor. Mail the notice through certified mail, return receipt requested.

(2) The assertion should include the following information:

(a) Reference to the statutory right to collect;

(b) A demand for payment or restoration;

(c) A description of the incident, including date and place;

(d) A description of the damage and estimate(s) of repair; and

(e) The name, phone number, and office address of the claims examiner to contact.

(3) See also 31 C.F.R. § 901.

e. Payment.

(1) Full payment. When a responsible party or insurer tenders full payment or a compromise settlement on a claim, the payment should be in the form of a check or money order made payable to "United States Treasury." The check or money order shall then be forwarded to the disbursing officer serving the collecting activity for deposit in accordance with the provisions of the Navy Comptroller Manual. For collections for damages to real property, the collection is credited to the account available for the repair or replacement of the real property at the time of recovery. (10 U.S.C. § 2782.) For damages to personal property, the money is returned to the general treasury.

(2) Installment payments. See 31 C.F.R. § 901.8 for specific procedures. In general, if the debtor is financially unable to pay the debt in one lump sum, an installment payment plan may be arranged. Payments will be required on a monthly basis and the size of payment must bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment agreements should specify payments of such size and frequency to liquidate the Government's claim in not more than

three years. Installment payments of less than $50 per month should be accepted only if justified on the grounds of severe financial hardship or for some other reasonable cause. In all installment arrangements, a confession of judgment note setting out a repayment schedule should be executed. See Appendix 7-a.

(3) Repair or replacement in kind. The Commanding Officer or Officer in Charge of the activity sustaining the loss is authorized to accept the repair or replacement of the property in lieu of payment of claim(s) if it is in the best interests of the United States. The person responsible for the property must certify repair or replacement is accomplished and is in compliance with any applicable standards, directives, or instructions before a release may be executed.

(4) Damage to non-appropriated fund instrumentality (NAFI) property. Any amount collected for loss or damage to property of a NAFI shall be forwarded to the headquarters of the NAFI for deposit with that activity. For those claims involving property belonging to Navy MWR, all collections and any claims the Naval Legal Service Office is unable to collect within 120 days after the demand letter is sent, shall be forwarded, with the entire claim file, to:

Navy Personnel Command
MWR Division (Pers 658)
5720 Integrity Drive
Millington, TN 38055-6580

In those situations where the recovery involves damage to both NAFI-owned property and other Government property, the portion of the recovery for the NAFI-owned property will be forwarded to the NAFI. For example, destruction of a Navy Exchange (NEX) building resulted in damages to the Government building and the $25,000 of NAFI property contained therein. A settlement of $150,000 would require forwarding $25,000 to the NAFI, and then depositing the remaining payment for building damage in accordance with payment procedures described above.

f. Damage to Industrial-Commercial Property. When a loss or cost of repair has been borne by an industrial-commercial activity, payment shall be deposited in the Navy Industrial Fund of the activity in accordance with the provisions of the Navy Comptroller Manual.

g. Release. The Commanding Officer of a Naval Legal Service Office is authorized to execute a release of the claim when: (1) All repairs have been completed to the Government's satisfaction; and (2) All repair bills have been paid. Releases for payments under an installment plan will not be signed until receipt of the last payment. If repair or replacement in kind is made, a notation shall be made in any investigation or claims file.

5. WAIVER, COMPROMISE, AND REFERRAL OF CLAIMS

a. Officials Authorized to Compromise Claims. The officers identified in paragraph 4b(5) above may collect the full amount on all claims, and may compromise, execute releases or terminate collection action on claims of $20,000 or less. Collection action may be terminated for the convenience of the Government if the tortfeasor cannot be located, is found to be judgment-proof, has grounds to deny and has denied liability, or has refused to respond to repeated correspondence concerning legal liability involving a small claim. A termination for the convenience of the Government is made after it is determined that the case does not warrant litigation or that it is not cost-effective to pursue recovery efforts.

b. Claims Over $20,000. Claims in excess of $20,000 may not be compromised for less than the full amount or collection action terminated without approval from OJAG Code 15.

c. Litigation.

(1) If a determination is made that a case does warrant litigation, a Claims Collection Litigation Report (CCLR) will be prepared in accordance with 31 C.F.R. Chapter IX. Forward the CCLR worksheet and all documentation that substantiates the claim to OJAG Code 15. See Appendix 7-b.

(2) Requests to directly initiate or intervene in litigation should be made at least six months before the expiration of the SOL.

SECTION B: MEDICAL CARE RECOVERY ACT (MCRA) CLAIMS AND CLAIMS ASSERTED PURSUANT TO 10 U.S.C. §1095

1. STATUTORY AUTHORITIES

a. Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653, as amended by the National Defense Authorization Act for Fiscal Year 1997, PL 104-201, 10 U.S.C. § 1075, 110 Stat. 2422.

b. Title 10 U.S.C. § 1095 (Health care services incurred on behalf of covered beneficiaries: collection from third-party payers).

c. Title 10 U.S.C. § 1079a (CHAMPUS: Treatment of refunds and other amounts collected).

2. RESPONSIBILITY FOR MCRA ACTIONS

a. JAG Designees.

(1) Primary responsibility for investigating, asserting, and collecting Department of the Navy (DON) MCRA claims and properly forwarding MCRA claims to other Federal departments or agencies rests with the following officials:

(a) Commanding Officer, Naval Legal Service Office, Mid-Atlantic, Norfolk, Virginia;

(b) Commanding Officer, Naval Legal Service Office, Central, Pensacola, Florida;

(c) Commanding Officer, Naval Legal Service Office, Southwest, San Diego, California; and

(d) Commanding Officer, Naval Legal Service Office, Europe and Southwest Asia (EURSWA), Naples, Italy, in the area of geographic responsibility.

(2) The above officials may assert and receive full payment for any MCRA claim. They may, however, agree to compromise or waive claims for $40,000 or less. Claims in excess of $40,000 may be compromised or waived only with OJAG Code 15 approval. Further discussion of waiver and compromise can be found in paragraph 8 below.

(3) Area of responsibility. Appendix 7-c sets forth the areas of responsibility for offices with MCRA responsibilities.

b. Navy Medical Treatment Facilities (MTFs).

(1) Navy MTFs are responsible for ensuring potential MCRA/10 U.S.C. § 1095 claims are brought to the attention of the appropriate Naval Legal Service Office. They should not release billings without coordinating with the servicing Naval Legal Service Office.

(2) The MTF reports all potential cases by forwarding a copy of the injury log entries and treatment records to the Naval Legal Service Office for those cases that appear to have Third Party Liability (TPL) issues. The Naval Legal Service Office will coordinate with MTF personnel to ensure that inpatient and outpatient records and emergency room and clinic logs are properly screened to identify potential cases. The Naval Legal Service Office makes all determinations of liability.

c. TRICARE Fiscal Intermediary. The TRICARE fiscal intermediary (FI) is required to identify and promptly mail claims involving certain diagnostic codes to the Naval Legal Service Office with responsibility for the area. The FI is required to provide the Naval Legal Service Office with a personal injury questionnaire completed by the injured party (IP) and a copy of the Explanation of Benefits showing the amount TRICARE paid for the claim. Prior to settlement of a TRICARE claim, the Naval Legal Service Office should contact the TRICARE FI to ensure all amounts paid by TRICARE are included in the Government's demand.

d. Department of Justice (DOJ). Only DOJ may authorize the compromise or waiver of an MCRA claim in excess of $100,000 or settle an MCRA/10 U.S.C. § 1095 claim in which the third party has filed suit against the United States as a result of the incident which caused the injury and upon which the claim is based.

e. Determination of Amount Asserted.

(1) MTF costs. Recovery for the costs of MTF care is based on Diagnostic Related Group (DRG) rates or a Relative Value Unit (RVU). Rates are established by the Office of Management and Budget (OMB) and/or the Department of Defense (DOD) and published annually in the Federal Register. The Naval

Legal Service Office must ensure all bills from the MTFs include only expenses related to the injury. Naval Legal Service Offices may have to adjust the amount asserted if it appears that the billings include inpatient days where the IP was retained in the MTF for administrative purposes rather than medical needs. The MTF will issue the bills for treatment provided by or through the MTF. Prior to settlement of a claim, the Naval Legal Service Office should contact the MTF to ensure all care provided by or paid for by the MTF is included in the Government's demand.

(2) TRICARE costs. Naval Legal Service Offices should assert claims for the actual amount that TRICARE paid even if this amount exceeds the amount that the civilian hospital billed TRICARE.

(3) Ambulance services. Ambulance and air ambulance services provided to service members, family members, and retirees are medical costs within the meaning of the MCRA and 10 U.S.C. § 1095. Naval Legal Service Offices should attempt to obtain a specific breakdown of costs from the MTF for MTF provided ambulance services and include these in the amount asserted. For TRICARE-paid services, Naval Legal Service Offices should assert the amount paid by TRICARE for such services.

3. CLAIMS ASSERTED

a. General. The DON asserts MCRA and/or 10 U.S.C. § 1095 claims when medical care is furnished to Navy and Marine Corps active duty personnel, retirees or their dependents, or any other person when appropriate, and third-party tort or contract liability exists for payment of medical expenses resulting from an injury or disease. Claims are asserted when the IP is treated in an MTF or when the DON is responsible for reimbursing a non-Federal care provider.

b. Independent Cause of Action. The MCRA creates an independent cause of action for the United States. The Government can administratively assert and litigate MCRA claims in its own name and for its own benefit. Procedural defenses, such as a failure of the IP to properly file and/or serve a complaint on the third party, that may prevent the IP from recovering damages, do not prevent the United States from pursuing its own action to recover the value of medical treatment provided to the IP. The right arises directly from the statute; the statutory reference to subrogation pertains

only to one mode of enforcement. In creating an independent right in the Government, the MCRA prevents a release given by the IP to a third party from affecting the Government's claim.

c. Liable Parties. MCRA and 10 U.S.C. § 1095 claims may be asserted against individuals, corporations, associations, and non-Federal Government agencies subject to the limitations described in paragraph 4 below.

d. Reasonable Value of Medical Care. The reasonable value of medical care provided to an IP is determined:

(1) By using rates set as described in paragraph 2e above in bills issued by the MTF; or

(2) By the actual amount paid by the Government to non-Federal medical providers.

e. Examples of Alternate Theories of Recovery. When recovery under the MCRA is not possible because no third-party tort liability exists, 10 U.S.C. § 1095 provides the Government alternate means for recovery (i.e., recovery from health insurance for medical care furnished by or paid for by the Government). Thus, claims are asserted based on the United States being a third party beneficiary of an insurance contract of the IP. This includes such areas as:

(1) Medical Payments Coverage in an automobile policy;

(2) Uninsured/Underinsured Coverage in an automobile policy;

(3) No-fault coverage in an automobile policy; and

(4) On-the-job injury compensable under a worker's employment contract at the job.

Case law in these areas is still developing, but in most jurisdictions the Government stands in the position of a lien claimant for services rendered. Careful attention to state filing requirements is necessary as some jurisdictions have held that actions asserted on a third party beneficiary basis against an insurer or a worker's compensation fund must comply with the state notice requirement. These requirements can vary from state to state, (e.g., state requirements to provide notice may vary from one to six years, or the insurer's notice requirement set forth in the policy may have a notice requirement from the

date of accrual or the date of injury).

f. Demands in Foreign Countries. The provisions of the MCRA and 10 U.S.C. § 1095 are not extraterritorial. To the extent that the United States has a right to recover the cost of medical care or property damage under a foreign country's laws or the provisions of a treaty or international agreement, the MCRA and 10 U.S.C. § 1095 grant the DON the power to assert claims in that country.

4. CLAIMS NOT ASSERTED. In some cases, public policy considerations limit the DON's assertion of claims against apparent third-party tortfeasors or contract insurers. Claims are not asserted against:

a. Federal Government Agencies. Claims are not asserted against any department, agency or instrumentality of the United States. "Agency or instrumentality" includes self-insured NAFIs, but does not include private associations. For example, if a NEX truck operated by a NEX employee acting within the scope of employment collides with a motor vehicle driven by a service member and the service member seeks medical attention, no claim is made against NEX for the cost of the medical care provided the service member. Private associations that fall under NAFI guidance (e.g., flying clubs or equestrian clubs) that cause injury to covered personnel should be investigated to determine if the association has commercial insurance. If so, assert the claim against the private association.

b. Injured Service Members, Family Members, and Employees of the United States. Claims are not asserted directly against a service member, a dependent family member of a service member, or an employee of the United States who is injured as a result of his/her own willful or negligent acts. The United States does assert claims, however, against insurance policies that cover the injury.

c. Employers of Merchant Seaman. Claims are not asserted against the employers of merchant seamen who receive medical care in a Federal facility pursuant to 42 U.S.C. § 249.

d. Department of Veterans Affairs (VA) Care for Service-Connected Disabilities. Claims are not asserted for care provided to a veteran by the VA when the care is for a service-connected disability. The United States will, however, claim for the reasonable value of care provided a member before transfer to a VA hospital. This rule does not apply in cases where the MTF referred the patient and then paid for the care.

5. CLAIMS ASSERTED ONLY WITH OJAG APPROVAL. The responsible Naval Legal Service Office will investigate potential claims against the following third parties only with prior OJAG Code 15 approval:

a. Certain Government Contractors. OJAG Code 15 approval is required before asserting a claim against a Federal Government contractor when the contract provides that the contractor will be indemnified or held harmless by the Federal Government for tort liability.

b. United States Personnel. OJAG Code 15 approval is required before asserting claims directly against service members, their dependent family members, and federal employees and their dependent family members for injuries to another person. No OJAG approval is necessary to assert claims against their insurance policies, however, except for injuries caused by service members and federal employees if acting "within the scope of their employment." Intra-familial tort immunity would not preclude the Government from asserting any claims for care furnished to a tortfeasor's family members.

6. STATUTE OF LIMITATIONS

a. Federal. Claims asserted under the MCRA or against an automobile liability insurer under 10 U.S.C. § 1095 are founded in tort and must be brought within three years after the action "first accrues" (28 U.S.C. § 2415b). Normally, a medical care claim "first accrues" on the initial date of treatment.

b. Claims Asserted under 10 U.S.C. § 1095. Claims asserted under 10 U.S.C. § 1095 against a no-fault or personal injury protection insurer are presumably founded in a contract "implied in law" and must be brought within six years (28 U.S.C. § 2415a). Actions asserted on a third party beneficiary theory against an insurer must comply with the state notice requirement. See paragraph 3e above.

7. ASSERTING THE CLAIM

a. Initial Action by JAG Designee. When notice of a claim is received, the Naval Legal Services Office will determine the Federal agency or department responsible for investigating and asserting the claim.

(1) When DON has reimbursed a non-Federal provider for health care or when TRICARE has made payment for a DON health care beneficiary, the Naval Legal Service Office will assert any resulting claim.

(2) When care is provided in an MTF, the status of the IP will determine the agency that will assert the claim. Cost of treatment provided or paid for by an MTF is deposited in that MTF's account, regardless of which service is making the collection. Areas of single-service responsibility are set forth in DOD Directive 5515.8.

(a) Where DON members, retirees, or their dependent family members receive medical treatment from another Federal agency or department, the Naval Legal Service Office will assert any claim on behalf of the United States based on information provided by the treating facility, agency, or department.

(b) Similarly, where a DON MTF provides care to personnel of another Federal agency or department, that other agency or department will assert any claim on behalf of the United States. The Naval Legal Service Office will forward all available information to the appropriate agency or department. For claims involving members of the Coast Guard, that information will be sent to:

United States Coast Guard (G-LCL)
Room 3414
2110 Second Street, SW
Washington, DC 20593-0001

(3) If the claim is one that the DON asserts, the Naval Legal Service Office will provide notice to the IP and all third parties who may be liable to the IP and the United States under the MCRA or 10 U.S.C. § 1095.

b. Investigating the Claim. While there is no prescribed form or content for investigating these claims, the claims file will contain sufficient information on which to base valuation, assertion, settlement, waiver, and/or compromise decisions. The

file will normally contain:

(1) Identification of each person involved in the incident, including name, address, and nature of involvement;

(2) Police, social service, and other Federal, state, and local agency reports on the incident;

(3) Copies of all medical bills;

(4) Whether an identified third-party tortfeasor is a uniformed service member or United States employee, information and findings concerning that person's duty or scope of employment status at the time of the incident giving rise to the injury;

(5) Insurance information for identified third-party tortfeasors including names and addresses of insurance carriers, insurance policy numbers, and extent of coverage; and

(6) A copy of the signed protection letter if the IP's attorney will protect the interests of the United States.

c. Notice of Claim.

(1) The Naval Legal Service Office will assert claims by mailing a notice of claim to identified third-party tortfeasors and their insurers or insurer for third party beneficiary coverage. The demand should outline the facts and cite the applicable Federal statutes, MCRA, and 10 U.S.C. § 1095. Many insured tortfeasors fail to notify their insurance companies of incidents. This failure may be a breach of the cooperation clause in the policy and may be grounds for the insurer to refuse to defend the insured or be responsible for any liability. The United States, as a claimant, may preclude such an invocation by giving the requisite notification itself. The purpose of the clause is satisfied if the insurer receives actual notice of the incident, regardless of who provided it. This notice should be mailed as soon as it appears an identified third party may be liable for the injuries. The prompt assertion of the claim will ensure that the United States is named on the settlement draft. If the United States is not so named, and the claim has been asserted, the insurer settles at its own risk.

(2) The Naval Legal Service Office will also notify the IP or the IP's legal representative of the Government's interest in the value of the medical care provided by the United States. This notice will advise that:

(a) The United States may be entitled to recover the reasonable value of medical care furnished or paid for by the Federal Government; and

(b) The IP is required to cooperate in the efforts of the United States to recover the reasonable value of medical care furnished or paid for the United States.

d. Administering the Claim.

(1) After investigating and asserting the claim, the examiner will maintain contact with all parties, their legal representatives, and insurers.

(2) The Naval Legal Service Office should make an effort to coordinate collection of the United States' interest with the IP's action to collect on a claim for damages.

(a) Attorneys representing an IP may be authorized to include the Government's claim as an item of special damages with the IP's claim or suit.

(b) An agreement that the Government's claim will be made a part of the IP's action will be in writing and state that counsel fees will not be paid by the Government or computed on the basis of the Government's portion of recovery.

(3) If the IP is not bringing an action for damages or is refusing to include the Government's interest, the Naval Legal Service Office will pursue independent collection. The United States is specifically allowed to intervene or join in any action at law brought by or through the IP against the liable third person or bring an original suit in its own name or in the name of the IP.

(4) When the Government's interests are not being represented by the IP or his/her attorney and independent collection efforts have failed, the Naval Legal Service Office will request that OJAG Code 15 refer the claim to the cognizant United States Attorney for possible suit.

e. Access to DON Records and Information.

(1) Copies of medical records in cases that have potential claims will be sent by the MTFs to the cognizant Naval Legal Service Office. It is considered a routine use of the records for the Naval Legal Service Office to release them to an insurance company, if requested, in order to substantiate the claim. However, only the medical facilities as "keepers of the records" have the authority to make official releases of medical records to anyone else. Records will be protected in accordance with the provisions of the Privacy Act, 5 U.S.C. § 552a, and confidentiality of quality assurance medical records, 10 U.S.C. § 1102. Non-routine release requires the authorization from the IP or legal representative or an order from a court of competent jurisdiction. A clerk or attorney signed subpoena is not "an order from a court of competent jurisdiction." A judge must sign the subpoena for the subpoena to be considered "an order from a court of competent jurisdiction." Subpoenas are processed by the Staff Judge Advocates for the MTFs under SECNAVINST 5820.8A. See also 32 C.F.R. § 725.

(2) Requests for testimony of any Navy employee will be processed in accordance with DoD Directive 5405.2, 32 C.F.R. § 725, and SECNAVINST 5820.8A. However, if the IP or the IP's attorney has signed an agreement to protect the Government's interests and is requesting the testimony of a locally available physician who treated the IP, this request falls within an exception to the regulations. See 32 C.F.R. § 725.5(g)(3). In such a situation, the IP or the IP's attorney need only ask the Naval Legal Service Office for assistance in scheduling the testimony of the treating physician and the Naval Legal Service Office will coordinate with the physician's command to determine availability. Such testimony is limited to factual issues. The definition of factual issues is slightly different under the regulations than it is in civil litigation. Opinions that are formed prior to, or contemporaneously with, the treatment at issue and are routinely required in the course of the proper performance of professional duties constitute essentially factual matters. For example, the physician will have opined at the time of treatment if further treatment will be necessary. The physician may testify to that as factual, not opinion, testimony. Opinions that are formed after treatment and are not required for continuing treatment, especially those that respond to hypothetical questions, are not factual and are considered to be expert testimony. This expert testimony, regardless of who requests it, will be processed in accordance with 32 C.F.R. § 725, and must be forwarded to OJAG Code 14, General Litigation

Division. Requests for expert testimony are rarely granted.

8. WAIVER AND COMPROMISE

a. General. A Naval Legal Service Office may authorize the waiver or compromise of any claim that does not exceed $40,000. All requests for waiver or compromise of claims in excess of $40,000 will be forwarded to OJAG Code 15.

b. Waiver/Compromise. A Naval Legal Service Office may waive the claim when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver or compromise is also appropriate when, upon written request by the IP or the IP's legal representative, it is determined that collection of the full amount of the claim would result in undue hardship to the IP. In assessing undue hardship, the following factors should be considered:

(1) Permanent disability or disfigurement;

(2) Lost earning capacity;

(3) Out-of-pocket expenses;

(4) Financial status;

(5) Disability, pension and similar benefits available;

(6) Amount of settlement or award from a third-party tortfeasor or contract insurer; and

(7) Any other factors that objectively indicate that fairness requires waiver. See 32 C.F.R. § 757.6 for further guidance.

9. RECEIPT AND RELEASE

a. Payment. The Naval Legal Service Office will deposit affirmative claims collections at least once each week. The Naval Legal Service Office will make deposits in accordance with the Defense Finance and Accounting Service (DFAS), Cleveland check depositing procedures. The mailing address for DFAS

Cleveland is:

Defense Finance and Accounting Service
Disbursing, Room 2983
1240 East 9th Street
Cleveland, Ohio 44199

The Naval Legal Service Office will provide copies of each deposit voucher to each activity, MTF or TRICARE Management Activity (TMA), for which a deposit was made. Every time a deposit is made, copies of vouchers for TMA will be mailed to:

TRICARE Management Activity
Resource Management Division
16401 East Centretech Parkway
Aurora, CO 80011-9043

b. Apportionment of Medical Care Recovery Between Accounts. Medical care is often provided by a variety of sources, sometimes crossing Services. The Naval Legal Service Office will apportion money recovered to the different accounts. In claims where less than the amount asserted is recovered, the Naval Legal Service Office will give a pro rata share of the recovery to each MTF, regardless of service, and TMA.

c. Release. The Naval Legal Service Office will execute and deliver appropriate releases to third parties who have made full or compromised payments. A copy of the release will be kept in the claims file.

PROMMISSORY NOTE CONTAINING AGREEMENT FOR JUDGMENT

Date:

$

For value received, I,____, promise to pay to the order of the Treasurer of the United States the sum of $____ in monthly installments of $____ each, payable at Naval Legal Service 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.

_____
Name

_____
Date

CLAIMS COLLECTION LITIGATION REPORT WORKSHEET

From: _____

Debtor's Name and Address:

_____
_____
_____
_____

Debtor's SSN/EIN: _____

Statute of Limitation Expiration Date: _____

Basis for SOL Expiration Date:

_____
_____
_____

Amount of Claim: _____

Basis of Claim (cite state cause of action):

_____
_____
_____
_____

Assets for Recovery: _____

_____
_____
_____
_____
_____

Date of last demand to debtor and details of any compromise or settlement offers: _____

_____
_____
_____
_____
_____

Attach a short description of incident forming the basis for collection action and a summary of collection actions taken.

TABLE OF TERRITORIAL RESPONSIBILITY FOR ASSERTION OF MCRA/§1095 CLAIMS

RESPONSIBLE COMMAND	TERRITORY
NLSO MID-ATLANTIC	STATES: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington DC, West Virginia OTHER: Azores, Bermuda, Greenland, Iceland, Atlantic and Arctic Ocean areas and islands not otherwise assigned
NLSO CENTRAL	STATES: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Texas, Wisconsin OTHER: Mexico (east of the states of Chihuahua, Durango, Nayarit, Jalisco, and Colima), Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama
NLSO SOUTHWEST	STATES: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, Wyoming OTHER: Mexico (including and west of the states of Chihuahua, Durango, Nayarit, Jalisco, and Colima), Pacific Ocean areas and islands, Ecuador, Peru, Chile
NLSO EURSWA	Bahrain, Israel, Italy, Portugal, Tunisia, Greece, Spain, United Arab Emirates (UAE).

*NLSO - Naval Legal Service Office