

Claims Department



Federal Tort Claims Act

The Federal Tort Claims Act (FTCA) is a limited waiver of sovereign immunity making the United States liable for certain torts of federal employees under circumstances in which a private person would be liable to the claimant under the law of the place where the allegedly negligent or wrongful act or omission occurred. Under the FTCA, Congress has seen fit to impose the requirement that a tort claim be presented to the appropriate Federal agency for administrative consideration before the claimant may institute an action on a claim in a United States district court. This act applies only for acts or omissions of an employee of the government "while acting within the scope of his office or employment."

Military Claims Act

Like the FTCA, the Military Claims Act (MCA) compensates individuals for personal injury, death, or property damage caused by activities of the Federal Government. MCA claims are limited to two general types:

1. Injury, death, or property damage caused by military personnel or civilian employees acting within the scope of their employment; and
2. Injury, death, or property damage caused by non-combat activities of a peculiarly military nature.

Foreign Claims Act

The Foreign Claims Act (FCA) provides compensation to inhabitants of foreign countries for personal injury, death, or property damage caused by or incident to non-combat activities of military personnel overseas. The FCA was created to promote and to maintain friendly relations through the prompt settlement of meritorious claims.

Non-scope Claims Act

The Non-scope Claims Act provides payment for certain types of claims not cognizable under any other provisions of law. Such claims are known as "non-scope claims" and arise out of either the use of a government vehicle anywhere or the use of government property aboard a Federal installation. The personal injury, death, or property damage must be caused by a Federal military employee, but there is no requirement that the acts be negligent or in the scope of Federal employment.

Federal Claims Collection Act

Under the Federal Claims Collection Act (FCCA), the Federal Government may recover compensation for claims on behalf of the United States for damage

to, loss of, or destruction of government property through negligence or wrongful acts. The extent of FCCA recovery by the Federal Government is determined by the law where the damage occurred. As a general rule, if a private person would be entitled to compensation under the same circumstances, the Federal Government may recover under the FCCA. FCCA claims may be pursued against private persons, corporations, associations, and nonfederal government entities. An FCCA claim may be asserted against any Federal employee responsible for the damage. If the responsible party is insured, the claim may be presented to the insurer.

Medical Care Recovery Act

The Medical Care Recovery Act (MCRA) provides that, when the government treats or pays for the treatment of a military member, retiree, or dependent, it may recover its expenses from any third party legally liable for the injury or disease. MCRA claims may be asserted against private individuals, corporations, associations, and nonfederal governmental agencies. They may also be asserted against a Federal employee responsible for the injuries. However, no such claim may be asserted against a service member injured as a result of his/her own willful or negligent acts.

Personnel Claims Act

The Personnel Claims Act (PCA) provides for maximum payment of up to \$40,000 for loss, damage, or

destruction of personal property of military personnel or civilian employees incident to their service. The Act provides for the recovery from carriers, warehouse firms, and other third parties responsible for such loss, damage, or destruction. No claim may be paid unless it is presented in writing within 2 years of the incident giving rise to the claim. Additionally, claims for losses occurring prior to 31 October 1988 are limited to \$25,000.

Required Documentation

Proper documentation is required to expedite the claims process. If a claim alleges damage to a POV or personal property due to the negligence of a government employee, the claimant should file the claim using a Standard Form 95 (SF95). Insure the following:

- a. Check that all blocks of the SF95 are completed, paying particular attention to the claimant's name, basis of the claim, total amount, and claimant's signature.
- b. Provide two estimates of repair. File the claim for the lower of the two estimates. The amount of the lower estimate should be entered into block 12d of the SF95 as the total claimed.
- c. Provide proof of ownership in the form of a copy of the automobile title or registration.
- d. Provide the police incident report.
- e. Contact the command where the alleged tortfeasor is assigned. For

claims not involving personal injury and seeking less than \$5,000, request the command complete a Standard Form 91 (SF91). Be certain all parts of Section X are completed, the alleged tortfeasor's supervisor signs the form, and a scope of employment determination is made. For claims involving personal injury and/or seeking \$5,000 or greater, the command should contact our assigned NLSO claims attorney to determine the extent of the investigation required.



PATRONUS CLASSIS

Lessons Learned

1. *We cannot deny a claim based on the statute-of-limitations when the claim was not date stamped and the date of submission is not discernible.* The statute of limitations runs until a claim is submitted to an appropriate authority. Date stamping allows for a determination of when a claim was submitted. Commands that accept a claim should forward the date stamped original immediately to our office.

There have been occasions where we have received a claim from the claimant, and based upon the date of the incident, we have been prepared to deny the claim based upon the statute of limitations. Subsequently, when we received the command investigation,

included with the report was a copy of the claim that we had received from the claimant. However, the claim was not date stamped. The command had no idea as to when the claim was received by them, and the statute-of-limitations defense became moot. Claimants should be told to submit their properly documented claim to our office. Upon receipt, we will forward a copy of the claim to the command with our request for investigation. Nevertheless, if commands do accept claims, those claims must be date stamped.

2. *Pulling contracts can protect the Government against wrongful claims.* Frequently claims are affected by contractual relationships between the United States and an independent contractor. For instance, many claims are submitted on behalf of employees of contractors doing work for the Navy looking to the "deep pockets" of the United States for their injury at the job site. Under the FTCA, we have two defenses in our arsenal, the independent contractor defense and the statutory employer defense. Both defenses require certain contractual language to be operative. Therefore, it is important to separate and protect contracts. If a claim involves a contract, contact the contracting officer or the contracting officer's technical representative as soon as possible. Request that he pull a copy of the contract as it appeared on the date of the incident in the event we need it later.

3. *Service members need to properly insure their automobiles.* The Government is not an insurer of automobiles. If a POV is damaged as the result of a hit and run, an unknown occurrence, or some other incident not involving government negligence, there is no statute under which the individual may be reimbursed absent a showing of government liability. For example, if the owner of a car parked in a base parking lot returns to the vehicle and finds a dent in the driver's door but has no knowledge of who dented the vehicle, there are no grounds for recovery.

4. *Reporting damaged government property can benefit both the government and commands.* When a command has government property damaged by a third party, they should forward a copy of the incident report or command endorsement and a copy of the repair estimate or paid repair bill to NLSO MIDLANT. Although the command is not reimbursed for funds paid to repair the property, the money goes into the U.S. Treasury. Nevertheless, commands may receive the benefit of the reimbursement if the property is repaired without exchanging money. For example, a command vehicle is rear-ended by a POV. Company X insures the POV. Company X wants the command to take the car to a specific dealership to be repaired. Company X pays the dealership directly. As long as the command is not involved in the payment, this is an acceptable alternative for which the command

would receive the benefit of the reimbursement.

5. *Ensure vehicles are rented pursuant to Department of Defense (DOD) regulations.* Pursuant to DOD regulations and both the JFTR and JTR, absent a few defined exceptions, commands must use a Commercial Transportation Office (CTO) when making arrangements for rental vehicles for command personnel on TAD travel. The purpose of using the CTO is to ensure that the rental is made with a Military Traffic Management Command (MTMC) authorized rental company (RAC). MTMC has a contract with various RACs, and under that contract, the United States is protected in large measure by the RAC from both third-party liability (wrongs committed against third parties) and first-party liability (damage to the rental vehicle) when our driver is involved in an accident.

Under current DOD policy, where the vehicle is rented from a RAC which is not a MTMC RAC or where the renter rents with a MTMC RAC but rents "off the schedule" (e.g., the renter rents a SUV when he was authorized a sedan) and damage is incurred to the rental vehicle, first-party claims must be satisfied by the originating command using existing travel funds. Commands can find themselves forced to pay substantial damages. For example, we recently worked a first-party RAC claim in which the originating command had to satisfy a \$11,500 claim because the renter ordered an unauthorized SUV.

The Government Visa card provides slightly greater protection for commands against first-party liability. The Government Visa card affords coverage against first-party liability, but only if reported within 20 days. With the drawdown on use of the Government Visa card, however, this coverage may not be available in many situations. Claims in connection with rental vehicles are becoming more complex, and we will be happy to assist you in this area. Your attention is also directed to two OJAG 15 JAGINFO emails, dated 7 December 2001 and 10 October 2002, expanding on this theme. If you need copies of the JAGINFO e-mail, please contact our claims office.

7. Injuries to service members and their dependents at the hands of a third party requiring treatment at a military facility must be reported. 28 CFR § 43.2 discusses the obligations of persons receiving care and treatment. Specifically, such persons are required to furnish information concerning the circumstances giving rise to the injury or disease for which care and treatment is being given and concerning any action instituted or to be instituted by or against a third person. When notified of such injuries, NLSO MIDLANT can seek reimbursement on behalf of the Government. However, this office is often unable to recover money because we are not informed that a service member or dependent was injured. We can recover the money to which the Government is entitled if this information is provided to our MEDCARE

Division directly from the parent command. Commands should call our MECARE Division for a copy of our questionnaire and have the injured party complete and return it.