

Foreign Claims—Not Just for Overseas Offices

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Claims offices in the continental United States (CONUS) are familiar with the provisions of the Federal Tort Claims Act (FTCA), 18 U.S.C. §§ 2671–2680,¹ as implemented by Army Regulation (AR) 27-20, *Claims*, chapter 4.² After all, this law applies to tort claims that make up the bread and butter of most claims offices. Claims under the Military Claims Act (MCA), 10 U.S.C. § 2733,³ as implemented by AR 27-20, chapter 3,⁴ are also common within these jurisdictions, as the MCA is the statute applied to tort claims if the FTCA does not apply. Finally, claims offices are very familiar with the Personnel Claims Act, 31 U.S.C. § 3721,⁵ as implemented by AR 27-20, chapter 11,⁶ which applies damage to or loss of household goods shipments and other property claims arising incident to military service. However, most U.S.-based claims offices are less familiar with the rules governing foreign claims, including the International Agreement Claims Act (IACA), 10 U.S.C. §§ 2734a and b,⁷ and the Foreign Claims Act (FCA), 10 U.S.C. § 2734,⁸ as most believe these laws apply only outside the United States.

Claims judge advocates (JAs) and attorneys need to be aware of the IACA and FCA, as the former applies within the CONUS as well as overseas, and claimants may file claims under the latter at any office, including CONUS claims offices,⁹ and most JAs will be appointed as foreign claims commissioners at some time in their careers. This article will provide an overview of the fundamentals of receiving and processing claims under the IACA and FCA.

The IACA is the legal basis for paying claims under status of forces agreements (SOFA) and other stationing agreements. The IACA applies to any international agreement with reciprocal claims processing requirements. Within the United States, 10 U.S.C. § 2734a is the statute

that authorizes the United States to adjudicate and pay claims arising from in-scope tortious activities of foreign forces on duty within the United States.¹⁰ Normally, these claims arise from activities of our allies under the North Atlantic Treaty Organization (NATO)¹¹ and Partnership for Peace (PfP)¹² SOFAs. In addition, the United States has SOFAs with Singapore¹³ and Australia¹⁴ under which the United States processes claims.

Under these agreements, the nation sending forces to a foreign country is the Sending State, while the nation to which the forces are sent is the Receiving State. Under the SOFA, the foreign forces are considered assimilated into the U.S. armed forces, and the claims are considered claims against the United States under the FTCA or MCA. For claims arising within the United States, the Department of Defense has assigned single-service responsibility for adjudicating the claims to the Army.¹⁵ The Foreign Torts Branch (FTB), U.S. Army Claims Service (USARCS) is the U.S. Receiving State Claims Office (RSCO) for these SOFAs.¹⁶

Field claims offices are likely to receive claims arising under these SOFAs, as the claimant is usually an American citizen or legal resident. These claimants will turn to the nearest military installation, to include Navy, Marine, and Air Force bases, to request assistance in filing claims. Field claims offices are charged with notifying the FTB of all “incident[s] involving a member of a foreign military force or civilian component resulting in personal injury, death, or property damage”¹⁷ Upon receipt of information about a potentially compensatory event, correspondence from a

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¹ Federal Tort Claims Act, 18 U.S.C. §§ 2671–2680 (2006) [hereinafter FTCA].

² U.S. DEP’T OF ARMY, REG. 27-20, CLAIMS ch.4 (8 Feb. 2008) [hereinafter AR 27-20].

³ Military Claims Act, 10 U.S.C. § 2733 (2006) [hereinafter MCA].

⁴ AR 27-20, *supra* note 2, ch. 3.

⁵ Personnel Claims Act, 31 U.S.C. § 3721 (2006) [hereinafter PCA].

⁶ AR 27-20, *supra* note 2, ch. 11.

⁷ International Agreement Claims Act, 10 U.S.C. §§ 2734a, 2734b (2006) [hereinafter IACA].

⁸ Foreign Claims Act, 10 U.S.C. § 2734 (2006) [hereinafter FCA].

⁹ AR 27-20, *supra* note 2, para. 2-7.

¹⁰ FCA, *supra* note 8, para. 7-1a.

¹¹ Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792 [hereinafter NATO SOFA].

¹² Agreement Among the States Parties to the North Atlantic Treaty and other States Participating in the Partnership for Peace Regarding the Status of Their Forces, June 19, 1995, T.I.A.S. No. 12,666.

¹³ Agreement on the Status of the Singapore Personnel in the United States, with Agreed Minutes, Dec. 3, 1993, T.I.A.S. 12519. The contents of the SOFA beyond the reciprocal claims arrangements are classified. *See* Status of Forces Agreements (June 29, 1999), http://www.defenselink.mil/policy/sections/policy_offices/isa/inra/da/list_of_sofas.html.

¹⁴ Agreement Concerning the Status of United States Forces in Australia with Protocol, May 9, 1963, U.S.-Austl., 14 U.S.T. 506.

¹⁵ U.S. DEP’T OF DEF., DIR. 5515.08, ASSIGNMENT OF CLAIMS RESPONSIBILITY (11 Nov. 2006).

¹⁶ AR 27-20, *supra* note 2, para. 7-10.

¹⁷ *Id.* para. 7-8.

potential claimant or attorney, or a written claim, the field claims office should contact the FTB immediately. Upon receipt of a claim, the field claims office should log in the claim on the Tort and Special Claims Application (TSCA) database using the field office's claim number.

Field claims offices are also tasked with carrying out an investigation of the incident and providing the FTB with the results of the investigation.¹⁸ In practice, this requires close coordination with the FTB, which will work with the Sending State embassy or defense agency to obtain information regarding the claim and scope of duty of the foreign force member. Field claims offices are required to record information and evidence obtained from their investigation in the TSCA database so the FTB can access the information.¹⁹

Field claims offices need to be aware that they have no authority to settle claims under the SOFAs, even if the claimed amount is within the field offices' normal monetary authority under the FTCA or MCA. However, field offices may assist the FTB in the negotiation and settlement of such claims.

On occasion, a field claims office may receive an inquiry about filing a claim for alleged tortious activity of U.S. forces outside the United States, or may receive an actual claim. Field claims offices need to determine the location where the claim arose and ensure they do not assume the claim arose within the field office's jurisdiction. They also need to become familiar with common foreign statutes of limitations (SOL), which vary from three months to three years.

Some field offices have provided potential claimants and attorneys with incorrect advice on issues such as SOLs, which may be much different in some countries than the standard two-year time frame under the FTCA and MCA, and cause claimants to lose their ability to file claims.²⁰ For example, one CONUS claims attorney advised a potential claimant who was injured in Germany that the applicable SOL was the standard two-year FTCA/MCA SOL; in fact, under the NATO SOFA, the SOL in Germany is three months.²¹ The Commander, USARCS, has the authority to accept such claims for good cause or excusable delay, which can include reliance on misinformation from CONUS claims offices.²²

Field claims offices need to determine whether the foreign claim received arose in a country with a claims agreement, as noted above.²³ If so, the claimant should be informed of the proper RSCO and directed to file the claim with that office. The appendices at the end of this article contain contact information for the Korean, German, and Belgian RSCOs, which are the ones most commonly involved.²⁴ Field claims offices should contact the FTB if they have any questions on handling these claims.

Claims that do not arise in countries where there is a SOFA are adjudicated under the FCA. The Commander, USARCS, or the Chief of a Command Claims Service will appoint foreign claims commissions (FCCs) to adjudicate the claims. These FCCs may be composed of a single member, with monetary authority up to \$15,000, or three members, with monetary authority up to \$50,000 in the field and \$100,000 at USARCS.²⁵ The FCA has a two-year SOL but permits an oral claim filed within that time period to toll the SOL for an additional year for the claimant to file a written claim.²⁶ Field offices that receive FCA claims should immediately contact FTB for assistance in identifying the correct FCC to process the claim and transferring the claim to that FCC.

Finally, many JAs will find themselves deployed to foreign countries and may receive appointments as a foreign claims commissioner. Deployment to a foreign country is a hectic experience, which involves little free time. Accordingly, it behooves JAs to educate themselves on the applicable claims laws, regulations, and procedures before they are immersed in a deployment environment. Good customer service to claimants, potential claimants, and their attorneys, as well as to the United States, is the hallmark of a professional claims office. Knowledge of what to do when presented with a foreign claim or potentially compensable event will help field claims offices and JAs provide such service.

¹⁸ *Id.* para. 7-9.

¹⁹ *Id.* para. 13-1.

²⁰ *Id.* para. 7-13c.

²¹ *Id.* ch. 7.

²² U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 3-4a(2) (21 Mar. 2008).

²³ This includes the NATO countries, Australia, Singapore, Korea, and Kuwait.

²⁴ See *infra* apps. A and B. Although there is a Security Agreement with Iraq effective 1 January 2009 that addresses claims, it requires claims against U.S. forces arising in Iraq be handled by the United States under the FCA and not by the Iraqis. Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq, U.S.-Iraq, art. 21, Nov. 17, 2008.

²⁵ AR 27-20, *supra* note 2, paras. 10-6, 10-7, 10-9.

²⁶ *Id.* para. 2-30.

Appendix A

List of Republic of Korea RSCOs

Seoul District Compensation Committee
Seoul High Prosecutor's Office
1724, Socho-dong, Socho-gu, Seoul 137-740
Phone: (02) 530-3628

Taejon District Compensation Committee
Taejon High Prosecutor's Office
1390, Dunsan-dong, So-gu, Taejon 02-709
Phone: (042) 470-3258

Taegu District Compensation Committee
Taegu High Prosecutor's Office
458-2, Bomo 2-dong, Susong-gu, Taegu 706-714
Phone: (053) 740-4673

Pusan District Compensation Committee
Pusan High Prosecutor's Office
1501, Goje-dong, Yonje-gu, Pusan 611-743
Phone: (051) 606-3274 or 3275

Kwangju District Compensation Committee
Kwangju High Prosecutor's Office
342-1, Jisan-dong, Dong-gu, Kwangju 501-707
Phone: (062) 231-3263 or 3264

Inchon District Compensation Committee
Inchon District Prosecutor's Office
278-1, Hakik-dong, Nam-gu, Inchon 402-040
Phone: (032) 860-4674

Suwon District Compensation Committee
Suwon District Prosecutor's Office
80, Wonchon-dong, Paldal-gu, Suwon 442-703
Phone: (031) 210-4416

Chunchon District Compensation Committee
Chunchon District Prosecutor's Office
356, Hyoja-dong, Chunchon, Kangwon-do 200-716
Phone: (033) 251-5432

Chongju District Compensation Committee
Chongju District Prosecutor's Office
93-1, Sugok-dong, Hungdok-gu, Chongju 361-704
Phone: (043) 299-4674

Ulsan District Compensation Committee
Ulsan District Prosecutor's Office
635-3, Ok-dong, Nam-gu, Ulsan 680-705
Phone: (052) 228-4673

Changwon District Compensation Committee
Changwon District Prosecutor's Office
1, Sapa-dong, Changwon, Kyongnam 641-704
Phone: (055) 239-4436

Jonju District Compensation Committee
Jonju District Prosecutor's Office
1416-1, Dokjin-dong, Dokjin-gu, Jonju 561-705
Phone: (063) 259-4673

Jeju District Compensation Committee
Jeju District Prosecutor's Office
950-1, Yido 2-dong, Jeju, Jeju-do 690-022
Phone: (064) 729-4568

Appendix B

List of European RSCOs

Germany

Oberfinanzdirektion Nürnberg
SRB Regionalbüro Süd
Krelingstrasse 50
90408 Nürnberg
Phone: 0911/376-3801
0911/376-3470
Fax: 0911/376-2449
Handles claims arising in Baden-Württemberg,

Oberfinanzdirektion Koblenz
SRB Regionalbüro West
Schloss/Hauptgebäude
56068 Koblenz
Phone: 0261/3908-104
0261/3908-183
Fax: 0261/3908-181
Handles claims arising in Rheinland-Pfalz, Saarland,
Nordrhein-Westfalen, and Bundesgebiet (except Bayern,
Hessen, and Niedersachsen)

Oberfinanzdirektion Erfurt
SRB Regionalbüro Ost
Jenaer Strasse 37
99099 Erfurt
Phone: 0361/377-289
Fax: 0361/3787-073
Handles claims arising in Hessen, Berlin, Sachsen,
Thüringen, Sachsen-Anhalt (but not Regierungsbezirk
Magdeburg), Brandenburg (only nördlicher Teil), and
Bundesgebiet (except Bayern, Hessen, and Niedersachsen)

Oberfinanzdirektion Magdeburg
SRB Regionalbüro Nord
Sitz Soltau
Winsener Strasse 34g
29604 Soltau
Handles claims arising in Bundesgebiet, Bremen, Hamburg,
Nordrhein-Westfalen (only Regierungsbezirk Detmold),
Mecklenburg-Vorpommern, Sachsen-Anhalt (only
Regierungsbezirk Magdeburg), Brandenburg (only
nördlicher Teil), and Bundesgebiet.

Netherlands

Netherlands Ministry of Defence
Commando DienstenCentra
JDV/Sectie Claims
MPC58L
Postbus 20703
2500 ES Den Haag
Phone: +31-70-3397089
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