

Claims Report

U.S. Army Claims Service

Claims Office Management

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Introduction

Several years ago I wrote an article on claims office management.¹ This article is intended to update the information provided in my previous article and to assist staff judge advocates (SJAs) and other legal leaders to manage claims operations, both in garrison and when deployed.

Many Soldiers first visit the installation legal office when they turn in their notice of loss or damage to their household goods to the claims section.² The service they receive from claims personnel can determine the reputation of the entire legal office.³ As a result, claims office management can be critical to success or failure of an SJA. Fortunately, most claims offices are staffed by dedicated and experienced professionals that need little supervision. However, even the best run claims offices can benefit from the involvement and support of their senior legal leaders.

During the past several years there have been a number of changes affecting claims offices. One of these changes is the decrease in the number of household goods claims as a result of new transportation programs that encourage Soldiers to file such claims directly against the carriers responsible for the losses.⁴ Although the number of claims has gone down, the workload of Army claims offices has not: Army claims professionals now spend less time adjudicating claims and more time advising Soldiers who have filed claims against carriers.⁵ A second change is the increasing reliance on foreign claims as a combat multiplier

as operational tempo has increased.⁶ A third change is the increasing reliance upon automation as new claims computer programs are fielded.⁷

Although SJAs face many new challenges, they also deal with challenges that have been around for decades.⁸ How to best educate potential claimants, motivate and train claims staff, and fairly settle and pay claims are issues legal leaders have dealt with since the creation of the Army claims system. The goal of this article is to provide tips for dealing with both the new and the old challenges.

Overall Management

Staff judge advocates should require their chiefs of claims to prepare monthly reports on claims operations⁹ and review the reports when they arrive. When individual claims are forwarded to SJAs for approval or signature, they should use this as an opportunity to review the file with their claims professionals.¹⁰ Staff judge advocates should also take the time to visit their claims offices regularly to assess the morale and professionalism of their personnel.¹¹

Claims offices should be housed in professional facilities that are easily accessible to Soldiers and other claimants. Office hours should allow for access by claimants at the times most convenient for them but also allow for the office to be closed to customers at certain times during the week so claims professionals can work on claims

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¹ Colonel R. Peter Masterton, *Managing a Claims Office*, ARMY LAW., Sept. 2005, at 29.

² A Soldier is required to provide notice of loss or damage to household goods before filing a claim. U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS, para. 11-21c(1) (8 Feb. 2008) [hereinafter AR 27-20]; U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 11-21g (21 Mar. 2008) [hereinafter DA PAM. 27-162].

³ R. Kathie Zink & Lieutenant Colonel R. Peter Masterton, *Managing Personnel Claims*, ARMY LAW., Aug. 1999, at 74. See also Henry Nolan, *An Open Letter to Staff Judge Advocates, Area Claims Officers, Claims Attorneys and Claims Professionals*, ARMY LAW., Apr. 2010, at 68 (pledging to pay meritorious claims and resolve doubts in favor of claimants to improve Soldiers' morale).

⁴ See *infra* notes 52-69 and accompanying text.

⁵ See *infra* note 70 and accompanying text.

⁶ See *infra* notes 156-86 and accompanying text.

⁷ See *infra* notes 15-21 and accompanying text.

⁸ The Army claims system began early in World War II. DA PAM. 27-162, *supra* note 2, para. 1-8.

⁹ Management reports can be automatically generated by the specialized computer programs used to file and track claims. AR 27-20, *supra* note 2, para. 13-1e.

¹⁰ The senior judge advocate of a legal office can be designated as the head of an Area Claims Office. *Id.* para. 1-5e. These officers have the authority to settle claims within their monetary limits. *Id.* para. 1-11a(4). In some cases, their authority may not be delegated to subordinate attorneys. For example, they are the only persons in local claims offices authorized to act on requests for reconsideration of personnel claims. *Id.* para. 11-20d. They are also the only persons in local claims offices authorized to waive maximum allowable limits for certain types of property in paying personnel claims. *Id.* para. 11-14b.

¹¹ Staff Judge Advocates are required to supervise the settlement of claims and ensure they have adequately trained and qualified claims personnel. *Id.* para. 1-11a.

that have been turned in.¹² If the claims office is co-located with the legal assistance office, the receptionist must be properly trained on the different missions: claims personnel can advise claimants¹³ but are prohibited from representing them.¹⁴

Staff judge advocates should ensure their personnel are taking advantage of the specialized computer programs for tracking Army claims.¹⁵ Personnel claims are filed using the Personnel Claims Army Information Management System (PCLAIMS). Fielded in October 2009, this computer program permits Soldiers and civilian employees to file personnel claims through the Internet, either at their personal or work computers.¹⁶ Tort claims are tracked using the Tort and Special Claims Application.¹⁷ All Army tort claims and supporting documents must be uploaded into this computer program. Affirmative claims (claims asserted on behalf of the Army) are tracked using the Affirmative Claims Management Program.¹⁸ The Claims Discussion Board is an internet bulletin board that provides important information to Army claims professionals and allows them to ask questions of personnel in other claims offices.¹⁹ All Army claims professionals should access the discussion board daily.²⁰ All of these computer resources can be accessed through the U.S. Army Claims Service (USARCS) internet site.²¹

Army claims offices should reach out to their local communities through installation newspapers, command information television channels, local installation internet

sites and similar resources.²² Articles providing claims advice for departing personnel should be published each spring; similar articles with advice for incoming personnel should be published in the fall.²³ Claims personnel should become involved in post briefings for outgoing and incoming personnel.²⁴ Claims personnel should also conduct customer satisfaction surveys to see how they can improve their performance.²⁵

Staff judge advocates should ensure their claims offices maintain fiscal integrity. The Army claims budget is managed centrally.²⁶ Each installation claims office must request funds from the USARCS Budget Office and must ensure that they have enough funds to pay claims.²⁷ In 2011, the Army fielded a new program for the management of the Army claims budget: the General Fund Enterprise Business System (GFEBS). This new program requires a great deal of training by personnel responsible for paying claims. Because the training burden is significant, the USARCS has issued guidance and “job aids” which are available on the Claims Discussion Board on JAGCNET.²⁸ Staff judge advocates should ensure that their personnel are properly trained for their roles in this new system.

Another aspect of fiscal integrity is safeguarding the funds that claims offices collect on behalf of the government, either through affirmative claims asserted against those who damage government property or injure military personnel²⁹ or through the carrier recovery process.³⁰ Checks collected through these programs must be secured in a safe and properly deposited and accounted for.³¹

¹² Zink & Masterton, *supra* note 3, at 77.

¹³ DA PAM. 27-162, *supra* note 2, para. 2-4a (giving guidance on how to advise claimants).

¹⁴ Claims personnel represent the United States and are prohibited from representing individual claimants. U.S. DEP'T OF ARMY, REG. 27-26, RULES OF PROFESSIONAL CONDUCT FOR LAWYERS r. 1.13 (1 May 1992).

¹⁵ See AR 27-20, *supra* note 2, para. 13-1a(1) (listing some of these programs and access requirements).

¹⁶ Colonel R. Peter Masterton, *New Personnel Claims Computer Program: PCLAIMS*, ARMY LAW., Nov. 2009, at 46.

¹⁷ AR 27-20, *supra* note 2, para. 13-1a(1).

¹⁸ *Id.* para. 13-1a(3).

¹⁹ The Claims Discussion Board is split into four categories: the general discussion board, for announcements of general interest to all claims practitioners; the Personnel Claims Discussion Board; the Tort Claims Discussion Board; and the Affirmative Claims Discussion Board.

²⁰ Daily access to the Claims Discussion Board is one of the criteria for The Judge Advocate General's Award for Excellence in Claims. Reynold P. Masterton, *TJAG's Award for Excellence in Claims—Criteria for 2011 Award*, General Claims Discussion Board, JAGCNET (Apr. 8 2011), <https://www.jagcnet2.army.mil/JAGCNETPortals/Intranet/Discussion%20Boards/claimsdb.nsf/WebBoardSubNotApp?OpenView&RestrictToCategory=CF047E49201182228525786C00551749&Count=30&ExpandSection=0> [hereinafter Claims Award Criteria Posting].

²¹ This website is available at <https://www.jagcnet.army.mil/8525752700444FBA> (last visited June 27, 2011).

²² Publishing claims information to the local military community is included in the criteria for The Judge Advocate General's Award for Excellence in Claims. See Claims Award Criteria Posting, *supra* note 20.

²³ Masterton, *supra* note 1, at 33. Timing the publicity in this way takes advantage of the summer moving season.

²⁴ Participation in these briefings is included in the criteria for The Judge Advocate General's Award for Excellence in Claims. See Claims Award Criteria Posting, *supra* note 20.

²⁵ Conducting such surveys is included in the criteria for The Judge Advocate General's Award for Excellence in Claims. See *id.*

²⁶ *Id.* para. 13-6.

²⁷ *Id.* para. 13-6c.

²⁸ See, e.g., Kathy Charvat, *Updated Vendor Request GFEBS Job Aid*, Personnel Claims Discussion Board (29 Mar. 2011), <https://www.jagcnet2.army.mil/JAGCNETPortals/Intranet/Discussion%20Boards/claimsdb.nsf/WebBoardSubNotApp?OpenView&RestrictToCategory=DF26FCCFC926E4E85257862007C92EC&Count=30&ExpandSection=0>.

²⁹ See AR 27-20, *supra* note 2, para. 14-14.

³⁰ See *id.* para. 11-24b.

³¹ *Id.* para. 11-24b(2).

Personnel Claims

Staff judge advocates should further ensure that their claims professionals are properly trained.³² Personnel claims training conferences are held annually in the Fort Meade, Maryland, area. A tort claims training conference is held each fall at or near Fort Meade. One day of this conference is now dedicated to affirmative claims instruction. The USARCS currently hosts two Deployment Claims Conferences each year at Fort Meade. Overseas claims conferences are held each fall in both Korea and Germany. Other training is available on the USARCS internet site and JAG University.³³ Quarterly claims video-teleconferences are currently held on the second Thursday of September, December, March, and June.

Staff judge advocates should also ensure that their offices receive regular claims assistance visits by personnel from the USARCS.³⁴ Overseas offices receive such visits by personnel from the U.S. Army Claims Service Europe or the Armed Forces Claims Service Korea.³⁵ The focus of these visits is to assist offices, rather than to inspect them.³⁶ After a visit, the SJA will receive an assessment of the office's strengths and weaknesses and suggestions for improvement.³⁷

All SJAs should require their offices to apply for The Judge Advocate General's Award for Excellence in Claims.³⁸ The application, which is due each January,³⁹ asks offices to assess the quality of their claims operations. The questions include the adequacy of facilities, staff, training, automation equipment, and the extent to which the offices reach out to the community by participating in briefings to incoming and departing personnel and publishing articles in installation newspapers.⁴⁰ The application must be endorsed by the SJA.⁴¹ Staff judge advocates should review the application to determine how their offices are performing. Whether an office wins the award or not, the application process is an excellent management tool.⁴²

³² See *id.* para. 1-11a(8).

³³ Colonel R. Peter Masterton, *Claims Training on JAG University*, ARMY LAW., Apr. 2009, at 61.

³⁴ AR 27-20, *supra* note 2, para. 1-22.

³⁵ DA PAM. 27-162, *supra* note 2, para. 1-22e, f.

³⁶ *Id.* para. 1-22a.

³⁷ *Id.* para. 1-22d.

³⁸ AR 27-20, *supra* note 2, para. 1-23. See Colonel R. Peter Masterton, *The Judge Advocate General's Award for Excellence in Claims*, ARMY LAW., July 2010, at 38.

³⁹ See Claims Award Criteria Posting, *supra* note 20.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Lieutenant Colonel Cheryl E. Boone, *The Judge Advocate General's Excellence in Claims Award*, ARMY LAW., Sept. 2009, at 45.

Staff judge advocates must ensure their claims offices are settling personnel claims fairly and promptly.⁴³ The Personnel Claims Act⁴⁴ is a gratuitous payment statute that authorizes claims offices to pay for damage to or loss of personal property incident to service.⁴⁵ The intent of the act is to compensate Soldiers and civilian employees to the maximum extent possible,⁴⁶ to improve morale,⁴⁷ and to lessen the hardships of military life, such as frequent moves and assignments to areas with limited police and fire protection.⁴⁸ Military claims personnel should always look for ways to pay fair amounts on meritorious claims and resolve doubts in favor of claimants.⁴⁹

The Personnel Claims Act is primarily used to pay service members and civilian employees for losses to personal property incurred during government-sponsored shipments.⁵⁰ The statute can also be used to compensate for on-post losses due to theft, vandalism, fire, flood, hurricanes, and other unusual occurrences.⁵¹

A number of transportation programs have affected the use of the Personnel Claims Act to compensate claimants for shipment-related losses.⁵² Staff judge advocates should keep apprised of developments in these programs, since they will affect claims office staffing and operations.⁵³ The Full Replacement Value (FRV) Program, which began in fall 2007, encourages claimants to file shipment-related claims

⁴³ DA PAM. 27-162, *supra* note 2, para. 1-8.

⁴⁴ 31 U.S.C. § 3721 (2006).

⁴⁵ AR 27-20, *supra* note 2, para. 11-3a.

⁴⁶ DA PAM. 27-162, *supra* note 2, para. 11-1b.

⁴⁷ See *id.* para. 1-8; Nolan *supra* note 3.

⁴⁸ DA PAM. 27-162, *supra* note 2, para. 11-1a.

⁴⁹ Nolan, *supra* note 3; see also DA PAM. 27-162, *supra* note 2, para. 11-1b ("The Army Claims System intends that . . . Soldiers and civilian employees will be compensated for such losses to the maximum extent possible.").

⁵⁰ See AR 27-20, *supra* note 2, para. 11-5e.

⁵¹ *Id.* para. 11-5. The rules for compensation under the Personnel Claims Act are complex. Losses are compensable only if due to theft, vandalism, or unusual occurrence, which includes fire, flood, hurricane, earthquake, and weather phenomena that are unusual for the area. *Id.* para. 11-5c, d. The Personnel Claims Act can be used in certain situations to compensate for off-post losses, such as losses at authorized off-post quarters overseas. *Id.* para. 11-5d(2).

⁵² Major Daniel J. Sennott, *Families First and the Personnel Claims Act*, ARMY LAW., Dec. 2008, at 44, 45-48. This article prospectively described implementation of the full replacement value program (FRV) and Defense Personal Property Program (DP3) and the resulting issues for claims practitioners. The DP3 was initially called "Families First." The name was changed to DP3 before it was fielded.

⁵³ *Id.* at 45.

directly with the carriers responsible for their losses.⁵⁴ As long as such a claim is filed within nine months of delivery, the carrier is contractually obligated to pay full replacement value for lost and destroyed items. This means that the carrier must replace the property or provide compensation for it without deducting for depreciation.⁵⁵ In addition, the carrier is responsible for obtaining all of the necessary estimates for items that can be repaired.⁵⁶ Claimants who are dissatisfied with the carrier's offers can transfer their claims to a military claims office.⁵⁷

The Defense Personal Property Program (DP3), which began in fall 2008, also encourages claimants to file directly with carriers. Most military personal property shipments are now covered by this program. As with the FRV Program, carriers are contractually obligated to pay full replacement value if the claim is filed within nine months.⁵⁸ Claimants file their claims with the carriers using a special computerized claims module.⁵⁹ Claimants who are dissatisfied with a carrier's offer can transfer their claims to a military claims office.⁶⁰ The DP3 is a comprehensive program that covers every aspect of a move, including the initial counseling, pickup, and delivery of personal property as well as the filing of claims.⁶¹ It is designed to improve quality of moves by paying for performance; carriers who score higher on customer satisfaction surveys are awarded more business.⁶² Unfortunately, the customer satisfaction survey associated with the claims module does not currently work: it is not being used to score the performance of carriers.⁶³

Customer satisfaction with the claims aspects of these new transportation programs has been mixed.⁶⁴ In response to a survey conducted by the USARCS in 2010, only half of

claimants indicated that they were "satisfied" or "very satisfied" with the new programs.⁶⁵ Less than half of claimants indicated that the new claims procedures were better than the former procedure of filing claims with the military.⁶⁶ Only forty percent of claimants who responded to the survey indicated that the DP3 claims module was "user friendly."⁶⁷ Only a little over a third of claimants indicated that the claims process under the new programs was quick.⁶⁸

As a result of these new transportation programs, the number of personnel claims filed with military claims offices has decreased dramatically.⁶⁹ However, the USARCS has found that the workload at most installation claims offices is the same under the new claims procedure as it was under the former procedure where claims were filed with the military. Although military claims professionals now spend less time adjudicating claims, they spend more time

⁵⁴ *Id.* at 47; Karen Jowers, *As Full Replacement Coverage Kicks in, Confusion Remains*, ARMY TIMES (Dec. 11, 2007), http://www.armytimes.com/benefits/housing/military_moving_071211w/.

⁵⁵ Sennott, *supra* note 52, at 45–46.

⁵⁶ *Id.* at 46.

⁵⁷ *Id.* at 46–47.

⁵⁸ *Id.* at 45.

⁵⁹ *Id.* at 47–48.

⁶⁰ *Id.* at 46.

⁶¹ *Id.* at 45.

⁶² *Id.*

⁶³ Jeffrey J. Flemming, *DPS—Persistent Problems and Issues*, Personnel Claims Discussion Board, JAGCNET (11 May 2010), <https://www.jagcnet2.army.mil/JAGCNETPortals/Intranet/Discussion%20Boards/claimsdb.nsf/WebBoardSubNotApp?OpenView&RestrictToCategory=54FED3EA3E8D271385257720005E8BAE&Count=30&ExpandSection=4>.

⁶⁴ See Lisa Novak, *Movers Beware: No Guarantee of Full Reimbursement for Lost Goods*, STARS & STRIPES, Apr. 26, 2009, at 3.

⁶⁵ U.S. Army Claims Service Full Replacement Value Program Claims for Loss/Damage Customer Satisfaction Survey (Sept.–Nov. 2010) [hereinafter Customer Satisfaction Survey] (Betis Group, Inc. was the General Contractor and the survey was designed and managed by Leland Gallup, the Chief of the U.S. Army Claims Service Recovery Branch). In response to the question, "How would you rate your overall satisfaction with Full Replacement Value claims process?" 94 (17%) of the responses were "very satisfied," 182 (33%) of the responses were "satisfied," 49 (8%) of the responses were "neither satisfied nor dissatisfied," 81 (15%) of the responses were "dissatisfied" and 151 (27%) of the responses were "very dissatisfied" (survey results are on file with the Recovery Branch, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, Maryland 20755).

⁶⁶ *Id.* In response to the question, "How would you rate your satisfaction with the Full Replacement Value Claims Process compared with your satisfaction with the previous military claims process (where claims were filed solely with military claims offices)?" 96 (23%) of the responses were "the FRV process is much better," 91 (22%) of the responses were "the Full Replacement Value process is better," 95 (23%) of the responses were "the Full Replacement Value process is about the same," 44 (11%) of the responses were "the Full Replacement Value process is worse" and 86 (21%) of the responses were "the Full Replacement Value process is much worse."

⁶⁷ *Id.* In response to the question, "To what extent do you agree or disagree that the DPS claims module is user-friendly?" 21 (11%) of the responses were "strongly agree," 56 (29%) of the responses were "agree," 65 (34%) of the responses were "somewhat agree/somewhat disagree," 21 (11%) of the responses were "disagree," 30 (16%) of the responses were "strongly disagree."

⁶⁸ *Id.* In response to the question, "Was the claims process quick" (in describing "your experience with settling claims with the Transportation Service Providers [carriers]?" 36 (8%) of the responses were "strongly agree," 132 (28%) of the responses were "agree," 96 (21%) of the responses were "somewhat agree/somewhat disagree," 72 (15%) of the responses were "disagree," 129 (28%) of the responses were "strongly disagree."

⁶⁹ The dollar amount of personnel claims paid has declined steadily over the past four years. In Fiscal Year (FY) 2007 the Army paid a total of \$32.6 million; in FY 2008 it paid \$27.5 million; in FY 2009 it paid \$18.4 million; and in FY 2010 it paid \$6.1 million. During the same period the number of carrier recoveries also declined. In FY 2007 the Army recovered \$10.6 million from carriers responsible for loss or damage to personal property shipments; in Fiscal Year 2008 it recovered \$10.3 million; in FY 2009 it recovered \$4.4 million; and in FY 2010 it recovered \$3.3 million (statistics on file with U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, Maryland 20755).

providing advice to claimants who have filed against carriers. Staff judge advocates should monitor the workload in their claims offices to ensure that this new work is being accurately accounted for.⁷⁰

Army claims offices are currently prohibited from paying full replacement value.⁷¹ However, a new statute, 10 U.S.C. § 2740,⁷² will soon change this. The statute permits military claims offices to pay claims based on full replacement value for shipment-related losses where the carrier is unable to provide compensation, such as when the loss occurred as a result of an act of God for which the carrier is not liable. The USARCS is working to obtain a delegation to enable claims offices to use this new authority.

Staff judge advocates should also examine the personnel claim payment, denial, and appeal rates in their offices. In Fiscal Year 2009, the average payment on personnel claims Army-wide was 49 percent of the total amount claimed. In the same fiscal year 5.5 percent of personnel claims were denied completely and 6.0 percent of claimants submitted requests for reconsideration (appeals).⁷³ Payment rates between 45 and 65 percent are within the normal range; rates significantly above or below this warrant scrutiny. Similarly, offices with denial rates and reconsideration rates below eight percent are within the norm; rates significantly above this may indicate a problem.⁷⁴

Claims of wounded warriors must be handled with special care. Claims personnel are authorized to pay personnel claims of Soldiers evacuated from a combat theater when their personal effects are lost.⁷⁵ However, before making such payments, claims personnel should coordinate with the Joint Personal Effects Depot at Dover Air Force Base, Delaware. This organization is responsible for shipping personal effects of military personnel who are killed or wounded in a combat theater and may be able to locate missing property.⁷⁶ The USARCS can assist with this coordination.

⁷⁰ In February 2011, the USARCS has asked a number of claims offices to gather empirical data that will provide the basis for developing metrics to measure the new work being done as a result of the Full Replacement Value Program and Defense Personal Property Program.

⁷¹ Army claims offices are required to make appropriate deductions for depreciation of lost and destroyed personal property. See AR 27-20, *supra* note 2, para. 11-14d (discussing how to calculate depreciation).

⁷² 10 U.S.C. § 2470 (2006).

⁷³ Claims statistics are on file with U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, Maryland 20755.

⁷⁴ These payment, denial, and reconsideration rate ranges are based on the above statistics and were developed by Henry Nolan, the Chief of the Personnel Claims and Recovery Branch, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, Maryland 20755.

⁷⁵ AR 27-20, *supra* note 2, para. 11-5e.

Staff judge advocates should ensure that tort claims are investigated promptly and settled fairly.⁷⁷ Tort claims are paid under a number of different statutory authorities.⁷⁸ Often such claims are payable under more than one statute; in these situations it is important for claims professionals to consider each claim under all appropriate statutes.⁷⁹

The Federal Tort Claims Act⁸⁰ permits payment of claims for death, injury, or property loss caused by negligent or wrongful acts of military personnel acting within the scope of employment.⁸¹ These claims must be evaluated based on the law of the place where the tort occurred,⁸² requiring claims professionals to become experts in local law.⁸³ The *Feres*⁸⁴ doctrine prohibits payment of claims for injuries or death of military personnel incurred incident to their service.⁸⁵ In recent years this doctrine has come under increasing attack, including legislative proposals to overturn its application to medical malpractice claims.⁸⁶ Other exclusions prohibit payment of claims based on exercise of a discretionary function,⁸⁷ claims arising from combat activities,⁸⁸ and claims arising in foreign countries.⁸⁹ Claims professionals must carefully investigate claims to determine if any of these exclusions apply. Lawsuits may be initiated if a claim is not settled within six months after it is filed.⁹⁰

⁷⁶ Brett Kangas, *Personal Effects Depot relocating from Aberdeen to Dover*, WWW.ARMY.MIL (28 June 2011), <http://www.army.mil/article/5548/personal-effects-depot-relocating-from-aberdeen-to-dover/?ref=news-arnews-title1>.

⁷⁷ Prompt investigation and fair settlement avoids unnecessary litigation. AR 27-20, *supra* note 2, para. 1-8.

⁷⁸ *Id.* para. 1-4a(1).

⁷⁹ *Id.* para. 2-15.

⁸⁰ 28 U.S.C. §§ 2671–2680 (2006).

⁸¹ AR 27-20, *supra* note 2, para. 4-2a.

⁸² 28 U.S.C. § 1346(b)(1) (2006); AR 27-20, *supra* note 2, para. 2-24a.

⁸³ AR 27-20, *supra* note 2, para. 1-12a(4) (requiring heads of claims processing offices to maintain publications on local law related to tort claims).

⁸⁴ *Feres v. United States*, 340 U.S. 135, 141–42 (1950).

⁸⁵ AR 27-20, *supra* note 2, para. 2-26a.

⁸⁶ Major Edward G. Bahdi, *A Look at the Feres Doctrine as It Applies to Medical Malpractice Lawsuits: Challenging the Notion that Suing the Government Will Result in a Breakdown of Military Discipline*, ARMY LAW., Nov. 2010, at 56, 61–62.

⁸⁷ AR 27-20, *supra* note 2, para. 2-28b.

⁸⁸ *Id.* para. 2-28j.

⁸⁹ *Id.* para. 2-28k.

⁹⁰ 28 U.S.C. § 2675 (2006); DA PAM. 27-162, *supra* note 2, para. 4-2b.

Therefore, claims professionals must conclude their investigations and settlement negotiations promptly.

The Military Claims Act⁹¹ permits payment of claims for death, injury, or property loss caused by negligent or wrongful acts of military personnel acting within the scope of employment or incident to “noncombat activities” of armed forces.⁹² Noncombat activities are authorized military activities, such as weapons firing and maneuvers, which have little parallel in civilian pursuits and historically have furnished a proper basis for paying claims.⁹³ An example of a noncombat activity is a range fire that leaves a federal installation, damaging nearby property.⁹⁴ Prohibitions on the payment of such claims include the *Feres* doctrine,⁹⁵ and the discretionary function,⁹⁶ and combat activity exclusions.⁹⁷ The Military Claims Act can be used to pay claims arising in foreign countries that are brought by U.S. persons.⁹⁸ Although the statute does not authorize lawsuits,⁹⁹ claims professionals must adjudicate these claims fairly.¹⁰⁰

The National Guard Claims Act¹⁰¹ permits payment of claims for death, injury, or property loss caused by negligent or wrongful acts of Army National Guard personnel acting within the scope of employment under Title 32 of the United States Code or caused by noncombat activities of the National Guard.¹⁰² Since 2001, the Army National Guard

⁹¹ 10 U.S.C. § 2733 (2006).

⁹² AR 27-20, *supra* note 2, para. 3-3a.

⁹³ *Id.* at 108 (glossary).

⁹⁴ Sean Murphy, *Wildfire Rages in SW Okla., Destroys 13 Homes*, DESERET NEWS, June 25, 2011, at 1, available at <http://www.deseretnews.com/article/700147008/Wildfire-rages-in-SW-Okla-destroys-13-homes.html>; Bryan Dean, *Army to Reimburse Medicine Park Wildfire Victims*, THE OKLAHOMAN, July 1, 2011, at 1, available at <http://newsok.com/army-to-reimburse-medicine-park-wildfire-victims/article/3581797>.

⁹⁵ AR 27-20, *supra* note 2, para. 2-26a.

⁹⁶ *Id.* para. 2-28b.

⁹⁷ *Id.* para. 2-28j.

⁹⁸ *Id.* para. 2-28k.

⁹⁹ 10 U.S.C. § 2735 (2006) (noting that claims settlements under the act are final and conclusive “notwithstanding any other provision of law”); DA PAM. 27-162, *supra* note 2, para. 3-1c (noting that the Act provides for an administrative appeal “[i]nstead of a judicial remedy”).

¹⁰⁰ See AR 27-20, *supra* note 2, para. 1-17a(3) (establishing Department of the Army policy that favors compromising claims to achieve fair and equitable results).

¹⁰¹ 32 U.S.C. § 715 (2006).

¹⁰² AR 27-20, *supra* note 2, para. 6-2c, d. Many of these claims are also covered by the Federal Tort Claims Act and are processed under that statute. *Id.* When National Guard Soldiers are performing full time active duty they are under federal command and control and the National Guard

has performed missions in Title 32 status that in the past would have been performed in State Active Duty status; these Soldiers are federal employees and are covered by federal claims statutes.¹⁰³ Claims arising from National Guard operations should be coordinated with the full-time National Guard judge advocate for the state involved.¹⁰⁴ Claims professionals must contact the USARCS before denying any National Guard claim based on a determination that the Soldiers causing the claim were not covered by federal claims statutes.¹⁰⁵

Staff judge advocates in Europe and Asia should be familiar with the International Agreements Claims Act.¹⁰⁶ This statute permits payment of claims under Status of Forces Agreements (SOFAs).¹⁰⁷ There are three types of claims under most SOFAs: intergovernmental claims, scope claims, and *ex-gratia* claims. Intergovernmental claims involve damage or loss to government property of the receiving state (the host country). Liability for such claims is generally waived, either in part or in full.¹⁰⁸ Scope claims involve injury to a third party, such as a local national, arising from acts of sending state forces acting in the scope of their duties.¹⁰⁹ *Ex-gratia* claims involve injury to third parties arising from acts of sending state forces who were not acting in the scope of their duties, such as vandalism or other off-duty misconduct.¹¹⁰ Most SOFAs include a provision requiring the sending state and the receiving state to share the costs of scope claims.¹¹¹ *Ex-gratia* claims, on the other hand, are paid solely by the sending state.¹¹² When American forces are stationed in a country that has not

Claims Act does not apply. *Id.* para. 6-2a(1). When National Guard Soldiers are performing full time National Guard duty or Inactive Duty Training they are under state command and control and the National Guard Claims Act does apply. *Id.* para. 6-2a(2).

¹⁰³ Walter E. Parker, IV, *New National Guard Missions and the Federal Tort Claims Act*, ARMY LAW., Jan. 2011, at 59.

¹⁰⁴ *Id.* at 60.

¹⁰⁵ *Id.* The USARCS is located at 4411 Llewellyn Avenue, Fort Meade, Maryland 20755; its current phone number is (301) 677-9388. Additional contact information is available at the U.S. Army Claims Service internet site, <https://www.jagcnet.army.mil/8525752700444FBA>.

¹⁰⁶ 10 U.S.C. §§ 2734a, 2734b (2006).

¹⁰⁷ AR 27-20, *supra* note 2, para. 7-1.

¹⁰⁸ *Id.* para. 7-4b(1).

¹⁰⁹ *Id.* para. 7-4b(2).

¹¹⁰ *Id.* para. 7-4b(3).

¹¹¹ See *id.* para. 7-5 (pointing out that the North Atlantic Treaty Organization, Partnership for Peace (PFP), Singapore, and Australian Status of Forces Agreements all contain such cost-sharing provisions).

¹¹² The United States pays these claims under the Foreign Claims Act. 10 U.S.C. § 2734 (2006). AR 27-20, *supra* note 2, para. 7-12b; DA PAM. 27-162, *supra* note 2, para. 7-2b(3).

entered into a SOFA, the Foreign Claims Act¹¹³ is used to pay claims.¹¹⁴

The Nonscope Claims Act¹¹⁵ authorizes payment for death, injury, or property loss caused by military personnel using government vehicles or property. The loss must not be cognizable under any other act and the maximum payment is \$1000.¹¹⁶ The Army Maritime Claims Settlement Act¹¹⁷ permits payment for damage caused by Army vessels as well as towage and salvage rendered to Army vessels and maritime damages caused by tortious conduct of military personnel.¹¹⁸

Each claims office is responsible for investigating tort claims within a specific geographic district.¹¹⁹ Staff judge advocates should ensure that their offices are properly staffed and funded to meet this mission.¹²⁰

Article 139 Claims

Staff judge advocates should ensure their claims offices properly process claims under Article 139 of the Uniform Code of Military Justice.¹²¹ This article permits claims to be filed directly against Soldiers who willfully damage or destroy or wrongfully take the property of others.¹²² Any individual or entity can be a proper claimant.¹²³ The claim is processed by the local military claims office but investigated by the offender's unit.¹²⁴ The offender's Special Court-Martial Convening Authority may approve assessments up to \$5000, the General Court-Martial Convening Authority may approve assessments up to \$10,000, and the USARCS can approve assessments above these amounts.¹²⁵ The claim is paid directly from the pay of the Soldier responsible for the loss or damage.¹²⁶

Staff judge advocates should ensure their personnel do not delay the processing of these claims pending the outcome of a criminal investigation or disciplinary action.¹²⁷ If a convening authority will be required to act on the offender's court-martial or other disciplinary action, the claim may be forwarded to a higher level.¹²⁸ Overseas, there is often overlap between the SOFA *ex-gratia* claims process and Article 139; such claims should be processed under Article 139 unless undue hardship will result to the claimant.¹²⁹

Affirmative Claims

Staff judge advocates should ensure their claims offices are aggressively pursuing affirmative claims on behalf of the Army. Several statutes permit the Army to recover from those responsible for damaging federal property or injuring military personnel.¹³⁰ This is truly a "good news" story for SJAs, since these funds can often be returned to the local installation.¹³¹

Army claims offices can recover for the cost of medical care provided to military personnel who suffer injuries under circumstances where someone else is legally responsible.¹³² The Army can recover under the Federal Medical Care Recovery Act¹³³ when its personnel are injured in circumstances creating tort liability to a third person.¹³⁴ It can also recover under 10 U.S.C. § 1095¹³⁵ from health benefits insurers and automobile liability insurance companies.¹³⁶ Claims professionals must review records provided by Military Treatment Facilities and local military police reports to determine when to assert an affirmative claim.¹³⁷ If the injured party is represented by an attorney, military claims professionals can enter into an agreement

¹¹³ 10 U.S.C. § 2734 (2006).

¹¹⁴ AR 27-20, *supra* note 2, para. 2-15d(1).

¹¹⁵ 10 U.S.C. § 2737 (2006).

¹¹⁶ AR 27-20, *supra* note 2, para. 5-2a.

¹¹⁷ 10 U.S.C. §§ 4801–4804, 4806 (2006).

¹¹⁸ AR 27-20, *supra* note 2, para. 8-3.

¹¹⁹ *Id.* para. 2-1d.

¹²⁰ *Id.* para. 1-11a(8).

¹²¹ 10 U.S.C. § 939 (2006).

¹²² AR 27-20, *supra* note 2, para. 9-2.

¹²³ *Id.* para. 9-3a.

¹²⁴ *Id.* para. 9-8.

¹²⁵ *Id.* para. 9-7.

¹²⁶ *Id.* para. 9-8i.

¹²⁷ *Id.* para. 9-4; DA PAM. 27-162, *supra* note 2, para. 9-4a.

¹²⁸ DA PAM. 27-162, *supra* note 2, para. 9-7.

¹²⁹ AR 27-20, *supra* note 2, para. 9-5e (providing that claims cognizable under more than one statute may be processed under Article 139); *see also* DA PAM. 27-162, *supra* note 2, para. 9-8e (providing that, in the event of undue delay in processing an Article 139 claim, the Personnel Claims Act may be used to compensate the claimant, who must return any overpayment to the government if the Article 139 claim succeeds).

¹³⁰ AR 27-20, *supra* note 2, paras. 14-1, 14-2.

¹³¹ *Id.* para. 14-14a(2), a(3), a(5), b, c(1).

¹³² *Id.* para. 14-2b.

¹³³ 42 U.S.C. §§ 2651–2653 (2006).

¹³⁴ DA PAM. 27-162, *supra* note 2, para. 14-1b(1).

¹³⁵ 10 U.S.C. § 1095 (2006).

¹³⁶ DA PAM. 27-162, *supra* note 2, para. 14-1c(1).

¹³⁷ AR 27-20, *supra* note 2, para. 14-6b.

with the attorney to pursue the government claim.¹³⁸ Claims professionals must notify all injured parties (or their attorneys), tortfeasors, and insurers of the government claim.¹³⁹ Funds recovered for treatment at military Medical Treatment Facilities can be deposited into the account supporting the facility.¹⁴⁰

Claims for lost military pay are authorized by Federal Medical Care Recovery Act.¹⁴¹ The statute permits recovery for basic, special, and incentive pays for periods when a Soldier is unable to perform duty because of hospitalization or convalescent leave related to an injury.¹⁴² Collections are deposited into the account supporting the Soldier's unit.¹⁴³

Claims for damage to government property are authorized by the Federal Claims Collection Act.¹⁴⁴ Recoveries are generally deposited to the General Treasury pursuant to the Miscellaneous Receipts Act. However, recoveries for damage to military family housing are deposited to the local installation's housing operations and maintenance account.¹⁴⁵ Recoveries for damage to real property are deposited into an escrow account on behalf of the installation, but currently may not be withdrawn or used.¹⁴⁶ Legislation to fix this problem has been proposed.

The statute of limitations to assert an affirmative claim is three years for claims founded upon tort¹⁴⁷ and six years for claims founded upon contract.¹⁴⁸ The statute of limitations is not tolled by the assertion of a claim; claims professionals must contact the U.S. Army Litigation

Division and the local U.S. Attorney's Office well before the limitations period expires.¹⁴⁹ Staff judge advocates should ensure that their office has a suspense system to determine when claims are about to expire.

Military claims offices may compromise or waive affirmative claims asserted for \$50,000 or less based on the inability of a tortfeasor or insurer to pay, the government's inability to prove its case, a determination that collection costs would exceed the amount compromised, or because available funds are insufficient to satisfy all claims.¹⁵⁰ The Army Claims Service has delegated higher affirmative claims settlement authority to a few of the best Army field claims offices. This "blue chip" authority provides these offices with authority to waive or compromise affirmative claims up to \$100,000.¹⁵¹

When the Army successfully asserts medical care affirmative claims on behalf of TRICARE, the recovered funds are deposited to TRICARE's account.¹⁵² In early 2009, the Army entered into an agreement with TRICARE to return a portion of these funds to the Army.¹⁵³ TRICARE now reimburses Army Medical Treatment Centers for costs invested in the Medical Affirmative Claims program in proportion to TRICARE's share of recoveries.¹⁵⁴ In order to take advantage of this agreement, SJAs should ensure that their offices have entered into agreements with their local Medical Treatment Facilities.¹⁵⁵

¹³⁸ See DA PAM. 27-162, *supra* note 2, para. 14-10a. *But see* Captain David P. Lewen, Jr., *A Question of Priority: Issues Impacting Priority of Payment Under the Federal Medical Care Recovery Act*, ARMY LAW., Mar. 2007, at 20 (urging affirmative claims judge advocates to pursue recovery without obtaining a representation agreement with the injured party's attorney).

¹³⁹ AR 27-20, *supra* note 2, para. 14-9a.

¹⁴⁰ *Id.* para. 14-14c(1).

¹⁴¹ 42 U.S.C. §§ 2651–2653 (2006).

¹⁴² AR 27-20, *supra* note 2, para. 14-9b(3); DA PAM. 27-162, *supra* note 2, para. 14-9b(3)(c) (discussing how to calculate lost pay).

¹⁴³ AR 27-20, *supra* note 2, para. 14-14b.

¹⁴⁴ 31 U.S.C. § 3711 (2006).

¹⁴⁵ 10 U.S.C. § 2775(d) (2006); AR 27-20, *supra* note 2, para. 14-14a(5).

¹⁴⁶ 10 U.S.C. § 2782 (2006) (providing that funds are credited to accounts "available for the repair or replacement of the real property," and may be used "for the same purposes and under the same circumstances as other funds in the account" as "provided in advance of appropriation Acts"); AR 27-20, *supra* note 2, para. 14-14a(2) (stating that the escrow account is used to "temporarily hold deposits" and "roll over" deposits to avoid their reversion to the General Treasury, but not authorizing any use of these funds).

¹⁴⁷ 28 U.S.C. § 2415(b) (2006); AR 27-20, *supra* note 2, para. 14-5b(1).

¹⁴⁸ 28 U.S.C. § 2415(a) (2006); AR 27-20, *supra* note 2, para. 14-5b(2).

¹⁴⁹ AR 27-20, *supra* note 2, para. 14-11 (describing situations in which litigation is "particularly appropriate" and recommending that litigation commence at least six months before the expiration of the limitations period).

¹⁵⁰ *Id.* paras. 14-12a, d (providing authority for compromise and a nonexhaustive list of acceptable reasons for compromise).

¹⁵¹ Thomas Kennedy, *Blue Chip Selections (2011–2012)*, Affirmative Claims Discussion Board, JAGCNET (26 May 2011), <https://www/jagcnet2.army.mil/JAGCNETPortals/Intranet/Discussion%20Boards/claimsdb.nsf/WebBoardSubNotApp?OpenView&RestrictToCategory=ACDAFFB464AC8A3F852578680073E440&Count=30&ExpandSection=1>.

¹⁵² AR 27-20, *supra* note 2, para. 14-14c(2).

¹⁵³ Memorandum of Agreement (MOA) Between TRICARE Management Activity (TMA), and Army Medical Command (MEDCOM) and U.S. Army Office of the Judge Advocate General (OTJAG), subject: TMA Reimbursement to Army for Support of Medical Affirmative Claims (MAC) Program, signed 12 Dec 2008 (Robert D. Seaman, TMA General Counsel), 23 Dec. 2008 (Allen Middleton, TMA Health Budgets and Financial Policy), 14 Jan. 2009 (Lieutenant General Eric B. Schoemaker, MEDCOM), and 31 Dec 2008 (Lieutenant General Scott C. Black, Office of the Judge Advocate General).

¹⁵⁴ Thomas Kennedy, *TRICARE AGREEMENT Reimbursement Process*, Affirmative Claims Discussion Board, JAGCNET (Dec. 6, 2011), <https://www.jagcnet2.army.mil/JAGCNETPortals/Intranet/Discussion%20Boards/claimsdb.nsf/WebBoardSubNotApp?OpenView&RestrictToCategory=24CF617FACD035D0852577F10082A51E&Count=30&ExpandSection=1> (citing unpublished Memorandum of Agreement Between TMA, MEDCOM, and U.S. Army OTJAG).

¹⁵⁵ See Kennedy, *supra* note 154.

Deployment Claims

Staff judge advocates should ensure that their offices are prepared to pay claims during a deployment. Commanders have long recognized claims operations as a combat multiplier.¹⁵⁶ Deployed claims professionals often perform their duties at great personal risk. In Vietnam the only citation for heroism by a judge advocate was earned by Lieutenant Colonel Zane Finkelstein while paying claims.¹⁵⁷ In May 2007, Army Corporal Coty Phelps was tragically killed by a roadside explosive device while participating in a claims mission in Iraq.¹⁵⁸ Despite these risks, commanders continue to conduct claims operations in combat zones because of their importance to mission success.

The Army has single-service claims responsibility for many countries where Americans have recently deployed, including Iraq and Afghanistan.¹⁵⁹ This means that Army claims professionals are responsible for settling claims in these countries regardless of whether they arose from Army, Air Force, Navy or Marine operation.

Since the United States does not have a SOFA in Iraq or Afghanistan,¹⁶⁰ the Foreign Claims Act¹⁶¹ is the primary means of paying claims in these countries.¹⁶² This statute permits payment for death, injury, or property loss caused by negligent or wrongful acts of military personnel or incident

to the noncombat operations of the armed forces.¹⁶³ Payable claims include loss or damage caused by traffic accidents,¹⁶⁴ appropriation of property,¹⁶⁵ and temporary trespass on land.¹⁶⁶ The statute permits payment of claims even if the military personnel who caused the injury or loss were not acting in the scope of their duties.¹⁶⁷ The Foreign Claims Act does not permit payment of claims which arise from combat activities,¹⁶⁸ are not in the best interests of the United States,¹⁶⁹ or are for the rental of real estate.¹⁷⁰ Claims must be evaluated using the law of the foreign country where the act occurred,¹⁷¹ so claims professionals must become experts in foreign law. Although the statute does not authorize lawsuits,¹⁷² claims professionals must adjudicate these claims fairly.¹⁷³

The Foreign Claims Act relies on Foreign Claims Commissions, one- or three-person groups that investigate and settle claims.¹⁷⁴ One-member Foreign Claims Commissions have the authority to pay up to \$15,000;¹⁷⁵ three-member Foreign Claims Commissions may pay up to \$50,000.¹⁷⁶ All members of such commissions must be U.S.

¹⁵⁶ See INT'L & OPERATIONAL LAW DEP'T, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK 299 (2011) (noting that claims serve "[t]o ensure friendly relations with the local population and maintain the morale of our own troops").

¹⁵⁷ Fred L. Borch III, *For Heroism in Combat While Paying Claims: The Story of the Only Army Lawyer to be Decorated for Gallantry in Vietnam*, ARMY LAW., Sept. 2010, at 2.

¹⁵⁸ Major Richard DiMeglio, *In Memoriam: Corporal Coty James Phelps*, ARMY LAW., Apr. 2008, at 1, 3.

¹⁵⁹ U.S. DEP'T OF DEF., INSTR. 5515.08, ASSIGNMENT OF CLAIMS RESPONSIBILITY enclosure 2 (11 Nov. 2006). The Army has single-service claims responsibility for Afghanistan, Albania, Austria, Belarus, Belgium, Bulgaria, the Czech Republic, El Salvador, Eritrea, Estonia, Ethiopia, Germany, Grenada, Honduras, Hungary, Iran, Iraq, Kenya, Korea, Kuwait, Latvia, Lithuania, the Marshall Islands, Moldova, the Netherlands, Poland, Romania, Seychelles, Slovakia, Slovenia, Somalia, Sudan, Switzerland, Ukraine, Yemen, as well as claims in Central Command area of responsibility not specifically assigned to the Air Force or Navy. The Air Force has single-service claims responsibility for Australia, Azores, Canada, Cyprus, Denmark, Egypt, France, India, Japan, Jordan, Luxembourg, Morocco, Nepal, Norway, Oman, Pakistan, Qatar, Saudi Arabia, Tunisia, Turkey, the United Kingdom, and claims generated by Special Operations Command in countries not specifically assigned to the Army or Navy. The Navy has single-service claims responsibility for Bahrain, Djibouti, Greece, Guantanamo, Iceland, Israel, Italy, Portugal, Spain, and the United Arab Emirates. *Id.*

¹⁶⁰ Commander Trevor A. Rush, *Don't Call It a SOFA! An Overview of the U.S.—Iraq Security Agreement*, ARMY LAW., May 2009, at 34.

¹⁶¹ 10 U.S.C. § 2734 (2006).

¹⁶² AR 27-20, *supra* note 2, para. 2-15d(1).

¹⁶³ *Id.* para. 10-3a.

¹⁶⁴ See DA PAM. 27-162, *supra* note 2, para. 10-4b (explaining that if a U.S. Soldier causes a vehicle collision, resulting damage to a third party would be payable).

¹⁶⁵ *Id.* para. 10-3c (noting that cognizable claims include those resulting from wrongful acts of U.S. Soldiers and civilian employees).

¹⁶⁶ See Captain Christopher M. Ford, *The Practice of Law at the Brigade Combat Team (BCT): Boneyards, Hitting for the Cycle, and All Aspects of a Full Spectrum Practice*, ARMY LAW., Dec. 2004, at 22, 35.

¹⁶⁷ AR 27-20, *supra* note 2, para. 10-3a. However, claims involving tortious conduct of a local national employee who was not acting in the scope of employment may not be paid. *Id.*

¹⁶⁸ *Id.* para. 10-4k, 2-28j; DA PAM. 27-162, *supra* note 2, para. 10-3b.

¹⁶⁹ AR 27-20, *supra* note 2, para. 10-4h.

¹⁷⁰ *Id.* para. 10-4b (claims "purely contractual in nature" may not be paid). *But see* Ford, *supra* note 166 (claims for temporary trespass on land may be paid).

¹⁷¹ AR 27-20, *supra* note 2, para. 10-5. In particular, the amount paid may not exceed the amount that would be paid under the host country's law (even if that amount is zero).

¹⁷² 10 U.S.C. § 2734 (2006).

¹⁷³ AR 27-20, *supra* note 2, para. 1-17a(3) (DA Policy "seeks to compromise claims in a manner that represents a fair and equitable result to both the claimant and the United States.").

¹⁷⁴ *Id.* paras. 10-6e, f; 10-7a.

¹⁷⁵ *Id.* para. 10-9c. This authority is extended only to one-member Foreign Claims Commissions that are judge advocates; a non-attorney one-member Foreign Claims Commission (FCC) may pay up to \$5,000. *Id.* para 10-8.

¹⁷⁶ *Id.* para. 10-9d(2)(a). At least two members of such a commission must be judge advocates. *Id.* para. 10-8.

citizens.¹⁷⁷ The Commander of the USARCS appoints Foreign Claims Commissions in Iraq and Afghanistan.¹⁷⁸ Prior to deployments, SJAs should coordinate with the USARCS to ensure that Foreign Claims Commissions are properly trained.¹⁷⁹ Once deployed, SJAs should request appointments of such commissions by contacting the USARCS.¹⁸⁰ Foreign Claims Commissions need not be composed solely of Army personnel; Navy, Marine, and Air Force personnel may be appointed as well.¹⁸¹

Staff judge advocates should also be aware of means of compensating local nationals outside the claims system. Solatia payments may be made to victims of U.S. military activities to express sympathy when local customs permit for such payments. Such payments come from Operations and Maintenance funds, not claims funds. Solatia is used extensively in Japan and Korea.¹⁸² The Commander's Emergency Response Program (CERP) may also be used to provide funds to victims of U.S. military activities.¹⁸³ This program has been used extensively in Iraq and Afghanistan.¹⁸⁴

Claims by detainees must be handled with special care. Because of the sensitivity of these claims, SJAs should notify the USARCS of all claims involving alleged abuse or maltreatment of detainees.¹⁸⁵ Claims of persons who were detained in Iraq must be acted on by the Secretary of the Army.¹⁸⁶

Disaster Claims

Staff judge advocates should ensure their claims offices are prepared to respond to disasters.¹⁸⁷ Military claims offices must prepare for two types of disasters: those caused by the military, such as range fires, and those caused by natural or other forces, such as hurricanes, that cause property damage on a military installation compensable under the Personnel Claims Act.¹⁸⁸

Damages from disasters caused by the military may be payable under the Federal Tort Claims Act,¹⁸⁹ the Military Claims Act,¹⁹⁰ the National Guard Claims Act,¹⁹¹ or the Foreign Claims Act.¹⁹² The military claims office with geographic responsibility for the disaster is responsible for the resulting claims.¹⁹³ This office should immediately notify the USARCS,¹⁹⁴ which may deploy a team and set up a special claims processing office.¹⁹⁵ Staff judge advocates should obtain assistance from local authorities to establish the special claims office and publicize its location.¹⁹⁶ If claimants are in immediate need of funds as a result of the disaster, emergency partial payments may be authorized.¹⁹⁷ In these cases, SJAs should coordinate with their local finance offices to obtain cash for immediate payment.

Natural and other disasters that are not caused by the military require a different approach. Under the Personnel Claims Act,¹⁹⁸ Soldiers and Army civilian employees can be paid for losses incident to service that result from fire, flood, hurricane, or other unusual occurrence.¹⁹⁹ In the United

States, these payments are generally limited to damage that occurs on the installation.²⁰⁰ Overseas, Soldiers and

¹⁷⁷ *Id.* para. 10-8.

¹⁷⁸ *Id.* para. 10-6b; DA PAM. 27-162, *supra* note 2, para. 10-6a(2) (discussing need of the staff judge advocate to coordinate with USARCS for appointment of FCC).

¹⁷⁹ AR 27-20, *supra* note 2, para. 1-11a(14).

¹⁸⁰ DA PAM. 27-162, *supra* note 2, para. 10-6a(2).

¹⁸¹ AR 27-20, *supra* note 2, para. 10-8 (requiring approval of commander, USARCS, for any such appointment).

¹⁸² *Id.* para. 10-11.

¹⁸³ Captain Karin Tackaberry, *Judge Advocates Play a Major Role in Rebuilding Iraq: The Foreign Claims Act and Implementation of the Commander's Emergency Response Program*, ARMY LAW., Feb. 2004, at 39, 41.

¹⁸⁴ Lieutenant Colonel Mark Martins, *No Small Change of Soldiering: The Commanders Emergency Response Program (CERP) in Iraq and Afghanistan*, ARMY LAW., Feb. 2004, at 1.

¹⁸⁵ AR 27-20, *supra* note 2, para. 2-1c (requiring notification to commander, USARCS, of "all major incidents involving serious injury or death . . .").

¹⁸⁶ Memorandum from Sec'y of Defense, to Sec'y of the Army, subject: Processing of Claims by Iraqi Detainees Based on Allegations of Personal Injury/Abuse and Mistreatment (15 Sept. 2004), available at USARCS website, <https://www.jagcnet.army.mil/8525752700444FBA/0/0B4B0B6A8992AE268525782C0043D019?opendocument&noly=1>.

¹⁸⁷ AR 27-20, *supra* note 2, para. 1-21; DA PAM. 27-162, *supra* note 2, para. 1-21 (discussing disaster claims planning in general).

¹⁸⁸ 31 U.S.C. § 3721 (2006); AR 27-20, *supra* note 2, para. 11-5c.

¹⁸⁹ 28 U.S.C. §§ 2671–2680 (2006).

¹⁹⁰ 10 U.S.C. § 2733 (2006).

¹⁹¹ *Id.* § 715.

¹⁹² *Id.* § 2731.

¹⁹³ DA PAM. 27-162, *supra* note 2, para. 1-21b.

¹⁹⁴ *Id.* para. 1-21d(1).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* para. 1-21d(2).

¹⁹⁷ 10 U.S.C. § 2736 (2006); AR 27-20, *supra* note 2, paras. 2-49d, 11-18.

¹⁹⁸ 31 U.S.C. § 3721 (2006).

¹⁹⁹ AR 27-20, *supra* note 2, para. 11-5c; DA PAM. 27-162, *supra* note 2, para. 11-5c.

²⁰⁰ For example, in the United States damages occurring at quarters are only compensable if the quarters were provided in kind by the government. AR

civilian employees can be paid for damage at authorized quarters off the installation.²⁰¹ Claims professionals can make emergency partial payments under the Personnel Claims Act of up to \$5000.²⁰²

In 2011, the USARCS initiated a new procedure for adjudicating claims involving catastrophic losses.²⁰³ The Catastrophic Loss Accelerated Settlement Procedure (CLASP) can be authorized by the commander of the USARCS as an exception to policy.²⁰⁴ At the claimant's option, this procedure may be used to obtain settlement without the need for a complete itemized list of all property.²⁰⁵

Conclusion

Good claims office management is critical to the success of SJAs. All SJAs should require their claims offices to apply for The Judge Advocate General's Award for Excellence in Claims. Staff judge advocates should keep track of new developments in transportation, which may impact claims office manning, and new developments in tort claims and affirmative claims law. They should also ensure that their personnel are adequately prepared for deployment claims and disaster claims operations.

27-20, *supra* note 2, para. 11-5d(1); DA PAM. 27-162, *supra* note 2, para. 11-5d(1).

²⁰¹ AR 27-20, *supra* note 2, para. 11-5d(2); DA PAM. 27-162, *supra* note 2, para. 11-5d(2).

²⁰² AR 27-20, *supra* note 2, para. 11-18; DA PAM. 27-162, *supra* note 2, para. 11-18.

²⁰³ Colonel R. Peter Masterton, *Personal Claims Note: New Personnel Claims Procedure for Catastrophic Losses*, ARMY LAW., Jan. 2011, at 1.

²⁰⁴ AR 27-20, *supra* note 2, para. 1-17e (giving the Commander, USARCS, broad authority to deviate from the specific requirements of AR 27-20 "in the best interests of the government," except in matters governed by statute, executive order, or other controlling law).

²⁰⁵ Masterton, *supra* note 203, at 1.