

## Department of the Army, DoD

## § 536.62

claim arises under the FTCA or AMCSA, only if the amount claimed exceeds \$50,000, or \$100,000 per incident.

### § 536.61 Advance payments.

(a) This section implements 10 U.S.C. 2736 (Act of September 8, 1961 (75 Stat. 488)) as amended by Public Law 90-521 (82 Stat. 874); Public Law 98-564 (90 Stat. 2919); and Public Law 100-465 (102 Stat. 2005)). No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments, only under subparts C, F or J of this part, on claims not yet filed. See AR 27-20, paragraph 11-18 for information on emergency partial payments in personnel claims, which are not governed by 10 U.S.C. 2736.

(b) The Judge Advocate General (TJAG) and the Assistant Judge Advocate General (TAJAG) may make advance payments in amounts not exceeding \$100,000; the Commander USARCS, in amounts not exceeding \$25,000, and the authorities designated in §§ 536.786(4) and (5) and 536.101, in amounts not exceeding \$10,000, subject to advance coordination with USARCS, if the estimated total value of the claim exceeds their monetary authority. Requests for advance payments in excess of \$10,000 will be forwarded to USARCS for processing.

(c) Under subpart J of this part, three-member foreign claims commissions may make advance payments under the FCA in amounts not exceeding \$10,000, subject to advance coordination with USARCS if the estimated total value of the claim exceeds their monetary authority.

(d) An advance payment, not exceeding \$100,000, is authorized in the limited category of claims or potential claims considered meritorious under subparts C, F or J of this part, that result in immediate hardship. An advance payment is authorized only under the following circumstances:

(1) The claim, or potential claim, must be determined to be cognizable and meritorious under the provisions of subparts C, F or J of this part.

(2) An immediate need for food, clothing, shelter, medical or burial expenses, or other necessities exists.

(3) The payee, so far as can be determined, would be a proper claimant, in-

cluding an incapacitated claimant's spouse or next-of-kin.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained. This acceptance agreement must state that it does not constitute an admission of liability by the United States and that the amount paid shall be deducted from any subsequent award.

(e) There is no statutory authority for making advance payments for claims payable under subparts D or H of this part.

NOTE TO § 536.61: For further discussion see DA Pam 27-162, paragraph 2-71.

### § 536.62 Action memorandums.

(a) *When required.* (1) All claims will be acted on prior to being closed except for those that are transferred. For claims on which suit is filed before final action, see § 536.66. A settlement authority may deny or pay in full or in part any claim in a stated amount within his or her delegated authority. An approval authority may pay in full or in part, but may not deny, a claim in a stated amount within his or her delegated authority. If any one claim arising out of the same incident exceeds a settlement or approval authority's monetary jurisdiction, all claims from that incident will be forwarded to the authority having jurisdiction.

(2) In any claim which must be supported by an expert opinion as to duty, negligence, causation or damages, an expert opinion must be submitted upon request. All opinions must meet the standards set forth in Federal Rule of Evidence 702.

(3) An action memorandum is required for all final actions regardless of whether payment is made electronically. The memorandum will contain a sufficient rendition of the facts, law or damages to justify the action being taken. (A model action is posted on the USARCS Web site; for the address see § 536.2(a).)

(b) *Memorandum of Opinion.* Upon completion of the investigation, the

## § 536.63

ACO or CPO will prepare a memorandum of opinion in the format prescribed at DA Pam 27-162, when a claim is forwarded to USARCS for action. This requirement can be waived by the USARCS AAO.

(c) *Claim brought by a claims authority or superior.* A claim filed by an approval or settlement authority or his or her superior officer in the chain of command or a family member of either will be investigated and forwarded for final action, without recommendation, to the next higher settlement authority (in an overseas area, this includes a command claims service) or to USARCS.

NOTE TO § 536.62: For further discussion see DA Pam 27-162, paragraph 2-72.

### § 536.63 Settlement agreements.

(a) *When required.* (1) A claimant's acceptance of an award constitutes full and final settlement and release of any and all claims against the United States and its employees, except as to payments made under §§ 536.60 and 536.61. A settlement agreement is required prior to payment on all tort claims, whether the claim is paid in full or in part.

(2) DA Form 1666 (Claims Settlement Agreement) may be used for payment of COE claims of \$2,500 or less or all Army Central Insurance Fund and Army and Air Force Exchange Service claims.

(3) DA Form 7500 (Tort Claim Payment Report) will be used for all payments from the Defense Finance and Accounting Service (DFAS), for example, FTCA claims of \$2,500 or less, FCA and MCA claims of \$100,000 or less and all maritime claims regardless of amount.

(4) Financial Management Service (FMS) Forms 194, 196 and 197 will be used for all payments from the Judgment Fund, for example, FTCA claims exceeding \$2,500, MCA and FCA claims exceeding \$100,000.

(5) An alternative settlement agreement will be used when the claimant is represented by an attorney, or when any of the above settlement agreement forms are legally insufficient (such as when multiple interests are present, a hold harmless agreement is reached, or there is a structured settlement). For

## 32 CFR Ch. V (7-1-09 Edition)

further discussion, see DA Pam 27-162, paragraph 2-73c.

(b) *Unconditional settlement.* The settlement agreement must be unconditional. The settlement agreement represents a meeting of the minds. Any changes to the agreement must be agreed upon by all parties. The return of a proffered settlement agreement with changes written thereon or on an accompanying document represents, in effect, a counteroffer and must be resolved. Even if the claimant signs the agreement and objects to its terms, either in writing or verbally, the settlement is defective and the objection must be resolved. Otherwise a final offer should be made.

(c) *Court approval*—(1) *When required.* Court approval is required in a wrongful death claim, or where the claimant is a minor or incompetent. The claimant is responsible to obtain court approval in a jurisdiction that is locus of the act or omission giving rise to the claim or in which the claimant resides. The court must be a state or local court, including a probate court. If the claimant can show that court approval is not required under the law of the jurisdiction where the incident occurred or where the claimant resides, the citation of the statute will be provided and accompany the payment documents.

(2) *Attorney representation.* If the claimant is a minor or incompetent, the claimant must be represented by a lawyer. If not already represented, the claimant should be informed that the requirement is mandatory unless state or local law expressly authorizes the parents or a person in loco parentis to settle the claim.

(3) *Costs.* The cost of obtaining court approval will be factored into the amount of the settlement; however, the amount of the costs and other costs will not be written into the settlement, only the 20% limitation on attorney fees will be included.

(4) *Claims involving an estate or personal representative of an estate.* On claims presented on behalf of a decedent's estate, the law of the state having jurisdiction should be reviewed to determine who may bring a claim on