

Department of the Army, DoD

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arising while units are traveling to or from the maneuver within the jurisdiction of other ACOs, and forward such claims for action to the ACO in whose area the claims arose. Claims for damage to real or personal property arising on private land that the Army has used under a permit may be paid from funds specifically budgeted by the maneuver for such purposes in accordance with AR 405-15.

(iii) *Disaster claims and civil disturbance.* A special CPO provided for a disaster or civil disturbance should include a claims approving authority with adequate investigatory, administrative, and logistical support, including damage assessment and finance and accounting support. It will not be dispatched prior to notification of the Commander USARCS, whose concurrence must be obtained before the first claim is paid.

(5) *Supervisory requirements.* The CPOs discussed in paragraphs (b)(2) through (b)(4) of this section must be supervised by an assigned CJA or claims attorney in order to exercise delegated approval authority.

§ 536.11 Chief of Engineers.

The Chief of Engineers, through the Chief Counsel, shall:

(a) Provide general supervision of the claims activities of COE ACOs.

(b) Ensure that each COE ACO has a claims attorney designated in accordance with § 536.4.

(c) Ensure that claims personnel are adequately trained, and monitor their ongoing claims administration.

(d) Implement pertinent claims policies.

(e) Provide for sufficient funding in accordance with existing Army regulations and command directives for temporary duty (TDY), long distance telephone calls, recording equipment, cameras, and other expenses for investigating and processing claims.

(f) Procure and maintain adequate legal publications on local law relating to claims arising within the United States, its territories, commonwealths and possessions.

(g) Assist USARCS in evaluation of claims by furnishing qualified expert and technical advice from COE resources, on a non-reimbursable basis

except for temporary duty (TDY) and specialized lab services expenses.

§ 536.12 Commanding General, U.S. Army Medical Command.

(a) After consulting with the Commander USARCS on the selection of medical claims attorneys, the Commander of the U.S. Army MEDCOM, the European Medical Command, or other regional medical command, through his or her SJA/Center Judge Advocate, shall ensure that an adequate number of qualified MCJAs or medical claims attorneys and medical claims investigators are assigned to investigate and process medical malpractice claims arising at Army medical centers under the Commander's control. In accordance with an agreement between TJAG and The Surgeon General, such personnel shall be used primarily to investigate and process medical malpractice claims and affirmative claims and will be provided with the necessary funding and research materials to carry out this function.

(b) Upon request of a claims judge advocate or claims officer, shall provide a qualified health care provider at a medical treatment facility (MTF) to examine a claimant for his injuries even if the claimant is not otherwise entitled to care at an MTF (See AR 40-400, Patient Administration, paragraph 3-47).

§ 536.13 Chief, National Guard Bureau.

The Chief, National Guard Bureau (NGB), shall:

(a) Ensure the designation of a point of contact for claims matters in each State Adjutant General's office.

(b) Provide the name, address, and telephone number of these points of contact to the Commander USARCS.

(c) Designate claims officers to investigate claims generated by ARNG personnel and forward investigations to the Active Army ACO that has jurisdiction over the area in which the claims incident occurred.

§ 536.14 Commanders of major Army commands.

Commanders of MACOMs, through their SJAs, shall:

(a) Assist USARCS in monitoring ACOs and CPOs under their respective

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commands for compliance with the responsibilities assigned in §§536.9 and 536.10.

(b) Assist claims personnel in obtaining qualified expert and technical advice from command units and organizations on a nonreimbursable basis (although the requesting office may be required to provide TDY funding).

(c) Assist TJAG, through the Commander USARCS, in implementing the functions set forth in §536.7.

(d) Coordinate with the ACO within whose jurisdiction a maneuver is scheduled, to ensure the prompt investigation and settlement of any claims arising from it.

§536.15 Claims policies.

(a) *General.* The following policies will be adhered to in processing and adjudicating claims falling within this regulation. The Commander USARCS is authorized to publish new policies or rescind existing policies from time to time as the need arises.

(1) *Notification.* The Commander USARCS must be notified as soon as possible of both potential and actual claims which are serious incidents that cannot be settled within the monetary jurisdiction of a Command Claims Service or an ACO, including those which occur in the area of responsibility of a CPO. On such claims, the USARCS Area Action Officer (AAO) must coordinate with the field office as to all aspects of the investigation, evaluation and determination of liability. An offer of settlement or the assertion of an affirmative claim must be the result of a discussion between the AAO and the field office. Payment of a subrogated claim may commit the United States to liability as to larger claims. On the other hand, where all claims out of an incident can be paid within field authority they should be paid promptly with maximum use of small claims procedures.

(2) *Consideration under all subparts.* Prior to denial, a claim will be considered under all subparts of this part, regardless of the form on which the claim is presented. A claim presented as a personnel claim will be considered as a tort prior to denial. A claim presented as a tort will first be considered as a personnel claim, and if not payable,

then considered as a tort. If deniable, the claim will be denied both as a personnel claim and as a tort.

(3) *Compromise.* DA policy seeks to compromise claims in a manner that represents a fair and equitable result to both the claimant and the United States. This policy does not extend to frivolous claims or claims lacking factual or legal merit. A claim should not be settled solely to avoid further processing time and expense. All claims, regardless of amount, should be evaluated. Congress imposed no minimum limit on payable claims nor did it intend that small non-meritous claims be paid. Practically any claim, regardless of amount, may be subject to compromise through direct negotiation. A CJA or claims attorney should develop expertise in assessing liability and damages, including small property damage claims. For example, a property damage claim may be compromised by deducting the cost of collection, *i.e.*, attorney fees and costs, even where liability is certain.

(4) *Expeditious processing at the lowest level.* Claims investigation and adjudication should be accomplished at the lowest possible level, such as the CPO or ACO that has monetary authority over the estimated total value of all claims arising from the incident. The expeditious investigation and settlement of claims is essential to successfully fulfilling the Army's responsibilities under the claims statutes implemented by this part.

(5) *Notice to claimants of technical errors in claim.* When technical errors are found in a claim's filing or contents, claimants should be advised of such errors and the need to correct the claim. If the errors concern a jurisdictional matter, a record should be maintained and the claimant should be immediately warned that the error must be corrected before the statute of limitations (SOL) expires.

(b) *Cooperative investigative environment.* Any person who indicates a desire to file a claim against the United States cognizable under one of the subparts of this part will be instructed concerning the procedure to follow. The claimant will be furnished claim forms and, when necessary, assisted in completing claim forms, and may be