

any US Armed Forces member or employee not listed in §842.64(c)(1) of this part. The Act imposes responsibility on the United States when it places a US citizen or non-US citizen employee in a position to cause the injury or damage. If the cause is a criminal act clearly outside the scope of employment, ordinarily pay the claim and consider disciplinary action against the offender.

§ 842.65 Claims not payable.

A claim is not payable when it:

(a) Has been paid or denied by a competent tribunal under the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), or any similar SOFA or treaty.

(b) Is purely contractual in nature.

(c) Is for attorney fees, punitive damages, a judgment or interest on a judgment, bail, or court costs.

(d) Accrues from a private contractual relationship between US personnel and third parties about property leases, public utilities, hiring of domestic servants, and debts of any description. This claim is sent for action to the commander of the person concerned (see 32 CFR part 818).

(e) Is based solely on compassionate grounds.

NOTE: A Solatium payment is paid from O&M funds as an investigative expense.

(f) Is a bastardy claim.

(g) Is for patent or copyright infringement.

(h) Is waived under an international agreement.

(i) Is for rent, damage, or other payments involving regular acquisition, possession, and disposition of real property by or for the Air Force.

(j) Is filed by a Communist country or its inhabitants, unless authorized by HQ USAF/JACC.

(k) Is for real property taken by a continuing trespass.

(l) Is for personal injury or death of a person covered by:

(1) The Federal Employees' Compensation Act (5 U.S.C. 8101, *et seq.*).

(2) The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*).

(3) A US contract or agreement providing employee benefits through insurance, local law, or custom, where the United States pays for them either

directly or as part of the consideration under the contract. (See 42 U.S.C. 1651 and 42 U.S.C. 1701.) The Judge Advocate General or Chief, Claims and Tort Litigation Staff, HQ USAF/JACC, may authorize an award where local benefits are not adequate. Local benefits are deducted from any award.

(m) Results from an action by an enemy, or directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for or going to, or returning from a combat mission.

(n) Is based on negligence of a concessionaire or other independent contractor.

(o) Arises out of personal activities of dependents, guests, servants, or pets of members and employees of the US Armed Forces. (This includes situations where local law imposes strict liability or where the head of a household is held vicariously liable for their negligence.)

(p) Is the subject of litigation against the United States or its employees. This restriction does not apply to joint criminal/civil proceedings in a foreign court. Claims settlement may be authorized by HQ USAF/JACC in appropriate cases on request.

(q) Is covered under US admiralty laws, unless authorized by The Judge Advocate General or Chief, Claims and Tort Litigation Staff.

(r) Is one for which a foreign government is responsible under SOFA, treaty, or other agreement. However, HQ USAF/JACC may authorize payment of a claim where the foreign government refuses to recognize its legal responsibilities and the claimant has no other means of compensation.

§ 842.66 Applicable law.

This paragraph provides guidance to determine the applicable law for assessment of liability.

(a) A claim is settled under the law and standards in effect in the country where the incident occurred. In calculating the amount of any lump sum

§ 842.67

award, the present value of any periodic payment upon which the award is based, is computed, unless the law of the place of occurrence prohibits it.

(b) Contributory negligence committed by the claimant, claimant's agent, or employee is not used as a bar to recovery unless local law or custom requires it. If the comparative negligence doctrine is used, the percentage of negligence of each party is reflected in the apportionment of liability. The amount of damage sustained by both parties is apportioned according to local law.

(c) The following principles of the collateral source doctrine are applied in settling a claim except where local law provides otherwise:

(1) Any sums the claimant recovers from collateral sources, including proceeds of property insurance the claimant paid for are not deducted from the claim except when those sums are from:

- (i) The US Government.
- (ii) A US military member or employee.
- (iii) A Joint tort-feasor.
- (iv) An Insurer of § 842.66(c)(1)(i), (ii), or (iii), above.

(2) Do not deduct insurance or any other payments where the US military member or employee would have to make reimbursement.

§ 842.67 Reconsideration of final denials.

This paragraph provides the procedures used to reconsider a final denial.

(a) An FCC may reopen, reverse, or reconsider, in whole or in part, any claim it previously decided if the request for reconsideration is received in a reasonable time. Sixty days is considered a reasonable time, but the FCC may waive the time limit for good cause.

(b) An FCC reconsiders the final action on a claim when there is:

- (1) New and material evidence concerning the claim.
- (2) Obvious error in facts or calculation of the original settlement.
- (3) Fraud or collusion in the original submission of the claim.

(c) The FCC must state the reason for reconsideration in its opinion. A court decision is not in itself sufficient basis

32 CFR Ch. VII (7-1-11 Edition)

for reconsidering a claim, but the facts that resulted in the judgment may warrant reconsideration. The amount of a court judgment is not binding on a FCC's determination of damage, but the commission may consider the judgment as evidence of the local law on the subject.

§ 842.68 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of indemnity and contribution permitted by the law of the situs or under contract. Contribution or indemnity should not be sought:

(a) From US military personnel or civilian employees whose conduct gave rise to government liability.

(b) Where recovery action would be harmful to international relations.

Subpart H—International Agreement Claims (10 U.S.C. 2734a and 2734b)

§ 842.69 Scope of this subpart.

This subpart governs Air Force actions in investigating, processing, and settling claims under international agreements.

§ 842.70 Definitions.

The following are general definitions. See the relevant international agreement for the specific meaning of a term to use with a specific claim.

(a) *Civilian component.* Civilian personnel accompanying a force of a contracting party, who are employed by that force. Indigenous employees, contractor employees, or members of the American Red Cross are not a part of the civilian component unless specifically included in the agreement.

(b) *Contracting party.* A nation signing the governing agreement.

(c) *Force.* Personnel belonging to the land, sea, or air armed services of one contracting party when in the territory of another contracting party in connection with their official duties.

(d) *Legally responsible.* A term of art providing for settlement of claims under cost sharing international agreements consistent with the law of the receiving State. Often these claims are