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# ADMINISTRATIVE SETTLEMENT OF MILITARY CLAIMS

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## HEARINGS

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BEFORE

### SUBCOMMITTEE ON CLAIMS AND GOVERNMENTAL RELATIONS

OF THE

### COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

### H.R. 5843

TO AMEND SECTIONS 2733 AND 2734 OF TITLE 10, UNITED STATES CODE, AND SECTION 715 OF TITLE 32, UNITED STATES CODE, TO INCREASE THE MAXIMUM AMOUNT OF A CLAIM AGAINST THE UNITED STATES THAT MAY BE PAID ADMINISTRATIVELY UNDER THOSE SECTIONS

MAY 3, 1973

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MILITARY CLAIMS

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## ADMINISTRATIVE SETTLEMENT OF MILITARY CLAIMS

THURSDAY, MAY 3, 1973

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE NO. 2 OF THE  
COMMITTEE ON THE JUDICIARY,  
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to call, in room 2226, Rayburn House Office Building, Hon. Harold D. Donohue, chairman, presiding.

Present: Representatives Donohue (presiding); Danielson, Butler, Mann, and Jordan.

Staff members present: William P. Shattuck, counsel; Peter T. Straub, associate counsel.

Mr. DONOHUE. The meeting will please come to order.

We are meeting this morning to consider H.R. 5843, which would amend sections 2733 and 2734 of title 10 United States Code, and section 715 of title 32, United States Code, so as to increase the maximum amount of a claim that may be paid administratively under those sections.

[H.R. 5843 follows:]

[H.R. 5843, 93d Cong., 1st sess.]

A BILL To amend sections 2733 and 2734 of title 10, United States Code, and section 715 of title 32, United States Code, to increase the maximum amount of a claim against the United States that may be paid administratively under those sections

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That sections 2733 and 2734 of title 10, United States Code, are each amended by striking out "\$15,000" wherever it appears in each section and inserting in lieu thereof "\$25,000".

SEC. 2. Section 715 of title 32, United States Code is amended by striking out "\$15,000" wherever it appears therein and inserting in lieu thereof "\$25,000".

We have with us this morning the sponsor of this bill. He happens to be an able and distinguished member of this subcommittee, and of the General Committee on Judiciary. I think it is fitting and proper that we should hear from our colleague concerning the need for the amendments proposed in this bill.

Mr. DANIELSON. Thank you, Mr. Chairman. With your permission, I will remain in my regular place and defer to our more distinguished witnesses who are appearing in support of the legislation. I feel that they can really give us the basic information we require to act on the bill.

Under sections 2733 and 2734 of title 10, United States Code, and sections 715 of title 32, United States Code, we presently have a situation in which the settlement authority, by the executive department agencies is limited to \$15,000. In the course of work and in the

course of our studies, we frequently have been informed by those who are responsible for handling these claims that they could do a better job of discharging the responsibilities under the law if their jurisdictional limits were raised. The basic problem is of course that where a claim is approved which exceeds \$15,000, the payment of the balance must await approval of an appropriation bill, and this delay causes dissatisfaction or even hostility on the part of claimants.

Four or five members of this subcommittee who have done some work on this recently, have picked the figure of \$25,000 as being the appropriate figure to set for the new jurisdictional limit. The maximum limits do not come into play very often. Most of the military claims settled are in the matter of several hundred dollars. I think the average is around \$225 or \$250. But cases do come up from time to time in which the amount of damage, the amount that should be paid of settlement of the claim is considerably in excess of \$15,000 and this poses a difficult problem. Administratively they can pay the \$15,000 and the balance, if any, then becomes subject to approval by the Congress as line item in the appropriations bill from the Department of Defense.

The claim is taken care of eventually, but the delay occasioned by the jurisdictional ceilings sometimes results in the damaged person having to wait an additional year, or even maybe as much as 2 years, before they are compensated. In settlements under section 2734 of title 10. This may have an adverse negative affect upon our friendly relationship within our host countries, and it does work a real inequity upon a person who has been damaged substantially in excess of the \$15,000.

We have with us today members of the representatives of the military establishment who have the primary responsibility, and a deeper and more intimate knowledge than I, on the subject. Unless you have some questions, I think it would be best to move on to these other witnesses.

Mr. DONOHUE. Thank you very much, Congressman. We will now hear from Col. Walter D. Reed, Director of Civil Law, Office of the Judge Advocate, U.S. Air Force. Colonel Reed?

**STATEMENT OF COL. WALTER D. REED, DIRECTOR OF CIVIL LAW,  
OFFICE OF THE JUDGE ADVOCATE GENERAL, U.S. AIR FORCE;  
ACCOMPANIED BY CAPT. E. R. FINK, DEPUTY ASSISTANT JUDGE  
ADVOCATE GENERAL, LITIGATION AND CLAIMS, U.S. NAVY;  
PHILIP M. WILSON, DEPUTY CHIEF OF CLAIMS OPERATIONS, U.S.  
ARMY CLAIMS SERVICE, FORT HOLOBIRD, MD.; AND COL. THOMAS  
P. KEENAN, JR., CHIEF OF CLAIMS, DIRECTOR OF CIVIL LAW,  
OFFICE OF JUDGE ADVOCATE GENERAL, U.S. AIR FORCE**

Colonel REED. Thank you, Mr. Chairman.

I would like to introduce, first of all, Captain Fink, from the Navy, who is going to assist in any questions you may have regarding Navy activities, and Mr. Wilson, on my right, from the Army Claims Branch.

[The opening statement of Colonel Reed, follows:]

STATEMENT OF COL. WALTER D. REED, DIRECTOR OF CIVIL LAW, OFFICE OF  
THE JUDGE ADVOCATE GENERAL, HEADQUARTERS, U.S. AIR FORCE

I am Colonel Walter D. Reed, Director of Civil Law, Office of The Judge Advocate General, Headquarters, USAF. I appreciate the opportunity of presenting the views of the Department of Defense on H.R. 5843, a bill "To amend sections 2733 and 2734 of title 10, United States Code, and section 715 of title 32, United States Code, to increase the maximum amount of a claim against the United States that may be paid administratively under those sections."

H.R. 5843 proposes to increase from \$15,000 to \$25,000 the amount that may be paid administratively on claims covered by referenced statutory provisions within the Department of Defense (or the Coast Guard). All of these provisions relate to claims for personal injury or death, or damage to or loss of real or personal property of third parties. However, section 2734 is limited to claims of inhabitants of foreign countries, and relates only to claims that arise outside the United States, its territories, Commonwealths or possessions. The other two statutes are world-wide in application.

Claims usually arise out of acts or omissions of members or employees of the armed forces while in the performance of duty or National Guard personnel engaged in training or duty under certain Federal statutes, or otherwise incident to the noncombatant activities of the armed forces or the National Guard, as the case may be. All three statutes proposed to be amended apply to these claims. Section 2734 also applies to claims which arise in foreign countries out of acts or omissions of armed forces personnel not done in the performance of official duty when an *ex gratia* award appears warranted.

However, the Federal Tort Claims Act (28 U.S.C. 2672) is preemptive of section 2733 in cognizable tort claims arising in the United States and so is section 2734 in cognizable claims arising in foreign countries. Furthermore, the NATO Status of Forces Agreement (SOFA) and other SOFAs of the pro rata claim sharing type have been interpreted as being preemptive of both sections 2733 and 2734 in duty cases to which the SOFAs apply.

It is necessary that there be sufficient statutory authority to promptly settle and pay meritorious claims regardless of where the claim arises or which statute applies. The proposed amendment would increase the authority under 10 U.S.C. 2733, 2734 and 32 U.S.C. 715 both for complete settlement and payment and for partial payment of meritorious claims in excess of \$25,000 while the excess is reported to Congress for its consideration and payment. This increase brings them a little closer to the payment authority of other related claims laws, and agreements as implemented by 10 U.S.C. 2734a and b.

On behalf of the Department of Defense, the Department of the Air Force supports this increase in administrative settlement and payment authority. The armed forces' experience under these statutes shows that our claims personnel have the expertise and ability to properly administer the laws to be amended, as well as other laws authorizing the settlement and payment of claims against the United States, with fairness to the claimants and concern for the protection of public funds. The increased authority will also allow more claims to be settled in full and permit a larger payment to claimants prior to referral to the Congress. This will relieve the Congress of the burden of handling claims settled for \$25,000 or less, while expediting the payment of these claims, and thus result in some monetary savings, as well as increased good will from the claimant, the observing public and news media concerned in accident and incident cases of a catastrophic nature.

It should also be noted that the present \$15,000 payment limit in two of these three sections was enacted on July 8, 1970. In the other, 10 U.S.C. 2734, the increase was enacted on September 2, 1958. Inflation and, in the case of foreign claims, devaluation of the dollar have reduced the effective scope of administrative settlement and payment authority under these sections.

This increased payment authority should result in no increased expenditure by the United States as such payments were previously paid out of supplemental appropriations. It will, however, to this extent result in some increased expenditures from appropriations for the Department of Defense and, in the case of the Coast Guard, the Department of Transportation. Since claim payments usually result from accidents or incidents it is impossible to predict with certainty the impact the increased payment authority will have on the Department of Defense, although past claims experience gives some information as to what to expect.

Air Force records show that during the past three years the amounts between \$15,000 and \$25,000 of meritorious claims paid through Congressional action under these sections is as follows:

1970: 6—\$51,004.59.

1971: 2—\$13,332.51.

1972: 2—\$20,000.00.

Although increased payment authority proposed by H.R. 5843 would assist the armed forces in the prompt settlement and payment of some large meritorious claims, an additional amendment of two of the three laws, if favorably received, would facilitate the settlement and payment of claims to an even greater degree. At present the delegation of settlement, payment and appellate authority for claims in excess of \$2,500 to any one other than The Judge Advocate General concerned (or the Chief Legal Officer of the Coast Guard) is not authorized under 10 U.S.C. 2733 or 32 U.S.C. 715. This limitation unnecessarily delays the settlement of small claims and unnecessarily burdens The Judge Advocate General and the Secretaries concerned, or both in some instances, by requiring the referral of these claims for settlement and appellate action by those authorities. It also increases the administrative cost of processing these claims and creates built in referral delays that upsets claimants and generates many Congressional inquiries. No other major claims statute includes so stringent a limitation (see 10 U.S.C. 2734a, 2734b, 4802, 7622, 9802; 28 U.S.C. 2672; 31 U.S.C. 241). Experience under these statutes, two of which authorize the administrative payments of unlimited amounts (10 U.S.C. 2734a, 2734b; 28 U.S.C. 2672), shows that headquarters and field elements of the Department of Defense (and the Coast Guard) have other qualified legal personnel who would be available in the United States and in foreign countries to properly and expeditiously settle and pay claims under these sections, as proposed, and to act on such appeals. Under other claims statutes the Secretary concerned designates by regulation the limits of statutory authority that may be exercised by departmental Headquarters and subordinate commands and who may exercise the authority, considering the level of command, training, experience and other qualifications of available personnel.

Accordingly, although the Department of the Air Force wholeheartedly supports H.R. 5843 it also strongly recommends that it be amended to include an amendment of 10 U.S.C. 2733 and 32 U.S.C. 715 to permit the further decentralization of authority by permitting the delegation of authority to settle, pay or act on appeals concerning any meritorious claim when the amount to be paid is not more than the proposed \$25,000 limit for these sections.

This concludes the Department of Defense prepared statement. Other representatives of the armed services are also available to answer any questions which the Committee desires to ask.

Mr. DONOHUE. I think at this point that we probably should depart from the usual order in questioning the witness, and at this time I would like to recognize the sponsor of the bill, Congressman Danielson.

Mr. DANIELSON. Well, thank you, Mr. Chairman. On page 5 of your statement you list claims in excess of \$15,000 and then in excess of \$25,000, which were paid during 3 years according to Air Force records. Are there other claims, such as those, under the jurisdiction of the Army, the Navy, and so forth in addition to these 10 claims in 3 years?

Colonel REED. Yes, sir. The other services have claims in this category which are not listed in the statement. They are attached to the statement, but I would refer to Mr. Wilson and Captain Fink to respond to that question, sir.

Mr. DANIELSON. I just want to make clear that this is not the total scope of your problem, and the problem is one faced by all of the services.

Colonel REED. Attachments to the formal statement lists additional claims, yes, sir.

Mr. DANIELSON. Just for the record, are there any bases for the settlements of claims overseas which may be different from claims

procedures followed in the United States? By this I mean, settlements other than those made under the Foreign Claims Act provisions of section 2734 itself?

Let me state the question a little more clearly. I think we all are familiar with the requirement of an agency relationship which is embodied in several claims statutes. These are of the type which provide that in the event a member of the military service, acting within the scope of his duty causes damage or injury, there is a basis for liability on the part of the U.S. Government. Under section 2734, at least, of title 10, claims are settled in which here, in the United States we would not recognize that the U.S. Government has a liability to the claimant. Is there any basis for this sort of thing other than section 2734 of title 10?

Colonel REED. In the Status of Forces Agreements with some countries there is a provision for ex gratia payment of claims by the U.S. Government for damages caused by personnel stationed in that country irrespective of whether it was under the usual scope of the performance of duty or the agency relationship as you mentioned. The U.S. authority, the internal authority, however, I believe is limited to that section.

Mr. DANIELSON. To section 2734?

Colonel REED. Section 2734, yes. I know of no other authority which would grant us the ability to pay claims caused by our people who are not in the performance of some official act which results in damages.

Mr. DANIELSON. This section is, in effect, a counterpart of the SOFA's permitting similar recovery?

Colonel REED. Yes, sir. It's used in countries where we do not have a SOFA or we have a SOFA that does not have a claim provision. We must rely on 2734 to pay that kind of a claim, yes, sir.

Mr. DANIELSON. Within the same framework of reference here, where we do have a SOFA, we do not then use section 2734. Is that true?

Colonel REED. We use it for the payment of ex gratia claims. We do not use 2734 under a SOFA for the payment of claims generated due to the acts or omissions committed in the performance of official duty.

Mr. DANIELSON. Under the SOFA you can go beyond \$15,000?

Colonel REED. Yes, sir.

Mr. DANIELSON. Your normal course would be to settle under the SOFA rather than 2734. Thus you would avoid the problem as to the jurisdictional amount, would you not?

Colonel REED. We can go beyond the \$15,000 limit only, I believe, with respect to the damages resulting from the acts or omissions committed in the performance of official duty.

Mr. DANIELSON. Is that right? Under SOFA, scope claims are not limited, and outside scope or ex gratia claims are limited?

Colonel REED. Yes, sir.

Mr. DANIELSON. That is all I have. Thank you very much.

Mr. DONOHUE. Mr. Butler?

Mr. BUTLER. No questions for the moment. Thank you.

Mr. DONOHUE. Mr. Mann?

Mr. MANN. Reference is made by you, and I think reading the statute raises the question, that these statutes are designed to pay

third party claims. Are there any circumstances under which these statutes are used to pay members of the U.S. Forces for damages, losses of any sort?

Colonel REED. In certain instances under 2733 we do pay for damages caused by members of the Forces where, in some instances, it is barred by the Tort Claims Act. But, there is damage resulting, and we pay it under incident to service or under the Military Claims Act or 2733. Yes, there are certain instances.

Mr. MANN. Well, it would be appropriate, would it not, to pay military dependents that, let's say, are injured as a result of an act by an on-duty military employee?

Colonel REED. Yes, sir; the military dependent is a proper claimant under 2733.

Mr. MANN. Now, personal property losses do not include items like damage to privately owned furniture in transit, for example?

Colonel REED. Well, ordinarily damages to household goods in transit are covered by another section of law, the military personnel claims. It would be unusual that shipment claims for household goods for military personnel would be covered here. They would be covered elsewhere.

Mr. MANN. All right. Now, the supplemental appropriations procedure, have you ever participated in presenting to any congressional committee the details of claims in excess of \$15,000?

Colonel REED. No, sir. But, I would defer to another backup witness who can speak on that subject.

Mr. MANN. I would like to know how it's done.

Colonel REED. Colonel Keenan is chief of claims division of the Air Force.

Mr. MANN. Thank you.

Colonel KEENAN. Once the claim has been valued by the Secretary concerned, in excess of \$15,000, the military department under 2733 and under 32 U.S.C. 715 would make the initial payment of \$15,000. The balance of the payment, or the amount that was determined to be meritorious would then be certified through the Office of Management and Budget to the Congress. Normally, it would be included on a supplemental appropriations bill as a line item. When the Congress acted on it, and the bill was signed, then, the Office of Management and Budget would notify the military department concerned and that, in turn, would initiate the vouchering to the General Accounting Office for the payment of the balance in response to the passed bill.

Mr. MANN. All right. I am wondering if you are aware of the degree of scrutiny that the congressional committee, Subcommittee of Appropriations on Defense, I would assume, gives to these items. First, are they itemized separately, claim by claim, or is it just a one slot, line item of say \$250,000 from the—

Colonel KEENAN. They are itemized separately with a sketchy recitation of facts. The amount declared meritorious by the Secretary concerned, the amount paid, and the balance due. And as far as the degree of scrutiny, sir, I am unaware of this.

Captain FINK. Mr. Mann, I have talked to an official at the Office of Management and Budget on this point, and he knows of no case which was ever adjusted by the Congress after it was adjudicated at arm's length by the department concerned. In other words, when we

sent in a package that says we have negotiated a death or an injury or a damage to property at a certain valuation, he knows of no case where Congress has differed from our valuation and that includes all the departments, not just Navy, Air Force, and Army, but all departments.

Mr. MANN. I was considering asking that question. I do not know whether that was a comment on the lack of attention given to the subject by the Congress or the wisdom of the service in making the recommendation. In any event, giving the facility of that technique, it would appear that the requirement for this bill, the amendment above \$15,000, is not a compelling one.

Captain FINK. Well, there is a problem here, sir, in that there is a chance that whatever bill this particular rider is attached to does not pass or gets vetoes for some reason completely irrelevant, in which case we go back to the drawing boards. It is conceivable that one of these claims could get delayed in an inordinate amount of time. Now, I will admit that where you pay out \$15,000 to start with, that the claimant is not left without anything, as he is, for instance, in a tort claim. As you know, GAO pays all tort claims from \$2,500 up to \$100,000. Tort claims over \$100,000 go to the Congress. The claimant there gets nothing and has to wait until the complete administrative procedure is completed within the department, and within the Congress. It is possible that a year or more could pass before a widow would receive any money.

In the case of a death with children in college, or something of that nature, \$15,000 does not go a long way if it's going to be, say, a year and a half until the remainder of the claim is paid.

Mr. MANN. Well, I agree with that. On the other hand, the determination of damage claims is not an exact science and whether we raise the threshold by 40 percent, the psychological effort may be devaluation of the dollar by 40 percent, so that you start off on the \$25,000 limitation on the typical personal injury claim, rather than \$15,000.

Now, I do not intend to insult the efforts of the claims officers, but it's almost akin to raising the limit for a workmen's compensation claim for a specific loss. You start paying that much more automatically. Now, I recognize that it's not supposed to work that way, but I will predict at this moment that the claims will go up on an average value by more than the rise in the cost-of-living over the next few years.

Captain FINK. If I could take your argument, Mr. Mann; within my section in the Navy I computed in the last day or so, and I will admit these figures are rough, that it costs approximately \$100 per claim, and I figured in nothing for retirement, vacations, or the like, to process each claim out from Washington. This is computed from the time the claim is received until it is acted upon by the Judge Advocate General. And, as you know, if it's over \$2,500, only one person in the Navy other than the Secretary can approve the amount under the bill as it now stands. These claims that have to be processed through the Judge Advocate General cost \$100 just because it takes that long to get through the number of people who must review and evaluate.

Let's consider a claim involving a \$3,000 car that we are going to pay for, but the claimant wants \$3,300 and we say \$3,000. Now, because it's

that amount, it has to go through this \$100 process up to the Judge Advocate General. Of course, he is in Washington, and the car may be in Bermuda or somewhere else, and he looks at the reports and he will most likely rely on the local evaluation and approve \$3,000. Then it goes back down the line and the claimant refuses to accept that amount and appeals.

Under the statute the appeal has to go to the Secretary of the Navy. I didn't compute that, but by the time you get a piece of paper up to the Secretary to evaluate it, it costs another \$150.

I would suggest that if it were under \$40,000 that we spend in the Navy last year on claims between \$15,000 and \$25,000, that almost all of that could be saved or, let's say, half of that, by just allowing us to process more claims in the field.

Mr. MANN. Assuming that this \$2,500 amount should be raised, deferring for the moment the question of whether should it be raised, should it be eliminated so as to, in effect, make it \$25,000; or is there a point below which 90 percent, let's say, of claims fall—\$10,000, \$7,500—so as to preserve that review aspect of the more substantial claims.

Colonel REED. I do not think we have a breakout on percentage-wise. If we do, I am not aware of it. We do have some experience, though, in this matter of delegation under the Federal Torts Claim Act. And for the Air Force, we have not delegated the full authority of the Secretary down to a low level. We have retained the major and the larger amounts of claims at the departmental level. Under the Federal Torts Claim Act, we have delegated settlement authority of \$1,000 or less to the base staff Judge Advocate. We have delegated authority of \$5,000 or less to the officers exercising general court martial jurisdiction. That usually is at a numbered Air Force level. We have delegated \$10,000 or less to the major command level, and amounts claimed above that we have retained at the Judge Advocate General of the Air Force level. Anything over \$25,000 has to go to the Department of Justice for approval.

So we have retained that. I think the other services—I am not sure what their delegation of authority has been—but that is our experience and we would exercise some kind of judgment factor with these other things, probably about the same as we have done with the Federal Torts Claim Act that seems to have worked well.

Mr. MANN. So, you are again stating that you would like for the \$2,500 limitation to be eliminated altogether and rely upon your own discretion in delegating settlement authority?

Colonel REED. Yes, sir.

Mr. MANN. Thank you, Mr. Chairman.

Mr. DONOHUE. Mrs. Jordan?

Mrs. JORDAN. No questions, Mr. Chairman.

Mr. DONOHUE. Mr. Butler?

Mr. BUTLER. No, thank you. I appreciate your testimony.

Mr. DONOHUE. Referring to page 5, again, in the part of your statement, "Air Force records show that during the past 3 years the amounts between \$15,000 and \$25,000 of meritorious claims paid through congressional action under these sections is as follows: in 1970, six claims totaling \$51,004.59." Were there six separate claims carrying with them \$51,004?

Colonel REED. There were six separate claims. The aggregate total of those claims that were required that required congressional action was \$51,000.

Mr. DONOHUE. Now breaking down those six claims, if you have that material before you, what do each one of those claims amount to? Were they over \$15,000 and under \$25,000?

Colonel REED. Yes, each one of these was more than 15, but less than 25.

Mr. DONOHUE. There were more than 15. Well, 6 times 15 would be more than 51, wouldn't it?

Colonel REED. Yes, sir, but it would be six times the amount—one of those claims may have only been for \$20,000. We could pay \$15, which is not reflected in the \$51,000 total, and goes to Congress for \$5,000. Any amount between 15 and 25, we must come to Congress for.

Mr. DONOHUE. Those six claims, amounting to \$51,004 was for the excess of 15?

Colonel REED. Yes, sir. We had to process six bills in accordance with the procedures as Colonel Keenah outlined to get \$51,000, and it was six separate actions.

Mr. DONOHUE. Now, will you clarify this for me. It may be clear to the other members. On page 2, "Claims usually arise out of the acts of omissions of member or employees of the Armed Forces while in the performance of duty or National Guard personnel engaged in training or duty under certain Federal statutes."

Would you explain the Federal statutes that authorize payment of claims because of acts or omissions of members of the National Guard.

Colonel REED. Yes, sir. That is title 32, United States Code, section 715, which provides that the Secretary of the service concerned may pay for claims, pay claims for damages caused by National Guard personnel while carrying out duties for training or certain other duties authorized for the National Guard to perform.

Mr. DONOHUE. Now, what would be the authorized duties of the National Guard units that would come within the purview of these Federal statutes?

Colonel REED. One example I can give you is a National Guard, Air National Guard unit, on training flights to complete Federal requirements involved in, say, a sonic boom. This is an act by the National Guard in carrying out an authorized training activity in accordance with the Federal requirements. That claim could be processed by the Secretary of the service concerned.

Mr. DONOHUE. Well, there would not be any question about a claim arising when a National Guard unit would be on its summer tour. No questions about that, but what about these weekend training periods when they go off on a bivouac overnight, and while going from their armory to some particular location, they might cause personal injuries or property damage of a third party. Would they be covered under Federal statute?

Colonel REED. Mr. Wilson, sir, of the Army will respond.

Mr. WILSON. Subsection (a)(2) of title 32, United States Code section 715 provides that claims may be paid under this section.

Mr. DONOHUE. When was that enacted?

Mr. WILSON. In 1960, I believe. I can't recall exactly, but it lists the number of sections under which the Guard would be operating

pursuant to Federal authority, and they would be paid from Federal funds for this training or duty. It lists section 316, 502, 503, 504, 505 of title 32 and section 206 of title 37. This is the authority for the National Guard of the various States to perform summer training, weekend training, any training which is authorized by Federal law.

This section would not apply where the National Guard member or unit was performing a State function at the order of the Governor of the State.

Mr. DONOHUE. And for my further enlightenment, does the Federal Government assume the payment for National Guard organizations in the different States, that is, the entire payroll, does the Federal Government assume that?

Mr. WILSON. I cannot say for sure. But I believe that the Federal Government provides a substantial portion of the costs of maintaining the National Guard. It is a part of the Reserve Force of the United States Armed Forces.

Mr. DONOHUE. What do you mean by substantial part?

Mr. WILSON. This is in an area that I am not familiar with; so I can't answer.

Mr. DONOHUE. Who might be familiar with it?

Mr. WILSON. The National Guard Bureau in the Pentagon could furnish that information.

Mr. DONOHUE. What I am trying to find out is, when the Federal Government will assume responsibility for an act of a National Guardsman and when they won't. Where is the line of demarcation?

Mr. WILSON. If the National Guard unit is performing training of type that is authorized by one of the sections of the statute that I just referred to, then if the claim is generated by their activities, it is cognizable, and payable, under section 715 of title 32. As to the—

Mr. DONOHUE. Is it your opinion if a National Guard unit is required by Federal statute to engage in weekend drills or weekend periods of training and any act is performed or any omission takes place on the part of the National Guardsmen, the Federal Government would assume and pay that claim?

Mr. WILSON. If the damage resulted from acts or omissions of the members in the performance of official duty, or if the damage resulted from noncombat activity such as maneuvers, training exercises, and so forth, then it would be payable under this statute.

Mr. DONOHUE. Well, probably the colonel could answer this question. Does the Air Force require National Guard Air Force units to engage in weekend training periods.

Colonel REED. Yes; to meet their training requirements, they are required to do that.

Mr. DONOHUE. Is it your opinion that if any member of the Air National Guard causes an accident in the course of their weekend drill that under Federal statute, the Federal Government would assume satisfaction of that claim?

Colonel REED. Yes; we would assume it on the same basis as the regular establishment, because they are carrying out a Federal requirement.

Mr. DONOHUE. Why I am pursuing this line of inquiry, we have had several cases brought to our attention where the Air National Guard was engaged in a weekend training activity and they had caused

damages and the Federal Government has refused to pay the claims, and they have come before this subcommittee by way of private bills. Are you familiar with those cases? One of them happened, I think, in either South Dakota or North Dakota, and I recall an incident involving the New Hampshire Air Guard some years back and that claim had to be satisfied via the route of a private bill.

Colonel REED. I think Colonel Keenan is at least familiar with one or two or those claims, and that would ask him to respond to that question.

Colonel KEENAN. Sir, actually in this respect the Air Force just recently—actually, in the past 18 months—altered its policy in respect to the claim that you are speaking about. Especially the ones that occurred in Iowa. There were two separate incidents in Iowa; one involving the Iowa Air National Guard and the other involving a North Dakota Air National Guard aircraft.

At the time of the accident, the Air Force's policy was that if the State had waived its sovereign immunity and the aircraft was not involved in a federally directed and controlled flight, then the State would be expected to answer for the damages occasioned by the National Guard. If, however, under that policy, the State had not waived its sovereign immunity, then the Federal Government under section 715 of title 32 would answer for the damages caused by the Guard's plane.

Since the two crashes in Iowa, the Air Force has completely reversed its policy in the implementation of 715 and has taken care of both families in respect to those crashes and intends to continue to do so in similar incidents in the future. That is the Air Force will respond immediately to such catastrophic losses and not postpone action on the claims and await State action.

The private bills in question, if I am not mistaken, have been rendered somewhat moot by the fact of the claims of both of these families have been administratively settled. One has had the congressional action taken on the excess over the \$15,000 limit, while the other congressional action is currently pending on the excess.

Mr. DONOHUE. Now, in the statement, colonel, that it has reversed or changed its policy insofar as these two families are concerned, is that to be the general policy?

Colonel KEENAN. Yes, sir. That is to be the general policy and has been promulgated in a change to our manual which is issued in implementation of the statute.

Mr. DONOHUE. And whereas that is to be the general policy of the Air Force, what about the Army and the Navy?

Colonel KEENAN. Sir, I cannot answer for the Army. Let Mr. Wilson.

Mr. WILSON. The Army's policy all along has been the same as the Air Force policy is now. So that there has been no real problem so far as claims generated by Army National Guard is concerned.

Mr. DONOHUE. In other words, do I understand you to now say, insofar as the Army is concerned, any time a National Guardsman while on authorized training, be it a weekend tour or a summer tour, if he caused any damages, be it property or personal injuries, the Army, that is, the Federal Government, would pick up the claim and pay it?

Mr. WILSON. That is correct, provided the claim is filed with the Army and is payable under 32 U.S.C. 715.

Mr. DONOHUE. How about the Navy?

Captain FINK. Sir, we have no National Guard in the Navy.

Mr. DONOHUE. What do you mean when you say you do not have a Guard?

Captain FINK. We have no National Guard.

Mr. DONOHUE. I beg your pardon.

Captain FINK. Therefore, we have no claims coming from the Navy.

Mr. SHATTUCK. Actually, the Navy Reserve does not include an organization similar to the Guard. Is that the situation?

Captain FINK. We just have a Naval Reserve. We have no State Guard, or National Guard under that statute.

Mr. DONOHUE. Now, what is meant, referring again to page 2, starting on line 4, "or otherwise incident to the noncombatant activities of the armed forces of the National Guard, as the case may be?"

Colonel REED. This is a result of exercises or maneuvers which could not necessarily be attributed to an act of a specific person or to a specific omission, but an activity, a maneuver that takes place for which we would accept responsibility, and it's where there is no negligence involved. I think a sonic boom would be an example or a maneuver claim.

Mr. DONOHUE. And again referring to that portion of page 2 in that first paragraph, "acts or omissions of Armed Forces personnel not done in the performance of official duty when an ex gratia appears warranted." What is meant by that?

Colonel REED. This refers, it is applicable only in foreign countries to forces stationed in foreign countries and under the Foreign Claims Act, which is section 2734 of title 10 of the United States Code, the Government accepts responsibility for damages caused to inhabitants of foreign countries, damages caused by Armed Forces personnel, whether they are off duty or not, in a performance of duty. It is only applicable in foreign countries and the only proper claimant are inhabitants of foreign countries.

Mr. DONOHUE. And what might be an example of that sort of claim?

Colonel REED. One example might be an uninsured automobile accident where one of our people did not have insurance for damages or the amount might be in excess of the amount of coverage that he had. The damage is caused, and it would be in the U.S. Government's interest, to make that kind of a settlement. It might be from that kind of incident to an assault. If one of the members of our Armed Forces assaulted an inhabitant of a local country, we would pay for the hospitalization and for the damages caused by him.

Mr. DONOHUE. And is that a pro rata basis or do you pay the whole thing?

Colonel REED. No, sir. The non-scope-type claims, we pay 100 percent of the cost and the receiving State does not make a contribution.

Mr. DONOHUE. And those claims arising under this Status of Forces Agreement, you only pay part of it?

Colonel REED. In some countries. The NATO Status of Forces Agreement provides for a 75-percent payment by the sending state. The U.S. Government, for our people. Iceland has an 85 percent, 15 percent pro rata payment. Some status-of-forces agreements do not have a pro rata payment provision.

Mr. DONOHUE. Now, under the present law the present limitation is \$15,000—you have to report the excess to Congress. When the Air Force, the Army, or the Navy has a claim presented to it and they feel administratively it would exceed the \$15,000 in satisfaction of it, how is that handled? Do you suggest to the claimant, we think your claim is worth, say, \$25,000. What procedure do you follow?

Colonel REED. He accepts a partial payment and the excess amount then is forwarded on up. He does not sign a release if the claim is adjudicated to worth, say, \$25,000.

Mr. DONOHUE. You make a pro tanto payment of \$15,000?

Colonel REED. Yes, sir. We make a pro tanto payment of 15.

Mr. DONOHUE. Now, assume this case: When the excess was reported to the Congress it would go by way of the OMB?

Colonel REED. Yes, sir.

Mr. DONOHUE. Would the OMB have the authority to veto your action?

Colonel REED. I do not think they have claim settlement authority. No, they do not have authority.

Mr. DONOHUE. Well, if some over in OMB did not agree with your analysis of the claim and its worth and they said, no, this excess shall not be authorized by us, what would happen to the claimant, the claimant's right of the excess?

Colonel REED. The claimant would have to wait until this particular roadblock was eliminated.

Mr. DONOHUE. Let us assume that the appropriations committee would disapprove it. Then, the claimant would not have the excess paid to him; is that correct?

Colonel REED. That is correct. Now, we get a settlement agreement whether we adjudicate the claim, say, as being \$25,000. We get a settlement for \$25,000 and make a \$15,000 payment which is the limit. Now, if the Congress does not approve the settlement that has been adjudicated, of necessity the claimant does not get any money. So, it's in effect, the Congress would make the final determination in those instances.

Mr. DONOHUE. Now, what is the situation insofar as the Coast Guard is concerned regarding claims against it?

Colonel REED. Well, they are covered by the Foreign Claims Act with respect to their activities in foreign countries; and domestically, I would ask that Captain Fink respond to that.

Captain FINK. From my contact with them, I would say that they use the same or approximately the same rules and regulations that we do.

Mr. DANIELSON. Mr. Chairman, if I may, both section 2733 and 2734 include the Coast Guard by their terms.

Mr. DONOHUE. Well, I am concerned, as I take it Mr. Mann is, about delegation of settlement authority to people in the lower echelon when these claims get up into the larger amounts.

Colonel REED. As I think I mentioned with respect to 2733, the military claims portion, that is the only one that has the limitation of

delegation at \$2,500; and with respect to the tort claims our practice has been not to delegate more than \$10,000 settlement authority below the departmental level. We would anticipate doing that with respect to the increased settlement authority that would be granted under this proposed legislation.

Mr. DONOHUE. In other words, it is your intent to follow the same guidelines as now exist?

Colonel REED. Under the Federal Tort Claims Act, yes.

Mr. DONOHUE. Mr. Butler?

Mr. BUTLER. With reference to the questions that were pursued by the chairman on the amount of claim in excess of \$15,000, is it the practice when you pay the \$15,000 to execute some kind of an agreement liquidating the total amount of the claim?

Colonel REED. Yes, sir. And, of course, we make the payment up to \$15,000 and then we have an agreement liquidating the total amount. But that, of course, is subject to the appropriations by Congress.

Mr. BUTLER. I follow that. But he cannot come back there after and decide he wants to disagree with the amount agreed to by the Congress; he is foreclosed by his acceptance of the \$15,000 when he is claiming more than he claims at the time you adjudicate?

Colonel REED. Yes, sir.

Mr. BUTLER. Thank you.

Mr. DONOHUE. Mrs. Jordan.

Mrs. JORDAN. Mr. Chairman, I have a question about the need for this legislation and how great that need is. Now, in your testimony on page 5 when you give us the No. 10 claims which have been aggregate excess of \$15,000 as reported by Air Force records, now I want to know what percentage of the total claims settled administratively does this number represent? What about the other departments of military?

Colonel REED. As I mentioned, there is a more complete statement of the number of claims in the attachment to the formal report submitted. I do not have here the figures which would show the relationship between those claims that represent an amount in excess of \$15,000 and not more than \$25,000 as it relates to the total amount of claims settled. I do not have that. I do have the aggregate amounts which should be submitted by all three services for those years.

Our record shows there have been a total of 51 separate claims for the 3 years, 1970, 1971, and 1972. For all three services. Now, I cannot give you the relationship of that figure to the total number of claims that have been processed and paid under these statutes.

Mrs. JORDAN. Is it possible for you to give me that figure at some later time? I think it's important to know what the relationship that would have to the total claims considered and I think it would bear rather heavily on the need for this legislation.

I have nothing further. Mr. Chairman.

Mr. DANIELSON. Mr. Chairman, I fully agree with Miss Jordan here. I think that will not only be helpful, but necessary for us to have a tabulation of the number of claims.

I would assume that this form is itemized by service and by claim law because the claim laws have a different impact. I would also like to have you supply the total numbers of claims regardless of the

amount, so that we will have some idea what percentage of these claims, both as to number as well as dollars, fall into this excess category.

Can you gentlemen supply that?

Colonel REED. We can provide the committee with it, yes, sir.

Mr. DANIELSON. You can do that. Fine. I would appreciate that. And I would ask unanimous consent that table be incorporated in the record, Mr. Chairman.

Mr. CHAIRMAN. So ordered.

[Whereupon, the document referred to follows:]

PAYMENTS UNDER THE NATIONAL GUARD CLAIMS, MILITARY CLAIMS AND FOREIGN CLAIMS ACTS (32 U.S.C. 715, 10 U.S.C. 2733 AND 10 U.S.C. 2734)

Military and National Guard Claims Acts (10 U.S.C. 2733 and 32 U.S.C. 715):		Foreign Claims Act (10 U.S.C. 2734):	
Number	Amount	Number	Amount
1970:		1970:	
Army.....	5,007 \$788,889.94	Army.....	4,918 \$2,267,136.57
Navy.....	( <sup>1</sup> ) ( <sup>1</sup> )	Navy.....	( <sup>1</sup> ) ( <sup>1</sup> )
Air Force.....	( <sup>2</sup> ) ( <sup>2</sup> )	Air Force.....	( <sup>2</sup> ) ( <sup>2</sup> )
Total.....	5,007 788,889.94	Total.....	4,918 2,267,136.57
1971:		1971:	
Army.....	5,278 825,914.27	Army.....	10,955 4,752,415.65
Navy.....	( <sup>1</sup> ) ( <sup>1</sup> )	Navy.....	( <sup>1</sup> ) ( <sup>1</sup> )
Air Force.....	2,682 704,939.44	Air Force.....	600 379,667.92
Total.....	7,960 1,530,853.71	Total.....	11,455 5,132,083.57
1972:		1972:	
Army.....	5,212 1,125,473.35	Army.....	4,330 1,677,078.37
Navy.....	1,583 324,531.34	Navy.....	405 82,081.51
Air Force.....	2,490 615,315.43	Air Force.....	611 257,984.93
Total.....	9,285 2,065,320.12	Total.....	5,346 2,017,144.81

<sup>1</sup> Only 1972 information readily available from the Navy.

<sup>2</sup> 1970 information not readily available from the USAF.

Mr. DANIELSON. Just to recapitulate, so I am sure I understand this, section 2733 of title 10 applies to the accidents or incidents which are domestic within the United States or its possessions and the like; is that correct?

Colonel REED. It may also apply in foreign countries as well with respect to U.S. claimants.

Mr. DANIELSON. When the claimant is a U.S. national, the statute applies abroad. It also applies within territorial jurisdiction of the United States; is that correct?

Colonel REED. Yes, sir.

Mr. DANIELSON. Then 2734 applies only abroad and only to claimants who are nationals of a foreign country?

Colonel REED. Yes, sir. Inhabitant is the word that the statutes use.

Mr. DANIELSON. All right. Inhabitant. But a citizen of Memphis, Tenn., could not apply under section 2734 if the event took place in Germany or Turkey or some such place?

Colonel REED. That is correct.

Mr. DANIELSON. Lastly, 715—section 715 of title 32 applies only to the instance of the National Guard type of activity?

Colonel REED. Yes, sir.

Mr. DANIELSON. Now, then under both sections 2733 and 2734, I see that this applies to incidents in which the damage is caused by a member of our armed services or by a civilian employed by the armed services. I am thinking now of a foreign country. Let's say Turkey. I presume that we do have Turkey national inhabitants who are civilian employees of the U.S. armed services within that country. Are the damages caused by those civilian employees of the military service as likewise compensable under section 2734?

Colonel REED. Yes, sir.

Mr. DANIELSON. Now, do you know whether that has ever happened?

Colonel REED. Where we have drivers of military vehicles who would cause damages to inhabitants of the local country, we would pay that under 2734. Is that your question, sir?

Mr. DANIELSON. Well, it's my question, but I didn't phrase my question tightly enough. Section 2734 also applies to nonscope activities?

Colonel REED. Yes, sir.

Mr. DANIELSON. If a national of Turkey who is a civilian employee of the U.S. military service was acting outside of the scope of his employment, nonscope, would the damages caused be compensable under section 2734?

Colonel REED. No, sir, they would not.

Mr. DANIELSON. Yet those, absolutely comparable situation, if the tortfeasor or the actor is an American, shall I say, would be compensable? You understand that?

Colonel REED. Yes, sir.

Mr. DANIELSON. I do not see the distinction in the language of the statute. I think you made a good decision there, but—

Colonel REED. The decision I think belongs to Congress and it was one in which we want to enhance the image and enhance the reception that we get in foreign countries by compensating—

Mr. DANIELSON. I understand the purpose. I think it's a good purpose. But as I read 2734, no distinction is made between a civilian employee of the military department who is an American national and a civilian employee of the military department who is not an American national.

Captain FINK. The three services take care of that in their regulations. We spell it out in detail, and have done so traditionally.

Mr. DANIELSON. You have stopped the gap there, but I don't see it in the law. It is never compensated then under the hypothetical that I have presented.

Captain FINK. No, sir, never. We have always taken care of it by specific language in our regulations.

Mr. DANIELSON. The last point in order so I understand for sure, under 2733 these events are taking place basically inside American territory and the investigation is done by the investigative arm of the military service; is that true?

Colonel REED. Yes, sir.

They have claim investigators who are, for the most part, lawyers who investigate and prepare.

Mr. DANIELSON. If the answer is yes, that is all I need.

Colonel REED. Yes.

Mr. DANIELSON. Under section 2734—we are in a foreign country and let us now speak of a situation that is not a SOFA agreement. Is the investigation done by the investigators of the military department of the foreign country? Or is it done by your own investigators?

Colonel REED. It's done by our own investigator.

Mr. DANIELSON. Did you find out you get good cooperation from the foreign countries on this?

Colonel REED. Yes, it has been our experience to get good cooperation.

Mr. DANIELSON. Under the SOFA-type situations, the other countries do the investigating. We are contributing 75 percent; isn't that it?

Colonel REED. Yes.

Mr. DANIELSON. Also, you exercise oversight to be sure the investigation is made.

Colonel REED. Yes, sir, and our personnel conduct an independent investigation.

Mr. DANIELSON. I believe that is all the questions I have, Mr. Chairman. I understand the number of incidents and the amounts will be presented to the committee.

Mr. BUTLER. One more question. Am I correct in understanding that you feel that the greater discretion you have to settle these claims, the greater the benefit to the taxpayer, because in many instances those claims which are disallowed result in pursuit of other remedies and in the long run are settled at a higher cost to the taxpayer? Is that a fair statement?

Colonel REED. Yes, sir, I think our main reason is that there is a time factor involved in which we enhance our image in the settlement attitude of the claimant. Also, the cost involved it costs money to send 51 private bills up for settlement, and those are, I think, the two.

We really do not see this is going to result in any greater cost in claims settlements, because they are settled now in a way we feel to be a fair manner and that the amount in excess is sent here and for the most part it has always been handled in the manner recommended.

Mr. BUTLER. Thank you.

Mr. DANIELSON. Mr. Chairman, may I ask another question?

Mr. DONOHUE. Yes.

Mr. DANIELSON. I am sorry. I overlooked this. On your claims which are in excess of \$15,000, would you be able to let us know what is the time lag in settlement for the excess amount that you pay over \$15,000 under subsection (d) when you report the excess to Congress.

That is, after you paid the \$15,000 what is the time lag before the claimant is paid the balance of the amount that is considered to be due and owing to him?

Since this whole section 2734 is based on the desire to promote and maintain friendly relations, I think that amount of time is important.

Colonel REED. I do not have that.

Mr. DANIELSON. I wouldn't expect you to have it here, but I would like to have that information, if you can.

Colonel REED. Yes. We will provide that.

Mr. DANIELSON. May that be added to the record, Mr. Chairman?

Mr. DONOHUE. Without objection, it will be.

[Whereupon, the document referred to follows.]

## TIME DELAYS IN CERTIFYING EXCESS PAYMENTS

	Number	Delay in months		Number	Delay in months
National Guard and Military Claims Acts (32 U.S.C. 715 and 10 U.S.C. 2733):			Foreign Claims Act (10 U.S.C. 2734):		
Navy.....	1	7	Navy.....	3	8
Army.....	6	13	Army.....	14	8
Air Force.....	6	5	Air Force.....	3	5
Total.....	13	19	Total.....	20	18

<sup>1</sup> Average.

Note: Delay figured from time at which the action was taken by the service Secretary until the actual date of payment by the General Accounting Office. Claims included are those for which the information was readily available.

Mr. DONOHUE. Further inquiring into the questions propounded by Mr. Butler, referring to page 4, the last paragraph of your statement, "This increased authority should result in no increased expenditure by the United States as such payments were previously paid out of supplemental appropriations." You then go on, "It will, however, to this extent result in some increased expenditures from appropriations from the Department of Defense and, in the case of the Coast Guard, the Department of Transportation."

What is meant by that?

Colonel REED. Well, we budgeted for claims payments in the Department of Defense appropriations and charged to that appropriations would be the \$15,000 that we pay. The amount in excess of \$15,000 is not included in that appropriation but it is included in the supplemental appropriation. So if the amount is increased, the authority is increased, what was formerly in the supplemental appropriations would then be included in the Department of Defense appropriations and paid in that manner. The net payment is not more, our Defense appropriations would have to be increased by that amount. The supplemental appropriations would be reduced by that amount.

Mr. DONOHUE. Then you would say that the language, "will, however, to this extent result in increased expenditures," is surplusage because you cover it in the previous sentence?

Colonel REED. Yes, sir.

Mr. DONOHUE. Now, anticipating, if we report this out favorably and approved by the full committee and it reaches the floor, I think there might be questions raised about the last page of your statement. "Accordingly, although the Department of the Air Force"—and I assume it would be the position of the other branches of our Defense Departments—"strongly recommends that it be amended to include an amendment to permit the further decentralization of authority by permitting the delegation of authority to settle, pay, or act on appeals concerning any meritorious claim when the amount to be paid is not more than the proposed \$25,000 limit for these sections."

Now, under our present law, any claim above a certain amount must go to the Judge Advocate General?

Colonel REED. Yes, sir.

Mr. DONOHUE. Over what amount?

Colonel REED. \$2,500, sir.

Mr. DONOHUE. According to your statement, you would like to have that limitation eliminated so that any claim up to \$25,000 could be settled by anyone within the Air Force, Army, or the Navy?

Colonel REED. We would like authority to delegate that down at least certain amounts of it, to delegate down below the secretarial level, and his designate, yes.

Mr. DONOHUE. Without limitation?

Colonel REED. Yes, sir.

Mr. DONOHUE. Does that mean a claim for \$25,000 would be treated and adjusted and settled in the same way and by the same people that would settle a claim, say, for \$1,000?

Colonel REED. No, sir, because we have not delegated that full authority on those claims where we do have the authority to delegate. For example, the Federal Torts Claim Act, we can delegate up to \$25,000 down to the base level, but we have only delegated authority to settle \$1,000 claims.

Mr. DONOHUE. What authority would the people in the command at base level have to settle claims?

Colonel REED. We would anticipate \$1,000.

Mr. DONOHUE. \$20,000?

Colonel REED. \$1,000.

Mr. DONOHUE. \$1,000. I have no further questions. Any further questions? Well, thank you very much.

You wish to make a statement?

Captain FINK. I would like to make one last pitch, Mr. Donohue, if I might. Earlier I went into the amount of money that it cost us to process claims at the headquarters here in Washington. Now, I want to make a point that we are limited in the number of lawyers we have in Washington. I have four people under me working claims, tort claims, and all kinds of claims—and this, as you will see from the figures we put in, will be a drop in the bucket compared to their total workload. Around the world we have 30 Navy law centers, most of them staffed with a Navy captain in charge, and anywhere from, say, 5 to 35 lawyers attached. They are well-equipped and geared to handle claims, including tort claims.

Now, we are toying with an increase from \$10,000 to \$20,000 in their delegation authority to pay tort claims in the field. The reason we are doing this is because the Department of Justice is at the same time processing a similar recommendation to increase the U.S. attorney's to adjudicate in the field from 10 to 20. In the Navy we try to keep our authority similar to that of the U.S. attorney so that there is no bargaining element for claimants.

We do not delegate full authority to everyone in the field. The average base commander has no settlement authority. Only a portion of the 30 Navy law centers in the United States would be handling tort claims. Overseas we would occasionally give a base such as Bermuda, or Iceland where we have single service responsibility, some authority to handle military claims under section 2733. But to do this, we have to set up accounting procedures that are very complex. We have to report down to the last dollar. We have to keep the number of commands handling claims down to a minimum to keep our accounting on a practical basis.

So, we do not do it very often, and we only do it where there is a need and where we are geared to do it.

Please allow me to present some specifics. We had a foreign claim, for instance, where a young girl was killed by a sailor in a vehicle accident off duty. We negotiated with the next of kin. Local officials were up in arms over the incident and we negotiated a certain amount in local currency. By the time it went through this process—and it happened to be under \$15,000 and did not have to be sent to Congress—but by the time I could get a paper processed from the field and through the office here, the dollar had been devalued and the settlement was no longer good. We were back to the drawing boards and we caused more hate than good will.

So, we have now proposed to increase the local authority to pay foreign claims. We are going to do it with claims commissions made up of lawyers—three-men commissions. That way we will be able to settle Foreign claims in the field before those problems arise.

Next, let me give you an example occurring in the United States. A Navy truck, for instance, would go out of control and hit two parked vehicles worth \$2,600 each, one belonging to a sailor who had it parked there while he went to work and the other one belonging to a civilian visiting the base. Under case law the courts have ruled that a serviceman cannot sue the United States. This is the Ferris doctrine. So we cannot process the serviceman's \$2,600 claim as a tort claim. We can process the civilian's claim and he is paid. The civilian will have his money in a week or two. He goes away happy. The sailor's claim must be first processed locally, then massaged and put in perfect enough condition so that the local command will not be embarrassed with grammar and hyphens and commas, since it will go to the Judge Advocate General. There, at headquarters the claim has to be massaged, reviewed, evaluated, and assessed by no less than 14 people, including secretaries. If the claim is an average one, it will use up \$9 worth of admiral's time, \$8 worth of captain's time, and average \$11 worth of commander's time, \$2 in lieutenant commander's time, and \$40 worth of lieutenant's time, and it will take 3 months to pay.

Up to now, I have been talking only in terms of dollars. In terms of morale the sailor may have to wait 3 to 4 months to get his money.

Now, let me discuss another hypothetical case, very similar to one that we processed recently in Bermuda. Take two bicyclists one a young college student from your district, and the other his local date, and they are out seeing the sights in Bermuda when a Navy vehicle broadsides both of them and causes broken legs. Let's say that each case is worth \$2,600 for broken legs. We can, with the foreign claims commission, pay the Bermuda resident in a relatively short time—as soon as we have an arm's-length evaluation and the medicals are in.

With respect to the U.S. citizen, since we have to go through this process that I described, he would be left out of the local settlement and would have to negotiate his claim with Washington. If he won't settle for \$2,600 but wants \$3,000 he would have to appeal to the Secretary of the Navy under the way the statute is now written.

This requires another month or two of processing and massaging papers, and I propose that this is an inefficient way to run such routine claim matters where we have such broad authority under other statutes.

Now, there is one other point in this bill and that—

Mr. DONOHUE. Let me interrupt you, if you would.

Captain FINK. Yes, sir.

Mr. DONOHUE. Take the case of two people on the island of Bermuda, one American and the other a native of Bermuda, and they're both injured. You would be in position to pay the native of Bermuda, but you would not be in position to pay the American citizen that is visiting down there?

Captain FINK. No, sir. There the local command would have to compile a record, make evaluations in accordance with applicable standards, send it in and possibly have it returned for additional evidence. It would be months.

Mr. DONOHUE. Well, is there anything under existing law that would permit the payment to the American that was visiting in Bermuda that was involved in the type of accident that you cited?

Captain FINK. No, sir. The only way to pay would be under 10 U.S.C. 2733. The Federal Tort Claims Act does not apply overseas. The Foreign Claims Act does not apply because he is not a foreigner and 10 U.S.C. 2733 is what is left. That is the only—

Mr. DONOHUE. The Tort Claims Act would not apply?

Captain FINK. Would not apply, no, sir. The only way that man could be paid—

Mr. DONOHUE. So under what law would that American be permitted to obtain relief.

Captain FINK. 10 U.S.C. 2733, the Military Claims Act that this bill refers to.

Mr. DANIELSON. The one we seek to amend.

Captain FINK. If you removed that \$2,500 limit, the Navy would have authority to handle some of these claims in the field or at least we could by message delegate authority. But the way it's set up now, only the Judge Advocate General can authorize payment and if the claimant does not accept what we want to give him, only the Secretary of the Navy can act on the appeal. Also, only the Secretary can refer claims over \$15,000 to Congress. And that's another part of this bill.

Mr. DANIELSON. Mr. Chairman, may I inquire?

Mr. DONOHUE. You may.

Mr. DANIELSON. Thank you. Is this what you are saying, Captain Fink, that you would like to have the same latitude under 2733 that you now have under 2734?

Captain FINK. Yes, sir. And under the Federal Tort Claims Act, too.

Mr. DANIELSON. Under the Federal Tort Claims Act, is there any dollar limit on your settlement?

Captain FINK. No, sir. Over \$25,000 we must get the approval of the Attorney General.

Mr. DANIELSON. But there is no dollar limit with that approval?

Captain FINK. No, sir.

Mr. DANIELSON. Of course, we do not propose by this bill to give that unlimited dollar jurisdiction, but current practice under the Federal Tort Claim Act is that you do not have any limit except that you have to go to the Attorney General for settlements in excess of \$25,000?

Captain FINK. Well, there is in effect a very similar provision that is over \$100,000, the General Accounting Office cannot pay without congressional authorization. So Congress can say no in the same way as they can in cases over \$15,000 under this statute.

Mr. DANIELSON. We are not talking about \$100,000. What you are asking for is the increase under the bill H.R. 5843 which provides for an increase in the limits to \$25,000 from \$15,000.

Captain FINK. Yes, sir.

Mr. DANIELSON. Well, that does not anywhere bring you within the scope of administrative settlement authority found in 2672 of the Federal Torts Claim Act provisions of title 28, but it does expand your authority. And then as a secondary matter, you have asked is that section 2733 of title 10 be amended so that it will have the same provision as 2734 which will allow you to delegate settlement authority beyond \$2,500?

Captain FINK. Yes, sir.

Mr. DANIELSON. I believe it was Colonel Reed that said that you have a regulatory formula of \$5,000 at one level, and at a second level, and \$15,000 at the third level—something of that nature?

Colonel REED. Yes.

Mr. DANIELSON. That is what you are talking about?

Captain FINK. Yes, absolutely.

Mr. DANIELSON. I have one other point that I think may help us all understand this a little better. Section 2734 really has a diplomatic aspect. We are trying to maintain and promote friendly relations with those nations in which we have military establishments. That's the purpose of it.

Do you have any recollection of the incident at Palomares, in Spain in which an atomic bomb was lost; I understand it was lost anyway, and there was widespread searching through the vineyards, whatever they grow, olives or tomatoes, and so on, could you tell us a little bit of what that problem brought. From a claims standpoint, what was the result over there?

Colonel REED. Yes, sir. I would like to turn that over to Colonel Keenan or our claims division.

That was a rather large part of his work for some time.

Colonel KEENAN. Thank you. The incident gave rise to over 600 claims. That was the first thing that happened. All the claims were handled under 2734, the Foreign Claims Commission. They fell into all types, categories of damages claimed, and also all types and categories of moneys requested. Many of them, I would say, the bulk of them, were settled under the authority that the current statute now provides. They were settled within the \$15,000 limit—the balance, and they were I would say, and this through recollection and I haven't looked at the record recently, the balance less than 100 involved, recommended payments in excess of \$15,000.

At the time of the incident the Foreign Claims Act, section 2734, as it was before it was amended, permitted the Secretary concerned after action by a foreign claims commission, if they determined that the amount of the damages were in excess of \$15,000 the Secretary would have to refer the whole amount to Congress for supplemental appropriation and was not able to make a pro rata payment of \$15,000 at that time.

The last amendment to the Foreign Claim Act does now permit the payment of the \$15,000 monetary limit with the balance being referred to Congress for supplemental appropriation.

Mr. DANIELSON. What kind of delay was experienced in settling the excess amounts? Getting the appropriations through? And paying them?

Colonel KEENAN. Sir, the bulk of the delays that were encountered were primarily the result of negotiation difficulties. The U.S. Government in many instances felt that the amount that the claimants were requesting was exorbitant and there was a failure of a meeting of the minds and that led to the basic part of the delays in paying the claims.

When this was overcome, primarily through the acts of a substitute followon foreign claims commission, then the delay in obtaining supplemental appropriations were—again, I am not sure, sir, I think we would have to go and dig that out. I would—I am reluctant to comment on that. I believe some of them caught a supplemental appropriations act and in a timely fashion. The Congress was willing to entertain the act around the time that the claim was settled, and an agreed amount was reached. For others the timing was bad, the Congress was in recess and it would take time to get a new supplement act in and it took time to get the claim finally paid.

Mr. DANIELSON. I think it's obvious to the extent there was delay, this did not improve our relations in the host country.

Colonel KEENAN. No, sir, it did not.

Mr. DANIELSON. Thank you.

Mr. DONOHUE. Any further questions? Thank you very much, gentlemen. You are excused.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE SECRETARY,  
Washington, May 2, 1973.

HON. PETER W. RODINO, Jr.,  
Chairman, Committee on the Judiciary,  
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H.R. 5843, 93d Congress, a bill "To amend sections 2733 and 2734 of title 10, United States Code, and section 715 of title 32, United States Code, to increase the maximum amount of a claim against the United States that may be paid administratively under those sections." The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of H.R. 5843 is to increase from \$15,000 to \$25,000 the amount which may be paid administratively on claims within the Department of Defense (or the Coast Guard) in the following categories:

(a) Claims against the United States for personal injury or death, or damage to or loss of property, incident to noncombat activities of a Department of Defense element (or the Coast Guard), with certain exceptions (10 U.S.C. 2733).

(b) Claims against the United States for personal injury to, or death of, any inhabitant of a foreign country, or for damage to or loss of his or a foreign country's property, incident to noncombat activities of an element of the Department of Defense (or the Coast Guard) (10 U.S.C. 2734).

(c) Claims against the United States for personal injury or death, or damage to or loss of property, incident to noncombat activities of the Army National Guard or the Air National Guard while engaged in training or duty under certain Federal Laws (32 U.S.C. 715).

In each case, the proposed amendment would increase the authority both for complete settlement and payment and for partial payment of meritorious claims in excess of \$25,000 while the excess is reported to Congress for its consideration and payment.

The Department of the Air Force, on behalf of the Department of Defense, supports the increase in the administrative settlement and payment authority proposed in H.R. 5843. The elements of the Department of Defense (and the Coast Guard) have demonstrated their ability to administer the laws to be amended, and other laws authorizing payment of claims against the United States, with fairness to the claimants and concern for the protection of the public funds. Increasing the amount payable administratively will allow more claims to be settled in full without reference to Congress, thus reducing the time and manpower required for administrative processing, expediting the relief of the claimant who has suffered a major loss, and relieving Congress of the necessity for consideration of these claims. Moreover, even in the case of claims in excess of \$25,000, the increased administrative authority would allow payment of a greater sum in less time to the claimants who have suffered so large a loss.

In addition, the present \$15,000 limit in two of these three sections was enacted July 8, 1970. In the other, 10 U.S.C. 2734, the increase was enacted on September 2, 1958. Since that date, inflation and, in the case of foreign claims, devaluation of the dollar have reduced the effective scope of administrative claims settlement authority under these sections.

Although the increased payment authority will result in increased expenditures from appropriations for the Department of Defense (and, in the case of the Coast Guard, the Department of Transportation), it should result in no increased expenditure by the United States. Although it is impossible to predict with certainty the impact of the increased claims payment authority upon the budget of the Department of Defense, some idea may be gained in a review of the amounts which represent the portion between \$15,000 and \$25,000 of claims under these sections considered meritorious in the last three years:

	1970		1971		1972	
	Number	Amount	Number	Amount	Number	Amount
Army.....	5	\$34,223.00	8	\$78,700.00	10	\$89,286
Navv.....	6	49,585.66	8	69,761.53	4	34,211
Air Force.....	6	51,004.59	2	13,332.51	2	20,000
Total.....		134,813.25		161,794.04		143,497

Note.—A breakdown by statute authorizing payment is attached.

Although H.R. 5843 would increase the extent to which meritorious claims could be promptly settled and paid, additional amendment of two of the three laws would facilitate settlement and payment of these claims to an even greater degree. Delegation of settlement, payment, and appellate authority in the case of claims in excess of \$2,500 to any one other than The Judge Advocate General concerned (or the Chief Legal Officer of the Coast Guard) is not permitted under 10 U.S.C. 2733 or 32 U.S.C. 715. This unnecessarily delays the settlement and payment of small claims and imposes unnecessary administrative burdens on The Judge Advocate General and the Secretaries concerned, or both, by requiring the referral of these claims for action by those authorities. No other major claims statute includes so stringent a limitation (see 10 U.S.C. 2734a, 2374b, 4802, 7622, 9802; 28 U.S.C. 2672; 31 U.S.C. 240-243). Experience under these other statutes shows that the elements of the Department of Defense (and the Coast Guard) have qualified legal personnel in field commands in the United States and overseas who would be available properly and expeditiously to settle and pay claims under these sections and to act on appeals. Under other claims statutes the Secretary concerned designates by regulation what authority may be exercised by subordinate commands and who within those commands may exercise the authority, considering the level of command and the training, experience, and other qualifications of the personnel.

Accordingly, while the Department of the Air Force, on behalf of the Department of Defense, wholeheartedly supports H.R. 5843 it recommends that it be amended to include an amendment of 10 U.S.C. 2733 and 32 U.S.C. 715 to permit delegation to any designee of the Secretary concerned of authority to settle, pay, or act on appeals concerning, any claim when the amount to be paid is not more than the proposed \$25,000 limit for these sections.

This report has been coordinated within the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Congress.

Sincerely,

(Signed) WILLIAM W. WOODRUFF,  
Assistant Secretary of the Air Force.

PORTIONS BETWEEN \$15,000 AND \$25,000 OF CLAIMS CONSIDERED MERITORIOUS

	10 United States Code 2733		10 United States Code 2734		32 United States Code 715	
	Number	Amount	Number	Amount	Number	Amount
1970:						
Army.....	1	\$5,000.00	2	\$11,723.00	2	\$17,500
Navy.....	5	39,585.66	1	10,000.00		
Air Force.....	2	17,896.00	2	18,108.59	2	15,000
Total.....	8	62,481.66	5	39,831.59	4	32,500
1971:						
Army.....	6	58,700.00	1	10,000.00	1	10,000
Navy.....	6	51,289.95	2	18,471.58		
Air Force.....	2	13,332.51				
Total.....	14	123,322.46	3	28,471.58	1	10,000
1972:						
Army.....	4	40,000.00	3	19,286.00	3	30,000
Navy.....	3	30,000.00	1	4,211.00		
Air Force.....					2	20,000
Total.....	7	70,000.00	4	23,497.00	5	50,000
Total 1970-72:						
Army.....	11	103,700.00	6	41,009.00	6	57,500
Navy.....	14	120,875.61	4	32,682.58		
Air Force.....	4	31,228.51	2	18,108.59	4	35,000
Total.....	29	255,804.12	12	91,800.17	10	92,500

USAF TORT AND TORT TYPE CLAIMS AGAINST UNITED STATES PROCESSED FISCAL YEAR 1970

Statute	Open (Including carry-over)		Closed		Paid	
	Number	Percent	Number	Percent	Number	Percent
10 U.S.C. 2733.....	3,595	49.12	3,382	46.79	2,234	43.04
10 U.S.C. 2734.....	912	12.46	893	12.35	614	11.83
10 U.S.C. 2734a (SOFA's).....	1,014	13.86	1,148	15.88	1,126	21.69
10 U.S.C. 2737.....	26	.35	24	.33	18	.35
28 U.S.C. 2672.....	1,771	24.20	1,781	24.64	1,199	23.10
Total.....	7,318		7,228		5,191	

USAF TORT AND TORT TYPE CLAIMS AGAINST UNITED STATES PROCESSED FISCAL YEAR 1971

10 U.S.C. 2733.....	2,556	40.35	2,628	40.10	1,711	36.16
10 U.S.C. 2734.....	583	9.20	602	9.19	477	10.08
10 U.S.C. 2734a.....	1,260	19.89	1,345	20.52	1,333	28.17
10 U.S.C. 2737.....	19	.30	20	.30	16	.34
28 U.S.C. 2672.....	1,916	30.25	1,958	29.89	1,195	25.25
Total.....	6,334		6,553		4,732	

USAF TORT AND TORT TYPE CLAIMS AGAINST UNITED STATES PROCESSED FISCAL YEAR 1972

10 U.S.C. 2733.....	2,478	45.04	1,835	41.27	1,419	39.70
10 U.S.C. 2734.....	590	10.72	573	12.89	437	12.22
10 U.S.C. 2734a.....	639	12.52	549	12.35	543	15.19
10 U.S.C. 2737.....	21	.38	21	.47	21	.59
28 U.S.C. 2672.....	1,709	31.06	1,458	32.79	1,146	32.06
10 U.S.C. 939.....	15	.27	10	.22	8	.22
Total.....	5,502		4,446		3,574	

<sup>1</sup> Relates to total of each category—open, et seq.

## USAF CLAIMS REPORT TO CONGRESS FOR PAYMENT—FISCAL YEARS 1970-71

Statute	Claimant	Amount reported	Date reported through OMB	Payment authorized
10 U.S.C. 2734(d)	Tobin	\$23,108.59	Sept. 30, 1970	Jan. 8, 1971, Public Law 91-665.
10 U.S.C. 2734(d)	Chokchai International Co.	26,585.23	Oct. 20, 1970	Do.
10 U.S.C. 2733(d)	Fireman's Fund Insurance Co.	18,332.51	July 26, 1971	Dec. 15, 1971, Public Law 91-184.
32 U.S.C. 715(d)	Tjernagel, S.L.	30,330.70	July 20, 1972	Oct. 31, 1972, Public Law 92-607.
10 U.S.C. 2733(d)	Tjernagel, Marie	41,000.00	do.	Do.
	Lawrence	2,007.66	Dec. 12, 1972	July 1, 1973, Public Law 93-50.
10 U.S.C. 2734(d)	Enokowa	23,213.00	Apr. 4, 1973	Do.
32 U.S.C. 715(d)	McCarville	57,000.00	do.	Do.



