

## § 751.14

payment of the balance due. Overpayments are to be properly recouped.

[72 FR 53424, Sept. 19, 2007]

### § 751.14 Reconsideration and appeal.

(a) *General.* When a claim is denied either in whole or in part, the claimant shall be given written notification of the initial adjudication and of the right to submit a written request for reconsideration to the original adjudicating authority within 6 months from the date the claimant receives notice of the initial adjudication of the claim. If a claimant requests reconsideration and if it is determined that the original action was erroneous or incorrect, it shall be modified and, when appropriate, a supplemental payment shall be approved. If full additional payment is not granted, the file shall be forwarded for reconsideration to the next higher adjudicating authority. For claims originally adjudicated by the Head, Personnel Claims Unit Norfolk, the files will be forwarded to the Judge Advocate General (Claims and Tort Litigation)(Code 15) for final action. The claimant shall be notified of this action either by letter or by copy of the letter forwarding the file to higher adjudicating authority. The forwarding letter shall include a synopsis of action taken on the file and reasons for the action or denial, as well as a recommendation of further action or denial.

(b) *Files forwarded to JAG.* For files forwarded to JAG in accordance with § 751.14(a), the forwarding endorsement shall include the specific reasons why the requested relief was not granted and shall address the specific points or complaints raised by the claimant's request for reconsideration.

(c) *Appeals procedure for claims submitted by Marine Corps personnel.* Where any of the Marine Corps adjudication authorities listed in § 751.8(b) fail to grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded together with the entire original file and the adjudicating authority's recommendation, to the Judge Advocate General.

[72 FR 53424, Sept. 19, 2007]

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§§ 751.15–751.20 [Reserved]

### Subpart B [Reserved]

## PART 752—ADMIRALTY CLAIMS

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752.1 Scope.

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752.3 Claims against the Navy.

752.4 Affirmative claims.

752.5 Salvage.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5013, 5148 and 7621–7623; 32 CFR 700.105 and 700.331.

### § 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy for which the Navy has assumed an obligation to respond for damage. Affirmative claims by the United States for damage caused by a vessel or floating object to Navy property are covered under this part.

[72 FR 56268, Oct. 3, 2007]

### § 752.2 Organization.

(a) *Administrative authority of the Secretary of the Navy.* The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed \$15,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623).

(b) *Admiralty and Maritime Law Division of the Office of the Judge Advocate General.* The Navy's admiralty-tort claims are processed and adjudicated in

the Admiralty and Maritime Law Division of the Office of the Judge Advocate General. All correspondence with the Admiralty and Maritime Law Division should be addressed to the Office of the Judge Advocate General (Code 11), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066.

(c) *Mission and policy.* The primary mission of the Admiralty and Maritime Law Division is to effect prompt and equitable settlements of admiralty claims, both against and in favor of the United States. The settlement procedure has evolved to eliminate the expenses and delays arising out of litigation and to obtain results advantageous to the financial interests of the United States. Where settlements cannot be made, litigation ensues in the Federal Courts. The final test of whether a settlement is justified is the probable result of litigation. Settlements are therefore considered and determined by the probable results of litigation. The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever legal liability exists.

(d) *Admiralty-tort claims.* As indicated above, the Admiralty and Maritime Law Division primarily handles admiralty-tort claims. These are claims for damage caused by vessels in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and claims for damage caused by a privately owned vessel to a vessel or property of the Navy (affirmative claims). The Admiralty and Maritime Law Division also handles claims for towage and salvage services rendered to a vessel in the naval service.

(e) *Admiralty-contract claims.* Admiralty-contract claims arising out of the operations of the Military Sealift Command (MSC) are handled by its Office of Counsel. MSC is responsible for the procurement of vessels and space for the commercial ocean transportation of Department of Defense cargo, mail, and personnel. It is also responsible for the maintenance, repair, and alteration of Government-owned vessels assigned to it. The Office of Counsel, MSC, deals with the various claims of a contract

nature which arise out of these operations. These include claims for cargo damage, charter hire, redelivery, general average, and claims arising under MSC ship-repair contracts.

(f) *Damage caused by Navy contract stevedores.* Office of Counsel, Naval Supply Systems Command, has cognizance of admiralty claims for damage caused by Navy contract stevedores. Under these stevedore contracts, the stevedoring companies are responsible for negligent acts of their employees which result in vessel damage. It is important that the extent of any such damage be accurately determined and promptly reported to the contracting officer having cognizance of the particular stevedore contract involved.

(g) *Resolving conflicts.* Admiralty-tort claims, such as collision, personal-injury, and death claims, are dealt with by the Admiralty and Maritime Law Division, irrespective of whether an MSC vessel or other naval vessel is involved. Whether any particular claim is to be handled by JAG or by MSC, therefore, is determined by the nature of the claim. Cases may arise which could be handled by either office. If doubt exists, such matters should be reported both to JAG and to MSC. An agreement will then be reached between the Admiralty and Maritime Law Division and the Office of Counsel, MSC, as to how the incident should be handled.

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12173, Apr. 2, 1990; 65 FR 60861, 60862, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004; 72 FR 56268, Oct. 3, 2007]

### § 752.3 Claims against the Navy.

(a) *Settlement authority.* 10 U.S.C. 7622 provides settlement authority for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy. The limit on the Secretary's settlement authority is payment of \$15,000,000. A claim

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which is settled for an amount over \$15,000,000 is certified to Congress for payment. Section 7622 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over \$1,000,000. Under the Secretary's delegation, settlements not exceeding \$500,000 may be effected by the Judge Advocate General. Under the Secretary's delegation, settlements not exceeding \$250,000 may be effected by the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

(b) *Settlement is final.* The legislation specifically authorizes the Secretary to settle, compromise, and pay claims. The settlement, upon acceptance of payment by the claimant, is final and conclusive for all purposes.

(c) *Settlement procedures.* Where the amount paid is over \$500,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved, the voucher required for effecting payment is prepared. The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 7622 are paid out of annual Department of Defense appropriations.

(d) *Limitation period.* The Secretary's settlement authorization is subject to a two-year limitation. This limitation is not extended by the filing of claim nor by negotiations or correspondence. A settlement agreement must be reached before the end of the two-year period. If settlement is not accomplished, then the claimant must file suit under the appropriate statute to avoid the limitation bar. The agreement reached in negotiations must receive the approval of the Secretary of the Navy or his designee, depending on the amount involved, prior to the expiration of the two-year period.

(e) *Matters in litigation.* When suit is filed, the matter comes within the cog-

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nizance of the Department of Justice, and the Secretary of the Navy is no longer able to entertain a claim or to make administrative settlement.

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12173, Apr. 2, 1990; 65 FR 60861, 60862, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004; 72 FR 56268, Oct. 3, 2007]

### § 752.4 Affirmative claims.

(a) *Settlement authority.* The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 7623, and is the reciprocal of 10 U.S.C. 7622 referred to in § 752.3.

(b) *Scope.* 10 U.S.C. 7623 is a tort claims-settlement statute. It is not limited to affirmative claims arising out of collision, but embraces all instances of damage caused by a vessel or floating object to property of the United States under the jurisdiction of the Department of the Navy or for which the Department of the Navy has assumed an obligation to respond. Perhaps the most frequent instance is where a privately owned vessel damages a Navy pier or shore structure. To eliminate any issue of whether the damaging instrumentality was a vessel, the words "or floating object" were included.

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the "res" or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416).

(d) *Litigation.* 10 U.S.C. 7623 does not apply to any claim where suit is filed. If the Admiralty and Maritime Law Division is unable to effect settlement, the matter is referred to the Department of Justice for the filing of a complaint against the offending party. Thereafter, as in the case of adverse litigated claims, the Navy has no further authority to effect settlement.

[39 FR 9962, Mar. 15, 1974, as amended at 55 FR 12174, Apr. 2, 1990; 65 FR 60861, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004; 72 FR 56268, Oct. 3, 2007]

## Department of the Navy, DoD

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### § 752.5 Salvage.

(a) *Scope.* This section relates to salvage claims against or by the Navy for compensation for towage and salvage services, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy, or for salvage services rendered by the Department of the Navy. Suits for salvage may be maintained under the Public Vessels Act, and salvage claims are within the Secretary of the Navy's administrative-settlement authority under 10 U.S.C. 7622. Salvage claims against the Navy are reported to and processed by the Judge Advocate General (Admiralty and Maritime Law Division). Both claims and suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act and the Navy's settlement authority.

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 7365. Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command (SEA OOCL), 2531 Jefferson Davis Highway, NC/3 Room 11E54, Arlington, VA 22242-5160. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367.

[39 FR 9962, Mar. 15, 1974, as amended at 41 FR 26866, June 30, 1976; 55 FR 12174, Apr. 2, 1990; 65 FR 60861, 60862, Oct. 13, 2000; 69 FR 20542, Apr. 16, 2004]

## PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

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- 755.2 Scope.
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AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 939, 5013, and 5148; E.O. 11476, as reported in 3 CFR, 1969 Comp., p. 132; 32 CFR 700.206 and 700.1202.

SOURCE: 56 FR 42232, Aug. 27, 1991, unless otherwise noted.

NOTE 1: This part 755 is chapter IV of the Manual of the Judge Advocate General of the Navy.

NOTE 2: The Uniform Code of Military Justice (10 U.S.C. 801-940) is referred to in this part 755 as the "UCMJ". The Manual for Courts-Martial, United States, 1984 (E.O. 12473 of August 1, 1984) is referred to in this part 755 as "MCM 1984".

### § 755.1 Statutory authority.

Article 139, UCMJ, redress of injuries to property, is the basis for this chapter.

### § 755.2 Scope.

This chapter provides for assessments against the pay of members of the naval service in satisfaction of claims for property damage caused under certain circumstances. Claims for damage, loss, or destruction of privately owned property caused by a person or persons in the naval service, are payable under Article 139, UCMJ, only if such damage, loss, or destruction is caused by riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ, are cognizable under Article 139, UCMJ. Charges against pay under these regulations shall be made only against the pay of persons shown to have been principal offenders or accessories.

### § 755.3 Claims not cognizable.

The following claims are not cognizable under this chapter.

(a) Claims resulting from simple negligence.

(b) Claims of subrogees.

(c) Claims for personal injury or death.