

acting in his behalf, or on his own initiative. Such reconsideration may occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

Sec.

537.1 General.

537.2 Recovery of property unlawfully detained by civilians.

537.6 Maritime casualties; claims in favor of the United States.

537.7 Maritime claims.

Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army

537.21 General.

537.22 Basic considerations.

537.23 Predemand procedures.

537.24 Post demand procedures.

AUTHORITY: 10 U.S.C. 3012; sections 537.21 through 537.24 issued under 42 U.S.C. 2651-2653;

SOURCE: 54 FR 43914, Oct. 27, 1989, unless otherwise noted.

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

§ 537.1 General.

(a) *Purpose.* This section prescribes, within the limitations indicated in AR 27-20 (AR 27-20 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161), and in paragraph (b) of this section, the procedures for the investigation, determination, assertion, and collection, including compromise and termination of collection action, of claims in favor of the United States for damage to or loss or destruction of Department of the Army (DA) property.

(b) *Applicability and scope.* (1) Other regulations establish systems of property accountability and responsibility; prescribe procedures for the investigation of loss, damage, or destruction by causes other than fair wear and tear in the service; and provide for the administrative collection of charges against military and civilian personnel of the United States, contractors and common carriers, and other individuals and legal entities from whom collection may be made without litigation. When the investigation so prescribed results in preliminary indication of pecuniary liability, and no other method of collection is provided, the matter is referred for action under this section. This relationship exists with regard to—

(i) Property under the control of the DA.

(ii) Property of the Defense Logistics Agency in the custody of the DA.

(iii) Property of nonappropriated funds of the DA (except Army and Air Force Exchange Service property unless a special agreement exists). See AR 215-1 and AR 215-2.

(iv) Federal property made available to the Army National Guard (ARNG).

(2) This section does not apply to—

(i) Claims arising from marine casualties.

(ii) Claims for damage to property funded by civil functions appropriations.

(iii) Claims for damage to property of the DA and Air Force Exchange Service.

(iv) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(v) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(vi) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army, or the Department of Defense (DOD), for loss, damage, or destruction of personal property while in transit or storage at Government expense.

(3) The commander of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to establish procedures for the processing of claims in favor of the United States for loss, damage, or destruction of property which may, to the extent deemed necessary, modify the procedures prescribed herein. Two copies of all implementing directives will be furnished Commander, U.S. Army Claims Service (USARCS). Procedures will be prescribed—

(i) To carry out the provisions of DOD Directive No. 5515.8, assigning single service claims responsibility.

(ii) To carry out provisions of treaties and other international agreements which limit or provide special methods for the recovery of claims in favor of the United States.

(c) *Definitions.* For the purpose of this section only, the following terms have the meaning indicated:

(1) *Claim.* The Government's right to compensation for damage caused to Army property.

(2) *Prospective defendant.* An individual, partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, except an instrumentality of the United States, against whom the United States has a claim.

(3) *Damage.* A comprehensive term, including not only damage to, but also loss or destruction of Army property.

(4) *DA property.* Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefor, real or personal property of a foreign government, which is in the possession or under the control of the DA, one of its instrumentalities, or the ARNG, including that property of an activity for which the Army has been designated the administrative agency, and that property located in an area in which the Army has been assigned single service claims responsibility by appropriate DOD directive.

(5) *Major overseas command.* U.S. Army Europe; U.S. Army Forces Southern Command; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous States specially designated by The Judge Advocate General (TJAG) under the provisions of AR 27-20.

(6) *Area Claims Office.* The principal office for the investigation, assertion, adjudication and settlement of claims, staffed with qualified legal personnel under the supervision of a Staff Judge Advocate (SJA) or Command Judge Advocate or Corps of Engineers district or Command Legal Counsel under provisions of AR 27-20.

(7) *Recovery judge advocate (RJA).* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses and property damage.

(d) *Limitation of time.* The Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) established a 3-year statute of limitations, effective July 19, 1966, upon actions in favor of the United States for money damages founded upon a tort. In computing periods of time excluded under 28 U.S.C. 2416, the RJA concerned shall be deemed the official charged with responsibility and will ensure that action may be brought in the name of the United States within the limitation period.

(e) *Foreign prospective defendants.* Except as indicated below, claims within the scope of this section against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant. Claims against an international organization,

a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such international organization or foreign government, will not be asserted without prior approval of TJAG. Investigation and report thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS, unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(f) *Standards of liability.* (1) The Government's right to compensation for damage caused to Army property will be determined in accordance with the law of the place in which the damage occurred, unless other law may properly be applied under conflict of law rules.

(2) To the extent that the prospective defendant's liability is covered by insurance, liability will be determined without regard to standards of pecuniary liability set forth in other regulations. If no insurance is available, claims will be asserted under this section against military and civilian employees of the United States and of host foreign governments only where necessary to complete the collection of charges imposed upon such persons under the standards established by other regulations.

(g) *Concurrent claims under other regulations.* (1) Claims for damage to DA property and claims for medical care cognizable under §§ 537.21 through 537.24 arising from the same incident will be processed under the sections applicable to each.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim or suit against the United States, the claim in favor of the Government will be asserted and otherwise processed only by an RJA who has apparent authority to take final action on the claim against the Government.

(h) *Repayment in kind.* The RJA who asserts a claim under this section may accept, in lieu of full payment of the claim, the restoration of the property to its condition prior to the incident

causing the damage, or the replacement thereof. Acceptability of these methods of repayment is conditioned upon the certification of the appropriate staff officer responsible for maintenance, such as is described for motor vehicles in AR 735-5, before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

(i) *Delegation of authority.* Subject to the provisions of paragraph (k) of this section, the authority conferred by AR 27-20, to compromise claims and to terminate collection action, with respect to claims that do not exceed \$20,000, exclusive of interest, penalties and administrative fees, is further delegated as follows:

(1) An Area Claims Office, as defined in paragraph (c)(6) of this section, is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than \$10,000.

(ii) Terminate collection action, provided the uncollected amount of claim does not exceed \$10,000.

(2) The SJA, or if so designated, the chief of the Command Claims Service of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to:

(i) Compromise claims, not over \$20,000 without monetary limitations.

(ii) Terminate collection action, provided the uncollected amount of the claim does not exceed \$20,000.

(j) *Compromise and termination of collection action.* (1) The authority delegated in paragraph (j) of this section to compromise claims will be exercised in accordance with the standards set forth in 4 CFR part 104.

(2) The authority delegated in paragraph (j) of this section to terminate collection action will be exercised in accordance with the standards set forth in 4 CFR part 104.

(3) A debtor's liability to the United States arising from a particular incident shall be considered as a single claim in determining whether the claim is not more than \$20,000, exclusive of interest, penalties and administrative fees for the purpose of compromise, or termination of collection action.

(4) Only the Department of Justice may approve claims involving:

(i) Compromise or waiver of a claim asserted for more than \$20,000 exclusive of interest, penalties and administrative fees.

(ii) Settlement actions previously referred to the Department.

(iii) Settlement where a third party files suit against the United States or the individual federal tortfeasor arising but of the same incident.

(k) *Releases.* The RJA who receives payment of the claim in full, or who receives full satisfaction of an approved compromise settlement, is authorized to execute a release. A standard form furnished by the prospective defendant or his insurer may be executed, provided no indemnity agreement is included.

(l) *Receipts.* The RJA may execute and deliver to a prospective defendant a receipt for payment in full, installment payment or an offered compromise payment, subject to approval of the SJA. DA Form 2135-R (Receipt for Payment for Damage to or Loss of Government Property) be used.

§ 537.2 Recovery of property unlawfully detained by civilians.

Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the procedures contained in AR 735-11, Para. 3-15, Unit Supply UPDATE 10, should be followed.

§ 537.6 Maritime casualties; claims in favor of the United States.

See 32 CFR 536.60, which covers claims on behalf of the United States as well as claims against the United States.

§ 537.7 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee, under the direction of the Secretary of Defense, is authorized by Army Maritime Claims Settlement Act of 1956 (70A Stat. 270), as amended (10 U.S.C. 4801-4804, 4806).

(b) *Related statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought; the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741-752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781-790); the Extension of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code (U.S.C.), sections 7365, 7621-7623, and by the Department of the Air Force under 10 U.S.C. 9801 through 9804, 9806.

(c) *Scope.* (1) Section 4803 of title 10, U.S.C., provides for the settlement or compromise of claims of a kind that are within the admiralty jurisdiction of a district court of the United States and of claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the Department has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed \$500,000.

(2) Section 4804 of title 10, U.S.C., for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA for any vessel. The amounts of claims for salvage services are based upon per diem rates for the use of salvage vessels and other equipment; and materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis, in accordance with commercial practice, in an appropriate case.

(d) *Amounts exceeding \$500,000.* Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding \$500,000 payable to the United States. However, all such claims otherwise within the scope of this section will be investigated and reported to the Commander, USARCS.

(e) *Civil works activities.* Rights of the United States to fines, penalties, forfeitures, or other special remedies in connection with the protection of navigable waters, the control and improvement of rivers and harbors, flood control, and other functions of the Corps of Engineers involving civil works activities, are not dealt with in this section. However, claims for money damages which are civil in nature, arising out of civil works activities of the Corps of Engineers and otherwise under this section, for which an adequate remedy is not available to the Chief of Engineers, may be processed under this section.

(f) *Delegation of authority.* Where the amount to be received by the United States is not more than \$10,000, claims under this section, except claims for salvage services, paragraph (c)(2) of this section, may be settled or compromised by the Commander, USARCS, or designee, subject to such limitations as may be imposed by the Commander, USARCS and by engineer area claims offices, subject to such limitations as may be imposed by the Chief of Engineers.

(g) *Demands.* Demand for the payment of claims in favor of the United States under this section may be made by the Commander, USARCS, or designee.

Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army

§ 537.21 General.

(a) *Authority.* The regulations in §§ 537.21 through 537.24 are in implementation of the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3), Executive Order Number 11060 (27 FR 10925), and Attorney General's Order Number 289-62, as amended (28 CFR part 43), providing for the recovery of the reasonable value of medical care furnished or to be furnished by the United States to a person on account of injury or disease incurred after December 31, 1962, under circumstances creating a tort liability upon some third person.

(b) *Applicability and scope.* (1) Sections 537.21 through 537.24 apply to all claims for the reasonable value of medical services furnished by or at the ex-

pense of the Army which result from incidents occurring on or after March 1, 1969. Cases which arise from incidents occurring prior to that date:

(i) And which are the responsibility of an SJA or JA who is designated an RJA will be processed under §§ 537.21 through 537.24;

(ii) And which are the responsibility of an SJA or JA not so designated will be processed under the predecessor regulation until either completed or transferred.

(2) The procedures prescribed herein are to be employed within the DA for the investigation, determination, assertion, and collection, including compromise and waiver, in whole or in part, of claims in favor of the United States for the reasonable value of medical services furnished by or at the expense of DA. TJAG provides general supervision and control of the investigation and assertion of claims arising under the Federal Medical Care Recovery Act.

(3) In Continental U.S., Army SJA's and RJA's will be assigned responsibility under §§ 537.21 through 537.24 on a geographical area basis.

(4) The commander of any major overseas command specified in paragraph (c)(5) of this section is authorized to modify the procedures prescribed herein to accommodate any special circumstances which may exist in the command.

(5) Claims for medical care furnished by the DA on a reimbursable basis (see table 1, AR 40-3) ordinarily will be forwarded for processing directly to the Federal department or agency responsible for reimbursement.

(c) *Definitions.* For the purpose of §§ 537.21 through 537.24 only, the following terms have the meaning indicated.

(1) *Claim.* The Government's right to recover from a prospective defendant the reasonable value of medical care furnished to each injured party.

(2) *Medical care.* Includes hospitalization, out-patient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

(3) *Injured party.* The person who received an injury or contracted a disease which resulted in the medical

care. Such person may be an active duty or retired member, a dependent, or any other person who is eligible for medical care at DA expense. See section III, AR 40-3, and §§ 577.60 through 577.71 of this chapter.

(4) *Prospective defendant.* A person other than the injured party. An individual partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, against whom the United States has a claim.

(5) *Major overseas command.* U.S. Army Forces Southern Command; the U.S. Army, Europe; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous states specially designated by TJAG under the provisions of AR 27-20.

(6) *Recovery judge advocate.* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses.

§ 537.22 Basic considerations.

(a) *The right of recovery—(1) Applicable law.* The right of the United States to recover the reasonable value of medical care furnished or to be furnished an injured party is based on the Federal Medical Care Recovery Act. It accrues simultaneously with the accrual of the injured party's right to recover damages from the prospective defendant but is independent of any claim which the injured person may have against the prospective defendant. Recovery is allowed only if the injury or diseases resulted from circumstances creating a tort liability under the law of the place where the injury occurred.

(2) *Time limitation.* The Act of 18 July 1966 (28 U.S.C. 2415 *et seq.*) establishes a 3-year statute of limitation upon actions in favor of the United States for money damages founded upon a tort. The RJA will take appropriate steps within the limitation period to assure that necessary legal action is not barred by the statute.

(3) *Amount.* The Government's right of recovery is limited to amounts expended or to be expended by the United States for medical care from other than Federal sources, and to amounts determined by the rates established by

the Office of Management and Budget for medical care from Federal sources, less any amounts reimbursed by the injured party.

(b) *Certain prospective defendants—(1) U.S. Government agencies.* No claim will be asserted against any department, agency, or instrumentality of the United States.

(2) *U.S. personnel.* Claims against a member of the uniformed services; or an employee of the United States, its agencies or instrumentalities; or a dependent of a service member or an employee will not be asserted unless the prospective defendant has the benefit of liability insurance coverage or was guilty of gross negligence or willful misconduct. If simple negligence occurring in the scope of a member's or employee's employment is the basis of the claim, no claim will be asserted if such claim is excluded from the coverage of the liability insurance policy involved. No claim, in the absence of specific statutory authorization, will be made directly against a member or employee, or his or her dependents for injuries sustained to himself or herself through acts of simple negligence, gross negligence, or willful misconduct.

(3) *Government contractors.* Claims, the cost or expense of which may be reimbursable by the United States under the terms of a contract, will not be asserted against a contractor without the prior approval of USARCS. Such claims will be investigated and the report thereof, which will include citation to the specific contract clauses involved and recommendations regarding assertion will be forwarded through command channels to Commander, USARCS.

(4) *Foreign persons.* Claims within the scope of §§ 537.21 through 537.24 against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant, unless such action is precluded by treaty or international agreement. Claims against an international organization, or foreign government, will be investigated and reports thereof, together with recommendations regarding assertion and enforcement, will be forwarded through

command channels to Commander, USARCS.

(5) *National Guard Members.* Claims arising from the tortious conduct of NG members will be investigated and if assertion appears appropriate, a recommendation shall be made to Commander, USARCS.

(c) *Concurrent claims under other regulations—(1) Section 537.1.* Claims for medical care and claims for damage to DA property arising from the same incident will be processed by the RJA in accordance with §537.1(g). If an RJA lacks settlement authority sufficient to settle a concurrent claim under §537.1, he may request additional authority under that section from the appropriate major overseas command SJA or area claims authority, who may delegate such additional authority in an amount not exceeding his own settlement authority. Where time is of the essence, telephonic delegations of authority are encouraged, provided they are confirmed in a writing which will be made a part of the case file.

(2) *Counterclaims.* Claims for medical care and claims against the United States which arise from the same incident will be processed by the RJA in accordance with §537.1(g)(2). If an RJA lacks authority sufficient to settle the claim against the Government, he will coordinate his action with that claims echelon which has the necessary authority to settle the particular claim against the United States.

§ 537.23 Predemand procedures.

(a) *Relations with the injured party—(1) Advice.* The injured party, or, in appropriate cases, his guardian, next-of-kin, personal representative, or the executor or administrator of his estate, will be advised of the following:

(i) That under the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3, the United States may be entitled to recover the reasonable value of medical care furnished or to be furnished him in the future from the person or persons who injured him, or who were otherwise responsible for his injury or disease; and

(ii) That if he is otherwise entitled to legal assistance under AR 27-3, he should seek guidance from a legal as-

sistance officer regarding any claim he may have for personal injury; and

(iii) That he is required to cooperate in the prosecution of all actions of the United States against the person or persons who injured him; and

(iv) That he is required to furnish a complete statement regarding the facts and circumstances surrounding the incident which resulted in the injury or disease; and

(v) That he is required to furnish information concerning any legal action brought or to be brought by or against the prospective defendant, or to furnish the name and address of the attorney representing him; and

(vi) That he should not execute a release or settle any claim which he may have as a result of his injury without first notifying the RJA.

(2) *Statement.* A written statement will be obtained from the injured party, or his representative, in which he acknowledges receipt of the advice in paragraph (a)(1) of this section, and provides the information required by paragraphs (a)(1) (iv) and (v) of this section. If the injured party or representative fails or refuses to furnish necessary information or cooperation, the originator of the notification of potential claims may be requested to withhold records as to medical history, diagnoses, findings, and treatment, from the injured party or anyone acting on his behalf pending compliance with the requirements in paragraph (a)(1) of this section. Mere refusal by the injured party or his representative to include the Government's claim in his claim is not sufficient basis, by itself, for this action.

(b) *Determination and assertion—(1) Liability.* The RJA will review all the evidence including any claims officer's report of investigation and, after assuring completeness of the file, will make a written determination as to the liability of the prospective defendant and note his reasons for such determination.

(2) *Value.* If the RJA determines that the prospective defendant is liable, he will also ascertain the reasonable value of medical care furnished or to be furnished to the injured party, in accordance with §537.22(a)(3) and rates established by the Office of Management and

Budget. When a military member has been retained in a military hospital for administrative reasons, or where the patient was absent from the hospital or was in a purely convalescent status, the amount of the claim will be recomputed to apply the outpatient rate, if under circumstances warranting only outpatient treatment in a civilian hospital or eliminate such periods altogether if the injured party received no treatment during those periods. In making these determinations the RJA will coordinate with the registrar or other responsible official of the hospital or medical unit in his area of responsibility.

(3) *Amount.* In the event of doubt concerning the extent of medical care furnished or to be furnished an injured party, the RJA will assert the claim in an indefinite amount. Demand will be made in a definite amount at the earliest possible date, based on an estimate of a reasonable value of medical care to be furnished, if appropriate. The RJA will assure that the file contains complete statements of the value of medical care furnished, including all charges by civilian physicians, medical technicians and civilian hospitals.

§ 537.24 Post demand procedures.

(a) *Coordination with the injured party's claim.* (1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished or to be furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the claim on behalf of the government as an item of special damages with the injured party's claim or suit except where prohibited by law. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees may be neither paid by the Government (5 U.S.C. 3106) nor computed on the basis of the Government's portion of the recovery. The agreement must also require the Government's permission to settle its claim.

(3) If the injured party, denies or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(b) *Independent collection action.* Unless suit between the injured party and the prospective defendant is pending, all available administrative collection procedures will be followed prior to reference of the claim to the Department of Justice under paragraph (e) of this section. Direct contact with the prospective defendant's insurer, if known, is desirable. If the prospective defendant is an uninsured motorist, timely and appropriate action will be taken to collect the claim, or to request suspension of driving and registration privileges under the applicable uninsured motorist fund statute, or to seek compensation from the victim's insurer, or otherwise under financial responsibility laws.

(c) *Delegation of authority.* Subject to the provisions of paragraphs (d) and (e) of this section, authority to compromise or waive, in whole or in part, claims of the United States not in excess of \$40,000 exclusive of interest penalties and administrative fees is delegated as follows. The Area Claims Office as defined in paragraph (c)(6) of section 537.1 is authorized to:

(1) Compromise claims, provided the compromise does not reduce the claim by more than \$15,000 in any claim not asserted for more than \$25,000; and

(2) Waive claims for the convenience of the Government (but not on account of undue hardship upon the injured party) provided the uncollected amount of the claim does not exceed \$15,000 in any claim not asserted for more than \$25,000; and

(3) Redellegation in an amount not to exceed \$5,000 compromise authority to any claim processing office with approval authority is permitted.

(d) *Compromise and waiver of claims—*
(1) *General.* A debtor's liability to the United States arising from a particular incident will be considered as a single claim in determining whether the claim is not more than \$40,000, for the purpose of compromise or waiver. Claims not resolved within the delegation of authority stated in this section

or referred to the Department of Justice, will be forwarded to Commander, USARCS. A claim file forwarded to higher authority will contain a memorandum of opinion supported by necessary exhibits.

(2) *Compromise.* (i) The authority delegated in paragraph (c) of this section to compromise claims will be exercised in accordance with standards set forth in 4 CFR 103. When available funds are insufficient to satisfy both the claim of the United States and that of the injured party, the claim of the United States will be compromised to the extent required to achieve an equitable apportionment of the available funds.

(ii) If appropriate, a request by the injured party or his attorney for waiver on the ground of undue hardship may be treated initially as a suggestion for compromise with the tortfeasor, and the compromised amount of the claim of the United States will be determined. In such cases, RJA's may make offers of compromise within their delegated authority. RJA's may also make counteroffers within their delegated authority to offers of compromise beyond their delegated authority. If settlement within the limits of delegated authority is not achieved, the claim will be referred to higher authority.

(iii) When time is a factor, SJA or major overseas command staff JA's may make telephonic delegation within their compromise authority on a case by case basis. When such verbal delegations are made, they will be confirmed in writing and the writing included in the case file.

(3) *Waiver.* (i) The authority delegated in paragraph (c) of this section to waive claims for the convenience of the Government will be exercised in accordance with standards set forth in 4 CFR part 103.

(ii) If the injured party or his attorney requests waiver of the full or any compromised amount of the claim on the ground of undue hardship, and the request may not be appropriately treated under paragraph (d)(2)(ii) of this section, the file will be forwarded to appropriate major overseas command claims authority or Commander, USARCS. For the purpose of evaluation of the request for waiver, the file

will include detailed information concerning the reasonable value of the injured party's claim for permanent injury, pain and suffering, decreasing earning power, and other items of special damages, pension rights, and other Government benefits accruing to the injured party; and the present and prospective assets, income, and obligations of the injured party, and those dependent on him.

(iii) In the event an affirmative determination is made by TJAG that, as a result of the collection of the Government's claim the injured party has suffered an undue hardship, the RJA will be authorized to direct issuance of the amount waived to the injured party.

(4) A file forwarded to higher authority for waiver of compromise consideration will contain a memorandum by the RJA giving his assessment of the case and his recommendation with regard to the approval or denial of the requested compromise or waiver.

(e) *Only the Department of Justice may approve claims involving.* (1) compromise or waiver of a claim asserted for more than \$40,000 exclusive of interest, penalties or administrative fees,

(2) Settlement actions previously referred to the Department,

(3) Settlement where a third party files suit against the United States on the injured party arising out of the same incident.

PART 538—MILITARY PAYMENT CERTIFICATES

Sec.

538.1 Definitions.

538.2 Use of military payment certificates.

538.3 Restrictions on possession and use.

538.4 Convertibility of military payment certificates.

538.5 Conversion of invalidated military payment certificates.

538.6 Claims.

AUTHORITY: Sec. 3, 58 Stat. 821, as amended; 31 U.S.C. 492c.

SOURCE: 44 FR 76784, Dec. 28, 1979, unless otherwise noted.

§538.1 Definitions.

(a) *United States dollar instruments.* For the purpose of this section, United States dollar instruments include the following: