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(c) *When to file/statute of limitations.* Claims against the DON must be presented in writing within 2 years after they accrue. In computing the 2 year period, the day the claim accrues is excluded and the day the claim is presented is included. If the incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, an MCA claim, on good cause shown, may be presented within 2 years after the war or armed conflict is terminated. For the purposes of the MCA, the date of termination of the war or armed conflict is the date established by concurrent resolution of Congress or by the President. See 10 U.S.C. 2733(b)(1).

(d) *Where to file.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if it is known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, 200 Stovall Street, Alexandria, VA 22332–2400.

(e) *Claim form.* A claim is correct in form if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, with a claim for money damages in a sum certain. A Standard Form 95 is preferred. A claim should be substantiated as discussed in section 750.27 of this part. A claim must be substantiated as required by this Part in order to be paid. See 10 U.S.C. 2733(b)(5).

(f) *Amendment of claim.* A proper claim may be amended by the claimant at any time prior to final denial or payment of the claim. An amendment shall be submitted in writing and signed by the claimant or a duly authorized agent or legal representative.

(g) *Payment.* Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. If the Secretary of the Navy considers that a claim in excess of $100,000.00 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and § 750.43, he may make a partial payment of $100,000.00 and refer the excess to the General Accounting Office for payment from appropriations provided therefore.

§ 750.46 Applicable law.

(a) *Claims arising within the United States, Territories, Commonwealth, and Possessions.* The law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory or comparative negligence on claimant's right of recovery.

(b) *Claims within foreign countries.* (1) Where the claim is for personal injury, death, or damage to or loss or destruction of real or personal property caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of DON personnel acting within the scope of their employment, liability of the United States will be assessed under general principles of tort law common to the majority of American jurisdictions.

(2) Apply the law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant to determine the relative merits of the claim. If there is no foreign law on contributory or comparative negligence, apply traditional rules of contributory negligence. Apply foreign rules and regulations on operation of motor vehicles (rules of the road) to the extent those rules are not specifically superseded or preempted by U.S. Armed Forces traffic regulations.

(c) *Clarification of terms.* The principles of absolute liability and punitive damages do not apply to claims under the MCA. Federal law determines the meaning and construction of the MCA.

§ 750.47 Measure of damages for property claims.

Determine the measure of damages in property claims arising in the United States or its territories, commonwealth, or possessions under the law of the place where the incident occurred. Determine the measure of damages in property claims arising overseas under general principles of American tort law, stated as follows:

(a) If the property has been or can be economically repaired, the measure of

damages shall be the actual or estimated net cost of the repairs necessary to substantially restore the property to the condition that existed immediately prior to the incident. Damages shall not exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs. The amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, if such adjustments are sufficiently substantial in amount to warrant consideration. Estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(b) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value immediately after the incident. Estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(c) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, for such period reasonably necessary for repairs, as long as idle property of the claimant was not employed as a substitute. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but not obtained and used by the claimant, loss of use is normally not payable.

§ 750.48 Measure of damages in injury or death cases.

(a) Where an injury or death arises within the United States or its territories, commonwealth, or possessions, determine the measure of damages under the law of the location where the injury arises.

(b) Where an injury or death arises in a foreign country and is otherwise cognizable and meritorious under this provision, damages will be determined in accordance with general principles of American tort law. The following is provided as guidance.

(1) *Measure of Damages for Overseas Personal Injury Claims.* Allowable compensation includes reasonable medical and hospital expenses necessarily incurred, compensation for lost earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering.

(2) *Wrongful Death Claims Arising in Foreign Countries.* (i) Allowable compensation includes that in paragraph (b)(1) of this section, burial expenses, loss of support and services, loss of companionship, comfort, society, protection, and consortium, and loss of training, guidance, education, and nurturing, as applicable.

(ii) The claim may be presented by or on behalf of the decedent's spouse, parent, child, or dependent relative. Claims may be consolidated for joint presentation by a representative of some or all of the beneficiaries or may be filed by a proper beneficiary individually.

§ 750.49 Delegations of adjudicating authority.

(a) *Settlement Authority.* (1) The Secretary of the Navy may settle claims in any amount. The Secretary may pay the first $100,000.00 and report the excess to the Comptroller General for payment under 31 U.S.C. 1304. *See* 10 U.S.C. 2733(d).

(2) The Judge Advocate General has delegated authority to settle claims for $100,000.00 or less.

(3) The Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General