

(3) If an insurance settlement is not available due to the insurer's insolvency or bankruptcy, a report on the bankruptcy will be forwarded to the Commander USARCS without delay, setting forth all pertinent information, including the alleged reasons for the bankruptcy and the facts concerning the licensing of the insurer.

(d) *Deductions for amounts paid by tortfeasor.* Settlement authorities will deduct from the damages any direct payments by a member or civilian employee of the U.S. armed forces for damages (other than solatia).

**§ 536.140 Appointment and functions of Foreign Claims Commissions.**

(a) Claims cognizable under this subpart will be referred to the command responsible for claims arising within its geographic area of responsibility, including claims transferred by agreement between the services involved. The senior judge advocate of a command having a command claims service, or his delegee, will appoint a sufficient number of Foreign Claims Commissions (FCCs) to dispose of the claims. If there is no command claims service, the responsible commander may ask the Commander USARCS for permission to establish one. Otherwise, the Commander USARCS will appoint a sufficient number of FCCs from personnel furnished by the command involved. See § 576.3(d) for more information about command claims services.

(b) The Commander USARCS will appoint all other FCCs to act on all other claims, regardless of where such claims arose, unless they arose in a country for which single-service responsibility has been assigned to another service. FCCs appointed by the Commander USARCS at units based in the continental United States (CONUS) may act on any claim arising out of such unit's operations. Any FCC operating in, or adjudicating claims arising out of, a geographical area within a command claims service's jurisdiction, will comply with that service's legal and procedural rules.

(c) An FCC may operate as an integral part of a command claims service, which will determine the cases to be assigned to it, furnish necessary administrative services, and establish

and maintain its records. Where an FCC does not operate as part of a command claims service, it may operate as part of the office or a division, corps or higher command staff judge advocate (SJA), which will perform the foregoing functions.

(d) An appointing authority who appoints or relieves an FCC whom he or she has appointed will forward one copy of each order addressing an FCC's appointment, relief, or change of responsibility to the Commander USARCS. Upon receipt of an initial appointing order, the Commander USARCS will assign an office code number to the FCC. Without such a number the FCC has no authority to approve or pay claims. See AR 27-20, paragraph 13-1.

(e) Normally, the FCC is responsible for the investigation of all claims referred to it, using both the procedures set forth in subpart B of this part and any local procedures established by the appointing authority or command claims service responsible for the geographical area in which the claim arose. Chiefs of a command claims service may request assistance on claims investigation within their geographical areas from units or organizations other than the FCC. The Commander USARCS may make the same request for any claim referred to an FCC appointed under his or her authority.

(f) When an FCC intends to deny a claim, or offer an award less than the amount claimed, it will notify in writing the claimant, the claimant's authorized agent, or legal representative of the intended action on the claim and the legal and factual bases for that action. If the FCC proposes a partial award, a settlement agreement should be enclosed with the notice. Claimants will be advised that they may either accept the FCC action by returning the signed settlement agreement or, if dissatisfied with the FCC's action, they may submit a request for reconsideration stating the factual or legal reasons why they believe the FCC's proposed action is incorrect. This notice serves to give the claimant an opportunity to request reconsideration of the FCC action and state the reasons for the request before final action is

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taken on the claim. When the FCC intends to award the amount claimed, or recommend an award equal to the amount claimed to a higher authority, this procedure is not necessary. However, a settlement agreement is required for all awards, full or partial. See § 536.63(a).

(1) This notice should be given at least 30 days before the FCC takes final action, except on small claims processed pursuant to § 536.33. The notice should be mailed via certified or registered mail to the claimant. The claimant should be informed that any request for reconsideration should be addressed to the FCC that took final action, and that all materials the claimant wishes the FCC to consider should be included with the request for reconsideration.

(2) An FCC may alter its initial decision based on the claimant's response or proceed with the intended action. If the claimant's response raises a general policy issue, the FCC may request an advisory opinion from the Commander USARCS or the chief of the command claims service while retaining the claim for final action at its level.

(3) Upon completing of its evaluation of the claimant's response, the FCC will notify the claimant of its final decision and advise the claimant that its action is final and conclusive as a matter of law (10 U.S.C. 2735), unless the final decision is a recommendation for payment above its authority. In that case, the FCC will forward any response submitted by the claimant along with its claims memorandum of opinion to the approval authority, and will notify the claimant accordingly.

(4) When an FCC determines that a claim is valued at more than \$50,000 or all claims arising out of a single incident are valued at more than \$100,000, the file will be transferred to the Commander USARCS for further action; see § 536.143(d)(2). Upon request of the Commander USARCS, the FCC may negotiate a settlement, the amount of which exceeds the FCC's authority; however, prior approval by a higher authority is required.

(5) Every reasonable effort should be made to negotiate a mutually agreeable settlement on meritorious claims.

When an agreement can be reached, the notice and response provisions above are not necessary. If the FCC recommends an award in excess of its monetary authority, the settlement agreement should indicate that its recommendation is contingent upon approval by higher authority.

(g) The chief of an overseas command claims service may delegate to a one-member FCC the responsibility for the receipt, processing, and investigation of any claim, regardless of amount, except those required to be referred to a receiving State office for adjudication under the provisions of a treaty concerning the status of U.S. forces in the country in which the claim arose. If, after investigation, it appears that action by a three-member FCC is appropriate, the one-member FCC should send the claim to the appropriate three-member FCC with a complete investigation report, including a discussion of the applicable local law and a recommendation for disposition.

### § 536.141 Composition of Foreign Claims Commissions.

(a) Normally, an FCC will be composed of either one or three members. Alternate members of three-member FCCs may be appointed when circumstances require, and may be substituted for regular members on specific cases by order of the appointing authority. The appointing orders will clearly designate the president of a three-member FCC. Two members of a three-member FCC will constitute a quorum, and the FCC's decision will be determined by majority vote.

(b) Upon approval by the Commander USARCS and the appropriate authority of another uniformed service, the membership may be composed of one or more members of another uniformed service. If another service has single-service responsibility over the foreign country in which the claim arose, that service is responsible for the claim. If requested, the Commander USARCS may furnish a JAG officer or claims attorney to be a member of another service's FCC.