

§516.22

(e) *Settlement.* The contractor, unless the contract specifies otherwise, will ultimately decide whether to compromise a suit. Reimbursement under the contract is determined by the contracting officer, with the advice of his attorney.

§516.22 Miscellaneous reporting requirements.

SJAs or legal advisers will comply with the directives cited below concerning actual or prospective litigation involving the following types of cases:

(a) *Taxation.* (1) Contractor transactions. (FAR and DFARS, 48 CFR parts 29 and 229).

(2) Army and Air Force Exchange Service (AAFES) activities. (AR 60-20).

(3) Purchase or sale of alcoholic beverages. (AR 215-2).

(4) Nonappropriated fund and related activities. (AR 215-1).

(b) *Tort and contract claims, insurance and litigation involving nonappropriated fund activities.* (AR 215-1).

(c) *Annexation of Army lands.* (AR 405-25).

(d) *Communications, transportation, and utility services administrative proceedings.* Any contracting officer or other Army official responsible for the acquisition of communications, transportation, utilities (gas, electric, water and sewer), or military mail services, who becomes aware of any action or proceeding of interest to the Army, will promptly refer the matter to the SJA or legal adviser, who will take the actions prescribed in §516.17 of this part. Examples of actions requiring referral follow: new or amended rates, regulations, or conditions of service; applications for authority to discontinue or initiate service; changes in electromagnetic patterns causing adverse communications interference; or, zoning proposals affecting historic or aesthetic preservation. In addition, the SJA or legal adviser will transmit the following to Regulatory Law Office:

(1) The names and addresses of any parties intervening and the substance of their positions.

(2) Names of government users affected by any change.

(3) Copy of any proposed rates, rules, or regulations.

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(4) A recommendation whether the Army should intervene in the action or proceeding. If intervention is recommended, provide a memorandum to support the recommendation.

(e) *Legal proceedings overseas.* Foreign communications, transportation, and utility service proceedings need not be reported. In other legal proceedings instituted in a foreign country, the SJA or legal adviser will take the actions prescribed in §516.17 of this part.

(f) *Maritime claims.* Admiralty and maritime claims within the purview of Chapter 8, AR 27-20, which have been investigated and processed under AR 55-19 or other applicable regulations, will be referred to USARCS.

(g) *Army and Air Force Exchange Service litigation.* The SJA or legal adviser will send a copy of all documents relating to litigation against AAFES to General Counsel, AAFES, P.O. Box 660202, Dallas, TX 75266-0202.

(h) *Bankruptcy.* Reports of bankruptcy or insolvency proceedings shall be made in accordance with this regulation and AR 37-103.

§516.23 Litigation reports.

The SJA or legal adviser will prepare a litigation report when directed by HQDA. The report will contain the following sections: Statement of Facts; Setoff or Counterclaim; Responses to Pleadings; Memorandum of Law; Witness List; and, Exhibits.

(a) *Statement of Facts.* Include a complete statement of the facts upon which the action and any defense thereto are based. Where possible, support facts by reference to documents or witness statements. Include details of previous administrative actions, such as the filing and results of an administrative claim. If the action is predicated on the Federal Tort Claims Act, include a description of the plaintiff's relationship to the United States, its instrumentalities, or its contractors. Also include a statement whether an insurance company or other third party has an interest in the plaintiff's claim by subrogation or otherwise and whether there are additional claims related to the same incident.

(b) *Setoff or Counterclaim.* Discuss whether setoff or counterclaim exists. If so, highlight the supportive facts.