

SERVICES OTHER THAN PERSONAL

S. DEPT., BUREAU, OR ESTABLISHMENT AND LOCATION DEPARTMENT OF THE ARMY DFAS-IN INDIANAPOLIS, IN 46249	DATE VOUCHER PREPARED 01-Sep-05	SCHEDULE NO.
	CONTRACT NUMBER AND DATE	PAID BY FOBA4
	REQUISITION NUMBER AND DATE	DFAS-IN INDIANAPOLIS, IN 46249 DSSN: 5570

PAYEE'S NAME AND ADDRESS		DATE INVOICE RECEIVED 01-Sep-05
		DISCOUNT TERMS
		PAYEE'S ACCT. NUMBER

SHIPPED FROM	TO	WEIGHT	GOVERNMENT B/L NO.
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NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR SERVICE	ARTICLES OR SERVICES (Enter description, item no. of contract or Federal supply schedule, and other information deemed necessary)	QUAN- TITY	UNIT PRICE		AMOUNT
				COST	PER	
		Foreign Claim Commission 05-0373-0262 Date Request Filed: 24 MAY 05		197,240.00		197,24
		Exchange Rate: 49.31				

SEE CONTINUATION SHEET IF NECESSARY! (Payee must NOT use the space below) TOTAL **197,24**

PAYMENT: <input type="checkbox"/> PROVISIONAL <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input checked="" type="checkbox"/> FINAL <input type="checkbox"/> PROGRESS <input type="checkbox"/> ADVANCE	Certified by: _____ Foreign Claims Commission	DIFFERENCES
		Amount verified; correct for \$4,000.00 (Signature or initials)

Pursuant to authority vested in me, I certify that this voucher is correct and ready for payment.

1-Sep-05

(Date)

(Authorized Certifying Officer)

DISBURSING OFFICER

(Title)

ACCOUNTING CLASSIFICATION

2152020 22-0204 P436099.22-4200 VFRE F3203 S99999 APC: K226(83) A1D

Accounting Classification Verified by: _____ 1LT, FC, Deputy Disbursing Officer 208th FB (FWD) _____

PAID BY	CHECK NUMBER	ON ACCOUNT OF U.S. TREASURY	CHECK NUMBER	ON (Name of bank)
	CASH	DATE	PAYER	
	\$4,000.00	01-Sep-05		

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money.

The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

Figure 8

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DEPARTMENT OF DEFENSE
COMBINED/JOINT TASK FORCE (CJTF-76)
OFFICE OF THE STAFF JUDGE ADVOCATE
BAGRAM AIRFIELD, AFGHANISTAN APO AE 09354

REPLY TO
ATTENTION OF

CJTF-76-JA-CL

15 August 2005

MEMORANDUM FOR RECORD

SUBJECT: Foreign Claim Investigation, Claim # 05-OEF-0262/878

1. Identifying Information.

- a. Claimant: The claimant is a local national, [REDACTED] (hereinafter "the claimant"), living in Afghanistan.
- b. Amount: The claimant filed a claim for \$30,000.00 on 24 May 2005.
- c. The claimant states that on approximately 9 or 10 May, the date is uncertain, the claimant's brother was riding a bicycle near the bazaar at Kampany village, Paghman district. A US military HMMWV struck the claimant's brother, killing him. The claimant wants the U.S. Government to compensate him and his family for the wrongful death of his brother.
- d. Investigation Completed: 1 August 2005.

2. Jurisdiction. This claim is presented for consideration under the Foreign Claims Act, 10 U.S.C. §2734. The claimant filed his claim in a timely manner in the form of an SF 95. The claimant is a foreign national and the next-of-kin of the deceased. The claimant is a proper claimant under the Foreign Claims Act IAW DA PAM 27-162.

3. Statement of Facts.

- a. On 21 April, 2005 (according to CID reports, however the claimant gave a date of 9 or 10 May) a local national named [REDACTED] as riding a bicycle near a US convoy. The convoy belonged to the Parwan PRT, based at BAF. What happened next is unclear. The claimant states that the HMMWVs were driving too close to his brother, and that the side view mirror of one of the trucks struck his brother in the head. The results of a Commander's Inquiry conducted by the Parwan PRT argue differently. They state that the HMMWV was proceeding at a prudent speed when the deceased suddenly turned in front of the vehicle. In other words, the accident was unavoidable and was caused by the decedent.

- b. The claimant submitted an SF 95 indicating damages of \$30,000.00. This amount was claimed for the wrongful death of his brother

4. Legal Analysis.

- a. Legal Rules. Under AR 27-20, para. 10-3, the incident that forms the basis for the claim must arise in a foreign country and be a result of either noncombat activities of the U.S. armed forces or the negligent or wrongful acts of civilian employees or military members. "Noncombat activity" is defined in the Glossary of AR 27-20, as "authorized activities essentially military in nature, having little parallel in civilian pursuits, which historically have been considered as furnishing the proper basis for payment of

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claims. Activities excluded are those incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances."

b. Application of Rules. In this case, the claim arose in Afghanistan, a foreign country. While negligence by either party is not clear in this claim, the 3-member FCC found that there was some significant negligence on the part of the United States. This consisted of failing to keep a proper lookout in a highly populated bazaar area, and perhaps excess speed. The FCC did find contributory negligence on the part of the decedent, in turning in front of the HMMWV.

5. Damages.

a. The claimant's brother lost his life as a result of this incident. Based on projected income calculations, as well as an examination of the life expectancy of an Afghani male in his late twenties, and taking into account the negligence of the decedent, it was decided to award \$4000.00.

b. SF95. While the claimant has claimed \$30,000.00, this amount was found to be unjustified by the totality of the circumstances.

6. Proposed Settlement or Action. This claim is payable under the Foreign Claims Act because the death of the claimant's brother occurred, in part, as a result of a U.S. military member's negligent conduct. This claim should be settled in the amount of \$4000.00, converted to Afghani, because this amount is reasonable, taking into account the contributory negligence of the decedent.

7. Point of contact is the undersigned at (318) 231-4603.

CPT, JA
Foreign Claims Commission

CPT, JA

CPT, JA

2 Encls
1. SF 95

FOREIGN CLAIMS COMMISSION DECISION MEMORANDUM

1. CASE No. #: 05-OEF-0262/878 2. DATE REQUEST FILED: 24 May 2005

3. NAME AND ADDRESS OF CLAIMANT:

4. NAME AND ADDRESS OF REPRESENTATIVE:

N/A

5. DATE AND PLACE OF INCIDENT:

Old Kabul Road, approximately 5 KM north of Charikar.

6. AMOUNT REQUESTED: AFGHANI 199,000.00

7. EQUIVALENT IN U.S. CURRENCY: \$4,000.00

8. FACTS: See investigation memo

9. LIABILITY: The request is cognizable and considered meritorious

10. QUANTUM:

Amount requested: AFGHANI 199,000.00 Amount Approved: AFGHANI \$199,000.00

11. FUND CITE # 2152020 22-0204 P436099.22-4200 VFRE F3203 S99999 APC: K226(83) A1D

12. ACTION: claimant paid for substantiated loss

13 PAYMENT AMOUNT: AFGHANI 199,000.00

14. EQUIVALENT IN U.S. CURRENCY: \$4,000.00

15. COMMISSIONER'S SIGNATURE/DATE:

CPT, JA

Foreign Claims Commissioner

CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED
OMB NO.
1105-0008
EXPIRES 5-31-05

1. Submit To Appropriate Federal Agency:

24 May 05, claim intake at front gate

2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code)

Brother

District

3. TYPE OF EMPLOYMENT 4. DATE OF BIRTH 5. MARITAL STATUS 6. DATE AND DAY OF ACCIDENT 7. TIME (A.M. OR P.M.)

MILITARY CIVILIAN

21 years old.

Single

9 on 10 May 05

11 30 am

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)

- Deceased was on bicycle and was run over/hit by a Land Cruiser driven by [REDACTED] convoy commanded by [REDACTED] There was a bazaar at Kampong - many witnesses - a mechanic [REDACTED] uncle

9. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)

- Claimant Brother

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side)

10. PERSONAL INJURY/WRONFUL DEATH

STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT

- Claimant didn't see accident but will get statements from witnesses at bazaar
- Bicyclist was on sidewalk, not on road, right side land cruiser was damaged
Noisy shop

11. WITNESSES

NAME ADDRESS (Number, street, city, State, and Zip Code)

- May at bazaar

12. (See instructions on reverse)

AMOUNT OF CLAIM (in dollars)

12a. PROPERTY DAMAGE

12b. PERSONAL INJURY

12c. WRONGFUL DEATH

12d. TOTAL (Failure to specify may cause forfeiture of your rights.)

\$ 30,000 Equiv.

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)

13b. Phone number of signatory

14. DATE OF CLAIM

24 May 05

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant shall forfeit and pay to the United States the sum of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Imprisonment for not more than five years and shall be subject to a fine of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the United States. (See 18 U.S.C.A. 287.)

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