



DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
278TH REGIMENTAL COMBAT TEAM
FOB CALDWELL, IRAQ
APO AE 09374

278 RCT - SJA

9 August 2005

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED], Claim Number: Mandali 42

1. CLAIMANT'S NAME AND ADDRESS: The claimant is [REDACTED] who lives near Kanan in northeastern Iraq.

2. DATE AND PLACE THE INCIDENT OCCURRED GIVING RISE TO THE CLAIM: The incident occurred on 16 May 2005 near Kanan in the Diyala province of northeastern Iraq.

3. AMOUNT OF CLAIM AND DATE IT WAS FILED: The claim was filed on 30 July 2005 for \$2500.

4. JURISDICTION AND THE ISSUE(S) RAISED: This request is being presented for consideration under the provision of the Foreign Claim Act (FCA), 10 U.S.C. § 2734, as implemented by Chapter 10, AR 27-20. The claim was timely filed within the two year statute of limitations. The damage occurred as stated below.

5. FACTS:

- a. The claimant is [REDACTED]
- b. On 16 May 2005, claimant alleges he was driving his 1994 Van from Baquba to Balad Ruze with several passengers. At 1200, in the vicinity of Kanan, claimant alleges a Coalition Forces vehicle began shooting at his van for unknown reasons. A passenger was killed, claimant was wounded, and the van was damaged. The location of this alleged shooting incident is outside the area of operation of the 278th RCT. The village of Kanan and the surrounding area is under the control of 3rd BCT.
- c. The claimant is asking for payment of \$2500 for damages to his van and his personal injuries.

6. OPINION:

- a. **PROPER JURISDICTION:** The Foreign Claims Act (FCA) is applicable outside the United States, its commonwealths, territories and possessions, including areas under the jurisdiction of the United States. The incident occurred in or near Kanan in the in eastern Iraq. Accordingly, the claim may be adjudicated under the FCA.

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b. **PROPER CLAIMANT:** The FCA prescribes the substantive basis for settlement of claims of "inhabitants" of a foreign country against the United States for personal injury, death, or property damage caused by service members or civilian employees, or claims that arise incident to non-combat activities of the Armed Forces. The test for determining "inhabitant" status is whether the claimant dwells in and has assumed a definite place in the economic and social life of the foreign country. The claimant in this case lives in Kanan. Accordingly, the claimant is a proper claimant to seek compensation under the FCA.

In cases of property damage such as this, the claim may be presented by the owner of the property or by a duly authorized agent or legal representative in the owner's name. In this case, claimant is the owner of the damaged van. Therefore, the claimant is the proper claimant to seek compensation for the damage to the van under the FCA.

Likewise, in cases of personal injury, the claim may be presented by the injured person, his duly authorized agent, legal representative, or by any person determined to be legally or beneficially entitled. In this case, the claimant is the person injured and is a proper claimant under the FCA.

c. **PROPER CLAIM:** A claim for death, personal injury, or loss of or damage to property may be allowed under the FCA if the damage alleged results from non-combat activity or a negligent or wrongful act or omission of soldiers or civilian employees of the U.S. Armed Forces. In this case, the claimant has alleged that his car engaged by gunfire from Coalition Forces for no apparent reason. As there is no evidence of combat operations and the damage was caused by the intentional or negligent act of Coalition Forces, the claimant has alleged a cognizable claim.

d. **THE ISSUE & ANALYSIS:** The issue presented is whether claimant may receive compensation for personal injuries he suffered and damage to his car caused by gunfire from Coalition Forces.

In this case, the claimant was injured and his van was damaged by gunfire from Coalition Forces. Unfortunately, this incident occurred outside the area of operation of the 278th RCT. The 278th RCT has no authority to approve claims that occur outside the regiment's area of operation. This claim needs to be presented to the 3rd BCT, who controls Kanan, for processing.

7. **DISPOSITION:** I direct this claim be denied as the incident giving rise to the claim occurred outside the 278th RCT area of control. The claim should be resubmitted to the Unit Claim Officer for 3rd BCT.

RESPECTFULLY SUBMITTED,



CPT, JA
Foreign Claims Commission

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Claims Form

To: United States Army Foreign Claims Commission.

From: Name: [REDACTED]

Address: ATB Village (near Kanan)

Date, time and place of incident: 5-16-05

Date file received by United States Army Representative: 7-30-05

CLAIM / CONDOLENCE

Condolence:

Name of family member:

Relationship:

Proof of relationship (if any):

Any additional information and facts received during interview:

[REDACTED]

[REDACTED]

Claims:

Proof of ownership (if any): Pictures

List of damages and total cost for repair/replacement:

[REDACTED]

Total Cost: \$2500 US Local

Documents included with file: Police (translated) Documents to include
police report, claimant statement

All known facts regarding incident: Happened in Kanan outside of AO

8-4-05 - Checked w/ 5-2 no incident w/in AO
around date.

File received by [REDACTED]

(Signature of Representative)

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