



DEPARTMENT OF THE ARMY
HEADQUARTERS, 3RD BRIGADE COMBAT TEAM
OPERATION IRAQI FREEDOM, COB SPEICHER
TIKRIT, IRAQ APO AE 09393

AFZP-VA-HQ

30 January 2006

MEMORANDUM FOR RECORD

SUBJECT: Commander's Emergency Response Program payment to [REDACTED]

DEFLA

(Claim Number 06-IR8-078)

1. On 14 Dec 05, [REDACTED] son was shot and killed by U.S. Forces.
2. I certify that funds are available from the CERP to pay [REDACTED] in the amount of \$2500.00. This is a condolence payment.
3. The request to pay [REDACTED] in the amount of \$2500.00 from CERP has been legally reviewed. There is no legal objection to this payment and it is accordingly approved.



CPT, EN
Project Purchasing Officer

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DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
HEADQUARTERS, 101ST AIRBORNE DIVISION (AIR ASSAULT)
OPERATION IRAQI FREEDOM, COB SPEICHER
TIKRIT, IRAQ, APO AE 09393

AFZB-JA-C

09 January 2006

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED] 06-IR8-078

1. **Identifying Data:** [REDACTED]
2. **Date and place the incident occurred giving rise to the claim:** The claim occurred on 14 December 2005 in Ash Sharqat, Iraq.
3. **Amount of claim and date it was filed:** Claimant filed a claim for \$2,500 on 8 Jan 2006.
4. **Jurisdiction:** This request is presented for consideration under the provisions of the Foreign Claims Act, 10 USC Section 2734, as implemented by Chapter 10, Army Regulation 27-20. This claim was properly filed in a timely manner.
5. **Facts:** The Claimant alleges that his son, the decedent, was a passenger in a car that was driving to an election center. Claimant alleges that CF were at the election site, and they shot at the car he was riding in. He alleges that his car was traveling very slow, but driver did not see CF hand/light signals. A SIGACTS investigation for the relevant time period shows that at 0900 hours on 15 December, 2/A/3-101 conducted an Escalation of Force south of Ash Sharqat. The platoon was moving barriers at an election site when a LN vehicle tried several times to bypass the barriers. Local IPs tried to catch the vehicle but could not. The vehicle then reappeared trying to bypass the barriers again. Soldiers used VS-17 panels, flashlights, hand and arm signals to stop the vehicle. It continued on, so one soldier fired one round into the hood. But the vehicle continued trying to bypass. Then soldiers fired into the windshield of the vehicle, stopping it. There was 1xLN KIA and 1xLN WIA. IPs immediately treated casualties and evacuated them to hospital. IPs asked CF to leave the area, trying to avoid reprisal over the incident.
6. **Opinion:** Under AR 27-20, paragraph 10-3, Claims arising "directly or indirectly" from combat activities of the U.S. Armed Forces are not payable. AR 27-20 defines combat activities as, "Activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in armed conflict, or in immediate preparation for impending armed conflict." Due to the suspicious behavior of the Claimant driver in a dangerous area, there was an escalation of force. Force protection is combat activity because it includes immediate preparation for impending armed conflict. The driver further assumed risk by failing to obey the many warnings he was given to stop. Accordingly, this claim is non compensable because it is incident to a combat activity.

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7. **Recommendation:** The claim is denied.



CPT, JA
Claims Judge Advocate

Claims Form

To: United States Army Foreign Claims Commission.

From: Name: [REDACTED]

(Father of victim)

POA/ATT:

Power of Attorney provided and interpreter approved:

(Captain of C)
Brother

Decedents:

Hometown:

Iraqi Resident:

My claim arose at:

El Sharqat

(Town)

14

(City)

Dec

(Country)

2005

My claim arose on:

Month

Day

Year

Proof of Ownership:

NYA

Interpreter Approved:

Death Certificates (Name, Cause of Death, Age, and Time of Death Consistent with Claimant allegations): Seen -

15 dec 05 date of

COD - GSW

death

Interpreter Approved:

Legal Expert Opinion:

Interpreter Approved:

1 - driver of car: CF shot car & killed C

Witness Statement (Consistent?): yes

Interpreter Approved:

Give a brief statement of the accident or incident on which the claim for damages to property or for personal injury is based. (Use back of this sheet if necessary.)

Decedent C market when IA office came to shop - told him to go to his house. When travel to house, election center, CF @ election center.

CF shot @ car - ~~he~~ shot @ where driver was. Car was traveling very slow. C ~ 400-500 m from election center. CF apologized.

Driver didn't see the hand/light signals.

Decedent was passenger of driver wasn't paying attention.

Evidence: Hospital reports

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List in detail the amount of property damage and itemized expenses resulting from the property damage or personal injury: (Attach bills and receipts, if applicable.)

Item wrongful death Amount \$2,500

Total: \$2,500

I was insured to the following extent against the damage or injuries I have sustained:

N/A

The name and address of my insurer (if any) is:

(Name) _____ (Address) _____

I claim as damages: (Indicate amount in U.S. dollars and local currency)

\$ 2,500 local _____

(Signature of Claimant)

Subscribed before me this 8 day of JAN, 2006

(Print)

(Signature)

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