

PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL

VOUCHER NO.

DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION
Operation Iraqi Freedom III
Forward Operating Base KMTB
Camp Caldwell, Iraq
APO AE 09374

DATE VOUCHER PREPARED
31 December 2004
CONTRACT NUMBER AND DATE
Tuz 33
REQUISITION NUMBER AND DATE

SCHEDULE NO.
PAID BY
DATE INVOICE RECEIVED
DISCOUNT TERMS
PAYEE'S ACCOUNT NUMBER
GOVERNMENT B/L NUMBER

PAYEE'S NAME AND ADDRESS

[Redacted]
Tuz, Iraq

SHIPPED FROM TO WEIGHT

NUMBER AND DATE OF ORDER	DATE OF DELIVERY OR	ARTICLES OR SERVICES <small>(Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)</small>	QUANTITY	UNIT PRICE		AMOUNT (1)
				COST	PER	
1		Foreign Claim under AR 27-20 and the Foreign Claims Act (10 U.S.C.) for compensation for: <u>personal injury, wrongful death, and damage to personal property.</u>	1			\$11,020.00

(Use continuation sheet(s) if necessary) (Payee must NOT use the space below) TOTAL \$ 11,020.00

PAYMENT: PROVISIONAL COMPLETE PARTIAL FINAL PROGRESS ADVANCE

APPROVED FOR: NTE = \$ 11,020.00 BY: [Redacted] Team USARC

EXCHANGE RATE: = \$1.00

TITLE: 278th RCT Foreign Claims Commission

(Signature or initials): [Redacted]

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

2 JAN 2005 (Date) [Redacted] (Authorized Certifying Officer) 278th Foreign Claims Commission (Title)

ACCOUNTING CLASSIFICATION

Fund Cite: 2152020 22-0204 P436099 22-4200 VIRQ F9206 S99999 APC 0204

PAID BY: CHECK NUMBER ON ACCOUNT OF U.S. TREASURY CHECK NUMBER ON (Name of bank)

CASH DATE PAYEE'S X

1 When stated in foreign currency, insert name of currency.
2 If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title.
3 When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.

[Redacted Signature] Pay Agent



DEPARTMENT OF THE ARMY
30TH Brigade Combat Team
1st Infantry Division
FOB Kirkush Military Training Base
Camp Caldwell, Iraq

**REPLY TO
ATTENTION OF:**

BDE-OSJA

5 Dec 2004

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED] (File # Tuz 33)

1. **CLAIMANTS NAME AND ADDRESS:** The claimant is [REDACTED] (through his uncle [REDACTED]) who lives in or near Tuz in the Salah Ad Din province in Iraq.
2. **DATE AND PLACE THE INCIDENT OCCURRED GIVING RISE TO THE CLAIM:** The incident occurred on 3 March 2004 in or near Tuz in the Salah Ad Din in eastern Iraq.
3. **AMOUNT OF CLAIM AND DATE IT WAS FILED:** The claim was filed on 23 October 2004 for \$11,020.00 for wrongful death of his family and the destruction of his flock of sheep.
4. **JURISDICTION AND THE ISSUE(S) RAISED:** This request is being presented for consideration under the provisions of the Foreign Claims 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 limitation. The damage occurred as stated below.
5. **FACTS:**
 - a. The claimant is [REDACTED] (through his uncle [REDACTED]).
 - b. On 3 March 2004, elements from the 1/14th IN Bn opened fire on his home located in Dibig village killing four of his family members, 32 of his sheep and injuring 40 others. The unit involved had just been attacked from the direction of the village. They conducted and in the direction that the fire came and opened fire on the owner of the house after he stepped out with an AK-47 in his hand. The owner claims that he came out to investigate the disturbance of his dogs barking who was concerned for his flock. A once time solation payment of \$2500.00 was made to the claimant. The unit also states that it stayed in touch with the claimant and attempted to help as much as possible.

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- c. The claimant is asking for \$11,020.00 for the wrongful death of his family and the loss of his sheep.

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 Tuz in the Salad Ad Din Province in eastern Iraq. Accordingly, the claim may be adjudicated under the FCA.

- 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 Tuz. 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, the claimant and his family were the owner of 32 sheep that were killed by the coalition forces.

Therefore, the claimant has established himself as the proper claimant to seek compensation under the FCA.

Furthermore, in cases of wrongful death, a claim may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. In this case, the claimant is the son and brother of the decedent, and therefore qualifies as "beneficially entitled". Accordingly, the claimant has established himself as a proper claimant under the FCA to seek compensation for the wrongful death of the decedent.

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, Hasaan is the injured person who would be eligible to receive compensation for personal injuries suffered.

- 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 claim is for the wrongful death of claimants' mother, father and brother who were shot while sleeping. Accordingly, the claimant has presented a cognizable claim.

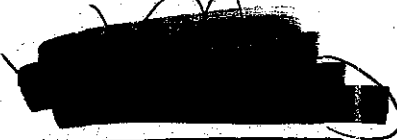

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On report of information gathered, the actions of the coalition forces may have been justified since there is an indication that shots were being fired, but it also appears that the action may have been in error.

- d. THE ISSUE & ANALYSIS: The issue presented is whether claimant may receive compensation for the death of his father, his mother, his brother and 32 sheep's. In this case, the claimant has lost his entire family and his herd of sheep that provide a means of income. In addition, the claimant suffered gun shot wounds himself. The claimant states that his family was sleeping when the shots were fired that killed his family. He claims that the family had only one AK-47 that the father carried outside after his wife was shot in the head. The coalition force may have been justified in shooting at another target where the claimant and his family would be collateral damage to that combat operation. However, the ROE require units to have positive identification of target before engaging. In this case, reports indicate that over one hundred rounds were fired that impacted around a flock of sheep and his sleeping family. Accordingly, it appears that the shooting, although not "wrongful", was conducted "negligently". It is therefore my opinion that there is sufficient evidence to justify compensation under the FCA.

7. **RECOMMENDED ACTION**: I recommend that claimant be approved in the amount claimed totaling \$11,020.00.

RESPECTFULLY SUBMITTED,



MAJ, JA

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Claims Form

To: United States Army Foreign Claims Commission.

From: Name: [REDACTED]

Address: Dibig Village, Tuz Iraq

I am

- a. A citizen and national of: Iraq
- b. A permanent resident of: _____
- c. Employed by: _____
- d. Check one () An insurer (X) Not an insurer
- e. Check one () A subrogee (X) Not a subrogee

I hereby make a claim against the United States Government for damages or injuries caused by: (Name, Organization, Military Department, Address, Telephone Number)
U.S. ARMY

The property damaged is owned by: (If the claim is made as an agent, parent, or guardian, attach a power of attorney or other evidence of authority and fill in the form below for party sustaining the damage or injuries.) _____

My claim arose at: Dibig (Town) Tuz (City) Iraq (Country)

My claim arose on: March Month 03 Day 2004 Year

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.)

Describe nature and extent of property damage or personal injury sustained as a result of the above incident.

Death of four family members

Injury

75 sheep were either killed or injured

60 killed

15 injured

1 cow killed

Car damage \$100

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	Amount
Deaths	
Injury	
Sheep killed	
Sheep injured (sold total a 500,000 dinars)	
1 cow dead (200,000 dinars)	

Total: _____

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:

N/A

(Name)

(Address)

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

\$ _____ local _____

(Signature of Claimant)

Subscribed before me this 06 day of November, 2004.

(Print Name)

(Signature)

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