



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

15 February 2006

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED], 06-IR8-272

1. **Identifying Data:** [REDACTED] by Attorney [REDACTED]
2. **Date and place the incident occurred giving rise to the claim:** The claim occurred on 3 September 2005 in Ishaki, Iraq.
3. **Amount of claim and date it was filed:** Claimant filed a claim for \$2,500 on 14 Feb. 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 her husband, [REDACTED], was killed by a CF convoy. The convoy allegedly shot and killed the deceased while he was driving in the traffic circle in Al Ishaki. A SIGACTS investigation revealed that TF 5-7 conducted an escalation of force in the vicinity of the alleged incident. The LZ vehicle approached from the rear of the convoy at a high rate of speed. The convoy flashed a spotlight on the vehicle, which caused other vehicles in the area to slow down. One warning shot was fired with no effect. A second warning shot was fired which traveled through the hood and struck the deceased in the neck. Claimant's death certificate confirms he was shot in the neck.
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." Here, the deceased was killed during an escalation of force when the vehicle did not comply with the instructions from the CLP. The escalation of force constitutes a combat activity because the soldiers were responding to a perceived threat.
7. **Recommendation:** The claim is denied.

[REDACTED]  
CPT, JA  
Claims Judge Advocate

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# TF Band of Brothers Claims Intake Form

To: United States Army Foreign Claims Commission

From: Name: [REDACTED]

POA/ATT: [REDACTED]

Power of Attorney provided and interpreter approved:

Decedents: [REDACTED]

Hometown: \_\_\_\_\_

Iraqi Resident:

My claim arose at: \_\_\_\_\_

Ishaki (Balad)

(Town)

(City)

(Country)

My claim arose on: \_\_\_\_\_

Sept 3, 2005

Month

Day

Year

Proof of Ownership: \_\_\_\_\_

N/A

VIN Match: \_\_\_\_\_

Interpreter Approved: \_\_\_\_\_

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

Original seen - dated - September 3  
COD - bullets in neck; Balad

Interpreter Approved: \_\_\_\_\_

Medical Report/Legal Expert Opinion: \_\_\_\_\_

Interpreter Approved: \_\_\_\_\_

Witness Statement (Consistent?):

① Nephew - saw - saw CF shoot deceased in traffic circle

Interpreter Approved: \_\_\_\_\_

② CF shot my brother b/c he was driving behind them.

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.)

Wife is claiming for the death of her husband.

Near traffic circle. A man turned & suddenly CF

convoy came in wrong direction & shot deceased.

Occurred on the traffic circle 8:00 p.m.

Near Ishaki 50m

6 kids

Hummv's

100m from convoy when

Evidence: original death cert, witness X 2, POA, police & judicial docs

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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	Amount
Wrongful death	\$2,500

Total: ~~\$~~2,500

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

\_\_\_\_\_

\_\_\_\_\_

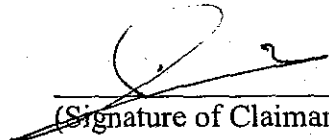
\_\_\_\_\_

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)

\$ \_\_\_\_\_ local \_\_\_\_\_

  
(Signature of Claimant)

Subscribed before me this 14 day of Feb, 2006.

  
(Print Name)  
  
(Signature)

6-128-276  
28 Feb 06



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MEMORANDUM FOR Record

SUBJECT: Claimant Denial

1. This is in response to your claim against the United States Government. Your claim has been reviewed under the Foreign Claims Act, 10 U.S.C. 2734, as implemented by Army Regulation 27-20, Chapter 10. I regret to inform you that your claim has been denied.
2. Your claim has been denied for the following reasons:
  - a. There is not enough evidence to prove your claim.
  - b. The evidence shows that United States Forces did not cause the damage.
  - c. The evidence shows that the damage was caused during combat.
  - d. The evidence shows that the damage was caused by your own negligence or wrongdoing.
  - e. The evidence shows that your claim was fraudulent.
  - f. Other: \_\_\_\_\_
3. If this is the first time your claim has been viewed by this office, you may submit an appeal. This office must receive the appeal no later than 30 days after receipt of this message. The appeal must also contain additional evidence supporting your claim. If the appeal is sent after 30 days have passed, or does not provide additional evidence, then the appeal will be denied.
4. POC is the 101<sup>st</sup> Airborne Division (Air Assault) Claims Office at DSN 318-845-1022.

[REDACTED]  
CPT, JA  
Chief of Claims

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