



DEPARTMENT OF THE ARMY
HEADQUARTERS, 42d INFANTRY DIVISION (Mechanized)
OPERATION IRAQI FREEDOM (FOB LIBERTY)
APO AE 09308

DHFT-JA

10 June 2005

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED] 05-IA3-808

1. **Identifying Data:** [REDACTED], Bayji, Iraq
2. **Date and place the incident occurred giving rise to the claim:** The claim occurred on 8 February 2005, in Bayji, Iraq.
3. **Amount of claim and date it was filed:** Claimant filed a claim for \$10,300 on 5 April 2005.
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 filed in a timely manner.
5. **Facts:** Claimant alleges that her husband was killed, herself injured and vehicle damaged, when U.S. Forces shot at them from a convoy. The claimant was riding in their 1987 Mazda with her husband and son. They were driving from Baghdad to Mosul. The husband was driving, when they caught up to a U.S. Forces convoy from behind, near Bayji. When they got within 200 meters of the rear vehicle, the gunner opened fire. The claimant's husband was killed, she was injured and the vehicle damaged. She indicated no warning shots were fired. There is no report of this incident in Division records. The claimant provided two corroborating witness statements, photographs, medical records, a death certificate and a police report with a scene sketch. A legal expert report estimated the damage to the vehicle at \$2,300.
6. **Opinion:** There is sufficient evidence to indicate that U.S. Forces damaged the claimant's vehicle. Unfortunately, those forces were involved in security operations at the time. Therefore, this case falls within the combat exception.
7. **Recommendation:** The claim is denied.

[REDACTED]
CPT, JA
Chief, Claims

001598

Claims Form

To: United States Army Foreign Claims Commission.

From: Name: _____

POA/ATT: _____

Decedents: _____

Hometown: _____

Iraqi Resident

My claim arose at: Bayji

(Town)

(City)

(Country)

My claim arose on: Feb

Month

8
Day

05
Year

Proof of Ownership: _____

- owner

Interpreter Approved: will bring original

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

allegations): Bullets in neck + thigh, # 682681, Time of death is listed as 1000 hours

February 2005 - 8 Feb 05 is written on top left of cert., 60 yrs old, _____

Interpreter Approved: From Bayji Hospital

Legal Expert Opinion: Judge Report, IP Report, Estimate for car (2,300 USD), Medical Report for wife

Interpreter Approved: _____

Witness Statement (Consistent?): Witnesses did not see incident. The claimants called

Interpreter Approved: them from Bayji Hospital

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.)

Claimant was driving from Baghdad to Mosul with ^{Musab and son} wife and son South of Bayji. They were following about 200 meters behind a convoy. The convoy fired on his vehicle killing the husband and injuring the wife. The husband was driving. ^{Wife} Claims there were no warning shots or signals given.

Medical report for wife was shot ~~in~~ in the right side from the back. (Shoulder)

It is hard to tell from the pics, but there doesn't seem to be bullet holes in driver's side windshield.

001599

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	\$ 5,000
Personal Injury	\$ 3,000
Property Damage.	\$ 2,300

Total: \$10,300

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)

\$ 10,300 local

(Signature of Claimant)

Subscribed before me this 5 day of April, 2005.

(Print Name)

(Signature)

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