



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

1 April 2006

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED], 06-IR8-489

1. **Identifying Data:** [REDACTED]

2. **Date and place the incident occurred giving rise to the claim:** The claim occurred on 3 September 2005 on the Bayji-Tikrit highway, Iraq.

3. **Amount of claim and date it was filed:** Claimant filed a claim for \$8,000 on 20 March 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 brother, [REDACTED], was killed by CF forces. The claimant and the deceased were allegedly driving from Bayji to Tikrit when they approached a CF checkpoint. The claimant tried to stop but lost control of the vehicle. The CP opened fire and killed the decedant. In support of the claim, the claimant has presented medical documentation substantiating injuries, witness statements, police and judicial documentation. The claimant suffered severe abdominal injuries which have necessitated several surgeries.

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. This constitutes combat activity because the troops in contact feared the vehicle was a VBIED and were acting in self defense.

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

[REDACTED]  
[REDACTED]  
[REDACTED]  
CPT, JA  
Claims Judge Advocate

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DEPARTMENT OF THE ARMY  
HEADQUARTERS, 3<sup>rd</sup> BRIGADE COMBAT TEAM  
OPERATION IRAQI FREEDOM, COB SPEICHER  
TIKRIT, IRAQ APO AE 09393

AFZP-VA-HQ

12 May 2006

CP3AA S60940401-16  
MEMORANDUM FOR RECORD

SUBJECT: Commander's Emergency Response Program payment to [REDACTED]  
(Claim Number 06-IR8-489)

1. On 3 September 2005, [REDACTED] s brother, [REDACTED], was shot and killed during an escalation of force at a checkpoint in Tikrit.
2. I certify that CERP funds are available to pay [REDACTED] in the amount of \$2,500.00. This is a condolence payment.
3. The request to pay [REDACTED] in the amount of \$2,500.00 from CERP has been legally reviewed. There is no legal objection to this payment and it is accordingly approved.

[REDACTED]

CPT, EN  
Project Purchasing Officer

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## TF Band of Brothers Claims Intake Form

To: United States Army Foreign Claims Commission.

From: Name: \_\_\_\_\_

POA/ATT: \_\_\_\_\_

Power of Attorney provided and interpreter approved: \_\_\_\_\_

Decedents: \_\_\_\_\_

Hometown: Tikrit.

Iraqi Resident: \_\_\_\_\_

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

(Town)

(City)

(Country)

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

Month

Day

Year

Proof of Ownership: original seen

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

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

Death Certificates (Name, Cause of Death, Age, and Time of Death Consistent with Claimant allegations): COD - bullets in head.

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

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

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

Witness Statement (Consistent?): same for

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.)

Bagji - Tikrit highway at CP. When they stopped CP fired @ car.

C asked why driving too fast, said he couldn't see the CP.

C was seriously injured.

outside gas station lost control of car & CP opened fire.

Hyundai elantra 1993 Dark green.

Evidence: \_\_\_\_\_

C has frags

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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.)

<u>Item</u>	<u>Amount</u>
Damage to car	1,600
Wrongful death	3,000
Personal Injury	<del>4,000</del> 4,000

Total: 8,600

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

\$ 8,600 local \_\_\_\_\_



(Signature of Claimant)

Subscribed before me this 26 day of March, 2006.

CPT  
(Print Name)

(Signature)

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