

§ 15.109 Settlements.

(a) A publisher may not settle a claim with another party, for which the publisher has sought, or intends to seek, indemnification under this part, unless—

(1) The publisher submits a copy of the proposed settlement, and a statement justifying the settlement, to the Chief Counsel of the FAA; and

(2) The Administrator and where necessary, the appropriate official of the Department of Justice, approves the proposed settlement.

(3) The publisher submits a signed release that clearly releases the United States from any further liability to the publisher and the claimant.

(b) If the Administrator does not approve the proposed settlement, the Administrator will—

(1) So notify the publisher by registered mail within 60 days of receipt of the proposed settlement; and

(2) Explain why the request for indemnification was not approved.

(c) If the Administrator approves the proposed settlement, the Administrator will so notify the publisher by registered mail within 60 days after the FAA's receipt of the proposed settlement.

(d) If the Administrator does not have sufficient information to approve or disapprove the proposed settlement, the Administrator will request, within 60 days after receipt of the proposed settlement, the additional information needed to make a determination.

§ 15.111 Conduct of litigation.

(a) If a lawsuit is filed against the publisher and the publisher has sought, or intends to seek, indemnification under this part, the publisher shall—

(1) Give notice as required by § 15.107 of this part;

(2) If requested by the United States—

(i) Implead the United States as a third-party defendant in the action; and

(ii) Arrange for the removal of the action to Federal Court;

(3) Promptly provide any additional information requested by the United States; and

(4) Cooperate with the United States in the defense of the lawsuit.

(b) If the lawsuit filed against the publisher results in a proposed settlement, the publisher shall submit that proposed settlement to the FAA for approval in accordance with § 15.109 of this part.

(c) If the lawsuit filed against the publisher results in a judgment against the publisher and the publisher has sought, or intends to seek, indemnification under this part as a result of the adverse judgment, the publisher shall—

(1) Give notice to the FAA as required by § 15.107(d) of this part;

(2) Submit a copy of the trial court's decision to the FAA Chief Counsel not more than 5 business days after the adverse judgment is rendered; and

(3) If an appeal is taken from the adverse judgment, submit a copy of the appellate decision to the FAA Chief Counsel not more than 30 days after that decision is rendered.

(d) Within 60 days after receipt of the trial court's decision, the Administrator by registered mail will—

(1) Notify the publisher that indemnification is required under this part;

(2) Request that the publisher appeal the trial court's adverse decision; or

(3) Notify the publisher that it is not entitled to indemnification under this part and briefly state the basis for the denial.

§ 15.113 Indemnification agreements.

(a) Upon a finding of the Administrator that indemnification is required under this part, and after obtaining the concurrence of the United States Department of Justice, the FAA will promptly enter into an indemnification agreement providing for the payment of the costs specified in paragraph (c) of this section.

(b) The indemnification agreement will be signed by the Chief Counsel and the publisher.

(c) The FAA will indemnify the publisher for—

(1) Compensatory damages awarded by the court against the publisher;

(2) Reasonable costs and fees, including reasonable attorney fees at a rate not to exceed that permitted under the Equal Access to Justice Act (5 U.S.C. 504), and any postjudgment interest, if

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the publisher conducts a good faith defense, or pursues a good faith appeal, at the request, or with the concurrence, of the FAA.

(d) Except as otherwise provided in this section, the FAA will not indemnify the publisher for—

- (1) Punitive or exemplary damages;
- (2) Civil or criminal fines or any other litigation sanctions;
- (3) Postjudgment interest;
- (4) Costs;
- (5) Attorney fees; or
- (6) Other incidental expenses.

(e) The indemnification agreement must provide that the Government will be subrogated to all claims or rights of the publisher, including third-party claims, cross-claims, and counter-claims.

§ 15.115 Payment.

After execution of the indemnification agreement, the FAA will submit the agreement to the United States Department of Justice and request payment, in accordance with the agreement, from the Judgment Fund.

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