

adjudicating authority and the attorneys and support personnel assigned to the Claims and Tort Litigation Division of the Office of the Judge Advocate General. For economy of language, Naval Legal Service Offices and Naval Legal Service Office Detachments are referred to as Naval Legal Service Command Activities.

(3) Commanding officers of commands receiving claims are responsible for complying with the guidance on investigations in §§ 750.2 and 750.3 and the guidance on handling and forwarding claims found in § 750.5.

(b) This subpart A delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this part. Where the general provisions of this subpart A conflict with the specific provisions of any subsequent subpart of this part, the specific provisions govern.

§ 750.2 Investigations: In general.

(a) *Conducting the investigation.* The command where the incident giving rise to the claim is alleged to have happened is responsible for conducting an investigation in accordance with this part.

(b) *Thorough investigation.* Every incident that may result in a claim against or in favor of the United States shall be promptly and thoroughly investigated under this part. Investigations convened for claims purposes are sufficiently complex that they should be performed with the assistance and under the supervision of a judge advocate or other attorney. Where the command has an attorney assigned, he shall be involved in every aspect of the proceedings. When an attorney is not assigned to the investigating command, consultation shall be sought from the appropriate Naval Legal Service Command activity.

(c) *Recovery barred.* Even when recovery may be barred by statute or case law, all deaths, serious injuries, and substantial losses to property that are likely to give rise to claims must be investigated while the evidence is available. Claims against persons in the naval service arising from the performance of their official duties shall be investigated as though they were claims

against the United States. When an incident involves an actual or potential claim against the United States for property damage only and the total amount likely to be paid does not exceed \$5,000.00, an abbreviated investigative report may be submitted. Where this monetary figure may be exceeded, but the circumstances indicate an abbreviated report may be adequate to preserve the facts and protect the Government's claims interests, approval to submit a limited investigative report may be sought from the nearest Naval Legal Service Command activity.

(d) *Developing the facts.* Any investigation convened for claims purposes must focus on developing the facts of the incident, *i.e.*, the who, what, where, when, why, and how of the matter. Opinions on the possible liability of the United States under any of the claims statutes listed above shall not be expressed. Early and continuous consultation with claims attorneys at Naval Legal Service Command activities is essential to ensure the timely development of all necessary facts, the identification and preservation of relevant evidence, and to void the need for supplemental inquiries.

(e) *Attorney work product.* (1) The convening order and the preliminary statement of an investigative report prepared to inquire into the facts of an incident giving or likely to give rise to a claim against the United States shall include the following:

This investigation has been convened and conducted, and this report prepared, in contemplation of claims adjudication and litigation and for the express purpose of assisting attorneys representing the interests of the United States.

(2) When an investigation is prepared by or at the direction of an attorney representing the Department of the Navy and is prepared in reasonable anticipation of litigation, it is exempt from mandatory disclosure under the Freedom of Information Act exemption (b)(5) and is normally privileged from discovery in litigation under the attorney work product privilege. 5 U.S.C. 552(b)(5). Unless an attorney prepares the report or personally directs its preparation, the investigation may not be privileged, even if it was prepared in reasonable anticipation of litigation.

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(f) *Advance copy.* An advance copy of any investigation conducted because a claim has been, or is likely to be, submitted shall be forwarded to the Naval Legal Service Command activity claims office responsible for the area where the incident giving rise to the claim occurred.

§ 750.3 Investigations: The report.

(a) *Purpose.* The purpose of investigations into claims incidents is to gather all relevant information about the incident so adjudicating officers can either pay or deny the claim. The essential task of the investigating officer is to answer the questions of who, what, where, when, why and how? The Navy's best interests are served when the investigation is thorough and is performed in a timely manner so the claimant can be advised promptly of the action on the claim.

(b) *Duties of the investigating officer.* It is the investigating officer's responsibility:

(1) To interview all witnesses to the incident and prepare summaries of their comments. Obtaining signed statements of Government witnesses is not necessary. Summaries of the witnesses' remarks prepared by the investigating officer are quite sufficient and generally expedite the gathering of information. On the other hand, written signed statements should be obtained from the claimant, wherever possible;

(2) To inspect the property alleged to have been damaged by the action of Government personnel;

(3) To determine the nature, extent, and amount of any damage, and to obtain pertinent repair bills or estimates and medical, hospital, and associated bills necessary to permit an evaluation of the claimant's loss;

(4) To obtain maintenance records of the Navy motor vehicle, plane, or other piece of equipment involved in the claim;

(5) To reduce to writing and incorporate into an appropriate investigative report all pertinent statements, summaries, exhibits, and other evidence considered by the investigator in arriving at his conclusions; and,

(6) To furnish claim forms to any person expressing an interest in filing a

claim and to advise such personnel where they should file their claim.

(c) *Content of the report.* The written report of investigation shall contain information answering the questions mentioned in § 750.3(a) and, depending on the nature of the incident, will include the following:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, or road;

(2) A concise but complete statement of the incident with reference to physical facts observed and any statements by the personnel involved;

(3) Names, grades, organizations, and addresses of military personnel and civilian witnesses;

(4) Opinions as to whether military or civilian employees involved in the incident were acting within the scope of their duties at the time;

(5) Description of the Government property involved in the incident and the nature of any damage it sustained; and,

(6) Descriptions of all private property involved.

(d) *Immediate report of certain events.* The Navy or Marine Corps activity most directly involved in the incident shall notify the Judge Advocate General and the appropriate adjudicating authority immediately by message, electronic mail, or telephone in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims.

(2) Upon filing of a claim that could result in litigation that would involve a new precedent or point of law.

(3) Claims or possible claims that involve or are likely to involve an agency other than the Department of the Navy.

(e) *Request for assistance.* When an incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge with responsibility for performing the investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Likewise, if a commanding officer or officer in