

Department of the Navy, DoD

§ 750.34

(b) *Jury trial.* There is no right to trial by jury in suits brought under the FTCA. 28 U.S.C. 2402.

(c) *Settlement.* The Attorney General of the United States, or designee, may arbitrate, compromise, or settle any action filed under the FTCA. 28 U.S.C. 2677.

(d) *Litigation support*—(1) *Who provides.* The adjudicating authority holding a claim at the time suit is filed shall be responsible for providing necessary assistance to the Department of Justice official or U.S. Attorney responsible for defending the Government's interests.

(2) *Litigation report.* A litigation report, including a legal memorandum emphasizing anticipated issues during litigation, shall be furnished to the appropriate Department of Justice official or U.S. Attorney.

(3) *Pretrial discovery.* Complete and timely responses to discovery requests are vital to the effective defense of tort litigation. Subject to existing personnel and resources available, appropriate assistance shall be provided. The Judge Advocate General should be notified promptly when special problems are encountered in providing the requested assistance.

(4) *Preservation of evidence.* Tort litigation is often accomplished over an extended period of time. Every effort shall be made to preserve files, documents, and other tangible evidence that may bear on litigation. Destruction of such evidence, even in accordance with routine operating procedures, undermines defense of a case.

§ 750.33 Damages.

(a) *Generally.* The measure of damages is determined by the law of the place where the act or omission occurred. When there is a conflict between local and applicable Federal law, the latter governs. 28 U.S.C. 1346(b).

(b) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. In a death case, if the place where the act or omission complained of occurred provides for only punitive damages, the United States will be liable in lieu thereof, for actual or compensatory damages. 28 U.S.C. 2674.

(c) *Setoff.* The United States is not obligated to pay twice for the same injury. Claimants under the FTCA may have received Government benefits or services as the result of the alleged tort. The cost of these services or benefits shall be considered in arriving at any award of damages. For example, the cost of medical or hospital services furnished at Government expense, including CHAMPUS payments, shall be considered. Additionally, benefits or services received under the Veterans Act (38 U.S.C. 101-800) must be considered. *Brooks v. United States*, 337 U.S. 49 (1949).

(d) *Suit.* Any damage award in a suit brought under the FTCA is limited to the amount claimed administratively unless based on newly discovered evidence. 28 U.S.C. 2675(b). Plaintiff must prove the increased demand is based on facts not reasonably discoverable at the time of the presentation of the claim or on intervening facts relating to the amount of the claim.

§ 750.34 Settlement and payment.

(a) *Settlement agreement*—(1) *When required.* A settlement agreement, signed by the claimant, must be received prior to payment in every case in which the claim is either:

(i) Settled for less than the full amount claimed, or

(ii) The claim was not presented on a Standard Form 95.

(2) *Contents.* Every settlement agreement must contain language indicating payment is in full and final settlement of the applicable claim. Each settlement agreement shall contain language indicating acceptance of the settlement amount by the claimant, or his agent or legal representative, shall be final and conclusive on the claimant, or his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose conduct gave rise to the claim, by reason of the same subject matter. 28 CFR 14.10(b). In cases where partial payment will benefit both claimant and the Government, such as payment for property

damage to an automobile, the settlement agreement shall be tailored to reflect the terms of the partial settlement. All settlement agreements shall contain a recitation of the applicable statutory limitation of attorneys fees. 28 U.S.C. 2678.

(b) *DON role in settlement negotiations involving the U.S. Attorney or DOJ.* Agency concurrence is generally sought by the Department of Justice or U.S. Attorney's office prior to settlement of suits involving the DON. Requests for concurrence in settlement proposals shall be referred to the appropriate DON adjudicating authority with primary responsibility for monitoring the claim. Adjudicating authorities shall consult with the Judge Advocate General concerning proposed settlements beyond their adjudicating authority.

(c) *Payment of the claim—(1) Statutory authority.* Pursuant to 28 U.S.C. 2672 and in accordance with 28 CFR 14.6(a), the Secretary of the Navy or designee, acting on behalf of the United States, may compromise or settle any claim filed against the Navy under the FTCA, provided any award, compromise, or settlement by the Navy in excess of \$100,000.00 may be effected only with the prior written approval of the Attorney General or designee. Title 28 CFR 14.6 requires consultation with the Department of Justice prior to compromise or settlement of a claim in any amount when:

- (i) A new precedent or a new point of law is involved;
- (ii) A question of policy is or may be involved;
- (iii) The United States is or may be entitled to indemnity or contribution

from a third party and the agency is unable to adjust the third party claim;

(iv) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$100,000.00; or

(v) The DON is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

(2) *Specific delegation and designation—(i) Payment authority.*

Delegated and designated authority	Federal Tort Claims Act
Judge Advocate General	Unlimited.
Deputy Judge Advocate General	Unlimited.
Assistant Judge Advocate General (General Law).	Unlimited.
Deputy Assistant Judge Advocate General (Claims and Tort Litigation) and Deputy Division Director.	\$100,000.00.
Head, Federal Tort Claims Branch, Claims and Tort Division, OJAG.	\$50,000.00.
Commanding Officers of Naval Legal Service Offices; Officers in Charge of Naval Legal Service Office Detachments when Specifically Designated by Cognizant Commanding Officers of Naval Legal Service Offices.	\$25,000.00.

Any payment of over \$100,000.00 must be approved by the Department of Justice. In addition, the authority to deny Federal Tort Claims is double the Federal Tort Claims Act approval authority shown above. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Claims and Tort Litigation) may deny Federal Tort Claims in any amount.

(ii) *Territorial responsibility.*

Responsible command	Territory
NAVLEGSVCOFF Newport	Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut.
NAVLEGSVCOFF Philadelphia	Pennsylvania, New Jersey, Ohio, and New York.
NAVLEGSVCOFF Washington, DC ..	Maryland, the District of Columbia, and Northern Virginia area (zip 220-223).
NAVLEGSVCOFF Norfolk	Virginia (less Northern Virginia area—zip 220-223), and West Virginia, North Carolina (counties of Currituck, Camden, Pasquotonk, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, and Onslow only), Bermuda, Iceland, Greenland, Azores, The Caribbean, The Republics of Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Panama, Belize, Colombia, Venezuela, Guyana, French Guiana, Surinam, Brazil, Bolivia, Paraguay, Uruguay, Argentina, and all Atlantic and Arctic Ocean areas and islands not otherwise assigned.
NAVLEGSVCOFF Charleston	North Carolina (less counties of Currituck, Camden, Pasquotonk, Gates, Perquimans, Chowan, Dare, Tyrrell, Washington, Hyde, Beaufort, Pamlico, Craven, Jones, Carteret, Onslow), and Georgia (less Counties of Charlton, Camden, and Glynn).
NAVLEGSVCOFF Jacksonville	That portion of Florida east of the western boundaries of Gadsden, Liberty, and Franklin Counties and Georgia (counties of Charlton, Camden, and Glynn).

Department of the Navy, DoD

§ 750.36

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NAVLEGSVCOFF Pensacola	Florida [Pensacola/Panama City area (zip 324–325)], Alabama, Louisiana and Mississippi (that portion south of Washington, Humphreys, Holmes, Attala, Winston, and Noxubee Counties, and that portion of the Gulf of Mexico East of longitude 90 W).
NAVLEGSVCOFF Memphis	Missouri, Tennessee, Kentucky, Arkansas, and that portion of Mississippi north of the southern boundaries of Washington, Humphreys, Holmes, Attala, Winston, and Noxubee Counties.
NAVLEGSVCOFF Great Lakes	North Dakota, South Dakota, Nebraska, Minnesota, Michigan, Iowa, Wisconsin, Illinois, and Indiana.
NAVLEGSVCOFF Corpus Christi	Texas.
NAVLEGSVCOFF San Diego	California (Imperial County, San Diego County, and that area included in Marine Corps Base, Camp Pendleton extending into Orange County, only), that portion of Mexico including and West of the States of Chihuahua, Durango, Nayarit, Jalisco, and Colima, Pacific Ocean areas and islands South of Latitude 45N and East of Longitude 135W, Ecuador, Peru, Chile, Arizona, New Mexico, Oklahoma, and Nevada (Clark County only).
NAVLEGSVCOFF Long Beach	That portion of California in Kern, Santa Barbara, Ventura, Los Angeles and Orange Counties (excluding Marine Corps Base, Camp Pendleton), Riverside, San Bernardino, and the China Lake Naval Weapons Station Center.
NAVLEGSVCOFF San Francisco	Northern California (Counties of San Luis Obispo, Kings, Tulare, Inyo, and all counties North thereof), Colorado, Nevada (less Clark County), Utah, and Kansas.
NAVLEGSVCOFF Puget Sound	Washington, Oregon, Idaho, Montana, Wyoming, and Alaska.
NAVLEGSVCOFF Pearl Harbor	Hawaii, including Midway and Pacific Island possessions serviced from Hawaii.
NAVLEGSVCOFF Mayport	Claims involving commands located at Naval Station, Mayport, Florida.
NAVLEGSVCOFF Guam	Guam, The Trust Territory of The Pacific Islands, The Republic of The Marshall Island, The Federated States of Micronesia and The Commonwealth of The Northern Marianas.
NAVLEGSVCOFF Yokosuka	Japan, Okinawa, Korea, that portion of the Eurasian Continent North of latitude 30N and East of longitude 60E, and those Pacific and Arctic Ocean areas and islands North of latitude 30N that are East of longitude 60E and West of longitude 170W.
NAVLEGSVCOFF Naples	Europe, the African Continent (excluding that portion thereof assigned to NLSO Subic Bay), the Eurasian Continent (excluding that portion thereof assigned to NLSO Yokosuka and NLSO Subic Bay), and the Mediterranean.
NAVLEGSVCOFF Subic Bay	Philippines, Hong Kong, Singapore, Diego Garcia, and unless otherwise specified, all Pacific and Indian Ocean areas and islands located between longitude 135E and longitude 15E; Ethiopia, Somalia, Kenya, Tanzania, Mozambique, Swaziland, Lesotho, and South Africa; that portion of the Eurasian Continent South of latitude 30N and East of longitude 60E.

(3) *Funding.* Claims approved for \$2,500.00 or less are paid from DON appropriations. Claims approved in excess of \$2,500.00 are paid from the judgment fund and must be forwarded to the United States General Accounting Office (GAO) for payment. 28 CFR 14.10(a). Claims arising out of the operation of nonappropriated-fund activities and approved for payment shall be forwarded to the appropriate non-appropriated-fund activity for payment.

§ 750.35 Attorney’s fees.

Attorney’s fees are limited to 20 percent of any compromise or settlement of an administrative claim, and are limited to 25 percent of any judgment rendered in favor of a plaintiff, or of any settlement accomplished after suit is filed. These amounts are to be paid out of the amount awarded and not in addition to the award. 28 U.S.C. 2678.

§ 750.36 Time limitations.

(a) *Administrative claim.* Every claim filed against the United States under the FTCA must be presented in writing within 2 years after the claim accrues. 28 U.S.C. 2401(b). Federal law determines the date of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act giving rise to the claim. In computing the statutory time period, the day of the incident is excluded and the day the claim was presented included.

(b) *Amendments.* Upon timely filing of an amendment to a pending claim, the DON shall have 6 months to make a final disposition of the claim as amended, and the claimant’s option to file suit under 28 U.S.C. 2675(a) shall not accrue until 6 months after the presentation of an amendment. 28 CFR 14.2(c).

(c) *Suits.* A civil action is barred unless suit is filed against the United