

INFORMATION PAPER

SUBJECT: Affirmative Claims

1. **Purpose.** To inform commanders and heads of Army and DoD organizations or activities of affirmative claims procedures and the need to identify potential claims to recover money for the Army for damage or loss of property and the costs of medical care provided to soldiers, family members, and retirees.

2. **Facts.**

a. As a property owner, the Army is often the victim of a tort. In many cases, the Army has a right to assert a claim against the tortfeasor and his or her insurer for damage to government property. The Army also has the right to assert a claim for the cost of medical care provided by military medical treatment facilities and for the lost wages of the service member resulting from the negligence of the tortfeasor. The Fort Belvoir claims office asserts affirmative claims against tortfeasors and their insurers for property damage and the cost of medical care provided by military medical treatment facilities (MTFs) and payments made by Tri-Care.

b. Monies recovered for personal property damage claims in favor of the Army are returned to the government. Monies recovered for damaged real property are deposited into the local account available for the repair or replacement of the real property. Monies recovered for care provided by or through the local MTF are deposited into the local MTF Operation and Maintenance (O&M) account. Monies recovered for lost pay are deposited to the installation O&M account that supports the operation of the command, activity, or other unit to which the member was assigned. Monies received for amounts paid by Tri-Care are deposited to the Tri-Care reimbursement account.

c. As an alternative to money damages, a recovery judge advocate or recovery attorney may accept, in lieu of money, the replacement of the property or the property's restoration to its prior condition. Before a release based on a repair or replacement in kind may be executed, the technical staff officer responsible for the type of property in question must certify that this procedure is acceptable and that the repair or replacement in kind was satisfactorily accomplished. This procedure may also be used in cases involving damaged real property.

d. Investigations are often conducted by unit claims officers (UCOs), who are encouraged to coordinate with the Fort Belvoir claims office at (703) 805-4377. The UCO's commander or head of the organization is responsible for the adequacy of the investigation but not for determining liability. The investigation is forwarded to the recovery judge advocate or recovery attorney who makes a determination of liability and asserts a demand upon the prospective defendant and the insurer, if known.

3. **Conclusion.** Commanders and heads of Army and DOD organizations should direct investigation of potential affirmative claims resulting from the activities of their units. UCOs should contact Mr. Gregory V. Hand, Chief, Claims, at (703) 805-4377 or gregory.hand@us.army.mil for guidance regarding claims investigations.

Mr. Gregory V. Hand/805-4377
Approved by LTC Reid, SJA