



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

09 January 2006

MEMORANDUM OF OPINION

SUBJECT: Claim of [REDACTED] 06-IR8-079

- 1. Identifying Data:** [REDACTED]
- 2. Date and place the incident occurred giving rise to the claim:** The claim occurred on 14 December 2005 in Ash Sharqat, Iraq.
- 3. Amount of claim and date it was filed:** Claimant filed a claim for \$4,000 on 8 Jan 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 is IP. Claimant alleges that CF were at an election site, and they shot at the car he was driving, causing engine damage, bullet holes and windshield damage. He alleges that his car was 7,500 meters from the election site, and he did not see CF hand/light signals. A SIGACTS investigation for the relevant time period shows that at 0900 hours on 15 December, 2/A/3-101 conducted an Escalation of Force south of Ash Sharqat. The platoon was moving barriers at an election site when a LN vehicle tried several times to bypass the barriers. Local IPS tried to catch the vehicle but could not. The vehicle then reappeared trying to bypass the barriers again. Soldiers used VS-17 panels, flashlights, hand and arm signals to stop the vehicle. It continued on, so one soldier fired one round into the hood. But the vehicle continued trying to bypass. Then soldiers fired into the windshield of the vehicle, stopping it. There was 1xLN KIA and 1xLN WIA. IPs immediately treated casualties and evacuated them to hospital. IPs asked CF to leave the area, trying to avoid reprisal over the incident.
- 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." Due to the suspicious behavior of the Claimant driver in a dangerous area, there was an escalation of force. Force protection is combat activity because it includes immediate preparation for impending armed conflict. The driver further assumed risk by failing to obey the many warnings he was given to stop. Accordingly, this claim is non compensable because it is incident to a combat activity.

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



CPT, JA
Claims Judge Advocate

Claims Form

To: United States Army Foreign Claims Commission.

From: Name: _____

POA/ATT: N/A

Power of Attorney provided and interpreter approved: N/A

Decedents: N/A

Hometown: _____ Iraqi Resident: _____

My claim arose at: Al Sharqat
(Town) (City) (Country)

My claim arose on: 14 Dec 05
Month Day Year

Proof of Ownership: Purchase K - names match

Interpreter Approved: _____

Death Certificates (Name, Cause of Death, Age, and Time of Death Consistent with Claimant allegations): N/A

Interpreter Approved: _____

Legal Expert Opinion: \$4,000

Interpreter Approved: _____

Witness Statement (Consistent?): X1 - see comp. claim - same ches.

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.)

- Claimant is IP. driving \approx 20-25 km/hr.
- C did not see any hand/arm signals
- \approx 500 m away from election center.
- engine damage / windshield / bullet holes
- Toyota supra hard top - 1991

Evidence: _____

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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.)

Item	Amount
CAR DAMAGE	\$4,000

Total: \$4,000

I was insured to the following extent against the damage or injuries I have sustained:

N/A

The name and address of my insurer (if any) is:

(Name) (Address)

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

\$ 4,000 local

[Redacted Signature]

(Signature of Claimant)

Subscribed before me this 8 day of JAN, 2006.

[Redacted Name and Signature]

(Print Name)

(Signature)