

DEPARTMENT OF THE ARMY HEADQUARTERS, 42d INFANTRY DIVISION (Mechanized) OPERATION IRAQI FREEDOM (FOB LIBERTY) APO AE 09308

DHFT-JA

10 June 2005

MEMORANDUM OF OPINION

SUBJECT: Claim of 05-IA3-808

1. Identifying Data: Bayji, Iraq

2. Date and place the incident occurred giving rise to the claim: The claim occurred on 8 February 2005, in Bayji, Iraq.

3. Amount of claim and date it was filed: Claimant filed a claim for \$10,300 on 5 April 2005.

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 filed in a timely manner.

5. Facts: Claimant alleges that her husband was killed, herself injured and vehicle damaged, when U.S. Forces shot at them from a convoy. The claimant was riding in their 1987 Mazda with her husband and son. They were driving from Baghdad to Mosul. The husband was driving, when they caught up to a U.S. Forces convoy from behind, near Bayji. When they got within 200 meters of the rear vehicle, the gunner opened fire. The claimant's husband was killed, she was injured and the vehicle damaged. She indicated no warning shots were fired. There is no report of this incident in Division records. The claimant provided two corroborating witness statements, photographs, medical records, a death certificate and a police report with a scene sketch. A legal expert report estimated the damage to the vehicle at \$2,300.

6. **Opinion:** There is sufficient evidence to indicate that U.S. Forces damaged the claimant's vehicle. Unfortunately, those forces were involved in security operations at the time. Therefore, this case falls within the combat exception.

7. Recommendation: The claim is denied.



Chief, Claims

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