

Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims, and whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United States, forward file with a memorandum of opinion to the Commander, USARCS, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The

Commander, USARCS, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If the Commander, USARCS, determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

**§ 536.77 Claims against the ARNG tortfeasor individually.**

The procedures set forth in § 536.9(f) are applicable. With respect to claims arising before 29 December 1981, an ARNG driver acting pursuant to the authorities cited in § 536.73(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)) and the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final actions will be withheld pending resolution of the demand against the ARNG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

**§ 536.78 When claim must be presented.**

A claim may be settled under §§ 536.70 through 536.81 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it

accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

**§ 536.79 Where claim must be presented.**

A claim must be presented to the appropriate Federal agency. Receipt of a written claim by any full time officer or employee of the National Guard will be considered receipt. However, the statute of limitations is tolled if a claim is filed with a State agency, the claim purports to be under the NGCA and it is forwarded to the Army within 6 months, or the claimant makes inquiry of the Army concerning the claim within 6 months. If a claim is received by a DA official who is not a claims approval or settlement authority, the claim will be transmitted without delay to the nearest approval or settlement authority.

**§ 536.80 Procedures.**

(a) The form of a claim under §§ 536.70 through 536.81 will be as described in § 536.5 (d) and (e).

(b) So far as they are not inconsistent with §§ 536.70 through 536.81, the guidance set forth in §§ 536.10 through 536.12 will be followed in processing a claim under §§ 536.70 through 536.81.

(c) The following provisions are applicable to claims under §§ 536.70 through 536.81 and are hereby incorporated by reference:

- (1) § 536.28 (applicable law);
- (2) § 536.29 (determination of quantum);
- (3) § 536.31 (claims over \$100,000);
- (4) § 536.32 (settlement procedures);
- (5) § 536.33 (attorney fees).

**§ 536.81 Settlement agreement.**

Procedures concerning settlement agreements will be in accordance with § 536.10, except that the agreement will be modified to include a State and its National Guard in most cases. A copy of the agreement will be furnished to

State authorities and the individual tortfeasor.

**Subpart D—Claims Incident to Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law**

**§ 536.90 Statutory authority.**

The statutory authority for §§ 536.90 through 536.97 is contained in the act of 9 October 1962 (76 Stat. 767, 10 U.S.C. 2737). This statute is commonly called the "Nonscope Claims Act." For the purposes of §§ 536.90 through 536.97, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

**§ 536.91 Scope.**

(a) Sections 536.90 through 536.97 prescribe the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than \$1,000, of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or civilian employees of the DA or by civilian employees of the DoD incident to the use of a United States vehicle at any place or incident to the use of other United States property on a Government installation.

(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under §§ 536.20 through 536.35, § 536.50, or §§ 536.70 through 536.81 as applicable. Only when all parties, to include an insurer, agree that there is no "in scope" issue will §§ 536.90 through 536.97 be used.

**§ 536.92 Claims payable.**

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.90 through 536.97 when