

Administrative Settlement of Claims Under The Federal Tort Claims Act

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It is significant that the full title of the Legislative Reorganization Act is "An act to provide for increased efficiency in the legislative branch of the government." Congress long had suffered from overwork, resulting from the retention of functions which it could have delegated to others. By this act important steps were taken toward Congressional emancipation. While much remains to be done, such as the granting of home rule to the District of Columbia, much was accomplished. Private bills for the relief of persons injured by the negligence of government employees were numerous. Fortunately, the processing of contract claims had been delegated to the Court of Claims in 1855. But tort claims had to be considered by committees in each house of Congress, approved by each house and by the President before the claim could be paid. Occasionally Congress would authorize a suit to be brought against the Government in the federal district court, but until the adoption of the Tort Claims Act there was no general waiver of governmental immunity from suit on tort claims. Even this makes certain exceptions, which are referred to later in this article.

The hearings before the Joint Committee on the Organization of Congress, which prepared the Reorganization Act, contain many references by informed persons to the need for relieving Congress of the duty of considering and passing upon tort claims. As a result the committee recommended "that Congress delegate authority to the federal courts and to the Court of Claims to hear and settle claims against the Federal Government." To support this recommendation the Committee offered the following comments:

Congress is poorly equipped to serve as a judicial tribunal for the settlement of private claims against the Government of the United States. This method of handling individual claims does not work well either for the Government or for the individual claimant, while the cost of legislating the settlement in many cases far exceeds the total amounts involved. Long delays in the consideration of claims against the Government, time consumed by the Claims Committees of the House and Senate, and crowded private calendars combine to make this an inefficient method

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of procedure. The United States courts are well able and equipped to hear these claims and to decide them with justice and equity both to the Government and to the claimants. We therefore recommend that all claims for damages against the Government be transferred by law to the United States Court of Claims and to the United States District Courts for proper adjudication.¹

EARLIER LEGISLATION ON ADMINISTRATIVE SETTLEMENT OF TORT CLAIMS

When the Committee began to draft Title IV of the Legislative Reorganization Act of 1946 it found that there were a number of laws already on the statute books dealing with the subject of claims against the Government. The oldest of these had been in effect for nearly a century. Congress, on February 24, 1855, had created a Court of Claims to adjudicate all claims against the Government arising out of contract. The jurisdiction of the Court of Claims under current legislation is as follows:

The Court of Claims shall have jurisdiction to hear and determine the following matters:

(1) First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an executive department, upon any contract express or implied with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity or admiralty if the United States were suable. . . .²

While the Court of Claims thus is given jurisdiction over contract claims, those sounding in tort are specifically excluded.

The first rift in the solid front of the Government's refusal to recognize tort claims except by congressional act of grace was in connection with marine collisions. In 1910, three different acts were passed to authorize the settlement of such claims. The first of these authorized the Commissioner of Lighthouses, subject to the approval of the Secretary of Commerce, "to consider, ascertain, adjust, and determine all claims for damages where the amount of the claim does not exceed the sum of \$500, occasioned by collisions for which collisions vessels of the Lighthouse Service shall be found to be responsible. . . ." ³ Another act in almost identical terms authorized the Secretary of the Navy to adjust claims up to \$500 occa-

¹ *Report of the Joint Committee on the Organization of Congress*, H.R. REP. NO. 1675, 79th Cong., 2d Sess. 25 (1946).

² 24 STAT. 505 (1887); 36 STAT. 1136 (1911), 28 U.S.C. §250 (1946).

³ 36 STAT. 537 (1910). The Lighthouse Service was transferred to the Coast Guard by Reorganization Plan II, §2(a) and the duties of the Commission of Lighthouses have been assumed by the Commandant of the Coast Guard.

sioned by collisions or damages incident to the operation of vessels, for which collisions or other damage, vessels of the Navy or vessels in the Naval Service were found to be responsible. The maximum limit on the claims adjusted by the Secretary of the Navy was raised to \$1,000 in 1918 and to \$3,000 in 1922.⁴

The third act of the 1910 session granted a similar power to the Chief of Engineers of the United States Army in the following terms:

Whenever any vessel belonging to or employed by the United States, engaged upon river and harbor works, collides with and damages another vessel, pier or other legal structure, belonging to any person or corporation, and whenever in the prosecution of river and harbor work an accident occurs, damaging or destroying property belonging to any person or corporation . . . the Chief of Engineers shall cause an immediate examination to be made and if in his judgment, the facts and circumstances are such as to make the whole or any part of such damage or destruction a proper charge against the United States, the Chief of Engineers, subject to the approval of the Secretary of War shall have authority to adjust *and settle* all claims for damages or destruction caused by the above designated collisions, accidents and so forth, in cases where the damage or expense does not exceed \$500 *and pay the same* from the appropriation directly involved and report such as exceed \$500 to Congress for its consideration.⁵ (Emphasis supplied).

This was the first act which conferred upon any administrative official of the Government statutory authority to settle and pay tort claims against the United States. In the small area which it covered, both as to amount and as to the administrative activity involved, Congress was relieved of the necessity of passing upon claims, and delegation to a responsible administrative agency established a precedent for further similar legislation.

Ten years after the enactment of these three admiralty tort acts, the Superintendent of the Coast and Geodetic Survey, was given power similar to that given to the Commissioner of Lighthouses as to claims arising out of "acts for which the Coast and Geodetic Survey shall be found to be responsible."⁶ While this act is not specifically limited to tort claims arising out of collisions, from its conformity to the language of the earlier act, it may be presumed to have been intended to apply primarily to admiralty torts.

⁴ 36 STAT. 607 (1910); 42 STAT. 1066 (1922), *repealed by* 60 STAT. 846 (1946).

⁵ 36 STAT. 676 (1910); 41 STAT. 1015 (1920), *repealed by* 57 STAT. 374 (1943), 29 U.S.C. §§31, 32 (1946).

⁶ 41 STAT. 1054 (1920), 33 U.S.C. §853 (1946); 41 STAT. 929 (1920), 33 U.S.C. §852 (1946).

In 1921 Congress conferred power upon the Postmaster General to settle and adjust claims for damages to persons or property, arising out of the activities of the Post Office Department, provided the sum involved did not exceed \$500. Torts included were those based on negligence of any officer or employee of the Post Office Department acting within the scope of his employment.⁷

In 1922 Congress adopted the Underhill Small Claims Act. This act provided:

The head of each department and establishment, acting on behalf of the Government of the United States may consider, ascertain, adjust, and determine any claim accruing after April 6, 1917, on account of damages to or loss of privately owned property where the amount of the claim does not exceed \$1,000 caused by the negligence of any officer or employee of the Government, acting within the scope of his employment. Such amount as may be found to be due to any claimant shall be certified to Congress as a legal claim for payment out of appropriations that may be made by Congress therefor together with a brief statement of the character of each claim, the amount claimed and the amount allowed.

A one-year statute of limitations was imposed.⁸ Again, it will be noted Congress reserved to itself the right to make the final decision; the work done by the departments was purely advisory. This was the first service-wide act dealing with tort claims.

Several attempts were made by Congress to subject the United States Government to tort claims on a basis broader than that provided by these laws. Notable among these efforts was H.R. 9275; Seventieth Congress, Second Session, which was pocket-vetoes by President Coolidge.⁹

In 1936 the Attorney General was authorized to adjust claims up to \$500 arising out of the activities of the Federal Bureau of Investigation and to make recommendations to Congress concerning their payment.¹⁰ The last important act involving tort claims before 1946 was that passed in 1943 covering the activities of the War Department. This act provides that the Secretary of War may settle claims up to \$500 in peace time and up to \$1,000 in time of war, arising after May 27, 1941, out of:

The loss or destruction of property, real or personal, injury or death, caused by military personnel or civilian employees of the War Department or the Army, acting within the scope of their employment or otherwise incident to non-combat activities of the War Department or of

⁷ 42 STAT. 63 (1921); 48 STAT. 1207 (1934), 31 U.S.C. §224 c (1946).

⁸ 42 STAT. 1066 (1922), repealed by 60 STAT. 846 (1946).

⁹ Field, *Administration by Statute—The Question of Special Laws*, 6 PUB. ADMIN. REV. 325 (1946); cf. 9 LAW & CONTEMP. PROB., *passim* (1942).

¹⁰ 49 STAT. 1184 (1936), 31 U.S.C. §224 b (1946).

the Army, including claims for damage to or loss or destruction by criminal acts of registered or insured mail while in the possession of the military authorities and claims for damage to or loss or destruction of personal property bailed to the Government.

A separate section (223d) covers losses due to aircraft operations. The act bars recovery in cases of contributory negligence. Claims must be filed within one year or, if in wartime, within one year after peace is declared. The amount allowable for personal injury or death is limited to reasonable medical, hospital, and burial expenses. The act is not applicable to claims arising in foreign countries. Settlements made by the Secretary of War or his designee are final and conclusive. Claims over the amounts specified above are submitted to Congress for its consideration.¹¹

To summarize, the situation in 1946 when the Legislative Reorganization Act was under consideration by Congress was as follows:

(1) Congress had divested itself entirely of the consideration of contract claims, through the establishment of the Court of Claims and through the conferring of jurisdiction to hear such claims upon the United States district courts.

(2) Congress had partially divested itself of the duty of considering tort claims against the Government by: (a) conferring power to consider and recommend to Congress payment of tort claims up to \$500 arising out of marine collisions upon the Commissioner of Lighthouses; (b) conferring power to consider and recommend to Congress payment of tort claims up to \$3,000 arising out of collision or damages caused by naval vessels upon the Secretary of the Navy; (c) conferring power to consider and recommend to Congress payment of tort claims up to \$500 arising out of acts for which the Coast and Geodetic Survey was responsible upon that agency; (d) conferring power to adjust and settle tort claims up to \$500 arising out of Post Office operations upon the Postmaster General; (e) conferring power to consider and recommend to Congress payment of tort claims up to \$500 arising out of the activities of the FBI upon the Attorney General; (f) conferring power to settle tort claims up to \$500 in peace time and \$1,000 in war time arising out of the loss or destruction of property, personal injury or death due to non-combatant activities of the War Department or Army upon the Secretary of War; and by (g) imposing upon all departments and establishments the duty of investigation and report to Congress upon all tort claims arising out of damage to or loss of privately owned property up to \$1,000.

In spite of this legislation Congress still had a monumental

¹¹ 55 STAT. 880 (1942), 31 U.S.C. §§224 d-i (1946); 57 STAT. 372 (1943), 31 U.S.C. §§223 b, c, d (1946).

task, one which interfered materially with its ability to discharge its primary legislative duties. It was to divest itself of a large part of that task that the Federal Tort Claims Act (Title IV of the Legislative Reorganization Act) was passed.

THE FEDERAL TORT CLAIMS ACT.

The Federal Tort Claims Act rests upon three basic principles: (1) that every claimant against the government is entitled to a hearing of his claim; (2) that small claims should be settled and paid by administrative processes so far as possible; and (3) that larger claims should be settled by the regular judicial processes of the courts. The Act is divided into four parts: (1) Short title and definitions; (2) Administrative adjustment of tort claims against the United States; (3) Suit on tort claims against the United States; and (4) Provisions common to parts 2 and 3.¹²

The short title of the act is established by Section 401 as the "Federal Tort Claims Act." Definitions contained in Section 402 include: (1) "Federal agency" which embraces all departments and independent establishments of the United States [except the Tennessee Valley Authority, excepted by Section 421 (1)] but excludes contractors with the United States; (2) "Employee of the Government" includes officers or employees of any federal agency, members of the military or naval forces and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the Government service, whether with or without compensation; (3) "Acting within the scope of his office or employment" in the case of a member of the military or naval forces means acting in line of duty.

Part 2 of the Act deals with the administrative adjustment of tort claims against the United States. Section 403 (a) confers authority upon the head of each federal agency or his designee to adjust and settle any claim against the United States for money only accruing after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death where the total amount of the claim does not exceed \$1,000, caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circum-

¹² The provisions of the Federal Tort Claims Act are reinforced by the provisions of Section 131 of the Legislative Reorganization Act which states: "No private bill or resolution (including so-called omnibus claims or pension bills) and no amendment to any bill or resolution authorizing or directing: (1) payment of money for property damages, for personal injuries or death for which suit may be instituted under the Federal Tort Claims Act . . . shall be received or considered in either the Senate or House of Representatives."

stances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

These provisions are designed to make it possible for small claims to be processed and paid by all federal agencies without congressional interposition. Settlement is expedited and more substantial justice can be given to the claimants. Federal agencies already were charged with the duty of investigating property damage claims by the Underhill Act of 1922. But the Tort Claims Act is broader than the earlier law in that it includes personal injury and death claims as well as property damage and in that it contemplates settlement and payment rather than investigation and report. In the case of the War Department, even the broader jurisdiction will cause no concern since the agency has been handling and paying personal injury and death claims up to \$1,000, as well as property damage claims, since 1943. No doubt this precedent was relied upon in phrasing the act. There are many similarities in the language. The only new concept appears in the final sentence where the tort liability of the Federal Government is made to depend upon the local law "where the act or omission occurred." This is consistent with the idea that there is no federal common law and hence that as to common law matters, such as tort liability for negligence, the federal courts will apply the local law under the principle of *Erie Railroad v. Tompkins*.¹³ But this will result inevitably in granting relief in one state and denying it in another, on similar sets of facts. It is submitted that such lack of uniformity in relief may lead to widespread dissatisfaction and eventually may require the adoption of a uniform body of law on the subject of federal torts. This can be done by congressional act or by a recognition by the courts that in cases arising under this Act of Congress they may and should establish a uniform common law as they have done in connection with federal checks.¹⁴

The remainder of Section 403 of the Act makes awards under the Act conclusive on all officers of the Government, unless obtained by fraud; grants authority to pay awards from appropriations; and makes the acceptance of an award conclusive on the claimant as against the Government or the employee whose act or omission gave rise to the claim. This latter provision would seem to be an express denial of the further utility of the "rule of law" in connection with the negligent torts of federal employees and an

¹³ 304 U.S. 64 (1937).

¹⁴ *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943); cf. *Gorrell and Weed, Erie Railroad—Ten Years After*, 9 OHIO ST. L. J. 276 (1948).

acceptance of the French idea of governmental assumption of liability for the negligent tortious acts of federal employees.

There seems to be little doubt that most claimants will prefer to present their claims to government departments rather than bring suit against the employee. Such suits are not barred by the Federal Tort Claims Act, but they probably will be extremely uncommon.

By Section 404 of the Act the head of each federal agency is required to make an annual report to Congress of all claims paid. This report must include the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim. It may be assumed that such reports will be published, probably in the Congressional Record and the Congress will reach some judgment upon the adequacy of the law and its administration from the facts thus disclosed.

By Part 4 of the Title, Congress has established a one-year period as the maximum for filing a claim for administrative action or for adjudication. When a claim is first filed with a department and later is withdrawn for submission to a district court a period of six months from the date of withdrawal is allowed for the filing of the action.¹⁵

Section 421 of the Act enumerates twelve exceptions to its application: (1) cases based on acts of employees exercising due care or acting under laws conferring discretion; (2) claims arising out of postal activities; (3) claims arising under customs and tax laws; (4) admiralty claims (already covered by law);¹⁶ (5) claims arising out of Trading with the Enemy Act; (6) claims for damages due to quarantine; (7) claims arising out of the operation of the Panama Canal; (8) claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, deceit, or interference with contract rights; (9) claims due to fiscal operations of the Treasury or to regulation of the monetary system; (10) claims arising out of acts of armed forces in combat during wartime; (11) claims arising in a foreign country; and (12) claims arising out of activities of the Tennessee Valley Authority.

The exception of claims based on activities of employees who are exercising due care and those who are acting under laws conferring discretion serves to emphasize the character of the act as one removing government immunity only as to cases of negligent tort. The exception relating to claims arising out of the assessment or collection of taxes and customs duties would seem to rest upon a desire to exempt purely governmental functions. Besides, the district courts already have been given jurisdiction over claims for

¹⁵ See §420, Federal Tort Claims Act.

¹⁶ 41 STAT. 525 (1920), 46 U.S.C. §§741, 742 (1946); 43 STAT. 1112 (1925), 46 U.S.C. §§781-790 (1946).

the refund of internal revenue taxes illegally or erroneously exacted.¹⁷ The exemption of admiralty claims would appear to rest on the basis that such matters already are adequately dealt with in the permanent law.¹⁸

Further instances of exemptions based on the exercise of governmental functions include those arising out of acts or omissions of employees in administering the provisions of the Trading with the Enemy Act, as well as those due to the imposition or establishment of quarantine, and those caused by the fiscal operations of the Treasury or by the regulation of the monetary system. The exclusion of claims arising from injury to vessels, cargo, crew, or passengers of vessels while passing through the locks of the Panama Canal or while in Canal Zone waters is not so easily classified. It may, in part, be referable to the desire of Congress to recognize under the Act only those torts committed in national territory, reserving for special legislation those arising abroad. The Canal Zone is only a leased area — it is not under American sovereignty, but that of the Republic of Panama. Then, too, Congress may have special reasons for desiring to have the Canal continue under the traditional protection of sovereign immunity from tort claims. Whatever the reason, such claims are not included under the Act and hence may be considered only by Congress itself, as they were before the adoption of the new law. The same appears to be true as to claims arising from operations of the Tennessee Valley Authority. Why this one government corporation was singled out from among the dozens now carrying on quasi-governmental functions is difficult to see. It has been suggested that government corporations, possessing as they do the power to sue and to be sued, could not hide behind the immunity of the Government in any event.¹⁹ If this is true, the exemption of the TVA from the Federal Tort Claims Act works no change in the pre-existing situation. But it does raise the question of why all government corporations were not excluded.

During World War II both the War and Navy Departments were given authority by Act of Congress to settle claims arising out of their operations overseas for property damage or loss or for personal injury or death, up to a maximum of \$5,000.²⁰ Combatant activities were excluded from this legislation as well as from the Federal Tort Claims Act. But the overseas settlements were delegated to commanders of overseas theaters who were authorized to take interna-

¹⁷ STAT. 1093 (1911), *as amended*, 28 U.S.C. §41 (20) (1940).

¹⁸ 41 STAT. 525-528 (1920), *as amended*, 46 U.S.C. §§741-752 (1946); 43 STAT. 1112-1113 (1925), 46 U.S.C. §§781-790 (1946).

¹⁹ *Kiefer & Kiefer v. R.F.C.*, 306 U.S. 381 (1939); *cf* §423 of Tort Claims Act.

²⁰ 55 STAT. 880 (1942), 31 U.S.C. §224 d (1946), *as amended*, 57 STAT. 66 (1943).

tional relations into account when such claims were under consideration. The Federal Tort Claims Act excludes all damage resulting from combatant activities of the armed services both within and without the country. In fact, all claims arising in foreign countries are left to the former methods of congressional procedure.

Section 422 of the Act deals with attorneys' fees. The court in rendering a judgment for a plaintiff under the Act, or the head of a federal agency making an award, or the Attorney General making disposition of a case may, as a part of the judgment, award or settlement, allow reasonable attorneys' fees. If the recovery is \$500 or more, the fee may not exceed ten per cent of the amount recovered in an administrative award or twenty per cent of a court recovery. This is paid out of, but not in addition to, the amount of the judgment, award, or settlement. Any attorney who charges more is guilty of a misdemeanor, subject to a fine of not more than \$2,000 or imprisonment for not more than a year, or both. Apparently this section was designed to prevent litigation or filing of claims for administrative award on a contingent fee basis. It likewise will discourage attorneys from representing small claimants and will tend to make the administrative handling of claims more nearly like the procedure of local small-claims courts. Of course, it will be necessary for the claimant to retain counsel if he elects to litigate his claim, but the allowance is more adequate in such cases.

Some indication of the attitude of Congress toward the filing of tort claims against government corporations may be gained from Section 423 of the Act. This section provides that "from and after the date of enactment of this Act, the authority of any federal agency to sue and be sued in its own name [a characteristic of corporations] shall not be construed to authorize suits against such federal agency on claims which are cognizable under part 3 of this title (suits in United States district courts) and the remedies prescribed by this title in such cases shall be exclusive." Thus, except for the TVA, apparently, tort actions in the federal district courts against any government corporations are now barred, except under the provisions of the Federal Tort Claims Act.

The final section of the Act provides specifically for the repeal, insofar as in conflict with the new law, of the Underhill Act,²¹ the law conferring authority upon the Director of the Coast and Geodetic Survey to settle claims,²² the act giving the Attorney General authority to settle claims arising out of the activities of the FBI,²³ the act conferring power on the Secretary of War or his designees

²¹ 42 STAT. 1066 (1922), *repealed by* 60 STAT. 846 (1946).

²² 41 STAT. 1054 (1920).

²³ 49 STAT. 1184 (1936), 31 U.S.C. §224 b (1946).

to settle claims arising out of non-combatant activities of the War Department and Army within the United States,²⁴ the similar act pertaining to the Navy,²⁵ and the act giving authority to the Postmaster General to settle tort claims arising out of the operations of the Post Office.²⁶

In addition to these specific repeals, the Act repeals generally "all provisions of law authorizing any federal agency to consider, adjust, or determine claims on account of damage to or loss of property, or on account of personal injury or death, caused by the negligence or wrongful act or omission of any employee of the Government, while acting within the scope of his office or employment" with respect to claims cognizable under Part 2 of the Act (those under \$1,000 which are submitted for administrative allowance), and accruing on and after January 1, 1945. But in Section 424 (b), there is an express saving clause: "Nothing contained herein shall be deemed to repeal any provision of law authorizing any federal agency to consider, ascertain, adjust, settle, determine, or pay any claim on account of damage to or loss of property or on account of personal injury or death in cases in which such damage, loss, injury, or death was not caused by any negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under part 2 of this Title."

The blanket repeal disposes of such acts not specifically repealed as the one authorizing the Commissioner of Lighthouses to adjust claims up to \$500²⁷ and that authorizing similar action by the Secretary of the Navy,²⁸ unless these are saved as admiralty claims under Section 421 (d) and this would appear unlikely since this provision specifically enumerates the code sections which are preserved.²⁹ The other side, represented by the final saving clause, is more mystifying since no statutes were encountered in this study which permit settlement of claims not based on negligence arising within the United States.³⁰ The hearings on the Act shed no light upon this problem.

²⁴ 57 STAT. 705 (1943) (This is a private law section).

²⁵ 40 STAT. 705 (1918), 34 U.S.C. §600 (1946).

²⁶ 48 STAT. 1207 (1934), 31 U.S.C. §224 c (1946).

²⁷ 36 STAT. 537 (1910). The Lighthouse Service was transferred to the Coast Guard by Reorganization Plan II, Section 2(a) and the duties of the Commission of Lighthouses have been assumed by the Commandant of the Coast Guard.

²⁸ 36 STAT. 607 (1910), 34 U.S.C. §599 (1946), *as amended*, 42 STAT. 1066 (1922).

²⁹ 41 STAT. 525-528 (1920), *as amended*, 46 U.S.C. §§741-752 (1946); 43 STAT. 1112-1113, 46 U.S.C. §§781-790 (1946).

³⁰ Cf. notes 76 and 77 *infra*.

The Federal Tort Claims Act became effective on August 2, 1946, with the approval by President Truman of the Legislative Reorganization Act of 1946. The situation on that date may be summarized as follows:

(1) Contract claims were entirely out of the hands of Congress. They were either (a) settled by the departments or (b) by the General Accounting Office or (c) by the Court of Claims or (d) by the United States district courts.

(2) Tort claims arising out of negligence in the United States were out of congressional hands, those up to \$1,000 being settled by departments and other federal agencies, with certain minor exceptions; admiralty claims were also cognizable by administrative agencies; the United States district courts had jurisdiction over all tort claims arising out of negligence, concurrently with the departments, up to \$1,000, and exclusively in excess of that amount, with appeals to the Court of Claims, by stipulation, or to the United States circuit court of appeals.

(3) Congress reserved to itself still the handling by special act of all tort claims arising outside the United States and practically all tort claims not arising out of negligence.

ADMINISTRATIVE EXPERIENCE UNDER THE FEDERAL TORT CLAIMS ACT

Of the forty-odd administrative agencies of the Federal Government, several report that they have not had, nor do they anticipate having, any claims under the Federal Tort Claims Act. Typical of these are the Board of Governors of the Federal Reserve System, the Smithsonian Institution, the United States Tariff Commission, the National Capital Parks and Planning Commission, and the Federal Trade Commission. The Administrative Office of the United States Courts and the District of Columbia are considered by their law officers to be outside the scope of the Act.

The remaining agencies vary greatly in the number of claims filed during the two fiscal years of operation and in the amounts awarded and paid. The Railroad Retirement Board and the Interstate Commerce Commission had but a single claim each. The Department of Commerce had fifteen claims in the fiscal year 1947 aggregating \$5,295.24; administrative awards totaled \$4,756.85.³¹ The Post Office Department allowed 3,773 claims during the fiscal year 1948 for a total of \$270,000.³²

During the first two fiscal years under the Act, each department and agency provided its own procedure for receiving and processing tort claims. Most of them which had made investigations prepara-

³¹ Letter signed by I.N.P. Stokes, Solicitor, dated July 9, 1948.

³² Letter signed by Frank J. Delany, Solicitor, dated July 8, 1948.

tory to congressional action under the Underhill Act already had rules which could be adapted readily to procedure under the new law. In fact this was the way the Department of Agriculture dealt with the matter.³³ As the Assistant Solicitor pointed out in his letter of April 30, 1947, "We have found the procedure and facilities established for the handling of claims under the Act of December 28, 1922, have proven adequate for the handling of claims under the Act of August 2, 1946." It is probable that this experience was shared by practically all government agencies.

Although there is little uniformity among the various agencies as to the rules and regulations governing procedure under the Tort Claims Act, the Bureau of the Budget has secured considerable uniformity in practice by prescribing the use of standard forms³⁴ for administrative settlement under part 2 of the Act. Copies have been supplied to all federal agencies, and claimants or their attorneys may obtain S.F. 95 on request for the filing of claims. The appropriate office also prepares S.F. 96 when a compromise is reached and prepares the voucher for the amount awarded or agreed to. Appropriations have been made to all agencies requesting them from which such payments may be made.

All agencies affected by the Act have provided some administrative procedure for handling claims. In most cases these regulations have been published in the Federal Register although it is common practice to supplement the regulations by departmental memoranda which are not generally available to the public.

Treasury Department.

The Treasury Claims Regulations were published in the Federal Register May 13, 1947. These were supplemented by Treasury Claims Instructions, issued by the Administrative Assistant to the Secretary on May 14, 1947. Both the Regulations and the Instructions are published in Departmental Circular No. 808 for intra-departmental circulation and guidance. This document covers claims not only under the Tort Claims Act, but also under the

³³ Letter signed by E. F. Mynatt, Associate Solicitor, dated April 30, 1947. Secretary's Memorandum No. 898, dated April 12, 1941; Supplement dated Aug. 30, 1946; Solicitor's Memoranda dated January 9, 1942, February 10, 1942, and August 30, 1946.

³⁴ Standard Form 91, Operator's Report of Motor Vehicle Accident. Standard Form 92, Supervisor's Report of Accident (Not motor vehicle or aircraft.)

Standard Form 93, Report of Investigating Officer.

Standard Form 94, Statement of Witness.

Standard Form 95, Claim for Damage or Injury.

Standard Form 96, Settlement Agreement.

Standard Forms 1145 and 1145 a, Voucher for payment under Federal Tort Claims Act.

Coast Guard Claims Act,³⁵ and the Underhill Act.³⁶ Employees are required to notify their immediate superiors of all accidents occurring while they are on duty. This superior is then required to notify the proper officer of his unit to arrange for an investigation. Each unit may make its own investigation; but if it is unable to do so it may call upon the Treasury enforcement agencies (Alcohol Tax Unit, Bureau of Narcotics, Customs Agency Service, Secret Service, or Coast Guard) to make the investigation. If the damage is \$100 or less an investigation is optional; if over \$100 it is compulsory.

The report of an investigating officer is sent through channels to the legal officer of the unit involved, who reviews it, orders any further investigation which may be needed, and finally approves it. It is then filed for reference if and when a claim is filed. Claims under \$500 which involve no novel questions of law may be settled and paid by the head of the unit. If the claim is for \$500 or more, or if it involves novel questions of law, the General Counsel of the Treasury Department makes the final determination. When a claim is withdrawn by the claimant under Section 410 (b) of the Federal Tort Claims Act, the General Counsel is required to notify the Attorney General of the nature and amount of the claim and the date of withdrawal. The Bureau of Accounts is required to maintain the necessary records to enable it to prepare the report to Congress required by Section 404 of the Act.

Department of Commerce

The procedure is prescribed by Department Order No. 70, effective May 9, 1947. By this order the Secretary of Commerce delegated to the head of each primary organization unit of the Department all authority vested in the Secretary by the Federal Tort Claims Act. Claims arising in the Office of the Secretary (except the Office of Technical Services) are dealt with by the Solicitor of the Department. The approval and acceptance of a claim by a unit head, or by the Solicitor is made final and further review within the Department is expressly prohibited.³⁷ Upon receipt of a claim, the receiving officer must record its receipt and forward it to the person designated by the head of the unit to examine claims. Filing may be by the injured person or by his attorney and may be in any one of the field offices of any organization unit or in any central office, bureau, or division.

³⁵ 59 STAT. 225 (1945), 31 U.S.C. §223 b (1946); 57 STAT. 373 (1943), 31 U.S.C. §223 c (1946); 59 STAT. 662 (1945), 31 U.S.C. §223 d (1946).

³⁶ This Act was repealed by Section 424(a) of the Federal Tort Claims Act only insofar as it related to claims cognizable under the latter act.

³⁷ Department Order No. 70, U. S. Dept. of Commerce, §302, May 9, 1947.

The claims examiner, if he deems the claim to be proper, recommends the amount of the award and the amount to be allowed for attorneys' fees. Claims involving unusual or novel questions of law may be submitted to the Solicitor of the Department for review and recommendation as to disposition. As soon as the examiner or the Solicitor reaches a conclusion the file is forwarded to the head of the unit who makes or denies an award. When an award is made, the file is transmitted to the appropriate fiscal office for payment. Prior to payment, a release must be obtained from the claimant stating that the award "is final and conclusive and constitutes a complete release by the claimant of any claim against the United States and against the employee of the Government arising out of the circumstances which resulted in the claim."³⁸ In order to enable the Secretary to make the annual report to Congress required by Section 404 of the Act, the head of each primary organization unit is required to submit to the Office of Budget and Management of the Department by August 15 of each year, a report covering the preceding fiscal year and showing the facts necessary to permit the making of the report.³⁹

Department of State

The Department of State normally deals with relatively few tort claims. A majority of them arise outside the United States and consequently do not fall within the purview of the Federal Tort Claims Act. Occasionally cases arising abroad are presented to the Department through diplomatic channels and if the Department is satisfied that legal liability exists it requests the Congress to appropriate the funds necessary to effect settlement. This appears to be an informal procedure which has never been covered by general act of Congress, other than the Underhill Act. The Department has considered a few cases arising out of traffic accidents in the United States involving motor vehicles operated by the Department. Such cases are investigated by departmental personnel, who take steps to obtain pertinent information and evidence. In the cases thus far considered, the Department has concluded that liability of the United States to respond in damages did not exist. Cases of this type would go to the courts if the claimant were dissatisfied with the conclusion reached by the Department.⁴⁰

³⁸ Department Order No. 70, U.S. Dept. of Commerce, §601, May 9, 1947.

³⁹ *Ibid.*, §701, Information for the Department of Commerce supplied by I.N.P. Stokes, Solicitor, in a letter dated July 9, 1948.

⁴⁰ Letter signed by Benedict M. English, Assistant Legal Advisor, Reference Le/C: 102.3/4-1847, dated May 8, 1947.

Department of Justice

The Attorney General on January 31, 1947, issued his departmental order No. 3732, Supplement 23, to the heads of all bureaus and divisions of the Department of Justice and to all United States Attorneys and United States Marshals, giving complete instructions to all concerned as to the procedure in handling claims under the Federal Tort Claims Act.⁴¹ This order requires first that any officer or employee involved in an incident which results in damage to or loss of property, or personal injury, or death should make an immediate detailed report including names and addresses of witnesses. The case is then thoroughly investigated at the earliest possible moment; statements are obtained from witnesses and photographs are made of the scene. In cases of serious personal injury or death, notice must be given to the Federal Bureau of Investigation which makes a thorough investigation of the matter. This record is retained in the bureau or division concerned for use if a formal claim is filed within the time limit permitted by the Act.

If a suit is filed, the Claims Division of the Department of Justice will call upon the bureau or division concerned for a full report. If a claim under \$1,000 is filed under Part 2 of the Act the bureau or division concerned makes a recommendation for payment or nonpayment and sends all papers to the Claims Division which will review the case for determination of legal liability. It prepares a memorandum indicating its opinion as to legal liability and a recommendation as to the amount, if any, which should be paid, and sends the claim and memorandum to the Administrative Assistant to the Attorney General. He must make the necessary finding and process the claim for payment. However, he may not set a different amount than that recommended to him except with the approval of the Assistant to the Attorney General.

If the claim is disallowed, the bureau or division is notified and the claim is returned so that the claimant can be notified. If it is determined that a settlement should be made, like notice is sent through the bureau or division to the claimant. The Administrative Assistant to the Attorney General is designated by the order as the departmental representative to certify claims for payment from appropriations as they are available.

Post Office Department

The Postmaster General acted promptly to provide administrative procedure for his department under the Federal Tort Claims Act. The regulations appear in the Federal Register for September

⁴¹ Letter signed by S. A. Andretta, Administrative Assistant to the Attorney General, Reference A3-5, 157-012, dated May 12, 1947.

11, 1946.⁴² Several hundred of such claims have been filed since the Act became effective, have been processed, and many have already been paid.⁴³

Department of Agriculture

The procedure followed in handling tort claims in the United States Department of Agriculture is based on Memorandum No. 898 of the Office of the Secretary, dated April 12, 1941, entitled "Small Claims Procedure under the Acts of December 28, 1922, and June 28, 1937."⁴⁴ Supplement 1 to this memorandum, dated August 30, 1946, outlines the differences between the coverage of the old acts and the new. This supplement called attention to the fact that the Federal Tort Claims Act did not repeal any acts concerning claims not arising out of negligence and enumerated two acts under which the Department operated in this category.⁴⁵ The Secretary has directed that claims continue to be handled under the procedure formerly in effect under the Underhill Act. Claim files assembled by bureaus are sent direct to the office of the Solicitor which is responsible for advising the Secretary of the appropriate action to be taken and for notifying the claimant and the bureau in which the case arose of the Secretary's determination.

The Associate Solicitor of the Department of Agriculture reports that most of the claims under the Act arise as the result of a motor vehicle collision. All drivers of Department vehicles fill out a report at the scene of the accident. When such a report is made to the driver's superior, he appoints an investigating officer who, if possible, proceeds to the scene of the accident and makes an investigation. The investigating officer's report and the driver's report are then kept in the field office until a claim is filed. When a claim is filed or it is determined that the accident was caused by the negligence of the driver of a private vehicle, the file is forwarded to the Department. The Solicitor then prepares a summary and a recommendation for the Secretary. After his action the claimant is notified of the action taken. This is the same procedure which was used under the Underhill Act, and it has proven adequate for the handling of claims under the Tort Claims Act.⁴⁶

⁴² Page 177 A — 150 ff.

⁴³ Letter signed by Frank J. Delany, Solicitor, dated April 23, 1947.

⁴⁴ 42 STAT. 1066 (1922); 50 STAT. 321 (1937).

⁴⁵ 46 STAT. 387 (1930), 16 U.S.C. §574 (1946); 46 STAT. 1052 (1931), 16 U.S.C. §502 (1946).

⁴⁶ Letter signed by E. F. Mynatt, Associate Solicitor, dated April 30, 1947. In a letter dated July 12, 1948, Ralph F. Koebel, Acting Associate Solicitor of the Department of Agriculture reports that "established procedure and facilities are still proving adequate for the handling of these claims." Up to June 30, 1948, the Department had allowed 151 claims for a total amount of \$21,907.57.

Department of the Interior

Prior to the passage of the Federal Tort Claims Act, the Office of the Solicitor was charged with the duty of preparing decisions on claims for the consideration of the Secretary under the Underhill Small Claims Act, as well as under recurring provisions in appropriation acts.⁴⁷ On August 28, 1946, the Secretary delegated to the Solicitor all of his functions under the Federal Tort Claims Act.⁴⁸ Subsequently, on suggestion of the Solicitor, the Attorney General was asked to rule on whether or not such delegation, under the Act, could be made to a number of persons rather than to one. In an opinion dated January 17, 1947, the Attorney General held that the delegation to a number of subordinates was legally permissible.⁴⁹ The Secretary thereupon authorized certain field counsel of the department to settle claims not in excess of \$500, subject to appeal to the Solicitor.⁵⁰ The determination of claims over \$500 was reserved to the Solicitor. Instructions to field counsel were issued by the Solicitor on February 4 and May 21, 1947. These latter instructions, which are still in effect, call for the submission of a copy of each voucher settled and paid in the field on Standard Form 1145 and 1145a to the Office of the Solicitor for use in compiling the annual report to Congress under the Tort Claims Act.⁵¹

The procedure for making field investigations was established by memorandum from the Office of the Solicitor October 25, 1946. The responsibility for making investigations lies with the administrative officer in charge of the office whose employee is involved. Investigations are to be supervised and reports reviewed by legal counsel.

Navy Department

All tort claims for and against the Navy are processed by the General Law Division, Office of the Judge Advocate General of the Navy. This unit was charged with the making of determinations on analogous claims under the Underhill Act and under Public Law 277 of the 79th Congress. Hence there was little need for any change in organization or procedure under the Federal Tort Claims Act. The investigation and development of cases are carried on

⁴⁷ For an example see the Interior Department Appropriation Act, 1946; 59 STAT. 318, 339 (1945).

⁴⁸ Order No. 2245, signed by J. A. Krug as Secretary of the Interior.

⁴⁹ 40 OPS. ATT'Y GEN. (U.S.) No. 118 (1947).

⁵⁰ 43 C.F.R. 421, *as amended*, 12 F.R. 924 (1947).

⁵¹ Letter signed by Martin G. White, Solicitor, under date of June 16, 1947. Mr. White reports further on July 14, 1948, that "the Procedure which we have worked out has functioned rather satisfactorily." He indicated his intention to recommend to the Secretary of the Interior that the jurisdiction of the field counsel be increased to \$1,000.

under the supervision and review of the Commandants of the Naval Districts. Claims are forwarded to the Office of the Judge Advocate General where they are adjudicated and those found proper are vouchered for payment by the Bureau of Supplies and Accounts.⁵²

Department of the Army

The basic administrative procedure is provided in Army Regulations No. 25-70, January 1, 1947. It is pointed out therein that:

Military personnel and civilian employees whose acts or omissions may give rise to claims within the scope of the act and these regulations, include members of the military forces of the United States and persons acting on behalf of the War Department (now Department of the Army) in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.⁵³

Activities are "ordinarily within the scope of employment if the performance thereof is directed, or if of a kind the performance of which is expressly or impliedly authorized, or if the purpose is, at least in part, to serve the Government. . . . A slight deviation as to time or place will ordinarily not constitute a departure from scope of employment; such a deviation, to have legal effect, must be a material deviation."⁵⁴

The Regulations provide that, since the Government is liable under the act only to the same extent as a private employer under the law of the place where the act or omission occurred, questions of proximate cause, family purpose doctrine, last clear chance, joint or concurrent tortfeasors, negligence *per se*, comparative negligence, imputed negligence, and contributory negligence will be determined in strict accordance with the common and statute law of the local jurisdiction.⁵⁵ Investigations are made under the provisions of A.R. 25-20, including accidents for which no claim has been filed. When a claim is filed, the report of investigation is attached and forwarded with a memorandum opinion recommending approval or disapproval to the Office of the Judge Advocate General.⁵⁶ This memorandum opinion must contain "citations of the pertinent statutory or other local law, including analogous cases of the law of the place where the act or omission occurred, with respect to liability and the amount of the recommended award."⁵⁷ Where access to law libraries for the purpose of preparing such a memoran-

⁵² Letter signed by Chester Ward, Capt. U.S.N., Chief General Law Division, Office of the J.A.G. of the Navy, dated July 7, 1947.

⁵³ A.R. 25-70, §4(a) (1947).

⁵⁴ A.R. 25-70, §4(b) (1947); cf. A.R. 25-25, §4(b) (1947).

⁵⁵ A.R. 25-70, §§4(c), 5 (1947).

⁵⁶ A.R. 25-70, §§6(a), 6(b), 6(c), 6(d), 6(e) (1947).

⁵⁷ A.R. 25-70, §6(f) (1947).

dum is difficult or impossible, the next higher headquarters is required to prepare it.

Settlement of claims is made solely with the insured rather than with the insurer, or with both, but never with the subrogee alone.⁵⁸ No inquiry is to be made into the relative interests of insurer and insured. An insurance company may, however, file a claim on behalf of the insured, if authorized by contract or power of attorney. Subrogation arising out of other situations is dealt with in the same manner. The substantive rights of the subrogee are determined according to the law of the place where the tort occurred.⁵⁹

An acceptance and general release by the claimant is a condition precedent to payment of claims against the War Department, unless the claim is for property damage and is approved in the full amount claimed.⁶⁰ Upon disapproval of a claim in whole or in part the claimant may appeal to the Secretary provided he does so within thirty days after receipt of notice of the disapproval. However, the action of the approving authority is final and conclusive unless an appeal is taken.⁶¹ The provisions of A.R. 25-70 expressly exclude consideration of claims under Article of War 105,⁶² claims payable under the provisions of A.R. 25-25,⁶³ foreign claims payable under the provisions of A.R. 25-90,⁶⁴ personnel claims payable under the provisions of A.R. 25-100,⁶⁵ and claims for personal injury or death of military personnel or civilian employees incident to their service.⁶⁶

Department of Labor

The Secretary of Labor, on October 18, 1946, issued his General Order No. 21 authorizing the Solicitor of the Department "to exercise and perform any and all powers, authority and functions conferred upon the Secretary of Labor by the Federal Tort Claims Act." The Legislation and Bureau Service Section of the Legislative and Trial Examining Branch of the Solicitor's Office was designated as the section to handle such claims.⁶⁷ Pursuant to such authority the Solicitor has issued a regulation setting forth the procedure for

⁵⁸ A.R. 25-70, §7(a) (1947).

⁵⁹ A.R. 25-70, §§7(b), 7(c) (1947).

⁶⁰ A.R. 25-70, §9(b) (1947).

⁶¹ A.R. 25-70, §14 (1947).

⁶² Redress of Injuries to Property of Private Persons.

⁶³ Foreign Claims Act 55 STAT. 880 (1942), 31 U.S.C. §224 d (1946), *as amended*, 57 STAT. 66 (1943).

⁶⁴ *Ibid.*

⁶⁵ Military Personnel Claims Act of 1945, 59 STAT. 225 (3) (1945).

⁶⁶ Such claims would be cognizable under the Federal Employees Compensation Act, 39 STAT. 743 (1916), 5 U.S.C. §§751-777, 779-791, 793 (1946).

⁶⁷ 11 F.R. 14514 §§2.001(a) (1), 2.002(b) (4) (1946).

presenting claims under the Act.⁶⁸ They may be presented in writing to the Solicitor or any regional office of the Department by the claimant or his attorney. If presented by an attorney, an authenticated power of attorney also is required. The claim must include a sworn, detailed statement of the facts and such affidavits and documents as are deemed appropriate by the claimant for a proper determination of the claim. If, after investigation, the Solicitor determines that compensation is due the claimant, the amount so found, together with such reasonable attorney's fees as may be allowed, will be paid by the Secretary. Only one claim had been filed with the Department under the Act up to June 30, 1948.⁶⁹

Independent Establishments

The Federal Security Administrator, on January 15, 1947, set up a still different type of administrative organization for handling claims under the Federal Tort Claims Act. By F.S.A. Order No. 101 he set up in his office the Federal Security Agency Claims Board composed of three members, to be appointed by him, from nominations by the General Counsel. This Board serves as the designee of the Administrator to perform the duties and exercise the authority vested in him by the Federal Tort Claims Act. The Board is authorized to handle claims or suits arising under the Act. Notices required by the Act to be served on a government agency may be served on the Board. Annually or oftener the Board must report to the Administrator on its activities. Such report must include all data required for the report to Congress under the Act and may also include any accident trends, practices, procedures, or other circumstances, including the operation of safety programs as evidenced by situations and claims which come to the Board's attention which may indicate the need for administrative action.⁷⁰

In the Bureau of the Budget, the Administrative Officer is responsible for securing all evidence on behalf of the Government and claimant and arriving at a finding or recommendation. If an award is recommended, Standard Form 1145 is prepared and sent to the claimant for acceptance. This form, together with a complete report, is forwarded to the Director who approves the award or disallows the claim. The voucher, if approved, is then certified and sent to the Treasury Department for payment. One claim was filed in 1947.⁷¹

⁶⁸ 11 F.R. 14513 §10.4 (1946).

⁶⁹ Letters signed by William S. Tyson, Solicitor of Labor, dated May 20, 1947, and July 13, 1948.

⁷⁰ Letter signed by Jack B. Tate, General Counsel, dated May 13, 1947.

⁷¹ Letter signed by Edward Kemp, General Counsel, dated May 15, 1947.

The Securities and Exchange Commission reports that when an employee allegedly commits a tort in the course of his employment a committee of three staff members of the Commission makes an investigation, receives any claims, hires an independent appraiser to assess the damage, if necessary, and reports its findings and recommendations to the Solicitor. This committee consists of the Budget and Fiscal Officer, an attorney in the Solicitor's Office, and the tortfeasor's division chief or his designee. The Solicitor reports to the Commission with his recommendations as to disposition and the Commission takes action. The claimant is then notified and vouchers for the amount agreed upon in settlement are presented to him for signature. The procedure thus outlined has proven adequate in handling the claims so far received under the Act.⁷² The only question which seems pertinent about this procedure is whether or not it is desirable to use such important officers of the agency for investigative work.

The National Housing Agency consists of four component parts: the Federal Home Loan Bank Administration, the Federal Housing Administration, the Office of the Administrator, and the Federal Public Housing Authority. Except in the last of these no need has been felt for special organization or procedure to process tort claims. The Federal Public Housing Authority promulgated its rules in the Federal Register for May 14, 1947.⁷³ These rules require the filing of claims with the housing manager or project engineer of the project on which the damage, injury, or death occurs or with the appropriate regional office, or directly with the central office in Washington. Each regional office and the central office have a committee of three persons responsible for investigating and recommending disposition of claims of this type. In filing claims with this agency for losses which are covered in whole or in part by insurance, the name of the insurance company must be given. If the F.P.H.A. determines that the claimant is entitled to an award a Standard Form 1145 is prepared and submitted to him for signature.

The Civil Aeronautics Board makes use of the same personnel and procedures for the investigation of tort claims as it had previously used for the handling of accidents. When an accident involving C.A.B. personnel or vehicles occurs, a written report must be made and sent to the Regional Chief Investigator in the region where the accident occurred. An investigation is made and submitted to the Chief of the Accident Investigation through the Director of the Safety Bureau in Washington. When a claim is received for processing, the file is sent to the office of the general

⁷² Letter signed by Roger B. Foster, Solicitor, dated May 19, 1947.

⁷³ 12 F.R. 3149 (1947), Letter of June 2, 1947, signed by B. T. Fitzpatrick, General Counsel.

counsel for his legal opinion. If he finds the claim to be a proper one under the law, the file with his opinion is returned to the Accident Investigation Division for vouchering of payment. This is made through the Audit Section, General Accounts Service.⁷⁴

In the Veterans Administration also, existing facilities and personnel have been utilized in the handling of claims under the Act. New regulations were promulgated October 14, 1946.⁷⁵ Occurrences resulting in personal injury, death, or damage to or loss of private property due apparently or allegedly to the negligence of Veterans Administration employees are reported promptly to the chief attorney of the appropriate regional office by the respective managers of the field stations wherein they occur. In case of motor vehicle accidents the appropriate standard forms (91 and 93) are executed and submitted. The regional chief attorney reviews the file, orders additional investigation where deemed necessary, and upon receipt of all available evidence, transmits the case to the chief attorney of the appropriate branch office, accompanied by a resumé of the applicable local laws, regulations, and court decisions.

The chief attorney of the branch office, after a review of all the evidence and the applicable local laws, regulations, and decisions, submits to the central office a report, including a summary of the evidence, his findings of the essential ultimate (not evidentiary) facts and his conclusions of law as to the liability or non-liability of the United States, and if liable, the amount of damages. While the usual rules of evidence applicable in judicial proceedings need not be strictly followed, every effort is made to base findings only on dependable evidence. Before submitting the report to the central office a signed statement is obtained from the claimant that all evidence known to be available has been presented.⁷⁶

Final administrative determination in respect to any claim not exceeding \$1,000 is made by the Solicitor. If the claim is disallowed, the Solicitor so informs the claimant and advises him of his right under the Act to file suit. If suit is brought the investigation report is made available to the Department of Justice. Local chief attorneys are required to cooperate with the district attorney in cases brought in district court. Similar cooperation is given by the Solicitor as to actions in the Court of Claims. In any case administratively settled, the Solicitor will approve the attorney fee, if any, to be paid out of the award. The Tort Claims Act is declared to supersede the Act of December 28, 1922, under which payment formerly

⁷⁴ Letter signed by Charles B. Holles, Assistant to the General Counsel, dated May 23, 1947.

⁷⁵ Veterans Administration, *Regulations and Procedure*, §§ 5600-5610. Letter signed by E. E. Odom, Solicitor, dated May 27, 1947.

⁷⁶ Veterans Administration, *Regulations and Procedure*, §5605.

was made for damage to or loss of personal property of hospitalized patients caused by negligence of any officer or employee of the Government. On the other hand, it did not change the payments under the World War Veterans Act of 1924⁷⁷ for loss of personal effects of hospitalized beneficiaries by fire.⁷⁸

SUMMARY

The adoption of the Federal Tort Claims Act has lifted a heavy burden from the shoulders of Congress, without imposing a corresponding burden on the administrative agencies of the Government. While most of them have found it necessary or desirable to adopt administrative rules and regulations to implement the new law, they have found the personnel and general procedures established under the Underhill Small Claims Act adequate for their new duties.

The promulgation of a full set of Standard Forms by the Bureau of the Budget and the General Accounting Office should tend toward uniformity in the handling of at least certain types of claims — particularly those arising out of motor vehicle accidents, which constitute the great majority of all claims filed. There is a tendency in certain departments to throw upon the field agencies the responsibility for making an exhaustive analysis of local law in order to permit the central office, without further investigation, to pass finally upon the claim. There is also some evidence of a tendency to permit officers and employees to inform injured persons of their rights to make a claim under the law and to tell them of their right to sue if the claim is denied. This certainly is a reversal of the usual procedure since it is ordinarily a serious breach of discipline to promote the filing of a claim or action against the Government.

Some difficulty may arise from the following of different policies by different agencies as to particular types of claims. For example, the Department of the Interior in fiscal year 1947 paid a considerable number of claims by subrogee insurance companies. The Department of Agriculture and the Department of the Army refused to do so. It is significant that the question as to whether such claims may be paid under the Act has been decided differently by different district courts and circuit courts of appeals. Accordingly several departments are holding such claims in abeyance until the Supreme Court passes upon the question.⁷⁹ There also seems to be some question whether injuries to federal employees formerly cognizable under the Federal Employees Compensation

⁷⁷ 44 STAT. 792 (1926), 38 U.S.C. §458 (1946).

⁷⁸ Veterans Administration, *Regulations and Procedure*, §§5609, 5610.

⁷⁹ See Comment, 9 OHIO ST. L.J. 471 (1948).

Act now may be compensated for under the Tort Claims Act. The Department of the Army expressly excludes such claims from consideration.

But the greatest potential source of difficulty in the administrative handling of claims under the new law would seem to be the requirement that the liability of the Government be determined according to local law. There is enough diversity in the local rules as to actionable negligence to make for considerable variety in the types and amounts of awards upon similar sets of facts. There will be a feeling that claimants have not been justly dealt with. The courts already have proclaimed a federal common law applying to federal contracts. Why should we not also have a federal common law relating to federal torts? There would seem to be no impediment to making the liability of the Government depend upon the acceptance by the claimant of such a policy, since the right of the claimant is purely statutory and can be granted under such conditions as Congress may see fit to provide.