



PROGRAM MATERIALS

Program #35196

October 20, 2025

So You Need to Sue the Federal Government - A How To Guide

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So You Need to Sue the Federal Government: A How To Guide



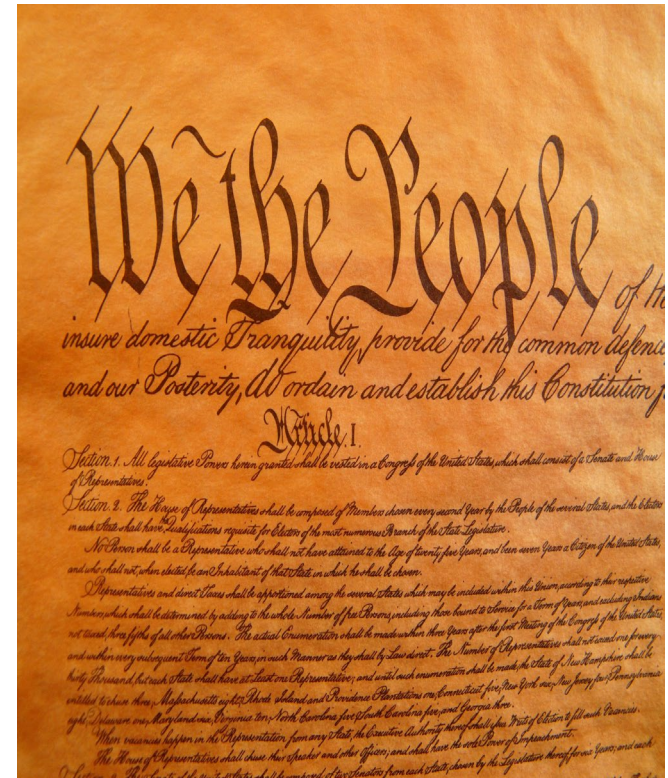
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Agenda

- Federal vs. State/Local Government Claims
- Administrative Procedures Act Claims
- Civil Rights / Civil Liberties Act Claims
- Government Contract Claims
- Tort Claims
- Attorney's Fees and Costs
- Questions

Federal vs. State/Local Governments

- Eleventh Amendment
 - Sovereign Immunity
 - Official Immunity
 - Qualified Immunity
- State vs. Federal Constitutions



Administrative Procedures Act Claims, 5 U.S.C. §§ 701-706

Injunctive Relief and Declaratory Relief

- Preliminary Injunctions vs. Administrative Stays
 - Irreparable Harm
 - *Per se?* - APA does not permit monetary recovery
 - Quantity of Harm Analysis
 - Balance of Harm and Public Interest
- Merge
- *Trump v. CASA*, 606 U.S. ____ (2025)
- FRCP Rule 65 Trial on the Merits
- Remand vs. Vacatur



Administrative Procedures Act Claims, 5 U.S.C. §§ 701-706

Claims to Consider

- Arbitrary and Capricious / Lack of Substantial Justification
 - *Loper Bright Enterprises*
 - Majority: (Generally) no deference under APA
 - Concurrence: Deference is unconstitutional
 - *Auer* deference untouched
- Regulatory Flexibility Act, 5 U.S.C. 604
- Failure to Conduct Notice and Comment
- Non-Delegation/Major Questions Doctrine
 - *West Virginia v. EPA*, 142 S.Ct. 2587 (2022)
- Standing
 - Final Agency Action
 - Moot vs. Capable of Repetition Yet Evading Review
 - *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, 144 S. Ct. 2440 (2024)



Civil Rights / Civil Liberties

Mandatory or Discretionary Act?

- Many acts are “ministerial” or “non-discretionary”
 - Writs of Mandamus / Writs of Prohibition
 - All Writs Act, 28 U.S.C. § 1651, and Federal Rules of Civil Procedure remove need for separate writs on federal level
- If discretionary: injunctive or declaratory relief



Civil Rights / Civil Liberties

42 U.S.C. 1983

- Injunctive Relief: Available for ongoing harms
- Monetary Damages
 - State officials, not states themselves
 - Compensatory
 - Injuries actually suffered
 - Out-of-pocket losses
 - Medical Bills
 - Impairment of Reputation
 - Lost/Diminished Earnings
 - Financial, psychological, or physical injuries
 - Nominal (\$1-2)
 - Punitive: Only individuals, not government



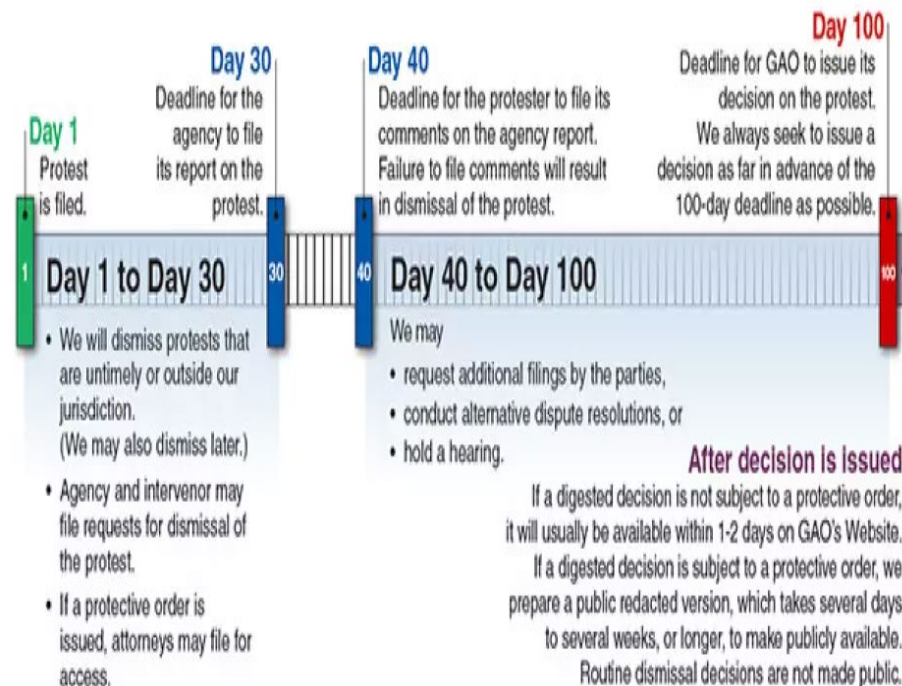


Federal Contract Claims



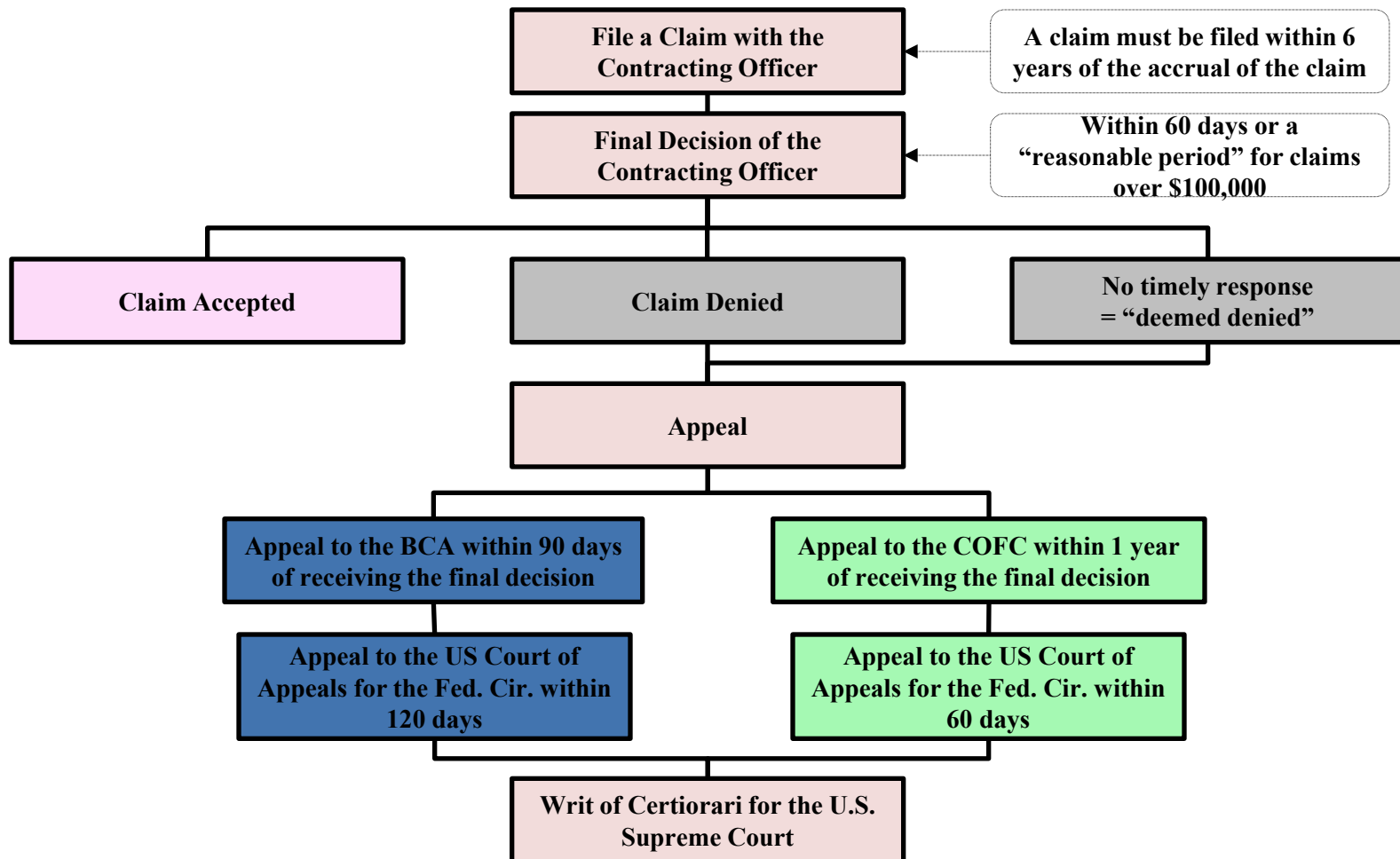
Procurement Problems

- Pre-Award
 - Solicitation Protest
 - Post-Award Debrief
- Bid Protest Forums
 - Agency (FAR 33.103)
 - Government Accountability Office (GAO) (FAR 33.104)
 - Court of Federal Claims (CoFC) (FAR 33.105)
 - Victory doesn't usually mean you get the contract, just that winner doesn't
 - Contract performance paused during protest





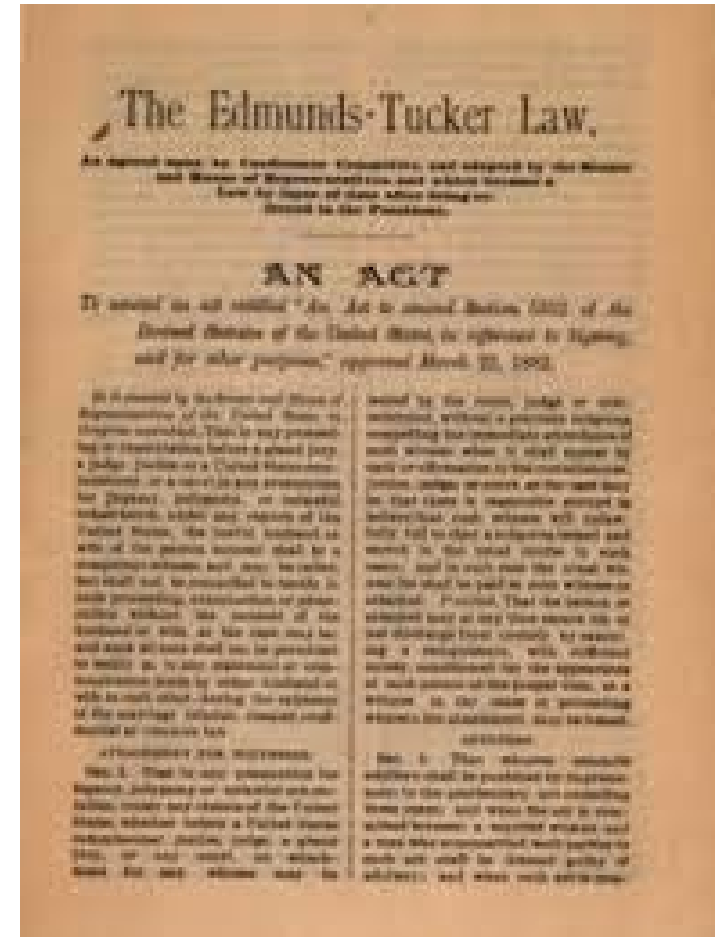
CDA Process Summary





Tucker Act

- 28 USC § 1491 (1887)
- Applies to claims *for money damages* against the government arising under the constitution, statutes, agency regulations or contracts, *other than tort claims*.
- **6-year statute of limitations!**



The Court of Federal Claims

- Created in 1855 (“Court of Claims”) as venue to assert contract claims against government.
- Tucker Act (1887) expanded the court’s jurisdiction to most money claims against government
 - Including claims under Constitution
 - But NOT torts
- Court reformulated in 1982 and name changed to Claims Court; then changed to Court of Federal Claims in 1992.



Contract Disputes Act

- Contract Disputes Act of 1978, 41 U.S.C. § 7101 et seq.
- Incorporated into most Federal Government Contracts
- Applies to claims under contracts for *goods or services* (procurement).

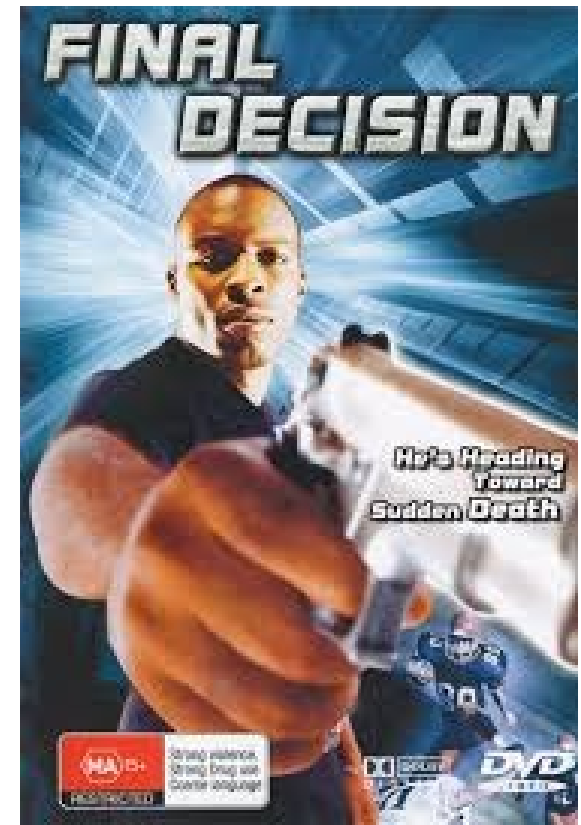
AWARD / CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING DO-A7		PAGE 1 of 16	
2. CONTRACT (PROC. INST. IDENT.) NO. FA8550-06-C-7626		3. EFFECTIVE DATE		4. REQUISITION / PURCHASE REQUEST / PROJECT NO. See Section G			
5. ISSUED BY PKDA USAF/AFMC DET 1 AF RESEARCH LABORATORY 2310 EIGHTH STREET, BUILDING 167 WRIGHT-PATTERSON AFB OH 45433-7801 SUSAN M. PALMER 937-255-2206 X084 susan.palmer@wpafb.af.mil		CODE FA8550		6. ADMINISTERED BY (IF OTHER THAN ITEM 5) DCMA SANTA ANA 34 CIVIC CENTER PLAZA ROOM 5001 SANTA ANA CA 92701-4056 DCMASANTAANA@DCMA.MIL SCD: C PAS: (NONE)		CODE S0513A	
7. NAME AND ADDRESS OF CONTRACTOR (NO., STREET, CITY, COUNTY, STATE AND ZIP CODE) IRVINE SENSORS CORPORATION 3001 REDHILL AVE BLDG 4-108 COSTA MESA CA 92626-4526 (714) 444-8760				8. DELIVERY ☐ FOB Origin ☒ Other (see below)			
				9. DISCOUNT FOR PROMPT PAYMENT N			
10. SUBMIT INVOICES (4 COPIES UNLESS OTHERWISE SPECIFIED) TO THE ADDRESS SHOWN IN				ITEM See Block 12			
CAGE CODE 3CWX4		FACILITY CODE		12. PAYMENT WILL BE MADE BY DFAS COLUMBUS CENTER DFAS-COWEST ENTITLEMENT OPS P.O. BOX 182381 COLUMBUS OH 43218-2381		CODE HQ0339	
11. SHIP TO / MARK FOR See Section F		CODE		EFT: T 14. ACCOUNTING AND APPROPRIATION DATA See Section G			
13. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION See Section B				15A. ITEM NO See Section B			
15B. SUPPLIES/SERVICES				15C. QUANTITY		15D. UNIT	
				15E. UNIT PRICE		15F. AMOUNT	
				15G. TOTAL AMOUNT OF CONTRACT		\$5,618,864.00	
16. Table of Contents							
SEC	DESCRIPTION	PAGE(S)	SEC	DESCRIPTION	PAGE(S)		
PART I - THE SCHEDULE			PART II - CONTRACT CLAUSES				
1	A SOLICITATION/CONTRACT FORM	1	1	CONTRACT CLAUSES	12		
2	B SUPPLIES OR SERVICES AND PRICES/COSTS	2	PART III - LIST OF DOCUMENTS, EXHIBITS & ATTACHMENTS				
3	C DESCRIPTION/SPEC WORK STATEMENT	4	3	J LIST OF ATTACHMENTS	16		
4	D PACKAGING AND MARKING	5	PART IV - REPRESENTATIONS AND INSTRUCTIONS				
5	E INSPECTION AND ACCEPTANCE	6	K	REPRESENTATIONS, CERTIFICATIONS OTHER STATEMENTS OF OFFICERS			
6	F DELIVERIES OR PERFORMANCE	7	L	INSTRS., CONDS. AND NOTICES TO EVALUATION FACTORS FOR AWARD			
7	G CONTRACT ADMINISTRATION DATA	9	M	EVALUATION FACTORS FOR AWARD			
8	H SPECIAL CONTRACT REQUIREMENTS	11	CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE				
17. ☒ Contractor's Negotiated Agreement (Contractor is required to sign this document and return 1 copies to issuing office). Contractor agrees to furnish and deliver all items or perform all services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. ☐ Award (Contractor is not required to sign this document). Your offer on solicitation number _____ including the additions or changes made by you which additions or changes set forth in full above, is hereby accepted as to items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (TYPE OR PRINT) Diane B. Rubner, Manager of Contracts				20A. NAME OF CONTRACTING OFFICER SUSAN M. PALMER			
19B. Name of Contractor				19C. Date Signed		20B. United States of America	
				5 May 2006		20C. Date Signed	
by <u>/s/ Diane B. Rubner</u> (signature of person authorized to sign)						by <u>/s/ S.M. Palmer</u> (signature of Contracting Officer)	
						8 May 2006	

NSN 7540-01-152-8069
Previous Editions unusable
ConWrite Version 6.5.1

STANDARD FORM 26 (Rev 4-85)
Prescribed by GSA FAR (48 CFR) 53.214(a)
Created 09 May 2006 8:42 AM

Contract Disputes Act: “Claim”

- Incorporated into contracts through Disputes Clause, FAR 52.233-1.
 - Defines “claim” as “a **written** demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a **sum certain**”
 - Contractor must also expressly request a **final decision**.





CDA: Claim Certification

For claims over \$100,000, contractor must certify:

- The claim is made in **good faith**;
- The **supporting data are accurate and complete** to the best of the contractor's knowledge and belief;
- The **amount requested accurately reflects** the contract adjustment for which the contractor believes the Federal Government is liable; and
- That the **certifier is authorized to certify the claim** on behalf of the contractor.



CDA: Claim Certification

Penalties for fraudulent claims (41 USC § 7103)

- *Daewoo* case: Court of Federal Claims (2006)
- “If a contractor is unable to support any part of the claim [due to] misrepresentation of fact or fraud . . . the contractor is liable to the Federal Government for an amount equal to such unsupported part of the claim plus all of the Federal Government’s costs attributable to reviewing the unsupported part of the claim.”



CDA: CO Decision

- Claims of \$100,000 or less: CO must issue decision within sixty days.
- Claims over \$100,000: CO must either issue a decision within sixty days or inform the contractor of when the decision will be issued.
- **“Deemed denied”**: If CO fails to issue decision within reasonable time, contractor may commence an appeal or suit.





CDA: Statute of Limitations

- Claims by a contractor or the Government must be submitted within **6 years** of the accrual of a claim.
FAR 33.206.
 - “Accrual of a claim means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known.” FAR 33.201.
 - Monetary damages need not have been incurred.
- Time period for filing may be decreased by contract.



CDA: Appeals Process

Boards of	
Contract Appeals	vs. COFC
90 days	12 months
Less formal	More formal
No Jury	No Jury
Agency attorneys	DOJ attorneys
Appeal to Fed. Cir. (120 days)	Appeal to Fed. Cir. (60 days)

Conversion & Common Defenses

- Conversion from Cause to Convenience (FAR 12.403)
- Excusable Delay (FAR 52.249-14)
- Waiver
- Notice & Cure / Order to Show Cause (FAR 49.607)
 - Reasonable Opportunity to Cure



Tort Claims: Federal Torts Claims Act

- Limited waiver of Sovereign Immunity
- Replaced Private Bill System
- Not a new cause of action, relies on state substantive law
- Usually a bench trial
- Claims must be brought in federal district court

Private Law 86-407
86th Congress, S. 2113
July 12, 1960

AN ACT

For the relief of a certain person.

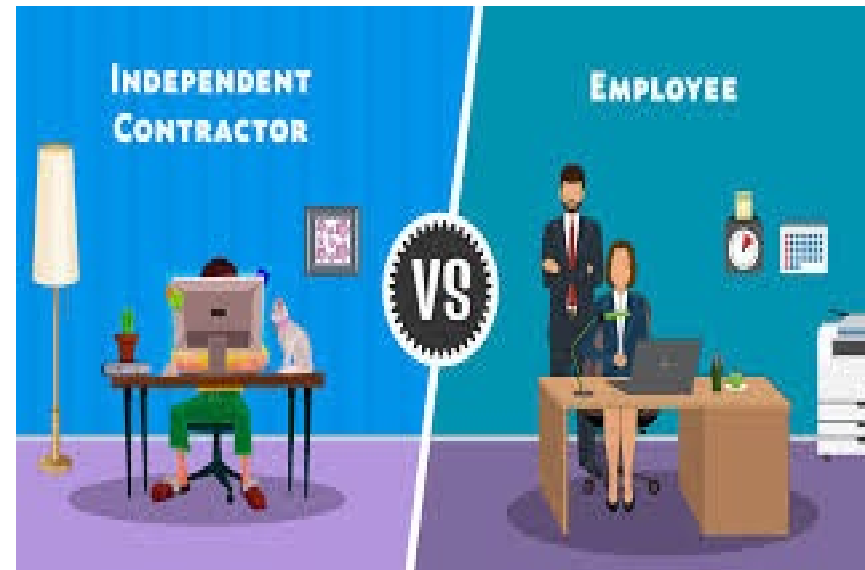
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (1) the Postmaster General is authorized and directed to pay, out of any money available for the payment of salaries of employees in the postal field service, to George K. Caldwell, of West Coldwater Road, Flushing,

Michigan, a sum equal to the amount he would have received as compensation had he continued in his employment at the same rate of compensation, less any amounts received by him through other employment, as a career substitute carrier in the postal field service from April 2, 1957, the date of his suspension from such employment pursuant to order of the Seventh U.S. Civil Service Region, to November 13, 1958, the date on which he was restored to such employment as a result of action by the Civil Service Commission reversing such order, and (2) the said George K. Caldwell shall be considered for all purposes, except the accumulation of leave, to have performed service during such period.

Approved July 12, 1960.

Tort Claims: Federal Torts Claims Act *Elements*

- Against the United States
- For Money Damages
- For injury to or loss of property, or personal injury or death;
- Caused by a federal employee's negligent or wrongful act or omission;
 - Independent contractors specifically carved out
- While acting within the scope of his or her office or employment;
- Under circumstances where the United States, if a private person, would be liable to the plaintiff in accordance with the law of the place where the act or omission occurred.



Tort Claims: Federal Torts Claims Act

Exceptions

- **Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation . . . or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty;**
- Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter
- certain claims arising from the actions of law enforcement officers administering customs and excise laws;
- Certain admiralty claims against the United States for which federal law provides an alternative remedy;
- claims arising out of an act or omission of any employee of the Government in administering certain provisions of the Trading with the Enemy Act of 1917;
- Any claim for damages caused by the imposition or establishment of a quarantine by the United States;
- **Certain claims predicated upon intentional torts committed by federal employees;**
- Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system;
- Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;
- Any claim arising in a foreign country;
- Any claim arising from the activities of the Tennessee Valley Authority;
- Any claim arising from the activities of the Panama Canal Company; or
- Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives

Tort Claims: Federal Torts Claims Act

Intentional Tort Exception

- assault;
- battery;
- false imprisonment;
- false arrest;
- malicious prosecution;
- abuse of process;
- libel;
- slander;
- misrepresentation;
- deceit; or
- interference with contract rights



Tort Claims: Federal Torts Claims Act

Presentment

- 2-year Statute of Limitation
- Standard Form 95
 - Sum certain demand
 - Detail fact and circumstances
 - Claimant or Agent Must Sign
- Final Agency Denial

CLAIM FOR DAMAGE, INJURY, OR DEATH				INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheets if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008 EXPIRES 4-30-88	
1. Submit To Appropriate Federal Agency: Commanding Officer Naval Legal Service Office Naval Station San Diego, CA 92136-5138				2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) Josephine Doe 555 Sunset Drive Westho, CA 92345			
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN	4. DATE OF BIRTH Nov. 1, 1958	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT April 17, 1994	7. TIME (A.M. OR P.M.) 7-15 A.M.			
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) The claimant, accompanied by her husband, was driving her father's (Moe B. Banks) 1989 Ford Sedan north on Thruway Road, San Diego, California. She was stopped for a red traffic light at the intersection of Thruway Road and Aside Street when her vehicle was struck from the rear by a 1988 Navy pickup truck, Vehicle #5387765, driven by SN Ready M. Rickless, USN, from the Naval Station, San Diego, California.							
9. PROPERTY DAMAGE NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) Moe B. Banks, 553 Sunset Drive, Westho, California 92345 BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.) The rear bumper trunk and fenders of the 1989 Ford were damaged extensively. Refer to the attached police report and to the enclosed estimates of repair.							
10. PERSONAL INJURY/WRONGFUL DEATH STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. The claimant suffered severe neck pain which Dr. T.C. Bandaid (302 Business Street, Westho, California) diagnosed as whiplash injury. See Dr. Bandaid's statement and bills, copies of which are attached.							
11. WITNESSES NAME ADDRESS (Number, street, city, State, and Zip Code) Richard Doe (same as claimant)							
12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars): 12a. PROPERTY DAMAGE 12b. PERSONAL INJURY 12c. WRONGFUL DEATH 12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$738.70 \$800.00 N/A \$1,538.70							
13. CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM							
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.) Josephine Doe				13b. Phone number of signatory 619-556-4274		14. DATE OF CLAIM April 17, 1994	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)				CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)			
83-107 Previous editions not usable		NSN 7540-00-624-4046		STANDARD FORM 95 (Rev. 7-83) PRESCRIBED BY DEPT. OF JUSTICE 28 CFR 14.2			

Attorney's Fees and Costs

- Most states don't have attorney's fees to prevailing parties against the government
- Two main federal statutes:
 - Equal Access to Justice Act, 28.U.S.C. 2412
 - 42 U.S.C. 1988



Attorney's Fees and Costs

EAJA

- Prevailing Party
- Application Timely Filed
 - 30 days for final judgment
- Substantial Justification
 - Effectively rational basis test
- Special circumstances
 - Government's burden
- Organizational Ineligibility
 - Net worth >\$7M
 - >500 employees
- Set statute rate of \$125 per hour
 - COLA



Attorney's Fees and Costs

EAJA

- Prevailing Party
- Application Timely Filed
 - 30 days for final judgment
- Substantial Justification
 - Effectively rational basis test
- Special circumstances
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 - COLA



Attorney's Fees and Costs

42 U.S.C. 1988

- “Reasonable” attorneys fees
- Even with nominal damages
 - The difference between the amounts sought and recovered
 - The significance of the issue on which the plaintiff prevailed relative to the issues litigated; and
 - Whether the case accomplished some public goal



Questions?



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