

CHAPTER 4-10

TAG FEDERAL TORT CLAIMS ACT

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4-10-10 ADMINISTRATIVE ADJUSTMENT OF CLAIMS

28 U.S.C. §2672 provides as follows:

"Administrative adjustment of claim

"The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, ~~compromise~~, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances 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: Provided, That any award, ~~compromise~~, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee.

"Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, ~~settlement~~, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

"Any award, ~~compromise~~, or settlement, in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award, ~~compromise~~, or settlement in an amount in excess of \$2,500 made pursuant to section 2677 of this title shall be paid in a manner similar to judgments and ~~compromises~~ in like causes and appropriations or funds available for the payment of such judgments and ~~compromises~~ are hereby made available for the payment of awards, ~~compromises~~, or settlements under this chapter.*"

4-10-20 DISPOSITION BY FEDERAL AGENCY AS PREREQUISITE; EVIDENCE

28 U.S.C. §2675 provides as follows:

- (a) An action shall not be instituted upon a claim against the United States for money damages for injury or death 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, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.
- (b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the Federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

4-10-30 TIME WITHIN WHICH TO MAKE CLAIM

28 U.S.C. 52401(b) provides as follows:

- "(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented."

4-10-40 ATTORNEY FEES

28 U.S.C. §2678 provides as follows:

'Attorney fees: penalty

"No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title."

4-10-50 EXCLUSIVENESS OF REMEDY

28 U.S.C. §2679 provides as follows:

- (a) The authority of any Federal agency to sue and be sued in **its** own name shall not be construed to authorize **suits** against **such** Federal agency on claim which are cognizable under section 1346(b) of **this** title, and the **remedies** provided by **this** title in such cases shall be exclusive.
- (b) The **remedy** against the United States provided by **sections 1346(b)** and 2672 of **this** title for injury or loss of property or **personal** injury or death, resulting from the operation by any employee of the **Government** of any motor vehicle while **acting** within the scope of **his** office or **employment**, shall hereafter be **exclusive** of any other civil action or proceeding by reason of the **same** subject matter against the employee of his **estate** whose act or **omission** gave **rise** to the claim.
- (c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee **against whom** such civil action or proceeding is brought shall deliver within such **time** after date of **service** or knowledge of service as **determined** by the Attorney General, all process **served** upon him or an **attested** true copy thereof to his **immediate** superior or to whomever was designated by the head of his **department** to receive **such** papers and **such person** shall promptly **furnish** copies of the pleadings and process therein to the United States attorney for the **district** embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency,
- (d) Upon a certification by the Attorney General that the defendant employee **was** acting within the scope of his employment at the time of the incident out of which the suit arose, any **such** civil action or proceeding **commenced** in a State court shall be removed without bond at any time before trial by the Attorney General to the **district** court of the United States for the **district** and **division** embracing the place wherein it is pending and the **proceedings** deemed a tort action brought **against** the United States **under** the provisions of **this** title and all references thereto. Should a United States **district** court determine on a hearing on a motion to remand held before a trial on the merits that the **case** so removed is one in which a remedy by suit within the meaning of **subsection (b)** of **this** section is not available against the United States, the case shall be remanded to the State court.
- (e) The Attorney General may **compromise or settle** any claim asserted in **such** civil action or proceeding in the manner provided in section 2677, and with the same effect.

4-10-60 **EXCEPTIONS**

28 U.S.C. §2680 provides in part as follows:

The provisions of this Chapter and **section 1346(b)** of this title shall not apply to •

"(a) 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, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be • based.

"(b) * * * *.

"(c) Any claim arising in respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

"(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

"(e) * * * *.

"(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

"(g) * * * *.

"(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentations, deceit, or interference with contract rights.

"(i) * * * *.

"(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

"(k) Any claim arising in a foreign country.

"(l) * * * *.

"(m) * * * *."