

# MS 775 SETTLEMENT OF CLAIMS ARISING ABROAD

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## 1.0 PURPOSE AND AUTHORITY

Section 10(b) of the Peace Corps Act is intended to permit the Peace Corps to settle certain claims brought by foreign citizens or their organizations against the U.S. expeditiously and without undue formality. Payment of claims under Section 10(b) may not exceed \$20,000. The regulations contained in this Section establish procedures under which Country Directors may exercise the authority of Section 10(b) in certain cases, and initiate a process whereby the Peace Corps Director may exercise it in others. This Section also describes authorities available to the Peace Corps to settle claims which Section 10(b) does not cover.

Settlement and payment of claims under Section 10(b) are discretionary and may be effected without regard to legal liability to further the purposes of the Peace Corps Act. Thus, although claims settled under this authority will normally involve negligence or other wrongful conduct by a Volunteer or employee, the authority may also be used when the U.S. would not legally be held responsible for the injury or damage.

## 2.0 DELEGATION OF AUTHORITY

Each Country Director or person acting in that capacity is hereby authorized:

- (a) To determine, with regard to claims of \$2,000 or less which meet each of the requirements below, that settlement and payment thereof will further the purposes of the Peace Corps Act; and

(b) To settle and pay such claims in accordance with procedures below.

Claims over \$2,000 which the Country Director recommends for settlement will be referred to the General Counsel for presentation to the Peace Corps Director. Include with such claims the Country Director's written recommendation for settlement and the pre-settlement documentation described below.

This authority is not redelegable.

### **3.0 POLICY**

#### **3.1 Criteria for Settlement and Payment of Claims Under Section 10(b)**

In order to qualify for settlement under Section 10(b), a claim must satisfy all the following conditions:

- (a) It must be against the U.S. Government or the Peace Corps as its Agency, rather than against individual volunteers, employees, or contractors.
- (b) It must be for personal injury or death, or loss or damage of property, of a person or entity who is neither a citizen nor resident of the U.S.
  - Claims brought by Peace Corps Volunteers or U.S. citizen employees may not be entertained under Section 10(b).
  - Claims brought by non-U.S. citizen employees may not be entertained under Section 10(b) without prior approval of the General Counsel.
- (c) It must result from an act or omission by a Peace Corps employee or Volunteer in a situation in which there is no expressed or implied contractual obligation.

Claims arising from the act or omission of a contractor's employee or a person serving the Peace Corps overseas under a personal services contract may not be entertained under Section 10(b) (see MS 734 Procurement of Personal Services by Contract Overseas). The most common of such claims are those arising from vehicle accidents.

This authority is not available for the settlement of contractual claims such as unpaid rent, overdrawn bank accounts, or other debts.

If there is any doubt, the General Counsel will advise whether a claim may be entertained under this authority.

- (d) It must arise abroad. In Puerto Rico and the Virgin Islands, the Federal Tort Claims Act is applicable, and tort claims arising there must be referred to the General Counsel (see MS 776 Claims Against U.S. Government Under Federal Tort Claims Act).
- (e) It must be presented in writing within one year after the claim accrues.
- (f) It must be presented by the owner of the property or the injured person in question, that person's authorized agent or legal representative, or, if for death, by the executor or administrator of the decedent's estate, or any other person legally or beneficially entitled to assert such a claim under applicable local law governing the rights of survivors. A claim filed by an agent or representative will:
  - State that it is presented in the name of the real claimant;
  - Be signed by the agent or representative, showing the agent's title or legal capacity;

- Be accompanied by evidence of the agent's authority to present the claim on the claimant's behalf.

### **3.1.1 Release**

No settlement and payment of a claim under Section 10(b) may be made unless the claimant agrees and accepts the amount paid as full satisfaction of the claim, and provides the Country Director with a written statement (signed by the claimant, authorized agent, or legal representative) releasing the U.S. Government, the Peace Corps, and the employee or Volunteer out of whose act or omission the claim arose, from any further liability.

The exact form and content of such statements will vary from country to country. Each Country Director should obtain from a host country attorney a copy of the form of release in general use in that country, and instructions on adapting it to use in particular cases.

The Embassy or AID Mission will have established relationships with a competent host country attorney. If time permits, consult a host country attorney before accepting a release or making payment.

### **3.1.2 Counterclaims**

If the Peace Corps or any employee or Volunteer has a counterclaim against the claimant arising out of the same incident, do not make settlement unless the counterclaim is also settled at the same time.

### **3.1.3 Insurance**

Before settling any claim, the Country Director must first determine whether Peace Corps liability insurance in effect in that country covers the claim (see MS 526 regarding purchase of Motor Vehicle Insurance).

If insurance coverage is applicable, refer the claimant to the appropriate insurer, unless direct and immediate settlement is required for pressing program reasons.

If liability insurance is in effect but does not cover the claim, or is not used for reasons stated in 1 (above), include a memorandum of explanation with other claim documentation.

### **3.1.4 Conflict of Interest**

To avoid the appearance of a conflict of interest, no employee or Volunteer may participate in the negotiation and settlement of a claim based on that same individual's acts or omissions, except in emergencies (see 6.1., below). The Deputy Country Director or other U.S. citizen employee acting as such will handle all claims arising from the act or omission of the Country Director personally, and will refer proposed settlements or recommendations for settlement to the General Counsel for approval or presentation to the Peace Corps Director.

## **3.2 Determination of Damages Under Section 10(b)**

The Country Director or official in charge of settlement should determine amounts to be paid in settlement of claims under Section 10(b) in light of the law and custom of the host country. Local attorneys may be able to provide guidance on this point. The following are the primary considerations under U.S. legal principles:

- (a) In the case of damaged property, what is the cost of its repair?
- (b) In the case of property damaged beyond repair or destroyed, what was its market value prior to the accident, minus the salvage value after the accident?

- (c) In the case of personal injury, what are the actual medical and other out-of-pocket expenses related to the treatment of the injury, loss of wages, and, if disability resulted, compensation therefore (In severe cases, an amount for “pain and suffering” may be added).
- (d) In the case of death, what are the actual medical and other related out-of-pocket expenses, loss of wages between time of the accident and death, and compensation to the legal survivors for loss of the economic benefits they would have received had the decedent survived (usually based on the decedent’s projected earnings). If death was preceded by a period of “pain and suffering,” an amount may be added for this. Local custom and usage may be an important guide in determining whether a settlement will be acceptable in such cases.

### **3.3 Further Guidance**

Country Directors may elect to seek additional guidance on local laws and standard procedures for claims settlement from the appropriate Embassy officer and/or the detailed State Department tort claim settlement regulations in 2 FAM 280-81. However, note that claims settlement authorities available to the Secretary of State and discussed in 2 FAM 281 are not available to the Peace Corps to settle claims arising out of Peace Corps operations.

## **4.0 PROCEDURES**

### **4.1 Documenting and Reporting Claims and Settlement Under Section 10(b)**

The Country Director should document a claim before settling it.

Documentation should include a copy of the written claim and a full report on the circumstances out of which the claim arose, as well as any of the following which are applicable:

- Statements of witnesses;
- Police reports;
- Estimates of property damage or doctor’s reports of injuries.

Retain such documentation in the files at Post for three (3) years.

### **4.2 Settlement Report**

After settlement, the Country Director should forward a brief report to the General Counsel with a copy to the Regional Director, summarizing the circumstances out of which the claim arose, stating the amount paid in settlement, and verifying that the claim was presented in writing and release secured from the claimant. Attach a copy of the release and any police report.

## **5.0 COMMENCEMENT OF LEGAL PROCEEDINGS**

Report immediately the commencement or threat of commencement of a legal proceeding in support of any claim to the General Counsel, including the name of the plaintiff, the nature of the action, the amount of damages claimed and copies of all pleadings, briefs, or other documents filed. No claim upon which legal proceedings have been commenced may be settled, nor any judgment satisfied, without prior written approval of the General Counsel.

## **6.0 CLAIMS NOT COVERED BY SECTION 10(B)**

The Country Director should report promptly to the General Counsel and the Regional Director cases in which settlement of a claim is necessary to carry out the purposes of the Peace Corps Act, but for which Section 10(b) apparently does not authorize settlement.

Include in the report a full statement of the circumstances out of which the claim arose, and a breakdown of claimed expenses, plus a request for authorization to settle the claim, the amount of settlement recommended, and reasons for the recommendation.

When the Country Director recommends settlement, the General Counsel will advise the Peace Corps Director of the availability of any exceptional authority; only the Peace Corps Director may authorize payment of such claims, and only on a case-by-case basis.

### **6.1 Settlement Authority in Emergencies**

In extraordinary circumstances, a Country Director or U.S. citizen employee, at the scene of an accident may determine that some payment needs to be made to the injured party immediately to forestall a situation that is potentially harmful to the Peace Corps.

In such instances, the U.S. citizen employee (not a Volunteer), may offer payment of \$200 or less on the spot, without requiring a written claim or securing any prior authorization. If possible, when obtaining a receipt, also obtain a release from further liability.

The Country Director must refer such settlements to the General Counsel for submission to the Peace Corps Director for ratification. In addition to the request for ratification, the settlement report should contain the information requested in Paragraph 3.2. and, if the Country Director did not personally make the payment, his or her approval of the settlement.

## **7.0 EFFECTIVE DATE**

This Manual Section shall take effect on the date of issuance.