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CNIC INSTRUCTION 5890.1

From: Commander, Navy Installations Command

Subj: NAVY MORALE, WELFARE, AND RECREATION (MWR) PROPERTY,
CASUALTY, AND BONDING SELF-INSURANCE PROGRAM

Ref: (a) DOD 7000.14-R, Volume 13
(b) BUPERSINST 1710.11C
(c) BUPERSINST 5300.10A
(d) SECNAVINST 5380.1
(e) OPNAVINST 1700.9D
(f) OPNAVINST 4060.4B
(g) DODI 1000.15
(h) BUPERSINST 1710.22
(i) JAGINST 5890.1A
(j) OPNAVINST 5100.8G
(k) OPNAVINST 5100.25A
(l) Navy Sailing Qualifications, CNET P 1552/2A (4-97)

Encl: (1) Navy Morale, Welfare, and Recreation (MWR) Property,
Casualty, and Bonding Self-Insurance Program

1. Purpose. To issue Navy Military Morale, Welfare, and Recreation (MWR) activities property, casualty, and bonding self-insurance program for nonappropriated funds (NAFs) and NAF procured assets. Coverage includes Billeting funds supporting Bachelor Housing (BH) activities and Category II and Category IV Civilian MWR (CMWR) activities and their NAF employees. This instruction contains revised and updated policies and procedures relative to the operation of Commander, Navy Installations Command's (CNI) Navy MWR Property, Casualty, and Bonding Self-Insurance Program. This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. BUPERSINST 5890.1.

3. Policy and Scope. References (a) and (b) require NAF financial and property assets owned by Navy activities, as well as their public liability responsibilities, be protected by appropriate commercial insurance or by a self-insurance program, as directed by the program manager. Consistent with references (a) through (l), CNI, Navy MWR Property, Casualty, and Bonding Self-Insurance Program provides that:

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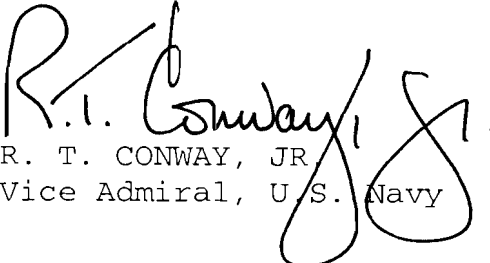
a. MWR NAF property and financial assets are protected from adverse financial consequences of covered losses.

b. NAF financial integrity of MWR organizations and their authorized MWR programs are protected against the financial losses caused by third party general liability claims.

c. This instruction creates no rights or remedies and may not be relied upon by any person, organization, or other non-governmental entity to allege a denial of any rights or remedies.

4. Applicability. This instruction specifically applies to the administration of Navy MWR programs. This instruction does not apply to employee worker's compensation claims, which are governed by reference (c).

5. Report. The reporting requirements contained in appendices A and B to Enclosure (1) are exempt from report control per SECNAVINST 5214.2B.


R. T. CONWAY, JR.
Vice Admiral, U.S. Navy

Distribution:
Regional Commanders

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**NAVY MORALE, WELFARE, AND RECREATION (MWR)
PROPERTY, CASUALTY, AND BONDING
SELF-INSURANCE PROGRAM**

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CHAPTER 1

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**NAVY MORALE, WELFARE, AND RECREATION (MWR) PROPERTY, CASUALTY,
AND BONDING SELF-INSURANCE PROGRAM**

101. Purpose. The Navy Morale, Welfare, and Recreation (MWR) property, casualty, and bonding self-insurance program (hereinafter referred to as the MWR Insurance Program) provides the following financial protection for covered Nonappropriated Fund Instrumentalities (NAFIs):

a. Loss or damage to assets (including non-plant property, equipment, resale merchandise, supplies, and vehicles) purchased with NAF by the covered MWR activity.

b. Payment of properly certified third party liability claims arising out of authorized MWR sponsored activities, programs, and events.

c. Acts/omissions of Nonappropriated Fund (NAF) employees (excluding Workers' Compensation Benefits coverage) or other covered activities listed below while acting within the scope of their MWR duties.

d. Acts/omissions of authorized volunteers (excluding Workers' Compensation Benefits coverage) to the MWR activity or other covered activities listed below while acting within the scope of their MWR duties.

(1) Consistent with the provisions of reference (d), an agreement must be completed and signed for each volunteer.

(2) Additional information on recruiting, training, and accepting volunteer services is available in sections 338, 339 and appendix H of enclosure (1) to reference (b). An acceptable alternative form is available electronically and can be downloaded from the DOD Electronic Forms website at www.dior.whs.mil/forms/DD2793.PDF.

e. Repairs to vehicles obtained through the Defense Reutilization Management Office (DRMO). The MWR Insurance Program will assist in the repair of DRMO purchased vehicles that sustain damages as a result of an incident and when the repair of such vehicle is \$2,000 or less, (i.e., the MWR organization would pay the \$1,000 deductible and the MWR

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Insurance Program would be responsible for the balance). However, if the depreciated blue book value of the vehicle is less than the cost of repair, the MWR Insurance Program will reimburse the MWR activity the lesser of the two amounts.

102. Activities Provided Coverage

a. The primary coverage under the MWR Insurance Program includes all authorized Navy military MWR activities under the cognizance of Commander, Navy Installations Command (CNI). CNI, MWR Division (N22), Child Development and Youth Division (N23), and Community Support Programs Division (N25) are also included under this program. Coverage includes NAF employees and authorized volunteers (excluding Workers' Compensation Benefits coverage) of MWR activities or other covered activities listed below while acting within the scope of their duties.

b. Billeting funds supporting Bachelor Housing (BH) activities are covered under the MWR Insurance Program for losses arising from operating billeting funds. This aspect of the program is managed on a cost reimbursable basis as coordinated between CNI (N25) and (N20).

c. Category II and Category IV Civilian MWR (CMWR) activities and their NAF employees are covered, if application and payment for coverage is received in advance of any incident giving rise to a claim.

103. Exclusions

a. Navy Child Development Home (CDH) liability insurance for CDH providers is commercially underwritten and must be purchased by each CDH provider per reference (e). CDH related claims are not payable through the MWR Insurance Program.

b. Coverage is not provided for NAF-purchased buildings and facilities or any other plant property, whether or not originally purchased with NAF or Appropriated Funds (APF).

c. Rental car/leasing programs, if authorized, entered into by the NAFI. NAFIs participating in rental car/leasing programs are required to purchase and maintain separate commercial liability insurance.

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d. Claims for damage to vehicles rented pursuant to travel orders. See the Rental Car Agreement published by the Surface Deployment and Distribution Command and the Joint Federal Travel Regulations (JTR) for civilian government employees, Vols. 1 and 2.

e. Auxiliary Resale Outlets (AROs) are not part of the MWR program and are not covered under the MWR Insurance Program. Per reference (f), each ARO must purchase and maintain its own commercial insurance policy.

f. Air show flying acts are excluded from coverage. However, contracted performers are required to comply with the insurance requirements discussed in Chapter 8 of this instruction.

g. Coverage is not provided for NAFI contractors or concessionaires. See Chapter 8 of this instruction for insurance requirements of contractors and concessionaires.

h. Private organizations are not MWR programs; therefore, coverage is not provided under the MWR Insurance Program. Reference (g) requires private organizations to secure insurance to protect the organization against public liability and property damage claims or other legal actions that may arise as a result of activities of the private organization or one or more of its members acting on its behalf, or the operation of any equipment/apparatus or device under the control and responsibility of the private organization. See section 802 of this instruction for minimum requirements for comprehensive general liability insurance policy limits.

i. Except in situations where state law requires, the individual liability of third parties, specifically the liability of one patron to a third party (patron liability) is not the responsibility of the Navy or MWR.

j. Coverage is not provided for certain high-risk activities (refer to Chapter 7 of this instruction for a description of activities not covered).

k. Navy Flying Clubs (NFCs) are not covered. Per reference (h), a commercial aviation insurance company must underwrite a central aircraft hull and liability insurance policy covering

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all individual NFCs. This coverage is administered centrally by CNI (N25).

104. Administration. The MWR Insurance Program is administered by CNI (N25L). Information or assistance regarding the technical nature of incidents giving rise to claims, and the process for filing claims should be directed to CNI (N25L).

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CHAPTER 2

**STRUCTURE OF NAVY MWR PROPERTY, CASUALTY, AND BONDING
SELF-INSURANCE PROGRAM**201. Commercial Insurance Coverage

a. CNI (N25) is authorized to purchase commercially underwritten insurance policies or provide self-insured coverage for all potential loss exposures. Self-insurance means that CNI Central NAFs are budgeted to pay both NAF property and liability claims of covered MWR activities. The purchase of commercially underwritten insurance means that a premium is paid by CNI (N25) to a commercial insurance company for an insurance policy contract for coverage to defend, adjust, and pay valid property and liability claims of covered MWR activities.

b. On a continuing basis, CNI (N25) will determine the most cost-effective strategy of either purchasing commercial coverage or self-insuring against certain types of loss.

202. Types of Loss Exposure. There are two types of risk or loss exposure.

a. Direct Loss. Pertains to damage or destruction of NAF-purchased assets under the control of the MWR activity, regardless of the cause of loss. Buildings and facilities (RAMCAS accounts 175 and 176, SAP accounts 175000 and 176000) are excluded from coverage.

b. Indirect Loss. Pertains to those claims attributable to negligence on the part of the covered MWR activity, its employees, or authorized volunteers that result in bodily injury, death of another, or damage to personal property owned by others. This type of claim is more commonly referred to as a tort or liability claim.

203. Covered Direct Losses. Direct losses involving NAF purchased assets, equipment, supplies, stock, resale merchandise, watercraft, vehicles, and NAF funds are covered for loss, destruction, or damage under this program. This "all risk" coverage, whether provided by the MWR Insurance Program or through commercial insurance, is a comprehensive program that provides coverage for NAF assets under the control of MWR, subject to certain conditions.

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a. NAF Property Coverage. The MWR Insurance Program provides coverage for the following:

(1) MWR-controlled, NAF-purchased furniture, fixtures, and equipment, supplies/stock, vehicles, watercraft, and resale merchandise lost or damaged as a result of fire, explosion, theft, vandalism, violent acts of nature, and unusual occurrences.

(2) Collateral property. Collateral property is NAF-purchased, non-plant property and equipment contained within the building, facility, or outdoor property in the control of MWR, which is not physically attached or affixed to the structure. Marquees, electronic signs, covered outdoor spaces and stairways are normally considered affixed to the structure and are classified as plant property.

(3) Inland Marine and Ocean Marine property. This coverage insures NAF property, equipment, supplies, stock, and resale merchandise acquired with NAFs that subsequently becomes lost or damaged while in transit to the covered MWR activity. This coverage is provided to an aggregate limit of \$25,000 per NAFI per fiscal year. Local activities are encouraged to purchase property insurance that is offered by most manufacturers/shippers to cover loss or damage of NAF property in transit, especially if the routine shipment of goods to their activity is subject to pilferage, or the value of property being shipped dictates the need for insurance. This type of insurance does not apply once a shipment has been accepted by a government agency and is subsequently lost or damaged.

(4) NAFs and securities are covered for theft, destruction, disappearance, or wrongful removal. Fidelity bond coverage is also provided to insure against losses caused by the dishonesty of NAF employees, such as forgery of securities and negotiable instruments, theft, and embezzlement of NAFs. This coverage does not apply to forged or fraudulent documents submitted to covered MWR activities that are relied upon by that activity to their detriment (e.g., personal checks returned with insufficient funds or closed accounts).

(5) NAF vehicles or special purpose equipment that are physically damaged. MWR-owned or leased NAF vehicles, including trailers and boats, are insured for collision and comprehensive damage. Covered vehicles and special purpose equipment are

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identifiable by a NAF 400000 series USN registration number. Reference (b) sets forth procedures for registering NAF vehicles. APF vehicles obtained by MWR activities from DRMO or Defense Property Disposal Office (DPDO) are extended the same coverage as NAF purchased vehicles once a NAF vehicle registration number has been issued by CNI (N254) for that vehicle/equipment.

b. Exclusions from NAF Property Coverage

(1) Appropriated Fund (APF) surplus minor plant property, including NAF property transferred to APF title.

(2) NAF-purchased buildings and facilities (RAMCAS 174 and 175, SAP accounts 174000 and 175000).

(3) Plantings or landscaping including trees, plants, shrubs, lawns, and golf courses (including tees, fairways, sand traps, and greens).

(4) Swimming pools, fences, permanent barrier nets/safety nets, paved areas such as tennis courts and other concrete, asphalt, masonry or outdoor-carpeted areas such as patios, gazebos, and pavilions.

(5) Above or underground gas lines or tanks, ground watering systems, and pump houses.

(6) NAF expended for the purchase or installation of built-in property. Plant property is defined as equipment, furnishings, fixtures, including carpeting, electronic scoreboards, marquees, awnings, etc., that are physically attached or built-in and become part of a building infrastructure. Plant property is considered as a building or facility, even if purchased or constructed with NAF as collateral equipment.

(7) Covered (roofed) MWR buildings constructed or renovated through the use of NAF funds, whether partially-funded or fully-funded, are considered to be plant property and assets of the U.S. Government once the building or facility is accepted for occupancy.

(8) Losses due to ground subsidence (e.g., sinkholes), soil deterioration, soil erosion, or mudslide.

(9) Gradual deterioration or wear and tear. **MAY 16 2006**

(10) Mysterious disappearance or shortage of supplies, stock, or merchandise that is disclosed by inventory inspections, unless there is evidence that theft or dishonest acts of an employee was the proximate cause.

(11) Loss or damage to electrical wiring, equipment, appliances, and computers caused by electrical disturbances, including power surges and outages, whether or not they occur or originate away from the covered MWR activity or the naval activity.

(12) Additional losses that result from the MWR activity neglecting to save or preserve MWR-owned property following a covered loss.

(13) If reasonable steps are not taken to protect NAF property that is endangered by a covered peril, when sufficient time, resources, and personnel could have been used to prevent or reduce the extent of a loss.

(14) Loss from refinishing, renovating, repairing, mechanical breakdown or failure, product defect, deterioration, corrosion, rust, dampness of atmosphere, freezing, or temperature extremes.

(15) Business interruption or "loss of use" coverage involving the loss of earnings or profits, or any additional expenses that are incurred by the MWR activity when providing contracted services or products during the time required to rebuild or repair property that has been damaged or destroyed.

(16) The "regular" wage and benefit costs associated with a NAFI, which uses its own employees to perform repairs of NAFI-owned property. Claims for overtime costs, as a result of natural disasters or unusual occurrence, must have prior approval from CNI, (N25).

(17) Losses caused by any type of pollution.

(18) Coverage for "rain outs" of concerts or other special events. The purchase of event insurance by the local MWR is encouraged.

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(19) Food spoilage resulting from MWR activities' failure to comply with Section 507 of Chapter 5 of this instruction.

(20) Accounting or mathematical errors or omissions.

(21) Money contained in coin-operated machines, except for slot machines with counting devices that compute the exact value in the machine at all times.

(22) Property in the control of any common carrier.

(23) Shipments by U.S. or commercial delivery service. In these instances, the MWR activity should determine if the purchase of shipping insurance is cost effective.

(24) Animals.

(25) "Fine arts" including paintings, pictures, tapestries, and other verified works of art or rarity.

(26) Jewelry and furs.

(27) Loss of property owned by others, such as employees, patrons, authorized guests, or NAF contractors.

(28) Books and records except for their physical value.

(29) Losses associated with MWR owned/bailed boats participating in any non-MWR hosted race or speed test. Competitive sailing is a restricted activity and is not covered under the MWR Insurance Program. Patrons wanting to participate in competitive sailing must adhere to the restrictions set forth in section 706 of this instruction.

(30) Any damage to watercraft due to icing, freezing, or failure of the NAFI to maintain watercraft in a seaworthy condition.

(31) Property loaned, leased, or rented to patrons. Patrons shall be informed via the rental agreement (acknowledgement of risk and hold harmless agreement, where applicable) that they (the patron) are responsible for the safe operation and safekeeping (including the theft of, or property

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damage to) of MWR-owned property and third-party personal property during the term of the rental agreement.

(32) Damage to MWR vehicles due to normal wear and tear or mechanical/electrical breakdown or failure.

(33) Loss of personal effects or clothing in vehicles.

(34) Loss of tires, unless by fire or theft, or loss or damage at the same time and from the same cause as other loss covered under this program.

(35) Exposure to rain, sleet, snow, wind-driven sand, or dust to personal property situated in the open.

(36) Damage to docks, floating docks, wharves, and piers by freezing or thawing, impact of watercraft, pressure or weight of ice or water whether driven by wind or tidal surge.

(37) Loss of APF property, including property purchased with NAFs and subsequently paid for with APFs using the Uniform Funding Management (UFM) process.

(38) No MWR activity will be reimbursed for destroyed or damaged MWR vehicles when the proximate cause of the accident involves alcohol consumption by the operator or passengers of the MWR vehicle.

204. Covered Indirect Losses (Liability). Indirect losses involve liability exposures, which arise out of covered organization operations. All authorized NAFIs covered under MWR Insurance Program are provided comprehensive general liability coverage and automobile liability coverage. This coverage can take the form of commercial insurance purchased locally or centrally, or provided by the MWR Insurance Program, or any combination determined to be most cost-effective by CNI (N25).

a. Coverage

(1) Claims attributable to negligence on the part of covered MWR activities and their NAF employees or authorized volunteers (while performing duties in the scope of their NAF employment or volunteer agreement) that cause bodily injury/death or damage to property owned by others.

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(2) Claims attributable to the use of NAF-purchased equipment, vehicles, or special purpose equipment used in direct support of the NAFI.

b. Exclusions from Liability Coverage. The personal liability of patrons, specifically the liability of one patron to a third party is excluded from coverage under this instruction. Patrons must sign a waiver of liability and be given written notification that they are liable for their own negligence when using NAF-purchased equipment or assets or when operating NAF vehicles and watercraft. Furthermore, patrons shall be informed via the rental agreement that they are responsible for safekeeping (including theft of, or property damage to NAFI-owned property), and the safe operation of NAF-purchased property loaned or rented to them less normal wear and tear.

205. Bonding Coverage. Military MWR activities are fully bonded. Civilian MWR activities are bonded to the extent coverage is purchased annually through this program or purchased through commercial insurance policy provider.

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CHAPTER 3

PROCESSING MWR NAF PROPERTY CLAIMS

301. Property Claims

a. Deductible. No claim of \$1,000 or less will be paid by the CNI Central Fund. MWR activities that sustain a loss of \$1,000 or less will be required to absorb the loss as an operating expense. See section 303 of this instruction for more information.

b. Notification. Notification requirements vary depending on the type of loss and the estimated dollar value of the claim.

(1) NAF Property losses exceeding \$20,000. CNI (N25L) will be informed within 24 hours, by telephone, E-Mail, or fax, of any loss exceeding \$20,000 covered by the MWR Insurance Program. Such reports will be confirmed by the command in writing (i.e., signed by the CO, regional commander, or competent "by direction" authority as applicable) and submitted within 72 hours. Information copies of any reports must be sent to the command's applicable regional commander. Within 60 days of the date that a NAF property loss has been discovered, a NAF Property and Liability Claim (sample in appendix A) must be completed, signed by the MWR director or site manager, and forwarded to CNI (N25L) under cover letter signed by the CO or regional commander, as applicable, or designee with "by direction" authority. Local MWR activities must notify the Tort Claims Unit Norfolk (TCU Norfolk), 9620 Maryland Ave., Suite 100, Norfolk, VA 23511-2989, (757) 444-5341. This office is responsible for processing Federal Tort Claims Act (FTCA) claims if it is likely that tort claims against the NAFI may arise from the incident.

(2) NAF Property losses less than \$20,000. Immediate notification of NAF property losses less than \$20,000 is not required. Within 90 days of the date that a NAF property loss has been discovered, a NAF Property and Liability Sample Claim, (appendix A), must be completed, signed by the Regional MWR director, site manager, or regional Community Support Programs (CSP) program manager and forwarded to CNI (N25L) under appropriate signed cover letter.

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c. Notification Format. A typical claim package includes:

- (1) Name of the installation or major command, as applicable.
- (2) Name of covered organization.
- (3) Name of the MWR point of contact, DSN or commercial telephone number, and E-Mail address.
- (4) Name of staff judge advocate (SJA) and contact information. If no SJA assigned, provide name and contact information for the TCU Norfolk.
- (5) Date, time, and place of loss.
- (6) Description of what happened.
- (7) Name, address, telephone number, number of parties involved and any witnesses.
- (8) Estimated loss (in dollars) - The amount of the loss can be determined by acquiring repair or replacement estimates or by determining the current "book" value as reflected on the MWR activity's inventory records. If the value of the loss cannot be readily determined, the CO/regional commander should submit a NAF Property and Liability Sample Claim as a report of loss. An addendum to this report that provides information regarding the value of the loss should be submitted as the official claim as soon as the value becomes known.

d. Proof of Loss Documentation. Proof of loss documents required for each claim will vary depending on the type of loss. Examples of documents required as proof of loss include:

- (1) Investigative reports, such as police (accident) reports, Naval Criminal Investigative Service (NCIS) reports, reports of investigation, fire or traffic accident reports and medical records. There may be a cost in retrieving such records from civilian law enforcement agencies. Local MWR activities shall seek the assistance of a Navy judge advocate or U.S. Attorney whenever necessary to retrieve such records.

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(2) Supporting documents to prove the amount of loss, such as repair or replacement estimates, an audit by a disinterested party, or a statement from the MWR's Support Services Office to confirm the exact amount of money, inventories/property missing.

(3) Information to confirm coverage, such as vehicle serial number or fixed asset record.

(4) A statement by the regional CSP manager or MWR site manager stating whether the loss could have been prevented and what steps, if any, are being taken to prevent future losses under the same or similar circumstances.

e. Claim Numbers. After receiving the report of loss (for losses exceeding \$20,000) or claim package (for losses of \$20,000 or less), CNI (N25L) will assign a pending claims number and inform the Regional MWR director, site manager, or regional CSP director, as applicable. All future correspondence about the loss between the MWR activity and CNI (N25L) will contain this claim number. The MWR activity filing a claim will maintain a record of the claim. Records shall be kept until the claim is processed and a closing notice is received from CNI (N25L). The closing notice will include notification of a payment (via funds transfer) or a statement that the claim was denied and the reason for denial.

f. Failure to Provide Notice. Failure to provide CNI (N25L) with initial written notice for property losses over \$20,000 and submission of a claim package within 90 days (60-day extension may be requested) may result in the claim being denied for payment.

302. Claims Submission under Commercial Insurance Policy. In case of damage to NAF property covered by commercial insurance, the MWR activity manager should phone, fax or E-Mail a basic assessment of damage to CNI (N25L) and ask for guidance before filing a claim, whenever practicable. If the amount of property damage is substantial, the insurance company providing the coverage will usually require immediate notification of any damage sustained. MWR activity managers should be well versed in any commercial insurance policies secured by their activity and have a complete understanding of how to proceed with a claim before an incident giving rise to a claim occurs.

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303. NAF Property Claim Deductible. Covered MWR activities are responsible for a \$1,000 deductible for each NAF property claim submitted for consideration. No deductible is applied to supplemental claims resulting from the same incident that caused the original claim. This deductible does not pertain to liability claims.

304. Valuation of MWR-Owned Property Losses. Claims for total loss or destruction of covered MWR-owned NAF property, equipment, stock, and supplies will be "adjusted" and paid by CNI (N25L) accordingly.

a. Total loss for motorized vehicles, watercraft, recreational vehicles, etc., will be paid based on a national valuation guide such as the National Automobile Dealers Association (NADA).

b. Damaged motorized vehicles, watercraft, recreational vehicles, and other mechanical or electrical equipment not associated with a total loss will be paid based on the most reasonable of at least two repair estimates. CNI (N25L) will pay a covered NAF property claim based on the lowest of at least two estimates submitted with the claim, unless the supporting documentation provides sufficient justification as to why the lowest cost estimate should not be used as the basis for reimbursement. Property replacement valuations and repair estimates must:

(1) Exclude sales taxes.

(2) Be solicited from outside companies by MWR and should be on company letterhead.

(3) Contain full documentation regarding all related costs including towing, delivery, or installation (where applicable).

(4) Include a repair company point of contact and phone number.

c. Equipment and supplies not included above, with an initial acquisition cost of \$2,500 or more will be paid based on whichever is less.

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(1) Replacement cost of the equipment minus depreciation of 10 percent per year, not to exceed total depreciation of 75 percent.

(2) Cost of repair.

d. Equipment and supplies not included above, with an initial acquisition cost less than \$2,500 will be paid based on whichever is less.

(1) Replacement cost of the property minus depreciation of 5 percent per year, not to exceed total depreciation of 50 percent.

(2) Cost of repair.

e. Fully depreciated NAF-purchased property that is claimed, as a total loss will be reimbursed based upon whichever is more, subject to a \$1,000 deductible.

(1) The salvage value.

(2) Twenty-five percent of the replacement cost.

f. Catastrophic Loss Exception. On claims totaling more than \$100,000 in initial acquisition cost, the claimant has the option of itemizing and depreciating each NAF property item claimed or applying the catastrophic loss exception. The catastrophic loss exception allows a general depreciation of 70 percent applied against the total amount of the original acquisition cost for the claimed NAF non-plant properties that have not been fully depreciated.

305. Recovery from a Third Party for a NAF Property Claim

a. TCU Norfolk, 9620 Maryland Ave., Suite 100, Norfolk, VA 23511-2989, (757) 444-5341 is responsible for providing assistance to the MWR activity in pursuing claims against third parties (including patrons) responsible for loss, destruction, or damage to NAF property. MWR activities should request the assistance of TCU Norfolk in asserting an affirmative claim. Consistent with reference (i), TCU Norfolk attorneys will assert affirmative claims on behalf of Navy MWR. Any requested payments for loss or damage to property of a MWR activity shall be mailed directly to CNI (N25L) for deposit. Upon receipt of

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payment, the MWR activity concerned will be reimbursed its \$1,000 property claim deductible.

b. In the event TCU Norfolk is unable to adjudicate the claim or to collect on any meritorious claims, CNI (N25L) will request that TCU Norfolk forward the claim to it's office for closure. Every effort will be made to collect on meritorious third party claims, and if accomplished, MWR activities will be reimbursed accordingly.

CHAPTER 4

PROCESSING MWR NAF TORT CLAIMS

401. Tort (Liability) Claims Against NAF Activities

a. This chapter explains how to settle claims for and against the NAF activities for property damage, personal injury, or death arising out of the operations of MWR activities.

b. Tort claims are claims resulting from loss of or damage to a claimant's personal property, injury, or death caused by the negligent or wrongful act or omission of a MWR employee or authorized volunteer acting within the scope of employment. It also provides for compensation for injuries caused by certain intentional, wrongful conduct. Tort claims are submitted to the Tort Claims Unit Norfolk (TCU Norfolk), 9620 Maryland Ave., Suite 100, Norfolk, VA 23511-2989, (757) 444-5341, by claimants seeking reimbursement for their loss.

c. Investigation of Tort Claims

(1) Any incident involving personal injury or property damage may result in a claim. Even where no injury or damage is apparent following an incident, damages and injuries can be discovered later and a claim may be filed. Consequently, collecting and preserving all information regarding such an incident is essential to protect both the government and the NAFI's interest. In most instances, claimants have 2 years to file a claim. Any incident that may give rise to a claim requires immediate notification of the TCU Norfolk and the attorney servicing the command.

(2) MWR activities are to establish local procedures to ensure that:

(a) All incidents resulting in a possible claim are reported to the command.

(b) Employees must record relevant information such as date, time, and place of incident; injured person's name, address, and phone number; names and contact information of witnesses; condition of premises; nature of injury or damage to property; and any statements made by persons involved. When possible, employees should take photographs of the scene of the

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accident. It is also important to note the pay status (APF or NAF) of the government employee involved in the incident-giving rise to the claim. It is imperative to quickly record and preserve as much information as possible to ensure fair and honest adjudication of any claim filed and to protect the interests of the U.S. government.

(3) Upon learning of any incident that may result in a claim, the MWR activity manager must:

(a) Notify TCU Norfolk, per section 401b(1) of this instruction. When instructed to do so, notify TCU Norfolk and provide the claims attorney with all relevant information recorded at the time the incident occurred. The MWR activity should also report other information which may have a bearing on the incident, such as specific instructions or warnings provided to patrons; documented efforts to repair known defects; and agreements with patrons, such as rental agreements, waivers, and Acknowledgement of Risk/Hold Harmless Agreements used with recreational equipment and facilities or in conjunction with other MWR activities.

(b) Notify CNI (N25L) within 24 hours, by phone, fax or E-Mail, of all incidents involving death or any injury requiring hospitalization or treatment at a medical treatment facility.

(c) Direct all communication and correspondence regarding the incident to the appropriate claims attorney at the TCU Norfolk. The MWR activity and its employees will not admit liability or express an opinion regarding an accident or incident as it may result in a liability claim against the Navy or the MWR activity.

(d) Contact the command safety officer to report accidents and incidents, or other officials as required by local command instructions.

402. Adjudication of Tort Claims

Tort claims for loss of or damage to personal property, injury, or death must be submitted and adjudicated by TCU Norfolk. TCU Norfolk determinations will be made in accordance with reference (i).

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403. Claim Payment

a. Meritorious tort claims against NAFIs due to acts or omissions of NAF employees or authorized NAF volunteers will be forwarded by the TCU Norfolk to CNI (N25L) for payment. Completed settlement agreements are required before payment will be made on amounts for less than originally claimed. The settlement agreement must indicate a willingness to accept the offered amount in full settlement and final satisfaction of the claim. No payment will be made until a signed settlement agreement has been received. CNI (N25L) will make payment on the claim consistent with the request from the TCU Norfolk as set forth in the terms and conditions of the settlement agreement.

b. Tort claim liability arising from the negligent act or omission of a non-appropriated fund employee cannot be paid with appropriated funds. These claims must be paid with non-appropriated funds or from applicable insurance policies. Tort claim liability arising from acts or omissions of appropriated fund employees or active duty military members is paid with appropriated funds. When the negligent act or omission giving rise to liability was jointly committed by a non-appropriated fund employee and an appropriated employee, liability may be apportioned and the claim paid with appropriated and non-appropriated funds according to the percentage of negligence assigned to each tortfeasor.

c. No claim deductible amount is charged against the MWR activity with respect to payment of liability claims.

d. Per reference (i), a claim not covered by the MWR Insurance Program that can be settled for \$1,500 or less, may be adjudicated and paid locally by the regional commander, or their designed regional CSP director. The claim should be paid out of NAFs generated from the local MWR activity or APF if available for those claims caused by MWR APF employees.

e. Claims resulting from NAF activities may be denied only by the TCU Norfolk. Denial of a claim shall be in writing and in accordance with enclosure (1) or (2) of reference (i), as appropriate.

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404. Commercial Insurance Company Payments Made on Behalf of an MWR Activity. CNI (N25) may elect to purchase commercial insurance coverage for protection against various losses. If commercial insurance coverage is in place, CNI (N25L) will provide information regarding the coverage and appropriate claims filing procedures to covered MWR activities.

405. Liability Waiver. A liability waiver (also known as a hold harmless agreement) is a document where one party to the agreement assumes the legal liability for damages of the other party of the agreement. Appendix B is provided as an example. By signing the agreement, the adult patron, authorized guest of the MWR activity, or a parent or guardian of a minor child reaffirms responsibility for all liability caused by the negligent acts of either party (i.e., the patron or the MWR activity). Although these agreements do not necessarily prevent injury claims, they are useful in pointing out potential risks and consequences associated with a specific activity, service, or event before the patron engages in the activity. Before using appendix B, obtain approval of the waiver from the local staff judge advocate or other government attorney responsible for providing legal services to the command. Please see <http://www.mwr.navy.mil/mwrprgms/policy/holdharmless.htm> for more examples of specific hold harmless agreements.

406. Recovery from Third Parties

a. If NAF-purchased non-plant property is damaged, or an MWR employee suffers bodily injury, and the loss or injury is primarily the responsibility of someone other than a the MWR employee (a third party), TCU Norfolk, on behalf of the MWR activity, may pursue an affirmative claim against the responsible party. MWR activities should preserve as much of the evidence of the accident/incident as possible to protect the government's interest. No evidence shall be disposed of until approved by TCU Norfolk attorney handling the claim.

b. It is important to note that liability, or the degree thereof, is determined by attorneys assigned to TCU Norfolk if the claim is still in the administrative stage, or by the U.S. Attorneys' Office, once the claim is in litigation. These attorneys have cognizance over the determination of fault and the reasonable amount to be awarded in any settlement of liability claims. Based on their expertise, TCU Norfolk attorneys and U.S. Attorneys may make a determination as to

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whether the MWR activity or CNI should pursue any subrogation claim.

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CHAPTER 5

RISK MANAGEMENT

501. Background. Risk Management is concerned with preventing and minimizing various kinds of losses, whether they involve bodily injury, illness, or property damage.

502. New Construction or Renovation of Existing Structures. Any new facility construction or renovation must be built per the standards of the Life Safety Code of the National Fire Protection Association as specified by the Naval Facilities Engineering Command.

503. Non-Government-Owned (Private) Property. Property not owned by the government that is either leased from its owner for use by the MWR activity, or that is owned by a third party who gives it over to the MWR activity for storage or safekeeping is considered non-government-owned property.

a. If any non-government-owned property is put into the care, custody, or control of the MWR activity, and the MWR activity advertises that the property will be protected from loss, the MWR activity has assumed a duty for which it may become responsible, should a claim arise. The MWR activity can also be found liable for the loss or damage of such property if it can be determined that it was negligent or failed to provide reasonable care in protecting the property that was in its care, custody and control.

b. Patrons renting space at vehicle storage lots shall sign a written rental agreement acknowledging the patron's responsibility for any loss of property. The MWR Insurance Program will not, absent an order from Tort Claims Unit Norfolk, pay a claim for damages unless under the provisions of paragraph 403 above.

c. The MWR activity is not to assume the responsibility for safekeeping of property that is privately owned by contractors employees of the MWR activity unless it is covered by an individual agreement or contract.

d. Signs should be posted to warn MWR patrons they are responsible for safeguarding and protecting personal property

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left at an MWR activity. The proper wording of these signs should be approved by the command's staff judge advocate.

504. Assumption of Liability Under Contract. The MWR activity, as a party in any contract, must not assume the liability of other parties in a contract. Under no circumstances shall the MWR activity relieve the other party to a contract of their legal liability for which the other party would rightfully be responsible. It is required that all contracts that are binding on the MWR activity be signed by a warranted NAFI contracting officer.

505. MWR-Owned Property or Funds Exposed to a Higher Probability of Theft or Vandalism. The MWR activity shall implement loss control measures to reduce the risk of theft of MWR controlled property that is recognized as highly pilferable or susceptible to vandalism. Valuable MWR-owned NAF property, equipment (e.g., electronic equipment, boat motors), funds, and resale merchandise not on the sales floor should be secured at all times. NAF vehicles, golf carts, event tents, campers, boats, motors, and trailers must also be secured when not in use. In seeking reimbursement from CNI (N25L) for a loss of either NAF funds, property, or equipment, the MWR activity must substantiate the measures that had been taken to prevent such a loss, including a description of the security systems or locks which failed or were defeated during the theft or vandalism incident which occurred.

506. Cold Storage Areas. Activity managers must ensure that thermometers on cold storage areas in warehouses are read and recorded at least once a day or more frequently, as warranted, to quickly identify and repair equipment breakdowns and prevent spoilage of large quantities of cold food. When deficiencies are detected, immediate corrective action to prevent waste/spoilage will be taken by the MWR activity. Any claim for food spoilage due to a failed freezer must show that all possible precautions were taken to prevent or reduce such loss. Failure to substantiate proper loss control measures or to routinely inspect and monitor temperatures of cold storage facilities may result in denial of a claim for food spoilage.

507. Food Safety and Sanitation. Ultimately, the CO, installation or regional commander has the responsibility for ensuring food and beverages served within their jurisdiction are safe and wholesome. To ensure the quality of food and beverages

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are safe and healthy and to reduce the risk of claims associated with improper or unhealthy food services, MWR activities are strongly recommended to adhere to the food safety and sanitation guidelines set forth in reference (b).

508. Recreational Equipment Rental. MWR activities that operate a recreational equipment rental program will make certain that authorized patrons renting or using equipment are capable of properly and safely using the equipment.

a. Prior to the release of equipment to the patron, MWR personnel responsible for the rental of recreational equipment should provide reasonable instruction regarding the safe use and operation of the equipment.

b. The rental agreement must clearly state the patron is responsible for the safe operation and safekeeping (including theft or property damage, less normal wear and tear) of MWR-controlled property and equipment while it is in their custody.

c. The MWR activity will provide the renter a signed copy of the rental agreement which includes the renter's personal information (name, address, phone numbers, unit, etc.), a description of the property, checkout and check-in times, rental rates, and other useful information, including warnings and instructions regarding the safe operation of the equipment or gear being issued. The rental agreement should also contain the following provisions:

(1) Names of any other authorized persons, in addition to the renter, who will be using the equipment. In this portion of the agreement, depending on the type of equipment rented, the names, ages, and addresses of any other authorized users must be noted.

(2) Renter agrees to indemnify and hold the MWR activity harmless for any and all liability claims for bodily injury to any person(s) or third party property damage arising out of or caused by the renter's negligence or the negligence of other users of the equipment.

(3) Renter agrees to return the issued equipment in the same condition as when it was checked out, less normal wear and

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tear. Otherwise, the renter will reimburse the MWR activity the actual replacement cost or the repair cost, as applicable.

d. Due to the variety of MWR-owned recreational property and equipment available for rental and other considerations (i.e., the location of the naval installation), it is recommended that rental agreement forms be reviewed at least annually by the local staff judge advocate or TCU Norfolk.

509. Theft of Recreational Rental Property. MWR activities that experience frequent losses resulting from the non-return of recreational rental property should ensure an adequate deposit is obtained for those types of items that historically tend to not be returned.

510. Immediate Medical Attention. Many liability claims can be avoided or the eventual claim settlement costs reduced by ensuring the injured MWR patron or authorized guest receives immediate initial medical or dental examination/treatment. Once medical treatment has been accomplished (or waived), every effort to preserve evidence, identify witnesses, and learn how the incident occurred will be made. At the first opportunity, the staff judge advocate and TCU Norfolk attorney will be notified of the incident.

a. The MWR Insurance Program will reimburse the MWR activity for any costs incurred on behalf of injured MWR patrons and authorized guests for emergency medical/dental care for injuries resulting from their participation in an MWR-sponsored program, activity, or event.

b. If someone is injured, and it appears that medical attention is needed, the NAFI activity shall make certain that immediate medical attention is provided. In those situations where the injuries are not life threatening, the injured person or their parent or guardian should be allowed to choose the medical treatment facility. In all other instances, the MWR employee, supervisor, or manager in charge at the scene should encourage the injured person or direct the injured person, if they are unable to communicate their desires, be taken to and treated at the closest medical facility.

511. MWR Motor Vehicle Accidents. MWR activities shall develop an easy to follow standard operating procedural guide outlining the following steps to be taken in the event of a motor vehicle accident involving an MWR vehicle:

- a. Seek immediate medical attention for anyone who is injured as a result of the accident.
- b. Report the accident to the proper authorities (civilian/military). The MWR activity is to request a copy of the official traffic accident report at the earliest practicable date.
- c. Inform the command's legal officer, SJA, or TCU Norfolk.
- d. Obtain statements from the driver of the MWR-owned vehicle, passengers (if any), and any witnesses to the accident. In any accident involving bodily injury or property damage to others, names and addresses of witnesses are to be recorded. If possible, please take photographs of scene.

512. Loss Reduction Procedures after a Property Loss. The following procedures should be followed when damage to buildings, facilities and their contents occurs:

- a. Clean up the affected building or area only after proper legal authority, i.e., command's investigating officer, Staff Judge Advocate, Security Officer, etc., determine that all information and evidence has been preserved for possible use in the claim's investigation.
- b. Separate contents by degree of damage - undamaged, repairable, salvageable, and totally destroyed.
- c. Safeguard the property and premises. Take appropriate measures to prevent further loss to the property while it is out-of-service and awaiting repairs.
- d. Cordon off any unsafe areas and equipment to prevent access or use by MWR employees, patrons, and authorized guests until repairs are completed.
- e. Make certain that organization business documents, assets, and other inventory records are preserved.

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f. Where possible, all evidence must be preserved as per the direction of the local SJA or CNI (N25L).

513. Repair Minor Damage. Repair minor damage to NAF property, equipment, vehicles, and special purpose vehicles before minor losses result in a greater loss or cause a serious accident. Minor property losses are classified as less than \$500.

514. Investigate Accident Causes. Investigate all accidents, incidents, and "close-calls" to determine causation and contributing factors. Identification of the causes of an accident will allow MWR personnel to take steps to eliminate/reduce risks and thereby further reduce chances of similar accidents in the future.

515. Training for Emergencies. Proper training of MWR personnel and drills (e.g., fire, hurricane, or tornado) will reduce the frequency and severity of a loss should an accident or emergency situation arise. MWR personnel should be instructed on their responsibilities concerning sounding of alarms, lifesaving and first aid, evacuation and escape, the use of fire-fighting equipment, and the shut off of critical controls or systems, as practicable, in case of an emergency. This essential training should be designed for each program/facility within MWR.

CHAPTER 6

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SAFETY PROGRAMS FOR MWR ACTIVITIES601. Safety Program Approach

a. An active safety program is the most effective way to reduce losses. Each organization participating in the MWR Insurance Program will institute its own safety program and participate in the installation's safety program. These programs work to reduce the frequency and severity of accidents and injuries to MWR employees, patrons, and guests. Each organization shall work with their command safety officer on establishing and monitoring an effective safety program. Guidelines found in reference (j) and the Naval Safety Center Recreation, Athletics, and Home Safety Program, should be used as source documents in developing the installation's MWR safety program. A copy of the Naval Safety Center Recreation, Athletics, and Home Safety Program can be found at <http://neds.daps.dla.mil/Directives/table21.html>.

b. Safety inspections of MWR facilities shall be done on a regular basis to ensure that all NAF property, equipment, fixtures, and vehicles are operating properly.

602. Safety Program Objectives. An effective NAFI Safety Program should meet the following objectives:

- a. Provide a safe work environment for MWR employees.
- b. Provide a safe environment for MWR patrons and authorized guests.
- c. Reduce the risk of loss to which NAF assets are exposed.
- d. Increase loss prevention awareness on the part of MWR employees with respect to NAF property damage and personal injury claims.
- e. Encourage the development of safety related standard operating procedures/checklists for all programs and facilities by the individual program manager. Programs should include documented periodic inspections of facilities and equipment.

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603. Safety Program Common Features. The safety program should include the following features:

a. Active command and MWR manager involvement.

b. A safety program coordinator for the MWR activity who is responsible for the development, supervision, and monitoring of the safety program. Program managers should be appointed in writing as safety coordinators for their programs. Safety standard operating procedures should be developed for all programs operated by MWR.

c. Scheduled and unscheduled inspections of all facilities, property, equipment, and vehicles owned by or under the care, custody, and control of the NAFI activity.

d. Identification, elimination or reduction of hazards to the greatest extent possible.

e. Provision of protective clothing, machine guards, and safety equipment to employees and patrons for their use where applicable. Procedures such as spot-checks should be established to assure compliance with directives requiring the use of such safety equipment.

f. Evaluation of accidents, incidents, and "close-calls" to determine causation so that loss prevention lessons can be learned to help prevent future mishaps.

g. Frequent safety meetings and safety refresher training with employees as necessary.

h. Encouragement for MWR employees to practice good clean-up procedures to create a safer work environment.

604. Loss Prevention

a. All NAFI employees should be encouraged to provide information regarding safety hazards and loss exposures to the MWR activity manager or the installation safety officer for action. If the MWR activity needs assistance in identifying potential hazards/information regarding how to reduce potential

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loss exposures, they should seek the assistance of the installation safety officer.

b. The Naval Safety Center, Norfolk is a valuable resource to help optimize locally developed NAFI activity safety programs. Per reference (j), COs or regional commanders may request on-site safety assessments of local NAFI programs from Commander, Naval Safety Center (COMNAVSAFECEN), Recreation and Off-Duty Safety Program Manager (Code 46), at Commercial 757-444-3520/DSN 564, Ext 7134. On-site safety assessments are recommended every 4 years for aquatics, marinas, and auto skills centers. These safety assessments are available at no cost.

605. Safety Legislation. The provisions of the Occupational Safety and Health Act are applicable to Federal departments and agencies, including Navy NAFIs. Accordingly, it is essential that MWR directors or site managers and their program managers become familiar with the provisions of reference (k) which requires commands to establish and maintain a comprehensive recreation, athletics, and home safety program.

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CHAPTER 7

**INSURANCE REQUIREMENTS FOR SPECIAL EVENTS, HIGH-RISK ACTIVITIES,
AND MWR-PROHIBITED PROGRAMS**701. Prohibited Programs

a. Typically, insurance considerations alone do not drive the types of programs MWR activities offer. However, because of the inherent risk exposure associated with some recreational activities and the higher potential for losses, MWR activities participating in the MWR Insurance Program are prohibited from directly operating certain recreational activities. These prohibited recreational activities include

- (1) Hang gliding and ultra-light aircraft flying.
- (2) Sky diving or sport parachuting.
- (3) Bungee cord jumping.
- (4) Cave exploration (i.e., spelunking, caving).
- (5) Drag racing, funny cars, or other similar vehicles.
- (6) Activities involving mechanical bulls and similar equipment.
- (7) Operation of MWR-owned/controlled gasoline-powered watercraft in a race or speed test, except when the event is part of the official MWR program or MWR sponsored event and all participants are active or retired military personnel and Department of Defense (DOD) civilians or their family members. In no circumstances will MWR-owned/controlled motorized watercraft be used in a race or speed test in the civilian community.

b. While MWR activities may not directly provide the prohibited activities listed above, MWR is authorized to enter into agreements with contractors to conduct such prohibited activities, provided the contractor(s) maintains at a minimum, commercial general liability (CGL) insurance policy limits of \$1,000,000 per occurrence, products/completed Operations aggregate \$1,000,000, personal and advertising injury \$1,000,000, general aggregate \$1,000,000. This coverage should

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be at no cost to MWR and must name the U.S. Navy, the region, command, MWR activity, and CNI as additionally insured under the policy coverage. A "certificate of insurance" from the insurance company must be provided to MWR as evidence of coverage. The certificate should also state that this insurance is "primary" coverage, and it is not secondary to, or contributory with, another insurance policy.

702. Absolute Liability Generated by Hazardous Activities and Dangerous Materials

a. Absolute liability is imposed by law on those involved with dangerous materials, animals, and hazardous activities, events, or operations. Accordingly, those involved with such hazardous activities or materials are strictly held liable for the damages of another, even if there was no negligence on their part. These hazardous activities and dangerous materials include

(1) The use of flames (other than tableside for cooking).

(2) Pyrotechnics or the use of fireworks.

(3) The use of dangerous animals (e.g., circus performers or rodeos).

b. Individual MWR activities may not operate hazardous activities, but may enter into a written contract with a contractor to conduct such hazardous activities under the following controls:

(1) In the event that MWR contracts with a promoter/independent contractor to conduct a rodeo or fireworks display, the promoter/contractor is required to provide proof of commercial liability insurance coverage.

(2) At a minimum, CGL insurance policy limits of \$1,000,000 per occurrence, products/completed Operations aggregate \$1,000,000, personal and advertising injury \$1,000,000, general aggregate \$1,000,000 are required.

(3) This coverage should be at no cost to the NAFI and must name the NAFI, the command, and the U.S. Navy as additionally insured under the policy coverage.

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(4) A "certificate of insurance" from the insurance company must be provided to MWR to provide proof of coverage. The certificate must also state that this insurance is "primary" coverage, and is not secondary to, or contributory with, another insurance policy.

(5) The contract process should include requests for certifications (as applicable) and reference checks through the Better Business Bureau.

c. The operation of horse stables and riding programs by an MWR organization is permitted, provided that both the stable facility and any riding programs are in compliance with applicable health and safety standards.

703. Additional Insurance Coverage Required for Special Events

a. If the MWR activity participates in a special event sponsored by the installation, the U.S. Navy, or DOD (e.g., open house, air show, hydrofest, concert, or any other special event), additional comprehensive commercial liability insurance may be required to cover the MWR activity at its own expense. For assistance in determining insurance requirements, contact CNI (N25L), with as much lead time as possible prior to the event, in any case, at least 60 days preceding the period of elected coverage.

b. The magnitude of the possible exposures involved will determine if the MWR activity is required to obtain commercial liability insurance coverage (and to what extent), as a prerequisite to participation in subject event.

c. As an alternative to the MWR activity purchasing the insurance locally, CNI (N25L), upon request, may arrange through its insurance broker to purchase commercial insurance subject to reimbursement for the premium from the local organization. Reimbursement to the Central Fund for the insurance premium for this coverage will be passed to the regional MWR activities sponsoring/co-sponsoring the event.

d. If the MWR activity provides automobiles or other means of transportation to performers at special events (e.g., pilots of air demonstration acts or entertainers but in no case military pilots or their crews), the driver of a vehicle owned, leased, or provided to MWR (by commercial sponsorship or other

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arrangement or agreement) must provide proof of insurance in the amount of not less than \$100,000 per occurrence, \$300,000 aggregate, and \$50,000 property damage. The driver of the automobile will also sign a waiver of liability and assumption of risk document. See Chapter 9 of this instruction for additional requirements.

704. High-Risk Outdoor Adventure Programs

a. When directly operating or contracting for these types of activities (e.g., white water rafting/canoeing, rock climbing, high ropes, etc.), the MWR employee, authorized MWR volunteer, or contractor must be certified by the appropriate national governing body.

b. The MWR activity is encouraged to contract with certified concessionaires for these high-risk adventure programs. The MWR activity is not authorized to provide these programs without properly certified leadership.

705. Skeet, Trap, and Pistol Ranges. CNI (N25) has determined that additional comprehensive general liability insurance is necessary for MWR activities operating skeet, trap, and pistol ranges. MWR activities are required to purchase a \$1,000,000 comprehensive general liability (CGL) policy written by a commercial insurance company. This policy must name the MWR activity as the primary insured and the U.S. Navy as additionally insured under the policy's terms and conditions.

706. Competitive Racing with MWR Owned/Controlled Sailboats. Competitive racing of MWR sailboats may be allowed at the region's discretion. Per reference (1), patrons (skipper and crew) must be qualified and certified to operate specific size sailboats competitively. Skipper shall be "Skipper C" level qualified (or higher). Crews shall be qualified based on size and type of sailboat involved. Patrons must secure adequate commercial property, casualty, and liability insurance per the limits set forth in section 802.c of this instruction.

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CHAPTER 8

CONCESSIONAIRES, INDEPENDENT CONTRACTORS, AND PRIVATE ORGANIZATIONS801. Background Information

a. Concessionaires and independent contractors (including service contract instructors and entertainers) are not considered U.S. Government or MWR employees. Therefore, concessionaires and contractors are responsible for their negligent actions and omissions while working under contract to the MWR activity.

b. Accordingly, commercial liability insurance is required of private organizations, concessionaires, and independent contractors (hereafter collectively termed as "contractors") to indemnify and protect MWR and the Navy.

c. Prior to negotiating a contract, the MWR director or site manager shall determine how, and to what extent, potential loss exposures could be related to the products and services provided by the contractor.

802. Liability Insurance Requirements. To make certain that a contractor's insurance coverage will indemnify the MWR activity and the Navy against liability claims; prospective contractors must meet all of the following insurance requirements as part of a written contract or agreement with the MWR activity:

a. The contractor must obtain a policy of CGL insurance, written by a commercial insurance company, which includes the MWR activity and the U.S. Navy as named insured. If contractor owned vehicles would be used during the period of the contract, the MWR director or site manager must determine if automobile liability insurance coverage is also required of the contractor. This determination should be made based on the risk associated with the vehicle use.

b. Such CGL/automobile liability insurance should be "primary" coverage (i.e., not secondary to, or contributory with, any other liability insurance policy).

c. As a minimum, CGL insurance policy limits of \$1,000,000 per occurrence, products/completed Operations aggregate

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\$1,000,000, personal and advertising injury \$1,000,000, general aggregate \$1,000,000 (primarily for contractor caused damage to NAFI-owned property) limits are required. Policy limits for automobile liability insurance shall at least meet minimum limits required in the state where the installation is located.

803. Workers' Compensation Benefits Required of a Contractor.

It is mandatory that contractors cover their employees for workers' compensation benefits per State statutes. The contractor will pay the cost of those benefits. If a contractor does not have appropriate workers' compensation benefits and employer's liability insurance coverage, then the MWR activity could potentially be made to pay benefits to an employee of the contractor per Section 4(a) of the Longshoremen and Harbor Workers Compensation Act.

804. Exemptions for Certain Service Contract Instructors and Entertainers

a. Instructors and entertainers working under authorized service contracts who provide "low-risk" recreational instruction or entertainment may be exempt from, or have lower limits set on, the above mentioned insurance requirement under the following conditions:

(1) If the MWR activity determines that an alternative, cost competitive insured contractor is not available.

(2) Contract instructors are appropriately certified by professional organizations that sanction and qualifies their members as instructors. Contracted instructors must demonstrate proficiency in the area in which they will instruct, or can provide references that verify their proficiency as an instructor.

(3) "Low-risk" classes of instruction include all classes except hang-gliding, sport parachuting or sky-diving, ultra-light aircraft flying, high-rope courses, climbing walls, bungee-jumping, velcro-wall up, firearms, skiing (both water and downhill snow), gymnastics (except floor exercises), martial arts (except where there is no physical contact between class participants, or class participants and the instructor).

(4) "Low-risk" entertainers include, but are not limited to, magicians, hypnotists, club bands, and comedians. "Low-

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risk" entertainment does not include circuses, carnivals, rodeos, or any event involving live animals, fire (other than cooking), fireworks displays, firearms, or other activities with high risk of bodily injury or death.

b. COs, regional commanders or their designee may reduce or waive (in writing) general liability coverage upon review and recommendation of the local SJA. In situations where general liability coverage is waived, the contractor shall be required to execute a Hold Harmless Agreement.

c. Because the government may not accept liability on behalf of a contractor, the MWR Insurance Program may not pay claims for contract instructors or entertainers that arise, even if the insurance coverage requirement has been waived by the CO, installation or regional commander, as applicable. Note: Contractors must be informed that even if the insurance coverage requirement is waived, neither the local MWR activity nor the CNI Central NAF assumes the contractor's liability.

d. Any contract exceeding \$5,000 which is to be conducted outdoors should be covered by weather/rain insurance in a minimum amount to recover expenses when payments are guaranteed. Weather/rain insurance is not provided centrally. It must be procured commercially by the local MWR activity.

805. Personal Property Owned by a Contractor. Contractors must be notified they are responsible for the loss, damage, or destruction of their owned or leased property or equipment. Such equipment might include tools, special gear, and musical instruments. Even if the contractor is given permission to store their owned or leased equipment on MWR premises, they must understand they do so at their own risk. Claims for damages will be honored only when ordered by TCU Norfolk.

806. Independent Private Organizations Located on Naval Installations. Per reference (h), private organizations are self-sustaining, non-Federal entities, incorporated or not, operating aboard Navy installations, with the permission from the installation CO or regional CSP director. The MWR Insurance Program does not cover private organizations.

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CHAPTER 9

MWR EMPLOYEE PERSONNEL CLAIMS

901. MWR Employee Personnel Claims. MWR employee personnel claims for lost or damaged personal property incident to their employment, including household goods (HHG) shipped pursuant to permanent change of station (PCS) transfers, shall be forwarded to and adjudicated by the Personnel Claims Unit Norfolk (PCU Norfolk), 9053 First Avenue, Ste 102, Norfolk, Virginia 23511-3605. Employment status (APF or NAF) will determine whether APF or NAF will be used to pay meritorious claims.

902. Payment of NAF Employee Claims. Once a NAF employee's personnel claim has been adjudicated by the PCU Norfolk, the meritorious claim will be forwarded to the claimant's MWR activity for payment. The claimant's employing MWR activity is responsible for making payment on subject claim with local NAFs. These claims are neither payable nor reimbursable through the MWR Insurance Program.

a. HHG Shipment. As with all other personnel claims, PCU Norfolk will adjudicate the claim and determine the amount to be paid, if any. Destruction and/or damage to HHG pursuant to PCS transfers will be paid with local NAFs by the employee's gaining/employing MWR activity. When a NAF employee terminates government service and executes a final HHG move pursuant to government orders, the adjudicated claim is to be forwarded to the claimant's detaching MWR activity for payment. In the event a former NAF employee executes a final HHG shipment from a disestablished command and there is no MWR activity remaining, PCU Norfolk will forward the adjudicated claim to CNI (N25), as successor in interest, for payment. PCU Norfolk payment determinations will be made per reference (i).

b. Carrier Recovery. In virtually every instance where payment was made to the claimant by the government (APF or NAF) for destroyed, lost, or damaged personal property sustained during an official HHG shipment, that amount can be recovered from the carrier. MWR activities making payment on such claims, consistent with the recommendations of PCU Norfolk, should forward a complete copy of the claim and a copy of the executed payment voucher to the OJAG Carrier Recovery Branch, 5722 Integrity Drive, NAVSUPACT Mid-South, Building 794, Millington, TN 38054-5030, who will pursue payment recovery from the

carrier. Once carrier recovery is accomplished, the Carrier Recovery Branch will transfer those funds to the MWR activity fund number provided in the forwarding letter. A sample letter to be used in forwarding such claims is at Appendix C of this instruction.

903. Payment of APF Employee Claims

a. Meritorious personnel claims submitted by APF employees will be paid with APF by PCU Norfolk. Should the APF employee's claim be processed as anything other than a personnel claim, the provisions of reference (i) will apply and the employing MWR activity will be advised on how to proceed on a case-by-case basis.

b. HHG Shipment. As with all other personnel claims, the PCU Norfolk will adjudicate the claim and determine the amount to be paid, if any. Destruction and/or damage to HHG pursuant to PCS transfers will be paid by the PCU Norfolk with APF.

904. Physical Damage to Privately-Owned Vehicles (POVs) Used by MWR Employees for Official Business

a. The Joint Travel Regulations (JTR) provide reimbursement for mileage to NAF MWR employees authorized to operate their POVs while in a Temporary Additional Duty (TEMADD) status. Mileage reimbursement under the JTR for expenses related to the operation of a POV include the cost of insurance as well as other costs related to the operation of a motor vehicle.

b. It is the responsibility of each MWR employee who is authorized to use their POV while on official travel orders to ascertain they have the proper insurance coverage. Otherwise they may be personally liable for the cost of any physical damage or loss to their POV. MWR personnel authorized to use their POVs incident to their employment are required to carry commercial automobile insurance that meets the minimum limits mandated by the Department of Motor Vehicles (DMV) in the State where that employee resides.

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APPENDIX A

NAF PROPERTY AND LIABILITY SAMPLE CLAIM

This sample provides MWR activities (claimants) with the step-by-step procedures that when completed, should contain all relevant information regarding any claim. This sample should be completed in either of the following instances:

- 1. **Property Claims** - In the case where an MWR activity participating in the MWR Insurance Program has suffered a loss of or damage to their NAF property.
- 2. **Liability Claims** - In the case where third parties such as patrons or authorized guests of an MWR activity participating in the MWR Insurance Program are involved in incidents, accidents, or mishaps arising out of MWR sponsored or authorized programs, activities, and events.

3. **Specific Information about the Accident or Incident:**

a. Date and time of day accident or incident occurred:

Date	Time

b. Location of accident or incident:

c. Persons involved and their relationship to the MWR activity. Indicate whether each person involved was a **NAF** employee, patron, authorized guest, or contractor, etc.:

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d. Status of individuals whose action or omission may be attributable to the incident giving rise to subject claim:

Civilian Employee: NAF APF (GS)

Active Duty: NAF (part-time) Official Duty
 Volunteer

Volunteer: NAF APF (GS) Other

Other: _____

e. Vehicles involved (indicate whether NAF, APF, or privately owned vehicle (POV), and identify Navy vehicles by USN registration number):

f. MWR facilities, property, equipment, or special purpose equipment involved and how these might have contributed to the incident or accident:

g. "Outside" organizations (not affiliated with or sponsored by the NAFI activity, such as independent contractors, private organizations, and concessionaires, and to what degree were they involved in the incident or accident (if applicable):

h. Date TCU Norfolk was notified and provided with documentation such as civilian or military police reports or eyewitness statements, photographs, etc. Note: This applies only to those accidents and incidents where the possibility of a liability claim arising out of the mishap exists.

i. Point of Contact at TCU Norfolk and contact information.

NOTE: Information concerning all accidents, incidents, and mishaps attributable to the MWR activity that involve the death or injury of an individual, or damage to or loss of property belonging to third parties (e.g., patrons and authorized guests) shall be provided to the claims attorney at the TCU Norfolk as soon as it becomes known. Similarly, notice should also be provided to the TCU Norfolk attorney if MWR property is damaged or a NAF employee is injured as a result of the negligent act of a third party. The MWR director or site manager should request a TCU Norfolk attorney to assist in asserting an affirmative claim for the recovery of damages.

j. Brief description of the accident, incident, or mishap.

k. Include the following as enclosures:

(1) A copy of accident or incident report, including photographs whenever possible.

(2) Two estimates of repair/replacement (if possible).

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(3) Point of contact with phone number (commercial and DSN) and E-Mail address.

(4) Cover letter from Commanding officer, regional commander, or "by direction" designee, as applicable.

(5) NAF property asset list for items being claimed. (Attach addendum sheet for additional items or attach NAF-property inventory sheet for mass casualty.)

<u>Description of Item</u>	<u>Acquisition Cost</u>	<u>Replacement/Repair Cost</u>	<u>Book Value</u>	<u>Age of Equipment</u>
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	\$ _____	_____

(6) Loss of Money and Securities.

(a) Amount of loss \$ _____.

(b) Circumstances of loss: _____

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(c) How was loss determined: _____

(d) Actions taken to prevent similar losses in future: _____

Point of Contact

COMM Phone #/DSN

E-Mail Address

Signature of MWR Activity Manager

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APPENDIX B

EXAMPLE LIABILITY WAIVER
(HOLD HARMLESS AGREEMENT)

IMPORTANT: THIS IS A LEGAL DOCUMENT

Please read and understand this document before signing. If you have any questions please ask us or consult an attorney.

Navy Morale, Welfare and Recreation (MWR) Department, [COMMAND], and its staff have done everything possible to assure that our patrons have a rewarding experience while participating in a MWR activity or event. We wish to inform our patrons that our events are not risk free. We do not want to heighten or reduce your enthusiasm for the experience, but we do want you to know in advance what to expect, and to be informed of some of the possible risks. We ask that you read, sign, and return this document to our office.

ACKNOWLEDGMENT OF RISK

I _____ (name of participant) hereby acknowledges that I have voluntarily chosen to participate in the Navy MWR _____ Program (hereinafter called "program") through Navy MWR [COMMAND]. I am participating in the program with the knowledge of the risks involved and hereby agree to accept any and all inherent risks including, but not limited to temporary or permanent muscle soreness; sprains; strains; cuts; abrasions; bruises; ligament and/or cartilage damage; head; neck or spinal injuries; loss of use of arms and/or legs; eye damage; disfigurement; or even death. I also recognize that there are both foreseeable and unforeseeable risks of injury that may occur as a result of participating in this program. Furthermore, I recognize that participation in the program involves activities and risks incidental thereto, including but not limited to, travel to and from other related activities, limited availability of medical assistance and the possible reckless conduct of other participants.

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I further understand that being exposed to such DAMAGES, risks and hazards are inherent in participating in Navy MWR Department [COMMAND] trips, programs and activities, therefore I understand that I should therefore exercise extra care for my own person. I understand the potential for these DAMAGES to occur, that those hazards and risks associated with Navy MWR Department [COMMAND] exist. Notwithstanding these factors, I choose to take this journey, agree to pay the required costs therefor and voluntarily assume the risks of such DAMAGES occurring while I am on this program.

Navy MWR Department [COMMAND] may at times deliver passengers to various third parties who will conduct, supervise, guide, or instruct passengers in various sporting or recreational activities, or conduct entire tours. Navy MWR Department [COMMAND] assumes no duty to certify, monitor or verify the qualifications of any third parties involved in these activities. Passengers' concerns regarding the qualifications of any third parties conducting or supervising these activities should be directed to the third parties and passenger agrees to release, indemnify and hold harmless Navy MWR, Navy MWR Department [COMMAND], [COMMAND] and its staff, the U.S. Navy, and the United States of America and its members, agents and employees for liability for DAMAGES arising out of the negligence of such third parties.

This list is not an exclusive or exhaustive list of possible injuries, trauma, or accidents that may occur participating in this program. Most of these injuries are rare and you are not likely to encounter them. However, they have occurred, and you need to know about them and other possible injuries not mentioned above. These injuries occur more often when the participants are not physically able to undertake these activities.

CONTRACT, WAIVER, RELEASE AND INDEMNIFICATION

I certify that my family, including minor children and myself are fully capable of participating. I state that I have read the above statement on some of the possible risks in the Navy MWR Department [COMMAND], trip/program or activity. Therefore, I assume full responsibility for myself, my family, including minor children, for bodily injury, death and loss of

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personal property and any expenses as a result of my negligence, negligence of my family, negligence of another participant on the Navy MWR Department [COMMAND], trip/program or activity, or the negligence of Navy MWR Department [COMMAND] and its staff. If I or my minor children contribute in any way to any injury to myself or my minor children or another or property loss to myself, my minor children or another I assume complete liability for negligence contributing to the accident. I also understand that Navy MWR Department [COMMAND] reserves the right to refuse any person it judges to be incapable of meeting the rigors and requirements of participating in Navy MWR Department [COMMAND], trip/program or activity. My family and I are in good physical condition and able to undertake this activity.

I agree to indemnify and hold harmless Navy MWR, Navy MWR Department [COMMAND], [COMMAND] and its staff, and the U.S. Navy, and its members, agents and employees from all claims, damages, losses, injuries and expenses arising out of or resulting from participation in these activities. I further agree to release, acquit and covenant not to sue Navy MWR, Navy MWR Department [COMMAND], [COMMAND] and its staff, and the U.S. Navy, and its members, agents and employees for all actions, causes of action claims or damages, damages in law or remedies in equity of whatever kind, including the negligence of Navy MWR [COMMAND], its staff or my family, myself, or my heirs, against Navy MWR Department [COMMAND] arising out of participation in the Navy MWR [COMMAND], trip/program or activity. In short, I cannot sue Navy MWR, Navy MWR Department [COMMAND], [COMMAND] and its staff, and the U.S. Navy, and its members, agents and employees, and if I do, I cannot collect any money.

I agree to the site of any lawsuit and the law governing any such lawsuit shall be governed the Federal Tort Claims Act, Military Claims Act, Foreign Claims Act, Suits in Admiralty Act, Public Vessels Act or Admiralty Extension Act, which ever is applicable. The terms of this agreement shall continue and be in effect after the MWR trip/program or activity has ended. I hereby give permission for transportation to any medical facility or hospital and I authorize any guide, or medical personnel to render necessary emergency medical care for my family or me. I hereby authorize the release of any medical information, including information concerning my HIV or "AIDS"

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status, in the possession of Navy MWR Department [COMMAND] to any medical facility or hospital, ambulance, first aid provider, first aid service, doctor, nurse or other such person rendering care on my behalf. I hereby waive any action or claim against Navy MWR Department [COMMAND] and its staff or any health care provider, hospital, doctor, nurse or first aid provider for the release of this medical information including my HIV or "AIDS" status.

As liquidated damages, I hereby agree that if Navy MWR, Navy MWR Department [COMMAND], [COMMAND] and its staff, and the U.S. Navy, and its members, agents and employees are forced to defend any action, lawsuit or litigation by myself, my executors, or my heirs, on my family's or my behalf; accordingly, my heirs or executors and I agree to pay court costs and attorney fees if they successfully defend such action, lawsuit or litigation.

Should a court of competent jurisdiction declare any paragraph or part of this agreement unenforceable, the remaining parts or paragraphs shall remain in full force and effect.

[] I authorize and release to Navy MWR Department [COMMAND] and its staff the use of my image in any photograph or video recording for any purpose of Navy MWR Department [COMMAND].

[] I have adequate health, disability and life insurance for my family and myself.

I, _____, of my own free will, for my family, my minor children, my heirs and executors and myself, have read, understand and acknowledge the risks and liability for myself, and my family this _____ day of _____ 200__.

I have read and understood this agreement.

FIRST PARTICIPANT SIGNATURE

SECOND PARTICIPANT SIGNATURE

PRINTED NAME

PRINTED NAME

ADDRESS

THIRD PARTICIPANT SIGNATURE

PRINTED NAME

PHONE: [_____] _____

IN CASE OF EMERGENCY PLEASE CONTACT: _____

PHONE: [_____] _____

I CARRY MEDICAL INSURANCE. YES _____ NO _____

NAME OF PROVIDER: _____

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APPENDIX C

MWR ACTIVITY REQUEST FOR CARRIER RECOVERY SAMPLE LETTER

5890
(Date)

From: (Your Command)
 To: Senior Claims Administrator, Office of the Judge
 Advocate General, Carrier Recovery Branch,
 Millington, TN 38054-5030

Subj: REQUEST FOR CARRIER RECOVERY ON NAF EMPLOYEE HOUSEHOLD
 GOODS CLAIM

Ref: (a) CNI 5890.1

Encl: (1) NAVLEGSVCOFF _____ Household Good (HHG) Claim
 No. _____ of _____
 (2) MWR Activity's Executed Voucher Authorizing Payment
 of NAF to Claimant

1. In accordance with reference (a), the Morale, Welfare and Recreation (MWR) Department at _____(Command)_____, seeks carrier recovery of \$_____ paid on household goods (HHG) claim No. _____ on _____(Date)____, enclosures (1) and (2) apply.
2. Upon carrier recovery, please transfer funds electronically to MWR Department's account number _____.
3. Point of contact on this matter is Mr/Ms. _____. He/She can be reached at commercial _____, DSN _____ or email _____.

By direction

Copy to:
 OJAG (Code 15)
 CNI (N25L2)
 COMNAVREG _____