



United States
General Accounting Office
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Office of the General Counsel

B-249060

April 5, 1993

Colonel Joseph C. Fowler
U.S. Army Claims Service
Office of the Judge Advocate General
Fort George G. Meade, MD 20755-5360

Dear Colonel Fowler:

This responds to your appeal of the position taken by GAO's Claims Group that the Army's agreement with 91-C01-T205, processed by your office under the Military Claims Acts (MCA), 10 U.S.C. ch. 163 (1988), settled two claims rather than one. As a consequence, you believe that the Army contributed more toward the payment of those claims, as well as claims settled in 90-K02-T02-T030, 90-C01-T503, and 90-C01-T504 (Z-2922114), 91-S01-T071 and T072 (Z-2923125), and 91-C01-T325 (Z-2920578),¹ than was proper under the MCA. You ask that the Judgment Fund reimburse the Army for the extra amounts you believe that it has paid. For the reasons explained below, we find no basis upon which to disturb Claims Group's disposition of the settlement. Similarly, we conclude that the and agreements each settled multiple claims. We, therefore, conclude that the Army is not entitled to any reimbursement from the Judgment Fund.

The four settlement agreements at issue here were made under the Military Claims Acts. As you know, under 10 U.S.C. §§ 2733(a), 2734(a), when certain prerequisites not relevant here are satisfied, the Secretary of Defense or his designee may settle and pay up to \$100,000 for "a claim against the United States" for "(1) damage to or loss of real property, . . . (2) damage to or loss of personal property, . . . or (3) personal injury or death." Furthermore, it is provided in 10 U.S.C. §§ 2733(d), 2734(d) that:

"[i]f the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and . . . otherwise payable under [the MCA], the Secretary may pay the claimant \$100,000 and report

¹You processed the agreements in and as each settling multiple claims, based on your experience with the agreement.

any meritorious amount in excess of \$100,000 to the Comptroller General for payment [from the Judgment Fund, 31 U.S.C. § 1304]."

is described in your submissions as a "claim of Wrongful Death and a Survival Action." died, during childbirth, as the result, allegedly, of medical malpractice by the staff of a U.S. Army hospital in West Germany. Claims Group treated the matter as two separate claims, one wrongful death claim on behalf of Mr. , individually, and one survival action on behalf of the estate, and required the Army to make two \$100,000 payments in this matter rather than one.

arose from the Army's allegedly negligent failure to adequately diagnose and treat genetic disorder, phenylketonuria, which resulted in her severe mental retardation. In addition to the physical and emotional harm incurred by , her parents claimed damages for emotional distress, loss of parent-child relationship, and financial losses. This matter was pursued by and settled with " , and Individually, and on behalf of , a minor." The Army, based on its experiences with , made three \$100,000 payments towards the settlement total.

was pursued by and settled with " and , individually." This matter arose from the Army's allegedly negligent failure to timely diagnose and treat Mrs. cancer. Claimed damages included the emotional, physical, and financial harm to Mrs. , and the loss of services, society, and companionship, and the mental, physical, and emotional distress, and expenses incurred by Mr. and two children. (Though described in the administrative claim, it does not appear that claims on behalf of the children were actually processed in conjunction with this matter.) In light of Claims Group's disposition of , Army made two \$100,000 payments towards the settlement total.

arose from alleged medical malpractice by the Army in its failure to timely diagnose and treat at various Army hospitals for progressive lymphoma, which led to her death. Wrongful death damages were claimed on behalf of the Mrs. 's survivors. Survival action damages were claimed on behalf of her estate. This matter was pursued by and settled with " Individually, as the Administrator of the Estate of , and as Parent or Guardian of , and surviving minors of the deceased, ." Again, because of the

disposition of _____, the Army made two \$100,000 payments on this settlement.

In your submission on _____, you note that the Army's regulations specify that maritime law shall govern the award of damages under the MCA. You maintain that maritime law recognizes survival action "as a part of a wrongful death claim," and that "such a survival action merges into the wrongful death action so only one claim remains." You assert that _____ was but one claim under the MCA: "there was only one incident and one injured party, that is _____. Her parent's claims were entirely derivative, as neither parent was an injured party." You make similar arguments with respect to _____ and _____. We believe that the Judgment Fund contemplates MCA claims as arising from awards to legally distinct persons based on distinct causes of action.

Both this Office and the courts have previously found that, before payment may be made from the Judgment Fund, the purposes and requirements of that appropriation must be satisfied. (See, e.g., B-18356, Aug. 26, 1977, and the court cases discussed therein.) The statute which established the Judgment Fund states that this fund is available (where certain other criteria not relevant here are met) "for a meritorious claim under [the MCA]." 31 U.S.C. § 1304(a) (3) (D). This statute does not define the term "claim." However, giving this term its plain meaning, we understand it to refer to a "cause of action" or a "demand for money or property as of right."² See Black's Law Dictionary 247 (6th ed. 1990).

Applying this definition, it appears to us that, in the present cases, each of the individuals who sought reimbursement for their claimed injuries, whether directly or "derivatively" inflicted, had legally separate "claims" within the meaning of the Judgment Fund. For example, in _____, Mr. _____ is pursuing claims, not only in his own right, but also as the legally authorized representative of Mrs. _____'s estate, and as representative of each of the minor children. The amounts to be paid in that case are owed not to him as an individual but to him, to the estate, and to the children. The fact that it is Mr. _____ who is pursuing all of these claims, rather than Mr. _____ and a combination of other individuals, arises from the


²Cf. 4 Comp. Gen. 404, 405 (1924) ("A claim has been judicially defined as the assertion of liability to the party making it to pay a sum of money [and] includes everything which can be recovered by suit." Citations omitted).

happenstance that he was named executor of his wife's estate, and that he continues to enjoy the status of father to and legal guardian of his children. With only slight variations from the present circumstances, other individuals could have been designated to pursue some of these claims instead of him. What is important here is not who is pursuing the claims or the fact that they had a common origin, but who are the real legal parties-in-interest, and do they have legally independent claims of right.

Our analysis is consistent with the MCA provisions allowing claims for alternative causes of action: "a claim against the United States for . . . (1) damage to or loss of real property . . . (2) damage to or loss of personal property . . . or (3) personal injury or death." 10 U.S.C. §§ 2733(a), 2734(a) (emphasis added). It is also consistent with the treatment historically given in this Office and by the courts to similar administrative settlements and judicial awards subject to the \$2,500 limitation imposed by the Federal Tort Claims Act, 28 U.S.C. § 2672, and the \$100,000 limit which used to be applied on judicial awards payable from the Judgment Fund. See, for example, 40 Comp. Gen. 307 (1960) and 58 Comp. Gen. 67 (1978), respectively.

While we understand the reasons for your election of maritime law in determining damages owed claimants who file under MCA, we find it difficult, in the absence of citation to relevant judicial interpretation of maritime law, to ignore either the purposes of the Judgment Fund statute or the plain meaning of "claim," as used in both that act and the MCA, and accept, in their place, your suggestion that the agreements at issue here would be viewed in maritime law as settling but one claim each. For these reasons, we find no basis for reversing Claims Group's position. We, therefore, decline to order reimbursement to the Army from the Judgment Fund with respect to the matters at issue here. Should you have further questions in this regard, please feel free to contact Mr. _____ of my staff at _____

Sincerely yours,


Gary L. Kepplinger
Associate General Counsel