(b)(3),(b)(6)

7-I41-469

DEPARTMENT OF THE ARMY
HEADQUARTERS, 25TH INFANTRY DIVISION
MULTI NATIONAL DIVISION NORTH
CONTINGENCY OPERATING BASE SPEICHER, APO AE 09393

REPLY TO ATTENTION OF

APVG-JA-C

30 August 2007

MEMORANDUM OF OPINION

SUBJECT: Claim of (b)(6) 07-I41-469

1. **Identifying Data:** (b)(6)

2. **Date and place the incident occurred giving rise to the claim**: The claim occurred on June 23, 2007 in Al Alam, Iraq.

3. **Amount of claim and date it was filed:** Claimant filed a claim for $50,000 on 27 Aug 07.

4. **Jurisdiction:** This request is presented for consideration under the provisions of the Foreign Claims Act, 10 USC Section 2734, as implemented by Chapter 10, Army Regulation 27-20. This claim was properly filed in a timely manner.

5. **Facts:** Claimant's brother was driving himself and another man to the pharmacy to pick up medication for his brother's friend's father. The two men were out after curfew. Claimant alleges his brother and the other man were attacked and killed by U.S. Forces for no reason. The truck was also destroyed. Claimant provided pictures of the destroyed vehicle, a photo of Claimant's nephew, a letter from LTC (b)(6), (b)(3) (acting Deputy Commander for the (b)(6) PRT), memorandums from the Provincial Joint Coordination Center, witness statements, police reports, a legal expert estimate, and a diagram of the incident.

6. **Opinion:** A claim is not payable if it resulted from "action by an enemy or…directly or indirectly from an act of the armed forces of the United States in combat." 10 U.S.C. §2734(b)(3). Investigation revealed an ongoing operating in the area and that U.S. Forces engaged and killed the two men. Although the specifics of the incident are highly classified, the Judge Advocate from the unit involved confirmed that the engagement was a "clean shoot." Consequently, U.S. Forces were engaged in combat activities and therefore the claim is not compensable under the Foreign Claims Act.

7. **Recommendation:** Recommend this claim be denied.

(b)(3),(b)(6)

CPT, JA
Chief, Claims

companion claim
7-I41-468

TF Lightning
Foreign Claims Cover Sheet

File #: 7-I41-469

sister case of 7-I41-468

Name: (b)(6)

POA/ATT:

Date Received: 27 Aug 07 **Date of Incident:** 22 June 07

Claim Amount: $50,000 **Location:** Al Alam

Next Apt: 03 sept 07 **Contact Info:** (b)(6)

Additional Evidence / Further Investigation:
POA; Death certificate and medical docs, ID

Check Intsum ☒ **Check Sigacts** ☑ No sigacts
Check Investigation Spreadsheet ☒ Personally verified b)(3),(b)(6

Approved ☐ **Denied** ☑ C/A

(b)(2)High, (b)(5)

Three Man Commission

The commission has decided to:

_____ Approve $ _____

X Deny

the claim of (b)(6) 7-I41-469 Related to 7-I41-468

(b)(3),(b)(6)	(b)(3),(b)(6)	(b)(3),(b)(6)
CPT (b)(3),(b)(6)	C (b)(3),(b)(6)	CPT (b)(3),(b)(6)
President	Judge Advocate	Judge Advocate
31 AUG 07	2 AUG 07	31 Aug 2007
Date	Date	Date
X Combat Activity	X Combat Activity	X Combat Activity
___ Insufficient Evidence	___ Insufficient Evidence	___ Insufficient Evidence
___ Unknown Enemy	___ Unknown Enemy	___ Unknown Enemy
___ Other (explain)	___ Other (explain)	___ Other (explain)

07-I41-469-00006

Pages 7 through 8 redacted for the following reasons:
- -
Already Reviewed and Redacted for Release

TF Lightning Claims Intake Form

Name of Claimant: (b)(6) same info for as in 7-141-469 case

☑ Iraqi ID Card Seen and Identity Verified ☐ Iraqi Resident ☐ Iraqi ID #_____

☐ Copy of Iraqi ID Provided (Hometown is _____)

not yet **POA/Attorney Name** _____

☐ Power of Attorney provided ☐ Original Seen

☐ Names Match ☐ If POA, state relation _____

☑ **Decedents** (if applicable list names below)

1. (b)(6) brother 2. _____

3. _____ 4. _____

Claim arose at: (b)(6)

(Town) (City)

Claim arose on: 23 June 07

Day Month Year

Time of Day: 0035

Proof of Ownership: _____

☐ Vehicle VIN Number Match ☐ Sales Contract Provided

☐ Land Deed (Name Match) ☐ Other (explain) _____

Death Certificates

not yet ☐ Original Seen ☐ Cause of Death _____

☐ Name Match ☐ Age of Decedent _____

Medical Report/Legal Expert Opinion

not yet ☐ Legal Expert Report Attached: (total damages $_____)

☐ Medical Report (State type and severity of injury)

Brief statement of the incident on which the claim for damages is based.

Claimant states that his brother was riding in a truck and after curfew when CF helicopter, shot and killed him

Witness Statements

1. *Witness #1*: (Name) (b)(6) ☐ Eyewitness

Synopsis of Testimony: Deceased, who was riding in a truck, was shot by US because he was not stop checkpoint.

2. *Witness #2*: (Name) (b)(6) ☐ Eyewitness ☐ Consistent w/ First ☑ Same Story as First Witness

Synopsis of Testimony:

Itemized expenses/damages resulting from the property damage or personal injury:

Item	Amount
brother	$50,000.00

Total: $50,000.00

I claim these total damag (b)(6) nt in U.S. dollars and local currency)
$ Iraqi Dinar

→ (b)(6)

(Signature of Claimant)

Subscribed before me this 27 day of Aug, 2007

(b)(3),(b)(6)

(Pr (b)(3),(b)(6)

(Signature)

Total Evidence Provided (*Check all that apply*)

☑ Witness Statements (# 2)	☐ Proof of Ownership	☐ Medical Documents
☐ Legal Expert Report	☑ Police Report	☐ Photographs
☐ Other	☐ Other	☐ Other

DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
HEADQUARTERS, 25TH INFANTRY DIVISION
OPERATION IRAQI FREEDOM, COB SPEICHER
TIKRIT, IRAQ APO AE 09393

AFZB-JA-C

MEMORANDUM FOR RECORD

SUBJECT: Waiver of Notification

1. I, the Claimant, hereby agree that if I fail to provide any requested evidence to the CMOC Claims Office within sixty (60) days of the date below or to request a written extension of the sixty (60) day period, such inaction shall constitute an affirmative act of abandonment of my claim, and my claim shall be administratively closed in accordance with the provisions of DA PAM 27-162, paragraph 13-3(f).

2. I further agree that if I wait longer than sixty (60) days from the date below to return to the CMOC to receive notification of the final disposition of my claim or to request a written extension of the sixty (60) days period, this failure will result in denial of the claim. The claim will be administratively closed in accordance with the guidance above.

1.انا المشتكي هنا اوافق على اني اذا فشلت في اثبات طلبي بالادلة الكافية الى دائرة الشكاوي (السيماك) خلال مدة(60) ستون يوما من تاريخ اليوم او طلب التمديد (الأستئناف) خلال فترة ستون(60) يوما ,هذا سوف يسبب عدم تكوين تاكيد لقضيتي , وبسبب ذلك قضيتي سوف تترك و تغلق اداريا طبقا للقانون (د,ا,ب,ا,م 27-162, من الفقرة 13-3(ف).

2.وانا كذلك اوافق على اني اذا انتظرت اكثر من (60)ستون يوما من التاريخ المحدد من دائرة (السيماك) لأستلام النتيجة للقرار النهائي لقضيتي او لطلب التمديد خلال الفترة المحددة وهي (60) ستون يوما ,هذا سوف يتسبب برفض قضيتي . و القضية سوف تغلق اداريا وفقا للقانون.

Claimant Signature: (b)(6)

Sworn before SGT (b)(3),(b)(6), on 27 day of Ag 200 07