

162 / 791

CENTCOM 005941

TF Band of Brothers
Foreign Claims Cover Sheet

File #: 6-IR8-791

Name: _____ (b)(6)

POA/ATT: _____ (b)(6)

Date Received: 3 June 06 **Date of Incident:** 9 Feb 06

Claim Amount: 5,000 **Location:** Al Sineeyati (Bayji)

Next Apt: 17 June 06 **Contact Info:** _____

Translation: _____

Further Investigation:

Contact S-2 **Check Sigacts** check to EDF
Match

Approved **Denied** of Award and \$2,500 GWP by
Denied C/E 4 Ju (b)(3),(b)(6) C/1/187 edr

Goodwill Payment recommended: _____
 Approved: _____ **Denied:** _____

MVA **RAID** **LOST** **NEG FIRE** **REAL**
 OTHER: _____

See Investigation Report Inside

6-128-791

17 Jun 06



DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
HEADQUARTERS, 101ST AIRBORNE DIVISION (AIR ASSAULT)
OPERATION IRAQI FREEDOM, COB SPEICHER
TIKRIT, IRAQ APO AE 09393

AFZB-JA-C

MEMORANDUM FOR Record

SUBJECT: Claimant Denial

1. This is in response to your claim against the United States Government. Your claim has been reviewed under the Foreign Claims Act, 10 U.S.C. 2734, as implemented by Army Regulation 27-20, Chapter 10. I regret to inform you that your claim has been denied.

2. Your claim has been denied for the following reasons:

- a. There is not enough evidence to prove your claim.
- b. The evidence shows that United States Forces did not cause the damage.
- c. The evidence shows that the damage was caused during combat.
- d. The evidence shows that the damage was caused by your own negligence or wrongdoing.
- e. The evidence shows that your claim was fraudulent.
- f. Other: _____

3. If this is the first time your claim has been viewed by this office, you may submit an appeal. This office must receive the appeal no later than 30 days after receipt of this message. The appeal must also contain additional evidence supporting your claim. If the appeal is sent after 30 days have passed, or does not provide additional evidence, then the appeal will be denied.

4. POC is the 101st Airborne Division (Air Assault) Claims Office at DSN (b)(2)High

(b)(3),(b)(6)
CPT, JA
Chief of Claims



DEPARTMENT OF THE ARMY
HEADQUARTERS, 101ST AIRBORNE DIVISION (AIR ASSAULT)
TASK FORCE BAND OF BROTHERS
COB SPEICHER, IRAQ APO AE 09393

AFZB-JA-C

4 June 2006

MEMORANDUM OF OPINION

SUBJECT: Claim of (b)(6) 6-IR8-791

1. **Identifying Data:** (b)(6) Iraq
2. **Date and place the incident occurred giving rise to the claim:** The claim occurred on 9 February 2006, in Bayji, Iraq.
3. **Amount of claim and date it was filed:** Claimant filed a claim for \$5,000 on 3 June 2006.
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 filed in a timely manner.
5. **Facts:** The Claimant alleges that a CF convoy approached his vehicle from behind and shot his who was riding in the car. The Claimant provided a death certificate and witness statements to substantiate the claim. A SIGACTS investigation confirmed an EOF that matched the alleged events.
6. **Opinion:** Under AR 27-20, paragraph 10-3, Claims arising "directly or indirectly" from combat activities of the U.S. Armed Forces are not payable. AR 27-20 defines combat activities as, "Activities resulting directly or indirectly from action by the enemy, or by the U.S. Armed Forces engaged in armed conflict, or in immediate preparation for impending armed conflict." Facts as alleged show that the damages were caused from an escalation of force, a combat activity. This claim is not compensable under the FCA.
7. **Recommendation:** The claim is denied.

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

CPT, JA
FCC

CENTCOM 005944

ESCALATION OF FORCE (EOF) INVESTIGATION REPORT
101ST AIRBORNE DIVISION (AIR ASSAULT)
TASK FORCE BAND OF BROTHERS

In accordance with (b)(2)High the following report is to be completed and forwarded to the Office of the Staff Judge Advocate of Task Force Band of Brothers no later than 24 hours following completion of any EOF investigations.

UNIT: C CO., 1-187 IN, 3 BCT, 101ST ABN DIV (AASLT)

CAPTURE DTG: 090900FEB06

LOCATION OF INCIDENT: (b)(2)High AS SINIYAH, IRAQ)

TYPE OF INVESTIGATION: SECOND INFORMAL INVESTIGATION UP AR 15-6

FINDINGS OF INVESTIGATION:

FACTS: ELEMENTS WERE CONDUCTING A ROUTINE PATROL VIC MARKET ST. IN A 4XM1114 CONVOY. THE CONVOY WAS TRAVELING AT APPX. 10-15 MPH. AS THE PATROL PASSED THE MOSQUE A WHITE TOYOTA PICKUP TRUCK PULLED OUT IN FRONT OF THE LEAD M1114 APPX. 50M AWAY, TRAVELING IN THE SAME DIRECTION. AT THAT POINT, THE DRIVER OF THE LEAD VEHICLE SIGNALLED TO THE TRUCK BY HONKING ITS HORN. THE TC THEN ORDERED THE GUNNER TO WAVE THE ORANGE FLAG TO SIGNAL THE TRUCK TO PULL OVER. THE GUNNER EXECUTED AND ALSO SHOUTED FOR THE VEHICLE TO PULL OVER. LOCAL RESIDENTS WERE WAVING AT THE TRUCK TO PULL OVER AS WELL.

(b)(2)High

(b)(2)High

THE GUNNER FIRED A SINGLE SHOT FROM HIS M4, AIMING AT THE BACK OF THE TRUCK. IMMEDIATELY AFTER THE SHOT WAS FIRED, THE WHITE TRUCK PULLED OVER TO THE SIDE OF THE ROAD. THE PATROL SLOWED DOWN AS THEY PASSED THE WHITE TRUCK TO OBSERVE THE OCCUPANT. THE TC AND GUNNER OF THE LEAD VEHICLE OBSERVED ONLY THE DRIVER IN THE CAB. WITH NO APPARENT INJURY OR DAMAGE, THE PATROL CONTINUED THEIR MISSION AND DID NOT REPORT THE INCIDENT.

THE NEXT DAY, THE UNIT LEARNED THAT THE LOCALS IN AS SINIYAH WERE HAVING A FUNERAL FOR THE DEATH OF AN IRAQI BOY KILLED BY CF ON MARKET STREET. AN INVESTIGATING OFFICER WAS APPOINTED AND ON 111300FEB06 ACCOMPANIED THE C CO CDR TO INVESTIGATE THE INCIDENT. THE INVESTIGATING OFFICER MET WITH THE BOY'S FATHER AND GRANDFATHER AND TOOK PICTURES OF THE TRUCK. THE FATHER UNDERSTOOD IT WAS AN ACCIDENT AND WAS PAID \$2500.00 IN CONDOLENCE PAYMENT FOR HIS LOSS BY THE CO CDR. THE FATHER AND GRANDFATHER

PUT THE INCIDENT AROUND THE MOSQUE, BUT OTHER DETAILS SCH AS THE DISTANCE AND NUMBER OF SHOTS FIRED WERE EXAGGERATED. THE FATHER SAID HE HAD NEVER SAW THE PATROL OR THE LOCALS WAIVING AT HIM AND AFTER THE INCIDENT TOOK THE BOY TO THE BAYJI HOSPITAL WHERE HE WAS PRONOUNCED DEAD. C/1-33 CAV PLAYED A MESSAGE OVER A LOUDSPEAKER IN ARABIC, ANNOUNCING THE TRAGEDY AND HOW IT COULD HAVE BEEN AVOIDED. HAVING INVESTIGATED THE INCIDENT ON LOCATION AND SPEAKING WITH THE FATHER AND GRANDFATHER, THE INCIDENT REGARDING THE DEATH OF THE BOY IS CONSIDERED SETTLED BY THE LOCAL COMMUNITY.

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

(b)(5)

CJA COMMENT: DETERMINATION OF HOSTILE INTENT MAY BE DERIVED FROM A VARIETY OF FACTORS. MNC-I EOF GUIDELINES PROVIDE COMMANDERS AND TROOPERS A TOOL FOR ASSISTING IN ASSESSING HOSTILE INTENT VS. INATTENTIVENESS OR MISTAKE. THIS CASE ILLUSTRATES THE IMPORTANCE OF THE ROE PRINCIPLE OF "HOSTILE INTENT," AND THAT EACH SITUATION IS UNIQUE. MERELY FOLLOWING PUBLISHED EOF PROCEDURES DOES NOT ALWAYS PROVIDE THE SOLDIER WITH A REASONABLE CERTAINTY OF HOSTILE INTENT. THE KEY IS THAT THE TROOPER MUST REASONABLY PERCIEVE A THREAT THAT JUSTIFIES THE USE OF DEADLY FORCE. THE

INVESTIGATING OFFICER CORRECTLY ANALYZED THE RESPONSIBILITIES OF TROOPERS TO REPORT, STOP, ASSESS AND PROVIDE ASSISTANCE AFTER AN EOF HAS OCCURRED. THE UNIT ALSO QUICKLY IDENTIFIED THE REQUIREMENT TO OFFER CONDOLENCE PAYMENT TO THE FAMILY OF THE CHILD WHO WAS KILLED. WHILE THIS IS AN EXTREMELY UNFORTUNATE INCIDENT, THE UNIT WAS ABLE TO DEMONSTRATE THAT THEY WERE NOT CALLOUS TO THE LOCAL COMMUNITY AND WERE CONCERNED AND SYMPATHIZED WITH WHAT HAD HAPPENED.

SUBSEQUENT INVESTIGATION: DUE TO THE SERIOUSNESS OF THE ISSUE, ON 12 MAR 06, 3 BCT CDR APPOINTED A SUBSEQUENT INVESTIGATION IOT VALIDATE THE FINDINGS AND RECOMMENDATIONS OF THE INITIAL INVESTIGATING OFFICER AND TO INVESTIGATE WHETHER THERE WAS SUFFICIENT EVIDENCE TO DEMONSTRATE THAT THE LN CHILD WAS KIA AS A RESULT OF THE EOF. WHILE THE FACTS WERE CLEAR THAT AN EOF OCCURRED AS FOUND BY THE INITIAL IO, THERE WERE SIGNIFICANT ISSUES CONCERNING WHETHER CF WERE THE ACTUAL CAUSE OF THE LN'S DEATH. THE IO FOUND THAT WHILE THERE IS EVIDENCE TO INDICATE THE EOF RESULTED IN THE DEATH OF AN IRAQI CHILD (BULLET ENTRY AND WHAT LOOKED TO BE A BLOODSTAIN IN A TRUCK MATCHING THE GENERAL DESCRIPTION OF THE ONE ENGAGED BY CF), THERE WAS NOT SUFFICIENT EVIDENCE TO POSITIVELY CONCLUDE THE ENGAGEMENT WAS THE CAUSE OF DEATH: NO BALLISTIC OR FORENSIC TESTING OCCURRED LINKING THE GUNNER'S WEAPON TO THE ENTRY POINTS ON THE VEHICLE; THE FAMILY OF THE VICTIM NEVER REPORTED THE INCIDENT TO IP, NOR DID THEY REPORT THE INCIDENT TO ANY CITIZENS OF SINIYAH OUTSIDE THEIR FAMILY; THERE ARE NO MEDICAL RECORDS DOCUMENTING THE DEATH OF THE CHILD. THE IO FOUND THAT THE ORIGINAL IO'S RECOMMENDATIONS ARE CONSISTENT WITH THE FINDINGS. THE IO'S RECOMMENDATIONS (b)(5)

(b)(5)

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

13 MAR 06

DATE

MAJ, JA
COMMAND JUDGE ADVOCATE

MEMORANDUM FOR Commander, 3rd Brigade Combat Team, 101st Airborne Division
(Air Assault), APO AE 09394

SUBJECT: Legal Review of AR15-6 Investigation

1. I have completed a legal review of the AR15-6 investigation conducted by MAJ
(b)(3),(b)(6) HHT, TF 1-33 CAV into the Escalation of Force (EoF) resulting in
1xLN KIA, vicinity As Siniyah, Iraq on 09 FEB 06. This is a subsequent investigation
that focuses on evidence linking the EoF to the child's death. (b)(5)
(b)(5)

(b)(5)

(1) The investigating officer found that while there is evidence to indicate the EoF resulted in the death of an Iraqi child, there is not sufficient evidence to positively conclude the engagement in conjunction with the escalation of force caused the death of the child. Coalition Forces never observed the remains of the child, nor did they gather medical records documenting the death of the child. The child's death is simply hearsay from family members and supported by only what appears to be a large bloodstain in the vehicle and a ceremony the local nationals claimed to be a funeral. No ballistic or forensic testing occurred that linked the gunner's weapon to the entry points in the vehicle.

(2) In addition to lack of physical evidence, the family of the child never reported the incident to Iraqi Police, nor did they report the incident to any citizens of Siniyah outside their immediate family. While not necessarily indicative of a ruse, the lack of notification of locals and/or local officials certainly raises additional questions.

d. The investigating officer's recommendations are consistent with the findings. Due to the lack of adequate forensic evidence or ability to capture the forensic evidence at this point, the investigating officer recommended that the file be closed without formal admission of culpability and upon completion of the additional EoF training recommended by the initial investigating officer. Due to the volatility of the town of Siniyah and recent strides to improve security as well as the relationship between Coalition Forces and the local citizens, a condolence payment was likely the appropriate course of action despite the lack of conclusive evidence indicating Coalition culpability.

AFZB-KC- JA
SUBJECT: Legal Review of AR15-6 Investigation

2. POC for this legal review is the undersigned at VOIF (b)(2)High or via email at (b)(3),(b)(6), (b)(2)High js.army.smil.mil.

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

MAJ, JA
Command Judge Advocate

CENTCOM 005949



DEPARTMENT OF THE ARMY
HEADQUARTERS, 3rd BRIGADE COMBAT TEAM
101st AIRBORNE DIVISION (AIR ASSAULT)
FOB SPEICHER, IRAQ, APO AE 09349



REPLY TO
ATTENTION OF

AFZB-KC-CO

12 March 2006

MEMORANDUM FOR RECORD

SUBJECT: Ratification of AR 15-6 Investigation

1. I have reviewed the AR 15-6 investigation conducted by 1LT (b)(3),(b)(6) into the following incident: Escalation of Force (EoF) by C/1-33 CAV on 090900FEB06 vic As Siniyah, Iraq. I take the following action regarding this investigation:

a. _____ IAW AR 15-6, paragraph 2-3, I ratify the appointment of the investigating officer and approve the findings and recommendations.

(b)(3),(b)(6) I ratify the appointment of the investigating officer. I appoint _____ to conduct an informal investigation pursuant to AR 15-6 into the above-named incident. A separate appointment memorandum is attached.

2. POC this action is 3 BCT CJA, at (b)(3),(b)(6) [@us.army.smil.mil](mailto:us.army.smil.mil); VOIP (b)(2)High

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

COL, IN
Commanding

War 3 - investigate this + get results back to me w/in 24 hrs (susg: 132100 mo). The conditions under which this EoF occurred are suspect at best.

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

CENTCOM 005950



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HEADQUARTERS, 3rd BRIGADE COMBAT TEAM
101st AIRBORNE DIVISION (AIR ASSAULT)
FOB SPEICHER, IRAQ, APO AE 09349



AFZB-KC-CO

12 March 2006

MEMORANDUM FOR MAJ (b)(3)(b)(6) HHT, 1st Squadron, 33rd Cavalry Regiment, 3rd
Brigade Combat Team, 101st Airborne Division (Air Assault), FOB Speicher, APO AE 09349

SUBJECT: Appointment Order for Investigating Officer UP AR 15-6

1. Effective 12 March 2006, MAJ (b)(3),(b)(6) is hereby appointed as the investigating officer.
2. AUTHORITY. AR 15-6, Investigations.
3. PURPOSE. To perform an informal investigation IAW AR 15-6, obtaining details pertaining to the Escalation of Force (EoF) by C/1-33 CAV on 090900FEB06 vic As Siniyah, Iraq. Your investigation should answer the following questions:
 - a. Are the findings and recommendations from the previous investigation conducted by 1LT (b)(3),(b)(6) accurate?
 - b. Is there sufficient evidence to show that the LN child was KIA as a result of the EoF? Is there subsequent evidence to show that Coalition Forces did not cause the child's death?
4. PERIOD. Until the investigation is completed and no further investigation is required, unless released sooner by the appointing authority.
5. SPECIAL INSTRUCTIONS. Conduct of this investigation will be your PRIMARY duty until the investigation is submitted to the appointing authority. Your findings will be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. Your findings and recommendations will be submitted to this headquarters NLT 132100MAR06. Prior to submission, you will obtain a final legal review of your findings and recommendations from the 3 BCT CJA.
6. POC this action is 3 BCT CJA, at (b)(3),(b)(6), (b)(2)High VOIP (b)(2)High

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

COL, IN
Commanding

CENTCOM 005951



TF Band of Brothers Claims Intake Form



To: United States Army Foreign Claims Commission

From: Name: _____ (b)(6) _____

POA/AT: _____

Power of Attorney provided and interpreter approved: original seen
Decedents: _____ (b)(6) old) (son)

Hometown (b)(6) _____ Iraqi Resident: _____

My claim arose at: BAIJI (Town) AI Sineyah (City) (Country)

My claim arose on: 9 Month Feb Day 06 Year

Proof of Ownership: N/A

VIN Match: _____

Interpreter Approved: _____

Death Certificates (Name, Cause of Death, Age, and Time of Death Consistent with Claimant allegations):

COO - GSW & heart failure
 Interpreter Approved: original seen

Medical Report/Legal Expert Opinion: _____

Interpreter Approved: _____

Witness Statement (Consistent?): (b)(6) - worker - 9:00 A.M. saw the
C & his son @ supermarket. later found dead.

Interpreter Approved: (b)(6) - worker - saw CF HUMV shoot
@ vehicle. saw dead son.

Give a brief statement of the accident or incident on which the claim for damages to property or for personal injury is based. (Use back of this sheet if necessary.)

C went to supermarket for groceries

When he went home, CF were shooting

(EDF) @ his 9:00 morning

Toyota pickup - white. Inside AI Sineyah

* Humvees approached from rear -
son was riding in the back
of the truck when the
car was shot.

- 150 meters away.

Evidence: Witness x 2, POA, Judge, IP Report

List in detail the amount of property damage and itemized expenses resulting from the property damage or personal injury: (Attach bills and receipts, if applicable.)

<u>Item</u>	<u>Amount</u>

Total: \$,000

I claim as damages: (Indicate amount in U.S. dollars and local currency)
\$ 5,000 local _____

(b)(6)

(Sig)

Subscribed before me this 3 day of June, 2006.

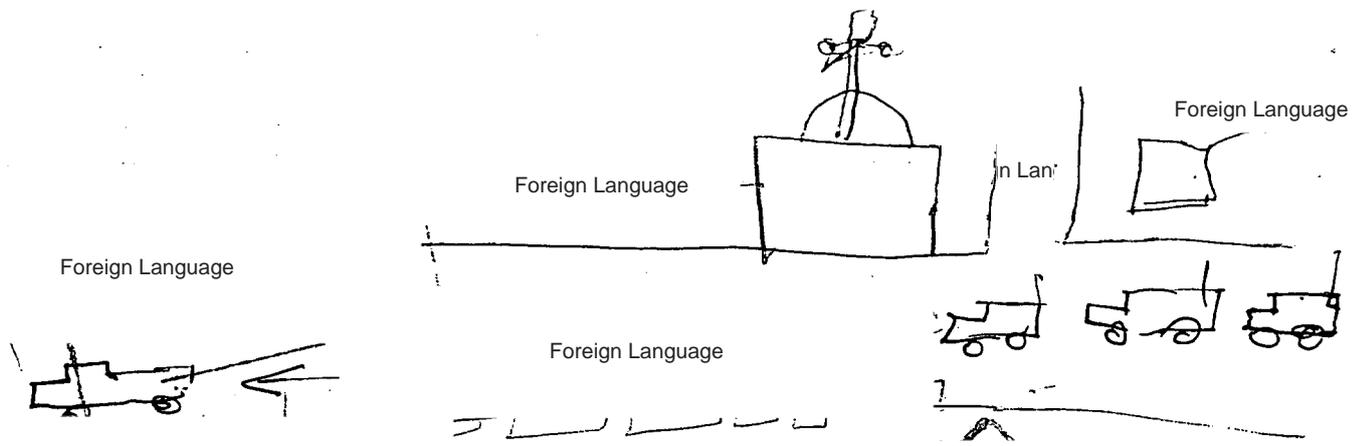
(b)(6), (b)(3)

Pages 14 through 17 redacted for the following reasons:

Foreign Language, (b)(6)

CENTCOM 005958

Foreign Language



Foreign Language, (b)(6)

Foreign Language

Pages 20 through 23 redacted for the following reasons:

Foreign Language, (b)(6)



DEPARTMENT OF THE ARMY
OFFICE OF THE STAFF JUDGE ADVOCATE
HEADQUARTERS, 101ST AIRBORNE DIVISION (AIR ASSAULT)
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 المشتكى 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 (الاستئناف) خلال فترة ستون (60) يوما , هذا سوف يسبب عدم تكوين تكويد لقضيته , وبسبب ذلك قضيته سوف تترك و تغلق اداريا طبقا للقانون (د,ا,ب,ايم 162-27, من الفقرة 13-3(ف)).

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

(b)(6)

Claimant Signature: _____

Sworn before _____, on _____ day of _____ 200_____.



CENTCOM 005965



COB Speicher CMOC
Tikrit Iran



(b)(6)

Time

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Original Language, (ite

17 June 06

التاريخ

Claim No.

6-IR8-791

رقم المعاملة

Purpose

C/S

السبب

CTA

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

✓