



U.S. SPECIAL OPERATIONS COMMAND INFORMATION PAPER

GENERAL INDEMNIFICATION AND HOLD HARMLESS CLAUSES IN LICENSING AGREEMENTS

Absent an act of Congress, United States Special Operations Command (USSOCOM) elements do not have the ability to unilaterally waive the sovereign immunity of the United States Government by agreeing to general indemnification or hold harmless clauses. However, the U.S. military is effectively self-insured as Congress has waived sovereign immunity for the actions of its employees to the same extent that private employers are liable under state law for the actions of their employees. This limited waiver of sovereign immunity is accessed by claimants via the Federal Tort Claims Act (FTCA) (28 U.S.C. §§ 1346(b), 2671-2680)/Military Claims Act (MCA) (10 U.S.C. § 2733).

The FTCA/MCA is an administrative process. The process begins when a person files a claim seeking recovery for personal injury or damages to property by military personnel. Once filed, USSOCOM will adjudicate the claim and offer a settlement to the claimant. Under the FTCA/MCA, the amount of recovery is only limited to the merits of the claim. If the settlement is accepted, the claimant will be paid from the U.S Treasury. If the settlement is refused, the claimant may still file an action in the Court of Federal Claims.

It is extremely rare for claims to arise during USSOCOM training events. USSOCOM conducts training in major U.S. cities three to four times every year and we always ensure our personnel are thoroughly prepared and have put in place the necessary risk mitigation measures prior to conducting training. Our experience and planning significantly reduce the possibility that any damages occur. But if a claim arises, USSOCOM personnel will do everything in their power to encourage third party claimants to seek recovery via the FTCA/MCA and will then expedite the claims process once initiated.

We hope this information paper helps to explain our limitations on agreeing to general indemnification and hold harmless clauses and that it assists with your understanding of the protections we can provide via the FTCA/MCA. We greatly value our partnerships with our civic and business leaders and we thank you for your support of USSOCOM.

If you have any questions or concerns, please feel free to contact the command legal office at [REDACTED] and ask to speak with one of our attorneys.