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SUMMARY OF GAO TESTIMONY  
ON H.R. 597 BY DAVID E. BRYANT, JR.  
GROUP DIRECTOR (CLAIMS) ACCOUNTING  
AND FINANCIAL MANAGEMENT DIVISION

GAO supports this Bill for two reasons. First, it will have the effect of shifting the fiscal accountability to agencies for allowable claims between \$25,000 and \$100,000 and an additional \$75,000 of claims in excess of \$100,000. The fiscal accountability may be to the government's benefit in compromise settlement offers and in the management of government activities which give rise to claims of these type.

Secondly, administrative paperwork will be reduced and allowable claims of under \$100,000 and the first \$100,000 of claims over \$100,000 will be paid 4-6 weeks faster than is now the case. GAO sees possibly reduced and at worst the same overall level of Treasury disbursement for claims affected by H.R. 597.

GAO sees no loss of oversight capability should H.R. 597 be enacted.



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U.S. GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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STATEMENT OF  
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BEFORE THE  
SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 597 - TO INCREASE THE MAXIMUM AMOUNT THAT  
MAY BE PAID IN THE ADMINISTRATIVE SETTLEMENT OF  
MILITARY CLAIMS AND FOR OTHER PURPOSES.

Dear Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before you today to express our support for the proposed changes contained in H.R. 597. Generally, we support enactment of H.R. 597, for two reasons. First, it would enhance agency accountability. In our view, once the Congress has made the basic policy determination that claims of a given type should be compensable from public funds, an agency should bear some measure of accountability, within reasonable limits, for claims of that type resulting from its activities or from the acts or omissions of its employees. Direct exposure to the fiscal consequences of its actions may provide greater incentive to the agency to undertake risk

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analysis and, where appropriate, implement corrective action. Second, the bill would reduce administrative processing (paperwork) and delay in the payment of awards up to \$100,000.

#### SUMMARY OF EXISTING LAWS

To place H.R. 597 in perspective, a summary of existing law may be helpful. As noted, the bill deals with three claims statutes:

(1) 10 U.S.C. §2733, known as the Military Claims Act. This statute authorizes the Department of Defense, the military departments, and the Coast Guard to administratively consider claims for death, personal injury, or property damage incident to noncombat activities of the agency concerned or not otherwise cognizable under either 10 U.S.C. §2734 (below) or the Federal Torts Claims Act. There is no need to establish negligence under this statute.

(2) 10 U.S.C. §2734, the so-called Foreign Claims Act or Foreign Military Claims Act. This provision authorizes the military departments to consider certain claims for death, personal injury, or property damage arising in foreign countries. Since 28 U.S.C. §2680(k) exempts claims arising in foreign countries from coverage under the Federal Torts Claims Act, overseas negligence claims involving the military departments are handled under this statute although, like 10 U.S.C. §2733, proof of negligence is not required.

(3) 32 U.S.C. §715, the National Guard Claims Act. Patterned generally after 10 U.S.C. §2733, 32 U.S.C. §715 authorizes the administrative consideration of death, personal injury,

or property damage claims incident to noncombat activities of the National Guard or certain prescribed training. As with 10 U.S.C. §2733, it does not apply to claims cognizable under either 10 U.S.C. §2734 or the Federal Tort Claims Act.

The three statutes have several things in common: they provide administrative, not judicial, relief; they are subject to a 2-year statute of limitations; and claim settlements are final and conclusive.

#### LATEST CONGRESSIONAL ACTION TO IMPROVE ADMINISTRATIVE PROCESSES

Prior to 1978, as is still the case, awards of up to \$25,000 under these statutes were paid directly by the agency concerned out of available appropriations. If an award exceeded \$25,000, the agency paid the first \$25,000 and submitted the excess to the Congress for a specific appropriation. The practice became to submit the awards to the Congress through the Office of Management and Budget as appropriation requests. The appropriations were then included in supplemental appropriation acts and were made almost as a matter of routine. The last specific appropriation for such claims was contained in the Supplemental Appropriations Act, 1977, Pub. L. No. 95-26 (May 4, 1977), 91 Stat. 61, 96.

In early 1978, Congress eliminated the need for specific appropriations by expanding the permanent judgment appropriation, 31 U.S.C. §1304 (former 31 U.S.C. §724a), to cover amounts awarded under these three statutes in excess of the amounts payable from agency appropriations. This amendment was made by the Supplemental Appropriations Act, 1978, Pub. L. No. 95-240

(March 7, 1978), § 201, 92 Stat. 107, 116. The Appropriations Committees of both the Senate and the House of Representatives felt that the amendment would "reduce the workload of an unnecessary and strictly routine legislative step" (i.e., making the specific appropriations), and that the claims could be "dealt with satisfactorily by the\*\*\*executive branch with the oversight of the Comptroller General." S. Rep. No. 95-564, 95th Cong., 1st Sess. 76 (1977); H.R. Rep. No. 95-644, 95th Cong., 1st Sess. 53 (1977). The 1978 amendment made in an appropriation act allowed claims in excess of \$25,000 to be paid from the judgment appropriation; however, corresponding technical amendments were not made to the three substantive statutes.

Thus, since March 1978, the agencies concerned have continued to pay awards up to \$25,000, plus the first \$25,000 of larger awards, directly from available appropriations. However, amounts in excess of the statutory amounts payable from agency funds have been submitted to the General Accounting Office for certification and payment from the permanent judgment appropriation.

We also note that activity under the National Guard Claims Act, 32 U.S.C. § 715, is likely to diminish. Legislation in 1981 (Pub. L. No. 97-124, December 29, 1981, 95 Stat. 1666), amended the Federal Tort Claims Act to include members of the National Guard while engaged in training or duty under specified sections of title 32. Since claims cognizable under the Federal Tort Claims Act are not cognizable under the National Guard Claims Act (32 U.S.C. § 715(b)(2)), claims where negligence can be

established will now be settled under the Federal Tort Claims Act.

PROCEDURES FOLLOWED AND CERTIFICATION PROCESS

In handling these claims since the 1978 amendment, we have found that the military departments are for the most part experienced in claims settlement and operate under relatively sophisticated regulations and procedures. Thus, we, as did the appropriations committees before us, must rely heavily on the material submitted to us by the agency.<sup>1/</sup> Accordingly, our policy has been to apply the same procedures to these claims that we use in making payments of administrative awards (in excess of \$2,500) under the Federal Tort Claims Act which are also, by virtue of 28 U.S.C. § 2672, payable from the permanent judgment appropriation.

Basically, we review the documents submitted to us to ensure that the claim has been settled in accordance with the governing statute. We look at such things as whether the claim was filed within the applicable statute of limitations and whether the claim is otherwise properly cognizable as a matter of law under the statute cited. We also check for documentation that the agency has in fact paid the first \$25,000. We do not, however, review the "merits" of the claim -- that is, we do not question

<sup>1/</sup>Strictly speaking, an agency's submission of a claim in excess of \$25,000 to us under these statutes -- with the possible exception of 10 U.S.C. § 2734 -- is not a final and conclusive settlement of that claim. However, we have thus far not found it useful to draw that distinction in practice.

the agency's determination of fault or negligence (if that was the case) nor do we review the amount of damages. We would, of course, reject an award which exceeded the amount claimed or any claim for interest. In brief, we review matters of cognizability, but not the merits.

#### IMPACT OF THIS BILL

In view of the 1978 amendment to the permanent judgment appropriation, discussed above, it is clear that the primary thrust of H.R. 597 would be to shift the burden of awards between \$25,000 and \$100,000, plus the first \$100,000 of larger awards, from the general fund of the Treasury to the appropriations of the agency whose actions gave rise to the claim. The bill would also revise the three substantive statutes to reflect what has in fact been the law, except for the amounts, since March 1978. Since the awards are currently payable from appropriated funds, H.R. 597 would not increase Federal liability or expenditures. An incidental effect would be to simplify and expedite the processing and payment of claims up to \$100,000. Our recent experiences are that there is a 2-3 weeks time between agency payment of the \$25,000 and GAO receipt of the claim. An additional 2-3 weeks is the average for GAO to review and approve the remaining payments. As noted at the outset, we concur with these objectives. Any loss in GAO oversight by virtue of our no longer seeing individual claims under \$100,000 could be compensated through our general audit authority.

To assess the impact of H.R. 597, we reviewed Treasury Department records for fiscal years 1980, 1981, and 1982. Awards under the 3 statutes that H.R. 597 would amend have averaged approximately \$2 million per year from the permanent judgment appropriation. This of course is in addition to the direct payments from agency appropriations. Approximately two-thirds of the claims arise in foreign countries. Traffic accidents, medical malpractice, and airplane crashes tend to account for most of the activity under these statutes. Appendix 1 summarizes the expenditures for the last 3 fiscal years together with an estimate of the amounts that would have been shifted from the judgment appropriation to agency funds if H.R. 597 had been in effect.

Mr. Chairman, this concludes my formal statement. My colleagues and I would be happy to respond to any questions you may have.



APPENDIX I

Summary of number and amount of claims certified for payment from judgment appropriation under 10 U.S.C. § 2733, 10 U.S.C. § 2734, and 32 U.S.C. §715

	Total		Awards less than \$100,000		Awards greater than \$100,000		Amount affected by H.R. 597
	No.	Amount <sup>1/</sup>	No.	Amount <sup>1/</sup>	No.	Amount <sup>1/</sup>	
FY 1980	25	\$2,547,114	16	\$ 291,991	9	\$2,255,123	\$ 966,991
FY 1981	18	\$1,930,925	11	\$ 160,733	7	\$1,770,192	\$ 685,733 <sup>2/</sup>
FY 1982	25	\$2,087,286	18	\$ 564,869	7	\$1,522,418	\$1,089,869 <sup>3/</sup>

<sup>1/</sup>First \$25,000 of these awards were paid from agency funds, amounts shown were paid from judgment appropriations.

<sup>2/</sup>FY81-1 claim added; paid in Korean won; estimate of U.S. \$131,269 used.

<sup>3/</sup>FY82-3 claims added, based on estimates of U.S. dollar equivalents.