

## **The Federal Tort Claims Act Precludes a Suit against the Individual Service Member or Federal Employee**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

9.0—Miscellaneous

14.0—Tort claims involving service members and military families.

**Q: I am a petty officer in the Navy, on active duty. My Commanding Officer directed me to drive a Navy vehicle from Naval Air Station (NAS) Oceana, in Virginia, to NAS Patuxent River, in Maryland. On the way, I was involved in a terrible accident. The driver of the other vehicle was killed.**

**I likely was at fault for the accident. Who is responsible for the payment of a judgment or settlement with the estate of the deceased driver? Me? The Navy? Both?**

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<sup>1</sup> I invite the reader's attention to [www.servicemembers-lawcenter.org](http://www.servicemembers-lawcenter.org). You will find more than 1500 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), and other laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1300 of the articles.

<sup>2</sup> BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 34 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice at Tully Rinckey PLLC (TR), and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (May 2015), concerning the accomplishments of the SMLC. After ROA disestablished the SMLC last year, I returned to TR, this time in an "of counsel" role. To arrange for a consultation with me or another TR attorney, please call Ms. JoAnne Perniciaro (the firm's Client Relations Director) at (518) 640-3538. Please mention Captain Wright when you call.

**A:** Only the Federal Government is responsible for the financial cost of resolving this case, either by settlement or by judgment, after trial.

In Law Review 16070, the immediately preceding article in this series, I discussed in detail the Federal Tort Claims Act (FTCA), the 1946 statute that permits individuals to sue and collect for death, injury, and property damage caused by the negligent or wrongful act or omission of a federal employee, including a member of the armed forces. The FTCA contains a provision exempting the individual employee or service member from personal liability:

The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government [including military members] while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter is precluded without regard to when the act or omission occurred.<sup>3</sup>

This provision could not have been written any more clearly. You are off the hook. This provision most commonly applies in claims involving vehicle accidents and alleged medical malpractice at federal (including military) medical treatment facilities, but the provision is not limited to those common situations. It applies to any case about property damage, personal injury, or death alleged to have been caused by the negligent or wrongful act or omission of a federal employee or service member, in the scope of his or her employment.

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<sup>3</sup> 28 U.S.C. 2679(b)(1). The citation is to section 2679(b)(1) of title 28 of the United States Code.