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Applying the Federal Tort Claims Act to an Aviation Disaster.

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¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

² 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. For 45 years, I have collaborated with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the Federal reemployment statute) for 38 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, 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 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at <mailto:swright@roa.org>

³ Brian J. Lawler is the founder of Pilot Law, P.C. Mr. Lawler received a B.A. in Political Science from Tulane University in 1990 and graduated from the University of San Diego School of Law in 2002. Before and while attending law school, Mr. Lawler served on active duty in the United States Marine Corps as a Weapons and Sensors Officer in the F/A-18D Hornet, including one tour as an instructor. From 2001-2018, Mr. Lawler was active in the Marine Corps Reserve where he retired at the rank of Lieutenant Colonel. Mr. Lawler was most recently assigned to Marine Forces Northern Command, New Orleans, LA as an Emergency Preparedness Liaison Officer where he served as a liaison between FEMA and the Department of Defense. He was mobilized in support of the Global War on Terror in 2003 and was a key member in six military aircraft accident investigations, including four as the senior investigator of multi-fatality accidents that claimed a total of 35 lives. Mr. Lawler is also a private pilot with over 2,000 hours of combined military and civilian flight time. Since being admitted to the California Bar in December 2002, Mr. Lawler has litigated numerous domestic and international aviation cases including mass commercial aircraft disasters, general aviation accidents and military mishaps, both helicopter and fixed wing. Since 2009, Mr. Lawler has expanded his practice to USERRA litigation, representing Reserve and Guard personnel in employment disputes against their

14.0—Tort claims involving service members and military families.

Q: I am a personal injury lawyer in Kansas.⁴ On 1/30/2025, an American Airlines regional jet collided with an Army helicopter over the Potomac River in Washington, DC, near Reagan National Airport. The 64 individuals on the plane and the three in the helicopter all perished.

I have been contacted by a man here in Kansas. His wife was a passenger on the American Airlines plane and died in the crash. He believes that the Federal Government is responsible for this disaster in two ways. First, he believes that the Army pilot of the helicopter was negligent because the helicopter was above the maximum permissible altitude of 200 feet and because the pilot had apparently turned off a safety system that might well have prevented this tragedy. Second, he believes that there were not enough air traffic controllers in the control tower at Reagan National Airport and that the controllers were not adequately trained and supervised.

Has the Federal Government waived sovereign immunity to permit a lawsuit against the Federal Government for claims like these?

A: Yes, 79 years ago Congress enacted, and President Truman signed, the Federal Tort Claims Act (FTCA).⁵ The FTCA provides:

Subject to the provisions of Chapter 171 of this title, the district courts ... shall have exclusive jurisdiction of civil actions, on claims against the United States, for money damages, for claims accruing on and after January 1, 1945, for injury or loss of property, or

civilian employers. Mr. Lawler is a life member of ROA, and you can reach him by email at: blawler@pilotlawcorp.com.

⁴ The factual set-up for this article is hypothetical but realistic. Of course, the aviation tragedy is all too real.

⁵ Public Law 79-601, 60 Stat.812-52 (Aug. 8, 1946). The FTCA is codified in multiple sections of title 28 of the United States Code...

personal injury or death caused by the negligent or wrongful act or omission of any employee of the [Federal] Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant *in accordance with the law of the place where the act or omission occurred*.⁶

The FTCA also provides:

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.⁷

Q: Section 1346(b) refers to the law of the place where the negligent or wrongful act or omission occurred. Where is that place? What law applies?

A: The boundary between the District of Columbia (DC) and the Commonwealth of Virginia (VA) is at the Virginia shore of the river. In other words, that part of the Potomac River is entirely within DC, not VA. If your claim is that the negligence of the Army helicopter pilot caused the accident, DC law applies.

The air traffic controllers work in the Reagan National Airport control tower, and that control tower is in VA. If your claim is that negligence of one or more air traffic controllers caused the collision, VA law applies.

Q: How do I initiate my client's tort claim?

A: Before you can sue the Federal Government in tort, you must first file an administrative claim with the specific federal agency that

⁶ 28 U.S.C. § 1346(b)(1) (emphasis supplied).

⁷ 28 U.S.C. § 2674.

employed the alleged tortfeasor.⁸ That form is called a Standard Form 95 (SF-95) and you can find one here: <https://www.gsa.gov/system/files/SF95-07a.pdf>. You should file an SF-95 with both the Department of Transportation (which includes the Federal Aviation Administration) and with the Department of the Army.

Q: How long do I have to file administrative claims with these federal agencies?

A: You must file the administrative claims before 1/30/2027, the second anniversary of the date that the cause of action accrued. The FTCA provides:

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate federal agency within two years after such claim first accrues.⁹

Q: What happens after I file my client's administrative claim with the Department of the Army and the Department of Transportation?

A: The two departments will investigate your client's claim and may try to resolve it by negotiating with you, although practically this rarely occurs.¹⁰ If the appropriate federal agency chooses to deny your claim, it must do so in writing, by certified or registered mail.¹¹ In that case, you must file the suit within six months after the mailing of the denial letter.¹²

Q: What happens if the two departments do not deny my client's claim but also do not make a settlement offer that we are willing to accept?

⁸ 28 U.S.C. § 2675(a).

⁹ 28 U.S.C. § 2401(b).

¹⁰ 28 U.S.C. § 2672.

¹¹ 28 U.S.C. § 2675(a).

¹² Id.

A: When six months have passed after you filed the administrative claim, you may deem the delay to be a denial and you may then sue, but you are not required to do this. You may continue negotiating with these agencies.¹³

Q: My client is really angry at the Army helicopter pilot. He wants to sue her estate. Is that permissible?

A: No. The FTCA provides:

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 resulting from the negligent or wrongful act or omission of any employee of the [Federal] Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money 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.¹⁴

Please join or support ROA.

This article is one of 2,200-plus “Law Review” articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. We add new articles each month.

ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force

¹³ Id.

¹⁴ 28 U.S.C. § 2679(b)(1).

Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).¹⁵

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

¹⁵ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

If you are now serving or have ever served in any one of our nation's eight¹⁶ uniformed services, you are eligible for membership in ROA,¹⁷ and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at <https://www.roa.org/page/memberoptions> or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002¹⁸

¹⁶ Congress recently established the United States Space Force as the eighth uniformed service.

¹⁷ Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

¹⁸ You can also contribute on-line at www.roa.org.