
CHAPTER 1

Introduction

This book is intended to provide a concise overview of the Federal Tort Claims Act (FTCA) and its jurisprudence. The presentation here is simplified so it can be quickly read and easily understood.¹ The book should be useful to attorneys or law-trained readers who are new to the FTCA and its procedures or have had limited recent dealings with the statute. It should also provide a ready reference for readers of all levels who are about to begin detailed research on particular FTCA issues. The book is an outline rather than a complete exposition of FTCA jurisprudence. There are nuances to almost every FTCA issue that are worthy of more detailed research.

The book addresses the FTCA's waiver of sovereign immunity, its purpose,² scope, exclusions,³ exceptions,⁴ and the procedures for presenting administrative tort claims⁵ and filing suit.⁶ It discusses the protections the FTCA may provide to federal employees sued in tort.⁷

1. An in-depth analysis of the FTCA and related issues is provided in the excellent three-volume treatise, LESTER S. JAYSON & ROBERT C. LONGSTRETH, *HANDLING FEDERAL TORT CLAIMS* (2018).

2. Chapter 2. Sovereign Immunity & Enactment of the FTCA.

3. Chapter 3. The Limited Nature of the FTCA's Waiver of Sovereign Immunity: A. The Jurisdictional Grant of § 1346(b)(1); B. The *Feres* Doctrine.

4. Chapter 4. Statutory Bars to FTCA Liability: A. Exceptions in the Text of the FTCA; B. Statutes That Explicitly Bar Suit; C. Other Statutes That Bar Suit.

5. Chapter 5. The Administrative Claims Process: Procedural Prerequisites to Making a Tort Claim.

6. Chapter 6. Procedural Requirements in FTCA Litigation: A. Exhaustion of Administrative Remedies; B. Courts, Juries, & Parties; C. The FTCA's Statutes of Limitations.

7. Chapter 7. Government Employee Defendants & the FTCA: A. Substitution & Dismissal under § 2679; B. The Judgment Bar of § 2676.

It explains the FTCA's rules for damages⁸ and for financial matters, including attorney's fees, costs, and interest.⁹ Finally, it examines the FTCA settlement process and recommends approaches to settlement negotiations.¹⁰

The Appendix includes the FTCA,¹¹ federal statutes relating to interest, costs, and payment;¹² the federal regulations on FTCA administrative claims, certification of scope of employment, authority to compromise, and representation of federal employees.¹³ It provides a copy of Standard Form 95 (for submission of FTCA administrative claims)¹⁴ and information for filing a Transcript of Judgment (a necessary step to obtain interest on an FTCA judgment).¹⁵ It includes

8. Chapter 8. Damages: A. Assessing Damages; B. Amount Stated in Administrative Claim; C. No Punitive Damages; D. Accounting for Taxes in FTCA Damages; E. No Pre-Judgment Interest.

9. Chapter 9. Source of Payment, Attorney's Fees, Costs, and Interest: A. Source of Payment; B. Attorney's Fees; C. Costs; D. Interest.

10. Chapter 10. Settlement.

11. Appendix A. Federal Tort Claims Act.

28 U.S.C. § 1346(b)(1). United States as defendant [Jurisdiction].

28 U.S.C. § 1402(b). United States as defendant [Venue].

28 U.S.C. § 2401(b). Time for commencing action against United States.

28 U.S.C. § 2402. Jury trial in actions against United States.

28 U.S.C. § 2671 *et seq.* Tort Claims Procedures.

12. Appendix B. Judgments, Costs, Interest.

28 U.S.C. § 1961. Interest.

28 U.S.C. § 2412. Costs and fees.

28 U.S.C. § 2414. Payment of judgments and compromise settlements.

28 U.S.C. § 2516. Interest on Claims and Judgments.

31 U.S.C. § 1304. Judgments, awards, and compromise settlements.

13. Appendix C. Regulations.

28 C.F.R. Part 14—Administrative Claims Under Federal Tort Claims Act.

28 C.F.R. Part 15—Certification and Decertification in Connection with Certain Suits Based upon Acts or Omissions of Federal Employees and Other Persons.

28 C.F.R. Part 0, Subpart Y—Authority to Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures.

28 C.F.R. Part 50.15—Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities.

14. Appendix D. Standard Form 95.

15. Appendix E. Filing Transcript of Judgment.

1. Contact information: Financial Management Service, Judgment Fund Branch.

2. Sample letter filing Transcript of Judgment.

checklists for FTCA defenses,¹⁶ filing an administrative claim,¹⁷ and filing an FTCA suit.¹⁸

The book focuses on the FTCA. Accordingly, it does not address non-tort defenses the government might raise in FTCA litigation such as the State Secrets privilege,¹⁹ the Political Question doctrine,²⁰ and the rule adopted in *Totten v. United States* barring suits based on espionage agreements.²¹ Nor does it address actions brought against individual federal employees under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*,²² other than to note the procedures by which such employees can request representation from the Department of Justice.²³

16. Appendix F. Checklist of FTCA Defenses.

17. Appendix G. Checklist for Filing Administrative Tort Claim.

18. Appendix H. Checklist for Filing FTCA Suit.

19. See *United States v. Reynolds*, 345 U.S. 1, 7–11 (1953).

20. See *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 842–44 (D.C. Cir. 2010); see also *Baker v. Carr*, 369 U.S. 186 (1962).

21. *Totten v. United States*, 92 U.S. 105 (1876) (suit by Civil War spy); see *Tenet v. Doe*, 544 U.S. 1, 3 (2005) (applying rule established in *Totten*, “prohibiting suits against the Government based on covert espionage agreements”).

22. *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

23. See page 60, *infra*.