

If several people are injured or damaged in one incident, and one or more has completed the administrative claim process and filed suit while other claims are still pending administratively, the agency will usually defer making any determination as to the pending claims until the litigation ends. The reason is that the agency does not want to prejudice the Justice Department's defense of the law suit. While the Act expressly states that the "disposition of any claim by the . . . head of a federal agency shall not be competent evidence of liability or amount of damages,"<sup>42</sup> the government fears that this language might be regarded as applicable only to a suit instituted by the one who filed the administrative claim, or that despite the Act's language the settlement would be brought to the court's attention and it would have a practical or psychological effect prejudicing the defense of the law suit.

The Attorney General's regulations expressly provide that an administrative claim may be adjusted or settled by an agency only after consultation with the Department of Justice if the agency is aware that the United States is involved in litigation based on a claim arising out of the same incident or transaction.<sup>43</sup> In practice, once litigation has commenced, the agency informs the Justice Department of the pendency of administrative claims submitted by other claimants arising out of the same incident. In some instances, the Justice Department will advise the agency that it has no objection to the latter's adjustment of these pending claims. In that event the agency would go forward with its determination of the claims without regard to the law suit.

## § 17.06 Amount of the Claim

[1]—In General. There is no limitation on the amount that may be demanded in the administrative claim. Indeed, as already stated, all claims, regardless of their amount, must be submitted for administrative consideration as a prerequisite to the filing of suit.<sup>1</sup> Federal agencies may adjust and settle administrative FTCA claims in *any* amount subject only to the proviso that most settlements in excess of \$25,000 must be approved by the Attorney General or his designee.<sup>2</sup>

<sup>42</sup> 28 U.S.C. § 2675(c).

<sup>43</sup> 28 C.F.R. § 14.6(c).

<sup>1</sup> See § 17.01, *above*. However, claims which may be asserted by third party complaint, or cross-claim, or counterclaim, pursuant to the Federal Rules of Civil Procedure, are exempted from this requirement.

<sup>2</sup> 28 U.S.C. § 2672.

In 1993, the Department of Veterans Affairs and the Department of Defense were given authority to settle claims of \$200,000 or less without Justice

Department approval. Directive No. 1-93, 58 Fed. Reg. 36867 (July 9, 1993).

The agency is also required to consult with the Department of Justice if the compromise of a particular claim may, as a practical matter, control the disposition of a related claim in which the amount to be paid may exceed \$25,000. 28 C.F.R. § 14.6(b)(4).

The Department of Defense, the Department of Transportation, the United States Postal Service and the Administrator of the Veterans' Administration have been delegated authority by the Attorney General

Administrative claims may be amended as to the amount claimed or in other respects at any time prior to final agency action or prior to the claimant's exercising his option under 28 U.S.C. § 2675(a) to deem the claim denied because of the agency's failure to make a final disposition of the claim within six months.<sup>3</sup>

[2]—The Sum Certain Requirement. It is important to note that the amount of the claim must be specified in a sum certain.<sup>4</sup> This requirement is

to settle claims without prior approval in an amount not exceeding \$100,000. These delegations appear as an Appendix to 28 C.F.R., Part 14, set forth in Appendix 38, and are authorized by Pub. L. No. 100-322, 102 Stat. 509, codified at 38 U.S.C. § 223(a), and the Administrative Dispute Resolution Act, Pub. L. No. 101-552, 104 Stat. 2736 (1990), codified at 28 U.S.C. § 2672.

<sup>3</sup> 28 C.F.R. § 14.2(c). If a claimant does amend, the agency has at least six months to consider the amended claim, and the claimant's option under § 2675(a) to file suit if no final disposition is made does not accrue until six months after the filing of the amendment.

See *Avila v. I.N.S.*, 731 F.2d 616 (9th Cir. 1984). The father of an incompetent adult son submitted a claim on behalf of his son and later amended the claim to add a claim for reimbursement for his own expenses. The amendment was permitted and related back to the original claim.

*McCormick v. United States*, 539 F. Supp. 1179 (D. Colo. 1982). The claimant submitted a personal injury claim for \$50,000, but later brought suit for over \$1 million asserting newly discovered evidence as to the seriousness of his injuries. The court ruled that if the new evidence was discovered after the presentation of his claim, his failure to amend the claim did not preclude his utilization of the exceptions to the FTCA's provisions limiting the damage award in a suit to the amount claimed administratively, 28 U.S.C. § 2675(b)(discussed in § 228.07, *above*).

<sup>4</sup> *Millares Guiraldes de Tineo v. United States*, 137 F.3d 715, 720 (2d Cir. 1998). While serving as a DEA informant, plaintiff was arrested and tried for cocaine possession in Chile. Several months after her release, she wrote to the DEA, asking that the DEA reimburse her for the defense expenses she incurred. She later orally requested that the DEA pay her \$38,000 to cover these costs. Over two years after her release, she filed an SF-95 form seeking \$1.5 million in damages for herself and \$1 million for her son for false imprisonment and emotional distress. The court held that her

request to the DEA for reimbursement of defense costs did not constitute a valid claim, since it did not state a sum certain in writing and did not refer to the false imprisonment or emotional distress claims advanced in the FTCA action.

*Glarner v. U.S. Dept. of Veterans Administration*, 30 F.3d 697 (6th Cir. 1994). Plaintiff's filing for disability benefits under 38 U.S.C. § 1151 did not satisfy the FTCA's administrative claim requirement, since it did not state a sum certain.

*Kendall v. Watkins*, 998 F.2d 848 (10th Cir. 1993). A former government employee sent a letter to the agency's secretary asserting alleged incidents of sexual harassment and sex discrimination and stating she would bring suit for back pay, front pay, and damages. The court held that because she did not request a sum certain, she had failed to file an adequate administrative claim.

*Hager v. Swanson Group, Inc.*, 916 F. Supp. 447 (E.D. Pa. 1996). Plaintiff's counsel sent a letter to the Navy stating that plaintiff would hold the Navy liable "for reimbursement of any and all damages" sustained in an automobile accident. His FTCA action was dismissed, since the administrative claim failed to state a sum certain. The court declined to follow the decision in *Collins v. United States*, *above* this Note.

*Le Grand v. Lincoln*, 818 F. Supp. 112 (E.D. Pa. 1993). The fact that the claimant has a continuing injury does not obviate the requirement of sum certain in the claimant's form.

*Cizek v. United States*, 953 F.2d 1232 (10th Cir. 1992). The claim filed by the plaintiff's insurer for reimbursement of sums it paid to the plaintiff resulting from his auto collision with a federal vehicle, which was only part of his damages, was held not to constitute a claim for money damages in a sum certain by the plaintiff.

*Adkins v. United States*, 896 F.2d 1324 (11th Cir. 1990). Within two years following a motor vehicle collision with a Postal vehicle, plaintiffs filed an

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administrative claim specifying the amount of property damages and stating they would “later” file a claim for personal injuries which were “incapacitating” as to one plaintiff and “non-incapacitating” as to the other. Plaintiffs provided no further information as to the injuries nor did they specify the amount claimed for personal injuries until over two years after the accident. The court held that the sum certain notice requirement was not met and dismissed the personal injury suit.

*Burns v. United States*, 764 F.2d 722 (9th Cir. 1985). The court held that a letter to a United States Senator could not possibly be considered an administrative claim, since it contained no sum certain.

*Charlton v. United States*, 743 F.2d 557 (7th Cir. 1984). The sum certain requirement is a “condition precedent” to a federal court’s jurisdiction over a FTCA suit.

*Keene Corp. v. United States*, 700 F.2d 836, 842 (2d Cir. 1983), *cert. denied*, 464 U.S. 864 (1983). The claimant, the defendant in some 14,000 private lawsuits based on its alleged failure to warn of the hazards of asbestos it distributed, filed an administrative claim for contribution and indemnity seeking damages “in the sum of \$1,088,135 and in an additional amount yet to be ascertained.” The claim was held deficient since it did not specify the amount demanded for each underlying lawsuit. The court stated that “[w]here separate claims are aggregated under the FTCA, the claimant must present the government with a definite damages amount for each claim.” The court also noted that where there is a reservation as to future damages which may entail huge sums, the government officials cannot possibly evaluate the claim with a view to settlement.

*Wadsworth v. United States Postal Serv.*, 721 F.2d 503, 506 (5th Cir. 1983). The court found that the claimant’s failure to indicate the specific amount claimed until after the two-year statutory period had run deprived it of jurisdiction, even though a Form 95 which did not indicate the amount claimed was timely filed.

*Caidin v. United States*, 564 F.2d 284 (9th Cir. 1977). The claim was held a nullity since the amount claimed by each claimant member of the class was not stated in a sum certain. The defect was not corrected by the fact that the total amount claimed for all members of the class was specifically stated.

*Commonwealth of Pennsylvania v. National Ass’n*

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of Flood Ins., 520 F.2d 11 (3d Cir. 1975). The state wrote a letter to the federal agency on its own behalf and on behalf of its many citizens who had suffered flood damage. The letter failed to specify the precise amount of damage sustained by the state or by the individual citizens, but asserted that, “Although the exact amount of damages cannot be calculated at this time, reasonable estimates exceed one billion dollars. . . .” The court held the claim insufficient since each individual’s claim was not specified in a sum certain.

*Allen v. United States*, 517 F.2d 1328 (6th Cir. 1975). A suit for personal injury, but not for property damage, was barred where the administrative claim specified property damage but left space for “personal injury” blank.

*Ianni v. United States*, 457 F.2d 804 (6th Cir. 1972). The failure to specify a sum certain renders a purported claim ineffective and does not toll the statute of limitations.

To the same effect: *Bradley v. United States by Veterans Admin.*, 951 F.2d 268 (10th Cir. 1991).

*Best Bearings Co. v. United States*, 463 F.2d 1177 (7th Cir. 1972). Correspondence with the FBI demanding the return of ball bearings being held for evidence did not meet the requirements of § 2675.

*Johnson v. United States*, 404 F.2d 22 (5th Cir. 1968). The court held that a 1963 letter to the General Services Administration giving notice of a claim, but not specifying a sum certain, was not a valid administrative claim, and did not toll the statute of limitations.

*Fleischmann v. United States*, 637 F. Supp. 1200 (D.P.R. 1986). The court dismissed an FTCA complaint that alleged that an administrative claim was filed, but failed to allege that the claim was for a sum certain.

*Segarra Ocasio v. Banco Regional de Bayamon*, 581 F. Supp. 1255 (D.P.R. 1984). Letters to the FDIC, acting in its capacity as receiver of a bank, requesting release of the claimant’s certificate of deposit did not specify a sum certain, and thus did not constitute presentation of an administrative claim.

*Owens v. United States*, 595 F. Supp. 725 (N.D. Cal. 1984). A claim which asserted medical malpractice but failed to indicate any amount by way of damages was held insufficient. The court found that a federal agency does not have any duty to instruct claimant on proper tort claim procedure or to advise him that he must make a claim in sum certain.

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Rispoli v. United States, 576 F. Supp. 1398 (E.D.N.Y. 1983), *aff'd*, 779 F.2d 35 (2d Cir. 1985), *cert. denied*, 474 U.S. 1069 (1986). A wife's claim for loss of services was submitted in an affidavit with her husband's valid malpractice claim for \$5,000,000. The claim was held insufficient because it failed to specify a sum certain as to her separate claim.

Benitez v. Presbyterian Hosp., 539 F. Supp. 470 (D.P.R. 1982). A letter to a VA hospital asserting that the husband's death was due to the negligence of the VA doctors, but not referring to any amount of damages claimed, was held insufficient as an administrative claim.

DiLorenzo v. United States, 496 F. Supp. 79 (S.D.N.Y. 1980). The court found that a mere complaint to an agency does not satisfy the sum certain requirement, and noted that the plaintiff had not indicated that he was seeking monetary relief, much less indicate a sum certain.

State Farm Mut. Auto Ins. Co. v. United States, 446 F. Supp. 191 (C.D. Cal. 1978). The failure to set forth a sum certain as to alleged property damage rendered the claim a nullity.

Walker v. United States, 438 F. Supp. 251 (S.D. Ga. 1977). An administrative claim is a nullity where no sum certain is stated.

Wright v. United States, 427 F. Supp. 726 (D. Del. 1977). The failure to specify the amount claimed makes the claim a nullity.

Mayo v. United States, 425 F. Supp. 119 (E.D. Ill. 1977). Letters to the FBI requesting the return of illegally seized property, but making no specific claim for money damages was held insufficient as an administrative claim.

Miller v. United States, 418 F. Supp. 373 (D. Minn. 1976). The claimant voluntarily dismissed a state court action against the federal driver when he was informed by the U.S. Attorney that he had to submit an administrative claim. In subsequent correspondence, the claimant's attorney advised that he would file a personal injury claim when he received the medical reports. More than two years after the accident, an administrative claim for injuries in the lesser amount than the *ad damnum* in earlier suit was filed. The court dismissed the action as barred by the statute of limitations, holding that the earlier suit and correspondence did not meet the requirement of filing a claim in a sum certain.

College v. United States, 411 F. Supp. 738 (D. Md. 1976), *aff'd on opinion below*, 572 F.2d 453 (4th Cir. 1978). An attorney's letter to an agency advising of his retention to represent the claimant in connection with the permanent injuries sustained as a result of the government's negligence, but not specifying the amount of the claim, was held insufficient.

Mayo v. United States, 407 F. Supp. 1352 (E.D. Va. 1976). The court held that there is no equitable exception to the sum certain requirement.

Franklin State Bank v. United States, 423 F. Supp. 1 (S.D.N.Y. 1975). The claimant advised the IRS of its purchase money security interest in the amount of \$4,700 in a machine seized by the IRS when taxpayer-purchaser failed to pay taxes. When the taxes were paid, the IRS released the machine without notice to the claimant, who then demanded that the IRS return the machine to it, but made no statement of money damages claimed. A subsequent suit was dismissed on the ground that there had been no administrative claim in a sum certain.

Driskell v. United States, 431 F. Supp. 339 (C.D. Cal. 1974). The suit for malpractice was dismissed where the claim failed to demand a sum certain.

Landis v. United States, 335 F. Supp. 1321 (N.D. Ohio 1972). A letter complaining of an injury, but not containing a prayer for damages, did not constitute a valid administrative claim.

Turtzo v. United States, 347 F. Supp. 336 (E.D. Pa. 1972). The claimants notified the U.S. Army Engineers of their claim and held conferences with the U.S. Attorney; the court held that this did not constitute a claim for a sum certain.

Muldez v. United States, 326 F. Supp. 692 (E.D. Va. 1971). During the two year period following the accident at issue, the infant's attorney corresponded and discussed the incident and the infant's claim with the naval claims officer, but a claim in a sum certain was not actually filed until more than two years had gone by. The court rejected an argument that the government was estopped from raising the limitations defense, and held that the claim was barred by the statute of limitations.

Driggers v. United States, 309 F. Supp. 1377 (D.S.C. 1970). Letters from the plaintiff's attorney to a government driver were not a valid administrative claim, since they did not contain a sum certain.

*Cf.* Williams v. United States, 693 F.2d 555 (5th

jurisdiction.<sup>5</sup> The requirement that a sum certain be claimed not only flows from the explicit language of the applicable Department of Justice regulations,<sup>6</sup>

Cir. 1982). The claimant filed a state court suit against a government driver seeking \$218,000 for personal injury and property damages, describing and itemizing the damages in the complaint. When the claimant was notified by the U.S. Attorney that he must first file an administrative claim under the FTCA, he voluntarily dismissed his state court suit and later filed a Form 95 with the Postal Service specifying \$7,000 for property damage and failing to indicate any amount for personal injuries or for the total amount claimed. The Fifth Circuit reversed the dismissal of a subsequent action, ruling that the timely filed administrative claim as supplemented by the facts set forth in the earlier state court complaint, when taken together, specifically enumerated a “sum certain,” since both had been in writing and both had been brought to the attention of the government within the FTCA’s two year limitations period.

*Kozio v. United States*, 507 F. Supp. 87 (N.D. Ill. 1981). The claimant submitted a timely Form 95 together with a physician’s report, medical bills, and data as to wages, but the agency informed him that his claim was deficient because it failed to request damages in a sum certain, and the agency returned his submission with instructions to perfect the claim. The claimant, within the original two-year period, submitted a new Form 95 demanding \$22,000 in damages, but did not resubmit his supporting exhibits until after the limitations period expired. Holding the claim sufficient, the court denied the government’s motion to dismiss based on the statute of limitations.

*Letoski v. United States Food and Drug Admin.*, 488 F. Supp. 952 (M.D. Pa. 1979). Although the claimant’s Form 95 did not include a demand for money damages in a sum certain, the claimant’s counsel later submitted a letter demanding \$4,500 in settlement of the claim. The court held that the letter was sufficient as a claim for a sum certain.

*But see Collins v. United States Dept. of the Army*, 626 F. Supp. 536 (W.D. Pa. 1985). A letter from the claimant’s counsel to the agency advising that he had been retained by the claimant, describing the accident, stating that the claimant had sustained “serious injuries,” and requesting the agency’s investigative reports, was held to be sufficient although no specific dollar demand was set forth. The court ruled that “the provisions of Form 95 which call for evidentiary detail and a dollar figure are wanting in statutory authority.”

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Note that the opinion is clearly contrary to the binding Third Circuit precedent, *see Bialowas v. United States*, 443 F.2d 1047 (3d Cir. 1971) and *Commonwealth of Pa. v. National Ass’n of Flood Ins.*, 520 F.2d 11 (3d Cir. 1975), and thus should not be considered good authority.

*Blue v. United States*, 567 F. Supp. 394 (D. Conn. 1983). The claimant was one of federal prisoners injured in a prison fire. He never submitted a formal administrative claim nor demanded damages in sum certain, but the court held that the claim was sufficient since the government had obtained the facts of the fire and the injuries from the claimant’s sworn statement to a prison caseworker, had conducted two investigations of the fire, and was fully informed of the prisoner’s medical status since the claimant was treated only at the prison infirmary. As to the sum certain requirement, the court noted that the other 53 injured inmates had all submitted claims in amounts that were arbitrary, speculative and fanciful, and that were given more to complete the standard claim forms than to set forth realistic damage claims, and found that if the claimant had submitted a demand in a sum certain, it would have been of the same kind. The court concluded that the government had not been prejudiced, pretrial settlement had not been hindered, nor was the court’s docket further congested unnecessarily by the claimant’s failure to demand a sum certain.

*See also Martinez v. United States Post Office*, 875 F. Supp 1067, 1075 (D.N.J. 1995).

*See also* ch. 14, *The Statutes of Limitations*, §§ 280.03 and 280.04 *above*, and § 17.05[3] *above*, with respect to the sum certain requirement precluding the submission of class claims.

<sup>5</sup> *Wadsworth v. United States Postal Serv.*, 721 F.2d 503, 505 (5th Cir. 1983). The court stated that: “[f]ederal courts have repeatedly held that the sum certain requirement is a jurisdictional one and that it applies to 28 U.S.C. §§ 2401 and 2675 [citations omitted].”

*Accord Bowden v. United States*, 106 F.3d 433, 441 (D.C. Cir. 1997); *Corte-Real v. United States*, 949 F.2d 484, 485-86 (1st Cir. 1991); *Adkins v. United States*, 896 F.2d 1324 (11th Cir. 1990).

*See also* the cases cited in § 17.01, especially those collected in ns.7, 13 and 17, *above*.

<sup>6</sup> 28 C.F.R. § 14.2, set forth in Appendix 38 *below*.

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but also is clearly implied from the statute itself, 28 U.S.C. § 2675, which, in pertinent part, provides that no action on a tort claim against the United States may be instituted “unless the claimant shall have first presented the claim to the appropriate Federal agency,” and that no such claim shall be “for any sum in excess of the amount of the claim [so] presented.” The Ninth Circuit has stated that: “It is plain that the required ‘claim’ is something more than the mere notice of an accident and an injury. The term ‘claim’ contemplates, in general usage, a demand for payment or relief, and, unless it is a claim *for* something, it is no claim at all.”<sup>7</sup>

The sum certain requirement also has its basis in the fact that it enables the agency to adjudicate and settle the claim promptly upon its receipt without engaging in further correspondence or meetings with the claimant to determine the extent of the claim. The administrative claim provisions of the Act are designed to give the agency a minimum of six months to dispose of the claim during which period the claimant is denied access to the court. It has been said that, “To allow a claim to be presented without a sum certain would encourage claimants to withhold vital information and hinder settlement of a claim in hopes of obtaining a better disposition in court.”<sup>8</sup> Moreover, the sum certain requirement indicates to the agency whether it has full responsibility for adjustment of the claim or whether it may have to seek the approval of the Attorney General, since the Act specifies that most agency settlements in excess of \$25,000 require such approval.<sup>9</sup> It is important, too, with respect to the source of funds for payment of the claim, because the law specifies that administrative claim settlements of \$2,500 or less are to be paid from the agency’s own appropriations

<sup>7</sup> *Avril v. United States*, 461 F.2d 1090, 1091 (9th Cir. 1972) (emphasis in original).

*See also* *Martinez v. United States*, 780 F.2d 525 (5th Cir. 1986). The court stated that an FTCA “claim” is “the amount that a plaintiff seeks to recover from the government.”

*Industrial Indem. Co. v. United States*, 504 F. Supp. 394 (E.D. Cal. 1980). The court stated that “[t]he filing of a deficient administrative claim in tantamount to no filing at all.”

*Cooper v. United States*, 498 F. Supp. 116 (W.D.N.Y. 1980) (citing *Avril*).

<sup>8</sup> *College v. United States*, 411 F. Supp. 738, 741 (D. Md. 1976), *aff’d on opinion below*, 572 F.2d 453 (4th Cir. 1978).

*See also* *Molinar v. United States*, 515 F.2d 246 (5th Cir. 1975).

<sup>9</sup> *Low v. United States*, 795 F.2d 466 (5th Cir. 1986).

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The court stated that the purpose of the sum certain requirement is to give full notice of the government’s potential liability, and that Section 2675 should be interpreted so that the government will at all relevant times be aware of its maximum possible exposure to liability and will be in a position to make intelligent settlement decisions.

*See also* *Martinez v. United States*, 780 F.2d 525 (5th Cir. 1986); *Erleben v. United States*, 668 F.2d 268 (7th Cir. 1981); *Maxson v. United States Postal Serv.*, 586 F. Supp. 80 (W.D. Mich. 1984).

Pursuant to 38 U.S.C. § 233(a) and 28 U.S.C. § 2672, as amended by the Administrative Dispute Resolution Act of 1990, 104 Stat. 2736 (1990), the Attorney General has delegated to the Department of Defense, the Department of Transportation, the United States Postal Service and the Department of Veterans Affairs the authority to settle claims, not exceeding \$100,000, without his prior approval. See Appendix to 28 C.F.R., Part 14, set forth in Appendix 38.

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