

Article 139 and the PCA

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GOALS

1. Understand Article 139
2. Learn how to assist our victims and witnesses in making an Art 139 complaint
3. Understand the Personnel Claims Act (PCA)
4. Learn how to assist our victims and witnesses in making PCA claims



Article 139, UCMJ

Article 139

- 10 U.S.C. § 939 = Art 139
- JAGMAN Chapter IV
- Redress of injuries to property
- Commanders have the authority to deduct money from one military member's pay and give it to another member or civilian.

Article 139

- Whenever (a) complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of investigation, it has the power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages as assessed and approved."





Example



What kind of damage?

Private property damage, destruction, or loss





What kind of **conduct**?

Willful damage

- Reckless, riotous, or disorderly conduct
- Not involving simple negligence or inadvertent
- Intentionally, knowingly, and purposefully without justifiable excuse

Who can make a claim?

Any individual, either civilian or military, business, charity, or a state or local government that lawfully owns or possesses property.

Article 139

- What is it not?
 - No claims resulting from simple negligence.
 - No third party subrogees.
 - You can't make a 139 claim for breach of contract.
 - Bad check? No 139 claim.
 - LCpl 85% APR defaults on payments? Civilian business can't get at it via Art 139.

Article 139 – Submitting a Claim

- To the commanding officer within 90 days of the incident
 - CO can extend time period for good cause
 - Good cause? Never knew Art 139 existed (does anyone?), had no idea who caused the damage until recently
- Which CO?
 - Ideally, you want to submit the claim to the CO of the unit that the damager-Marine is assigned to.
 - If that's not practical, may go to commander of the nearest military installation
 - The claim is then routed to the CO that has SPCMA over damager
 - This is the CO that that appoints a board

Article 139 – Submitting a Claim

- Where's my form?
 - Making the claim orally gets the process started, BUT
 - An official Art 139 complaint must be drafted AND include the sum asked for in compensation before final action can be taken.
- What needs to be included:
 - Amount of the claim,
 - Facts and circumstances surrounding the claims,
 - Any other relevant information
- Each claimant must file separately
- Must be personally signed by claimant or authorized representative

Article 139 – The Investigation



Three principal functions:

- Determine if this is really an Art 139 claim;
- Identify the party responsible for the damage; and
- Determine the liability for damages.
 - “Preponderance of the evidence” standard



JA Review



Article 139 – Commander's Action

- The Commander evaluates the board's recommendations
 - Is this really an Art 139 claim?
 - Change amount appropriated to each offender (board sets ceiling)
- Amount charged in any single month cannot exceed one-half of basic pay
- Notifies the offender and claimant of action
- Forwards to GCMCA for final review

Chapter 9 Article 139, Uniform Code of Military Justice

9-1. Statutory authority

Article 139 of the Uniform Code of Military Justice (UCMJ), entitled "Redress of Injuries to Property" (10 U.S.C. §939) states that:

a. Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that a person's property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages as assessed and approved.

b. If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

9-2. Purpose

a. Scope. Article 139, UCMJ, provides an administrative mechanism for assessing and paying restitution to the victims of certain types of criminal offenses committed by military personnel subject to the UCMJ (see para 9-5). Victims of these offenses often have no other adequate means of obtaining restitution. Article 139 ensures that a victim is compensated directly from the wrongdoer's military pay rather than from the United States Treasury. This serves both to implement the goals embodied in the Victim and Witness Protection Act of 1982 and to promote military discipline and protect the civilian or military community from these types of disorders. Article 139 provides, however, an extraordinary administrative claims settlement authority. In essence, commanders are granted special powers normally reserved to the civil judicial authority. This authority must not be expanded beyond its strict limits; doing so could raise serious constitutional issues.

b. Historical background. Throughout its history, Article 139 has provided redress for the offenses of wasting, spoiling, or destroying nonmilitary property, presently proscribed by Article 109, UCMJ. Because disorderly Soldiers often commit acts of depredation in groups, the Article contains a unique provision allowing a commander to levy against the pay of all members of a unit who were present when damages were inflicted if an individual offender cannot be identified.

9-3. Proper claimants

a. AR 27-20, paragraph 9-3 lists the categories of proper claimants under Article 139.

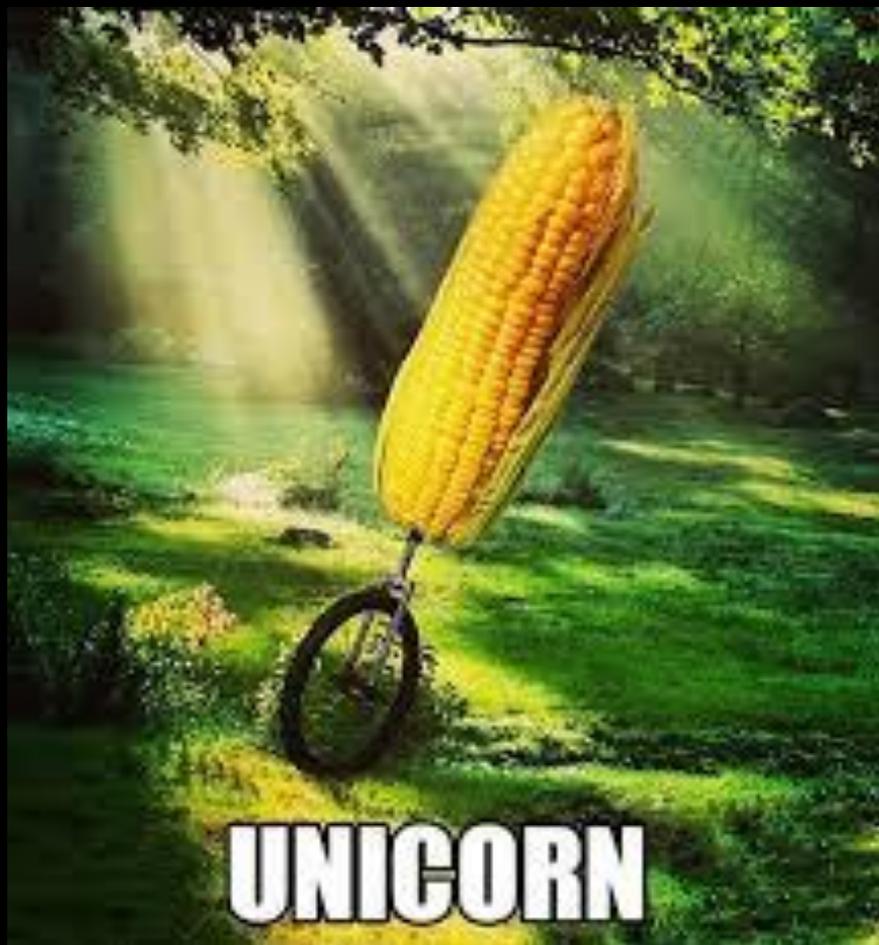
b. Essentially, any person, business, organization, or other legally recognized entity is a proper claimant. Only the United States and its nonappropriated fund instrumentalities (NAFIs) are ineligible.

9-4. Effect of disciplinary action, voluntary restitution, or contributory negligence

a. Disciplinary action. Disciplinary action taken against an offender is entirely separate from action taken under Article 139. Under no circumstances should the approval authority or anyone acting for, or appointed by, the approval authority to act on the claim delay action under Article 139 pending resolution of disciplinary action. Because different evidence is admissible and a different standard of proof is applied, acquittal on the charges underlying an Article 139 claim is not in itself a basis for dismissal of the claim or for modification on reconsideration. Action under Article 139 requires an independent inquiry. Furthermore, once disciplinary action is imposed, the claimant may be left with no effective remedy due to the discharge, reduction in rank or forfeitures of pay of the Soldier responsible.

b. Voluntary restitution. The approval authority may terminate Article 139 proceedings without findings if the

	YES	NO	N/A
2 Exhibits (para 3-16, AR 15-6)			
a. Are all items offered (whether or not received) or considered as evidence individually numbered or lettered as exhibits and attached to this report?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Is an index of all exhibits offered to or considered by investigating officer or board attached before the first exhibit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Has the testimony/statement of each witness been recorded verbatim or been reduced to written form and attached as an exhibit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Are copies, descriptions, or depictions (if substituted for real or documentary evidence) properly authenticated and is the location of the original evidence indicated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Are descriptions or diagrams included of locations visited by the investigating officer or board (para 3-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Is each written stipulation attached as an exhibit and is each oral stipulation either reduced to writing and made an exhibit or recorded in a verbatim record?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. If official notice of any matter was taken over the objection of a respondent or counsel, is a statement of the matter of which official notice was taken attached as an exhibit (para 3-10d, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Was a quorum present when the board voted on findings and recommendations (paras 4-1 and 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. COMPLETE ONLY FOR FORMAL BOARD PROCEEDINGS (Chapter 5, AR 15-6)			
4 At the initial session, did the recorder read, or determine that all participants had read, the letter of appointment (para 5-3b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Was a quorum present at every session of the board (para 5-2b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Was each absence of any member properly excused (para 5-2a, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Were members, witnesses, reporter, and interpreter sworn, if required (para 3-1, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 If any members who voted on findings or recommendations were not present when the board received some evidence, does the inclosure describe how they familiarized themselves with that evidence (para 5-2a, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. COMPLETE ONLY IF RESPONDENT WAS DESIGNATED (Section II, Chapter 5, AR 15-6)			
9 Notice to respondents (para 5-5, AR 15-6):			
a. Is the method and date of delivery to the respondent indicated on each letter of notification?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Was the date of delivery at least five working days prior to the first session of the board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Does each letter of notification indicate —	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(1) the date, hour, and place of the first session of the board concerning that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) the matter to be investigated, including specific allegations against the respondent, if any?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) the respondent's rights with regard to counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) the name and address of each witness expected to be called by the recorder?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) the respondent's rights to be present, present evidence, and call witnesses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Was the respondent provided a copy of all unclassified documents in the case file?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. If there were relevant classified materials, were the respondent and his counsel given access and an opportunity to examine them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 If any respondent was designated after the proceedings began (or otherwise was absent during part of the proceedings):			
a. Was he properly notified (para 5-5, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Was record of proceedings and evidence received in his absence made available for examination by him and his counsel (para 5-4c, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 Counsel (para 5-6, AR 15-6):			
a. Was each respondent represented by counsel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name and business address of counsel:			
(If counsel is a lawyer, check here <input type="checkbox"/>)			
b. Was respondent's counsel present at all open sessions of the board relating to that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. If military counsel was requested but not made available, is a copy (or, if oral, a summary) of the request and the action taken on it included in the report (para 5-6b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12 If the respondent challenged the legal advisor or any voting member for lack of impartiality (para 5-7, AR 15-6):			
a. Was the challenge properly denied and by the appropriate officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Did each member successfully challenged cease to participate in the proceedings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13 Was the respondent given an opportunity to (para 5-8a, AR 15-6):			
a. Be present with his counsel at all open sessions of the board which deal with any matter which concerns that respondent?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Examine and object to the introduction of real and documentary evidence, including written statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Object to the testimony of witnesses and cross-examine witnesses other than his own?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Call witnesses and otherwise introduce evidence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Testify as a witness?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Make or have his counsel make a final statement or argument (para 5-9, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14 If requested, did the recorder assist the respondent in obtaining evidence in possession of the Government and in arranging for the presence of witnesses (para 5-8b, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15 Are all of the respondent's requests and objections which were denied indicated in the report of proceedings or in an inclosure or exhibit to it (para 5-11, AR 15-6)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FOOTNOTES: 1. Explain all negative answers on an attached sheet. 2. Use of the N/A column constitutes a positive representation that the circumstances described in the question did not occur in this investigation or board.			



Personnel Claims Act

Applies if property is damaged or if
there is a loss of use for 60 days or
more



NCIS

NAVAL CRIMINAL INVESTIGATIVE SERVICE

Personnel Claims Act



U.S. NAVY JUDGE ADVOCATE GENERAL'S CORPS

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Claims & Tort Litigation (Code 15)

MISSION

The Claims and Tort Litigation Division (Code 15) has worldwide responsibility for processing different types of claims under various statutes and regulations. Code 15 processes approximately 45,000 claims annually with claims paid and recovered totaling \$60-\$70 million.

Code 15 is comprised of a headquarters unit at the Washington Navy Yard, D.C.; a Tort Claims Unit (TCU) in Norfolk, VA; a Personnel Claims Unit (PCU) in Norfolk, VA; and three Medical Care Recovery Units (MCRU), one each in Norfolk, VA, Pensacola, FL, and San Diego, CA.

Code 15 is also the custodian and designated release authority for all command investigations convened pursuant to Chapter II of the Manual of the Judge Advocate General conducted prior to December 1995, and all litigation report investigations. Code 15 is not the custodian or release authority for command investigations convened after December 1995 nor investigations involving breaches of classified information or information security regulations maintained by the Chief of Naval Operations (N09N).

FUNCTION

As the manager of the Navy Claims System, Code 15 develops and implements claims policy for the Judge Advocate General (JAG) and the Secretary of the Navy (SECNAV), and processes all claims brought for or against the Navy under the following statutes:

- Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680 – Limited waiver of U.S. sovereign immunity for damages for personal injury, death or property damage caused by negligence of Federal employees acting within the scope of their official duties.

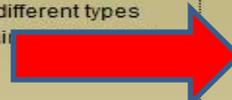
DO YOU WANT TO FILE A CLAIM?

These links have all the information and documents you will need:

[Camp Lejeune Claims](#)

[Packets & Forms](#)

[Claims POCs/Addresses](#)



SUMMARY

- You are now the smartest person in the room.
- Article 139 – compensation for personal property damaged by fire
- PCA – NCIS – for greater than 60 days

