UNITED STATES DISTRICT AND BANKRUPTCY COURTS
FOR THE DISTRICT OF COLUMBIA



SARA THOMPSON
1625 E ST. NE APT #1
WASHINGTON, DC 20002
(402) 880-3248

VS.

PEACE CORPS
1111 20TH STREET NW
WASHINGTON, DC 20526

Case: 1:15-cv-00437
Assigned To : Jackson, Amy Berman
Assign. Date : 3/25/2015
Description: PI/Malpractice (B Deck)

**COMPLAINT**

1. I am a thirty-two year old female who is currently living in Washington, DC.

2. Prior to joining Peace Corps in June 2010, I led a very healthy, active lifestyle to include running marathons, participated in yoga classes without any issues during class, and pursued an overall active lifestyle.

3. When I was twenty-six, I applied to become a Peace Corps Volunteer during the month of January 2009.

4. By March 2010, I was offered and accepted an assignment to become a Girls' Education and Empowerment Peace Corps Volunteer (PCV and heretofore, Peace Corps Volunteers are referred to as PCVs) for Burkina Faso, West Africa.

5. In June, 2010, I flew to Philadelphia, PA for pre-service training.

6. After two days of crash courses in Peace Corps policy, cross-cultural training, and a consulate visit, I flew to Burkina Faso to begin a rigorous three months training regarding safety and security issues, cross-cultural matters, medical and health safety, language training, etc.

7. In August 2010, I successfully passed my three months of pre-service Peace Corps training and was sworn in as an official Peace Corps Volunteer.

8. From the moment that I started training in Burkina Faso, I was given anti-malarial medication, called mefloquine, (also known as the brand name, Lariam but will, heretofore, be referred to as the generic name of mefloquine) in concentrated doses for the first three days which is contrary to the CDC recommendations (document #1, Medicines for the Prevention of Malaria While Traveling).

9. As Peace Corps mandates that all pre-service Peace Corps trainees and Peace Corps Volunteers take an anti-malarial prophylaxis and if at any time I refused to take mefloquine, I would be terminated from Peace Corps.

10. The prevailing practice surrounding mefloquine dosage in the Peace Corps is 1 pill at 250mg per week.

11. Throughout my service, I did exhibit several health issues related to impaired cognitive functioning. I consistently would misplace everyday items, when in the States, I am a very organized person. I always blamed this behavior on the fact that I was in a new environment and was not acclimated to my surroundings.

12. I would sleep more than sixteen hours a day, over twelve at night and a four-hour nap frequently, about 3-4 times per week. I would always excuse this excessive lethargy as just adjusting to a new culture and speaking a different language.

13. When I would be around other PCVs, if something was missing or somehow misplaced, I always blamed it on other PCVS and would often experience symptoms of paranoia that other PCVs would specifically target me and my belongings.

14. While making dinner or reading in my hut, I would often think that I saw things out of the corner of my eyes and then blame it on insect or dust movement that I had never before experienced as I would not live with dust and/or bugs inside my house in the States.

15. I would often experience these situations as a reality of my life and often, find any of this abnormal behavior as excusable because I was living in a developing country and was consistently adjusting to my new life without running water or electricity.

16. However, throughout my two years of service, none of these behaviors dissipated and looking back, all of these behaviors intensified.

17. At no time during my Peace Corps training or Peace Corps service did a Peace Corps Medical Officer (PCMO) or any other authorized medical professional from Peace Corps talk to me about any potential medical or psychological health issues that I was experiencing.

18. Moreover, at no time did a Peace Corps Medical Officer or any other authorized medical professional from Peace Corps during my Peace Corps service have a conversation with me about any possible adverse effects that I might be experiencing that could have potentially stemmed from my mefloquine ingestion.

19. Despite understanding health threats and risks and taking precautions to avoid any medical and/or health issues, during my service, I did suffer through several health and medical issues.

20. I had frequent fevers, was diagnosed with several parasites, endured several nights of diarrhea, and contracted chronic staph infection in the form of boils in which I have successfully filed a Federal Employee Compensation Act claim.

21. During my last month of service in August 2012, I suffered severe dizziness and vertigo symptoms to the point of vomiting.

22. When I called my Peace Corps Medical Officer, he informed me that as it seemed unlikely there was a head injury, I could wait until I met with the PCMO for my Close of Service (COS) process.

23. When I reached the Capital, Ouagadougou, for my COS and completed all paperwork to successfully finish my Peace Corps Service, I did speak to the acting PCMO at the time who was a visiting nurse practitioner.

24. The nurse practitioner stated that I must have an ear infection and prescribed me anti-nausea pills.

25. Before this intense dizziness episode, it is important to note, I had never in my life been diagnosed with an ear infection nor have I ever had any health issues as it relates to my ears and ear anatomy.

26. From August 2012 to the present day, I continually suffer through intense bouts of dizziness, vertigo, and disequilibrium.

27. As these symptoms had started while I was in Peace Corps, I successfully filed a Federal Employee Compensation Act claim with the US Department of Labor (DOL).

28. I have seen an Ear, Nose, and Throat doctor, Dr. Frederic P. Ogren, MD at Alegent Creighton Health in Omaha, Nebraska who conducted several tests to include an MRI scan.

29. I also consulted with Ear, Nose, and Throat dizziness specialist, Dr. Dennis Fitzgerald at MedStar Washington Hospital Center who reviewed the existing tests and diagnosed me with Benign Paroxysmal Positional Vertigo.

30. I also consulted my primary physician in DC, Dr. Jack Summer who conducted routine blood tests to ensure my body was functioning properly.

31. With these prevalent symptoms, one would assume that my medical tests would reveal abnormalities or other varying results that do not reflect normal levels. This is

not the case. My blood tests, my MRI and other test results reveal a completely normal, functioning brain, with no abnormalities.

32. Even though these tests come back normal, I still experience intense dizziness, vertigo, and disequilibrium episodes which continued and seemed to occur with more frequency and intensity in addition to neuropsychiatric issues in which mefloquine has been diagnosed to have been the cause of these issues.

33. Due to my recent diagnostic, I now understand that I have a permanent brain injury. This injury has affected my life to the extent that I am uncertain about my future.

34. As stated, before my Peace Corps service, I was a healthy, active, and a rather normal, functioning human being.

35. This indicates to me that the drug is dangerous and my life will never be the same in the sense that I will forever experience intense and unanticipated episodes of dizziness, vertigo, and disequilibrium.

36. During my training and throughout my Peace Corps service, I was never advised of these side effects of mefloquine to the extent of chronic brain damage as a result of taking mefloquine. The risk of such extensive brain damage is not mentioned in any of the Lariam documents including waiver that I signed (document #2, Lariam information sheets and document #3, waiver).

37. The government was negligent with the dispersal of this medication as Peace Corps should have ensured that PCVs are not adverse to the drug, mefloquine, and the lack of monitoring and evaluation by the PCMOs to reveal that they have not fulfilled their required role to the extent that I still suffer and my life has been miserable.

38. Before entering Burkina Faso, I should have been given the recommended dose of mefloquine two weeks before leaving the United States (document #1).

39. After ingesting the drug, Peace Corps Medical Officers should have sat down with each individual Volunteer who was prescribed mefloquine and talked about the possible side effects of the drugs to include neurotoxicity and chronic brain damage in addition to impaired cognitive abilities.

40. Moreover, psychologists and neurologists should have conducted frequent and exhaustive tests and evaluations to ensure the health and safety of each Peace Corps Volunteer, especially as each PCV is in a new, harsh living environment.

41. Peace Corps was negligent as they should have known the drug they prescribed would result in brain damage.

42. Peace Corps withheld this information from me and did not adequately inform me of the issues surrounding mefloquine to the extent that I could have chosen a different drug.

43. I filed an SF-95 administrative claim with the Peace Corps (document #4).

44. Peace Corps Chief Counsel responded by denying responsibility (document #5).

45. Finally, while the origins of the case seem to have started in Burkina Faso, the Peace Corps permitted that I travel overseas, with the knowledge that I had the possibility of being prescribed mefloquine, without assessing me for the drug's tolerance and without beginning my regimen while still in country, as is considered the standard of care (document #6, *Leaf v United States*).

46. Furthermore, even if this case is considered to have originated in a foreign country, exception to this has been already been decided in a court case as precedence (document #6, *In re Agent Orange Product Liability Litigation*).

47. As I continually suffer from mefloquine toxicity and I am unsure about my quality of life for the remainder of my life due to these chronic physical and mental health issues, I am requesting $1,000,000 in damages.

48. This claim is also requesting that Peace Corps ***officially*** use mefloquine as a drug of last resort.

49. I had filed this claim on March 3, 2015 *in forma pauperis* (IFP) to proceed with this complaint without the burden of payment (document #7 and #8).

50. I received notice that Honorable Judge Randolph D. Moss denied my request to file as pro se on March 16, 2015 (document #9).

51. Therefore, I am refiling this claim and paying the appropriate court fees as such.

ORIGINAL SIGNATURE

Sara T. Thompson

Sara T. Thompson, plaintiff
1625 E Street NE, Apt #1
Washington, DC 20002
(402) 880-3268

# Medicines for the Prevention of Malaria While Traveling
# Mefloquine

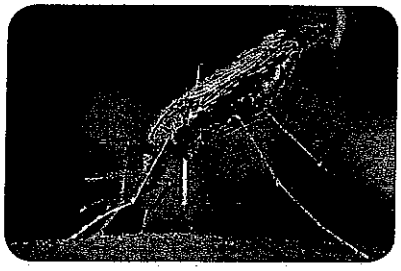
## What is mefloquine?

Mefloquine (also known as mefloquine hydrochloride) is an antimalarial medicine. It is available in the United States by prescription only. It is available as a generic medicine and used to be sold under the brand name Lariam. It is available in tablets of 228mg base (250mg salt).

The 228mg base tablet is the same as the 250mg salt tablet. It is just two different ways of describing the same thing.

Mefloquine can be prescribed for either treatment or prevention of malaria.

This fact sheet provides information about its use for the prevention of malaria infection associated with travel.



## Who can take mefloquine?

Mefloquine can be prescribed to adults and children of all ages. It can also be safely taken by pregnant women during all trimesters of pregnancy and nursing mothers.

## Who should not take mefloquine?

People with psychiatric conditions including active depression, a recent history of depression, generalized anxiety disorder, psychosis, schizophrenia, and other major psychiatric disorders should not take mefloquine.

In addition, people with seizure disorders (epilepsy) and certain heart conditions (irregular heartbeat and conduction problems) should not take mefloquine.

## How should I take mefloquine?

Both adults and children should take one dose of mefloquine per week starting at least 2 weeks before traveling to the area where malaria transmission occurs. They should take one dose per week while there, and for 4 consecutive weeks after leaving.

The weekly dosage for adults is 228mg base (250mg salt).

Your doctor will have calculated the correct weekly dose for your child based on the child's weight. The child's dose should not exceed the adult dose of 228mg base (250mg salt) per week. Mefloquine has a bitter taste. Children's doses may be added to something sweet such as a spoonful of honey or chocolate syrup to mask the flavor.

## Where can I buy mefloquine?

Antimalarial drugs are available in the United States by prescription only. Medicines should be obtained at a pharmacy before travel rather than in the destination country. Buying medications abroad has its risks: the drugs could be of poor quality, contaminated, or counterfeit and not protect you against malaria.

## Will mefloquine interact with my other medications?

Some other drugs can interact with mefloquine and cause you problems. Your doctor is responsible for evaluating the other medicines you are taking to ensure that there are no interactions between them and mefloquine. In some instances, medicines can be adjusted to minimize the interaction. You can also ask your pharmacist to check for drug interactions.

**Malaria is a serious disease that can cause death if not treated right away. It is caused by a parasite that can infect a certain type of mosquito which feeds on humans.**

**About 1,500 cases of malaria are diagnosed in the United States each year almost all in travelers to parts of the world where malaria occurs.**

Center for Global Health
Division of Parasitic Diseases and Malaria

CS237187-F

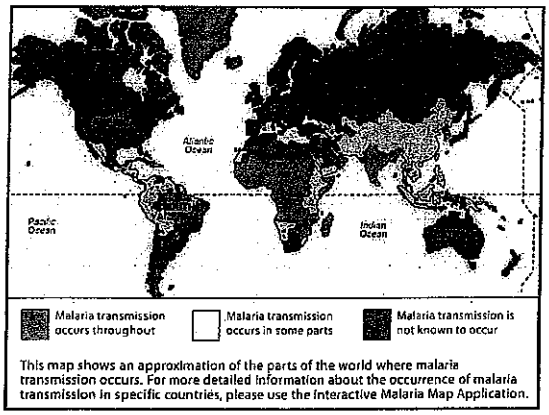
document #1

# Mefloquine

## In what parts of the world can mefloquine be used for prevention of malaria in travelers?

Mefloquine can be used in most parts of the world where malaria occurs. It is no longer effective for prevention in Southeast Asia and so should not be taken by travelers going to that part of the world. You should talk with your health care provider about your travel itinerary so he or she can identify if anti-malaria drugs are recommended where you are traveling and what kind.

CDC keeps track of all the places in the world where malaria transmission occurs and the malaria drugs that are recommended for use in each place. This information can be found using the malaria map on the CDC website: http://www.cdc.gov/malaria/map/index.html.



This map shows an approximation of the parts of the world where malaria transmission occurs. For more detailed information about the occurrence of malaria transmission in specific countries, please use the Interactive Malaria Map Application.

## What are the potential side effects of mefloquine?

Most people do not experience significant side effects when taking mefloquine. However, for those persons that do experience the side effects, they can be unpleasant and unsettling.

Mefloquine can cause dizziness, difficulty sleeping, anxiety, vivid dreams, and visual disturbances. In rare instances mefloquine can cause seizures, depression, and psychosis. When they occur, these side effects start within the first few doses of the medicine. People who are concerned about the possibility of experiencing these side effects during their trip may choose to start the medicine three or more weeks before travelling. That way, if they do experience these side effects, they can stop the medicine and switch to a different option before leaving home.

Mefloquine may also cause stomach pain, nausea, and vomiting. These side effects can often be lessened by taking mefloquine with food.

Mefloquine is eliminated slowly from the body and so the side effects may continue for weeks after you have stopped taking the drug.

All medicines may have some side effects. Minor side effects such as nausea, occasional vomiting, or diarrhea usually do not require stopping the antimalarial drug. If you cannot tolerate your antimalarial drug, see your health care provider; other antimalarial drugs are available.

## Other considerations

- Good choice for longer trips because you only have to take the medicine once per week.
- Usually, people who have not experienced side effects from mefloquine previously, do not experience side effects when they use it again.

## How long is it safe to use mefloquine?

CDC has no recommended time limits on the duration of use of mefloquine for the prevention of malaria.

## For more information:

Check out the CDC malaria website at http://www.cdc.gov/malaria

Health-care providers needing assistance with diagnosis or management of suspected cases of malaria should call the CDC Malaria Hotline: 770-488-7788 or 855-856-4713 toll-free (M-F, 9am-5pm, eastern time).

Emergency consultation after hours, call: 770-488-7100 and request to speak with a CDC Malaria Branch clinician.

## Prevent Malaria

- **Take an antimalarial drug.**
- **Prevent mosquito bites.**
- **If you get sick, immediately seek professional medical care.**

℞ only

# MEDICATION GUIDE

# LARIAM® (LAH-ree-am)
# (mefloquine hydrochloride)
## Tablets
## to Prevent Malaria

**This Medication Guide is intended only for travelers who are taking Lariam to prevent malaria.** The information may not apply to patients who are sick with malaria and who are taking Lariam to treat malaria.

An information wallet card is provided at the end of this Medication Guide. Cut it out and carry it with you when you are taking Lariam.

This Medication Guide was revised in August 2003. Please read it before you start taking Lariam and each time you get a refill. There may be new information. This Medication Guide does not take the place of talking with your prescriber (doctor or other health care provider) about Lariam and malaria prevention. Only you and your prescriber can decide if Lariam is right for you. If you cannot take Lariam, you may be able to take a different medicine to prevent malaria.

### What is the most important information I should know about Lariam?

1. **Take Lariam exactly as prescribed to prevent malaria.**

   Malaria is an infection that can cause death and is spread to humans through mosquito bites. If you travel to parts of the world where the mosquitoes carry the malaria parasite, you must take a malaria prevention medicine. Lariam is one of a small number of medications approved to prevent and to treat malaria. If taken correctly, Lariam is effective at preventing malaria but, like all medications, it may produce side effects in some patients.

2. **Lariam can rarely cause serious mental problems in some patients.**

   The most frequently reported side effects with Lariam, such as nausea, difficulty sleeping, and bad dreams are usually mild and do not cause people to stop taking the medicine. However, people taking Lariam occasionally experience severe anxiety, feelings that people are against them, hallucinations (seeing or hearing things that are not there, for example), depression, unusual behavior, or feeling disoriented. There have been reports that in some patients these side effects continue after Lariam is stopped. Some patients taking Lariam think about killing themselves, and there have been rare reports of suicides. It is not known whether Lariam was responsible for these suicides.

3. **You need to take malaria prevention medicine before you travel to a malaria area, while you are in a malaria area, and after you return from a malaria area.**

   Medicines approved in the United States for malaria prevention include Lariam, doxycycline, atovaquone/proguanil, hydroxychloroquine, and chloroquine. Not all of these drugs work equally as well in all areas of the world where there is malaria. The chloroquines, for example, do not work in areas where the malaria parasite has developed resistance to chloroquine. Lariam may be effective against malaria that is resistant to chloroquine or other drugs. All drugs to treat malaria have side effects that are different for each one. For example, some may make your skin more sensitive to sunlight (Lariam does not do this). However, if you use Lariam to prevent malaria and you develop a sudden onset of anxiety, depression, restlessness, confusion (possible signs of more serious mental problems), or you develop other serious side effects, contact a doctor or other health care provider. It may be necessary to stop taking Lariam and use another malaria prevention medicine instead. If you can't get another medicine, leave the malaria area. However, be aware that leaving the malaria area may not protect you from getting malaria. You still need to take a malaria prevention medicine.

### Who should not take Lariam?

Do not take Lariam to **prevent** malaria if you

- **have depression or had depression recently**
- **have had recent mental illness or problems,** including anxiety disorder, schizophrenia (a severe type of mental illness), or psychosis (losing touch with reality)
- **have or had seizures (epilepsy or convulsions)**
- **are allergic to quinine or quinidine (medicines related to Lariam)**

**Tell your prescriber about all your medical conditions.** Lariam may not be right for you if you have certain conditions, especially the ones listed below:

- **Heart disease.** Lariam may not be right for you.
- **Pregnancy.** Tell your prescriber if you are pregnant or plan to become pregnant. It is dangerous for the mother and for the unborn baby (fetus) to get malaria during pregnancy. Therefore, ask your prescriber if you should take Lariam or another medicine to prevent malaria while you are pregnant.
- **Breast feeding.** Lariam can pass through your milk and may harm the baby. Therefore, ask your prescriber whether you will need to stop breast feeding or use another medicine.
- **Liver problems.**

**Tell your prescriber about all the medicines you take, including prescription and non-prescription medicines, vitamins, and herbal supplements.** Some medicines may give you a higher chance of having serious side effects from Lariam.

### How should I take Lariam?

**Take Lariam exactly as prescribed. If you are an adult or pediatric patient weighing 45 kg (99 pounds) or less, your prescriber will tell you the correct dose based on your weight.**

To prevent malaria

- For adults and pediatric patients weighing over 45 kg, take 1 tablet of Lariam at least 1 week before you travel to a malaria area (or 2 to 3 weeks before you travel to a malaria area, if instructed by your prescriber). This starts the prevention and also helps you see how Lariam affects you and the other medicines you take. **Take 1 Lariam tablet once a week,** on the same day each week, while in a malaria area.
- **Continue taking Lariam for 4 weeks after returning from a malaria area.** If you cannot continue taking Lariam due to side effects or for other reasons, contact your prescriber.
- Take Lariam just after a meal and with at least 1 cup (8 ounces) of water.

**Information wallet card to carry when you are taking Lariam.**

**Lariam® (mefloquine hydrochloride) Tablets**

**You need to take malaria prevention medicine before you travel to a malaria area, while you are in a malaria area, and after you return from a malaria area.**

**If taken correctly, Lariam is effective at preventing malaria but, like all medications, it may produce side effects in some patients.**

**If you use Lariam to prevent malaria and you develop a sudden onset of anxiety, depression, restlessness, confusion (possible signs of more serious mental problems), or you develop other serious side effects, contact a doctor or other health care provider. It may be necessary to stop taking Lariam and use another malaria prevention medicine instead.**

*(Continued on back)*



document #2

**LARIAM® (mefloquine hydrochloride)**

- For children, Lariam can be given with water or crushed and mixed with water or sugar water. The prescriber will tell you the correct dose for children based on the child's weight.
- If you are told by a doctor or other health care provider to stop taking Lariam due to side effects or for other reasons, it will be necessary to take another malaria medicine. You must take **malaria prevention medicine before you travel to a malaria area, while you are in a malaria area, and after you return from a malaria area. If you don't have access to a doctor or other health care provider or to another medicine besides Lariam and have to stop taking it, leave the malaria area. However, be aware that leaving the malaria area may not protect you from getting malaria. You still need to take a malaria prevention medicine.**

## What should I avoid while taking Lariam?

- **Halofantrine (marketed under various brand names),** a medicine used to treat malaria. Taking both of these medicines together can cause serious heart problems that can cause death.
- **Do not become pregnant.** Women should use effective birth control while taking Lariam.
- **Quinine, quinidine, or chloroquine (other medicines used to treat malaria).** Taking these medicines with Lariam could cause changes in your heart rate or increase the risk of seizures.

**In addition:**

- **Be careful driving or in other activities** needing alertness and careful movements (fine motor coordination). Lariam can cause dizziness or loss of balance, even after you stop taking it.
- **Be aware that certain vaccines may not work if given while you are taking Lariam.** Your prescriber may want you to finish taking your vaccines at least 3 days before starting Lariam.

## What are the possible side effects of Lariam?

Lariam, like all medicines, may cause side effects in some patients. The most frequently reported side effects with Lariam when used for prevention of malaria include nausea, vomiting, diarrhea, dizziness, difficulty sleeping, and bad dreams. These are usually mild and do not cause people to stop taking the medicine.

Lariam may cause serious mental problems in some patients. (See "What is the most important information I should know about Lariam?").

Lariam may affect your liver and your eyes if you take it for a long time. Your prescriber will tell you if you should have your eyes and liver checked while taking Lariam.

**Information wallet card to carry when you are taking Lariam.**

**Lariam® (mefloquine hydrochloride) Tablets**

**Other medicines approved in the United States for malaria prevention include: doxycycline, atovaquone/proguanil, hydroxychloroquine, and chloroquine. Not all malaria medicines work equally well in malaria areas. The chloroquines, for example, do not work in many parts of the world. If you can't get another medicine, leave the malaria area. However, be aware that leaving the malaria area may not protect you from getting malaria. You still need to take a malaria prevention medicine.**

**Please read the Medication Guide for additional information on Lariam.**

Revised: August 2003

## What else should I know about preventing malaria?

- **Find out whether you need malaria prevention.** Before you travel, talk with your prescriber about your travel plans to determine whether you need to take medicine to prevent malaria. Even in those countries where malaria is present, there may be areas of the country that are free of malaria. In general, malaria is more common in rural (country) areas than in big cities, and it is more common during rainy seasons, when mosquitoes are most common. You can get information about the areas of the world where malaria occurs from the Centers for Disease Control and Prevention (CDC) and from local authorities in the countries you visit. If possible, plan your travel to reduce the risk of malaria.
- **Take medicine to prevent malaria infection.** Without malaria prevention medicine, you have a higher risk of getting malaria. Malaria starts with flu-like symptoms, such as chills, fever, muscle pains, and headaches. However, malaria can make you very sick or cause death if you don't seek medical help immediately. These symptoms may disappear for a while, and you may think you are well. But, the symptoms return later and then it may be too late for successful treatment.

  Malaria can cause confusion, coma, and seizures. It can cause kidney failure, breathing problems, and severe damage to red blood cells. However, malaria can be easily diagnosed with a blood test, and if caught in time, can be effectively treated.

  **If you get flu-like symptoms (chills, fever, muscle pains, or headaches) after you return from a malaria area,** get medical help right away and tell your prescriber that you may have been exposed to malaria.

  People who have lived for many years in areas with malaria may have some immunity to malaria (they do not get it as easily) and may not take malaria prevention medicine. This does not mean that you don't need to take malaria prevention medicine.
- **Protect against mosquito bites.** Medicines do not always completely prevent your catching malaria from mosquito bites. So protect yourself very well against mosquitoes. Cover your skin with long sleeves and long pants, and use mosquito repellent and bednets while in malaria areas. If you are out in the bush, you may want to pre-wash your clothes with permethrin. This is a mosquito repellent that may be effective for weeks after use. Ask your prescriber for other ways to protect yourself.

## General information about the safe and effective use of Lariam.

Medicines are sometimes prescribed for conditions not listed in Medication Guides. If you have any concerns about Lariam, ask your prescriber. This Medication Guide contains certain important information for travelers visiting areas with malaria. Your prescriber or pharmacist can give you information about Lariam that was written for health care professionals. Do not use Lariam for a condition for which it was not prescribed. Do not share Lariam with other people.

This Medication Guide has been approved by the U.S. Food and Drug Administration.

Manufactured by:
F. HOFFMANN-LA ROCHE LTD
Basel, Switzerland

Distributed by:

Roche Pharmaceuticals

Roche Laboratories Inc.
340 Kingsland Street
Nutley, New Jersey 07110-1199
www.rocheusa.com

# LARIAM MEDICATION GUIDE ACKNOWLEDGEMENT

*Instructions: To be completed by all Volunteers prior to starting malaria prophylaxis with mefloquine, and filed in the Volunteer health record under "In-Service Notes".*

_____
Date

I,_____, have received and read the July 2003, FDA Lariam (mefloquine hydrochloride) Medication Guide.

If, at any time, I experience what I feel are possible side effects from Lariam, I will promptly discuss the situation with my Medical Officer, and I may be placed on alternative anti-malaria prophylactic medication.

_____
Signature

document #3

# CLAIM FOR DAMAGE, INJURY, OR DEATH

**INSTRUCTIONS:** Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.

FORM APPROVED
OMB NO. 1105-0008

1. Submit to Appropriate Federal Agency:

United States Peace Corps
1111 20th St. NW
Washington, DC 20526

2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code.

Sara T. Thompson
1625 E Street, NE Apt #1
Washington, DC 20002
no attorney at this time

| 3. TYPE OF EMPLOYMENT | 4. DATE OF BIRTH | 5. MARITAL STATUS | 6. DATE AND DAY OF ACCIDENT | 7. TIME (A.M. OR P.M.) |
|---|---|---|---|---|
| ☐ MILITARY ☒ CIVILIAN | 09/29/1982 | single | 08/19/2012 | P.M. |

8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary).

Please see the attached summary (exhibit 1).

9. **PROPERTY DAMAGE**

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code).

BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side).

10. **PERSONAL INJURY/WRONGFUL DEATH**

STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT.

I experience the chronic effects of mefloquine toxicity in the form of dizziness, vertigo, and disequilibrium to the extent that I will chronically experience these symptoms for the remainder of my life as medical research has revealed. Peace Corps policy that Peace Corps Medical Officers prescribe mefloquine for Peace Corps Volunteers without revealing all health risks and possible chronic symptoms that result from mefloquine use.

11. **WITNESSES**

| NAME | ADDRESS (Number, Street, City, State, and Zip Code) |
|---|---|
| | |

12. (See instructions on reverse). **AMOUNT OF CLAIM** (in dollars)

| 12a. PROPERTY DAMAGE | 12b. PERSONAL INJURY | 12c. WRONGFUL DEATH | 12d. TOTAL (Failure to specify may cause forfeiture of your rights). |
|---|---|---|---|
| | 1,000,000 | | 1,000,000 |

**I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.**

| 13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). | 13b. PHONE NUMBER OF PERSON SIGNING FORM | 14. DATE OF SIGNATURE |
|---|---|---|
| | (402) 880-3268 | 08/12/2014 |

| CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM | CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS |
|---|---|
| The claimant is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729). | Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.) |



Document #4

## INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☐ No

17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with refererice to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☐ No

## INSTRUCTIONS

**Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.**

**Complete all items - Insert the word NONE where applicable.**

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

**Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.**

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

*(a)* In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

*(b)* In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

*(c)* In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

*(d)* **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

## PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

## PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

I am a thirty-one year old female who is currently living in Washington, DC. Prior to joining Peace Corps in June 2010, I led a very healthy life. I ran marathons, took yoga classes without any issues, and pursued an active lifestyle. When I was twenty-six, I decided to join Peace Corps and applied to be a Peace Corps Volunteer during the month of January 2009. Similar to most other Peace Corps Volunteers, I filled out the lengthy paperwork, impressed the interviewers, and passed all medical tests. By March 2010, I was offered an assignment to become a Girls' Education and Empowerment Peace Corps Volunteer (PCV) for Burkina Faso, West Africa. As I had majored in French and dreamed of the day when I would be able to work in French-speaking Africa, I was overjoyed at the news and accepted without any hesitation.

I flew to Philadelphia, PA for pre-service training in June 2010. After two days of crash courses in Peace Corps policy, cross-cultural training, and a consulate visit, I flew to Burkina Faso to begin an intensive and rigorous three months training regarding safety and security issues, cross-cultural matters, medical and health safety, language training, etc. I successfully passed my three months of training and was sworn in as a Peace Corps Volunteer August 2010. From the moment that I started training in Burkina Faso, I was given anti-malarial medication, called mefloquine, in very concentrated doses for the first three days. As Peace Corps mandates that all Volunteers take anti-malarial medication in at-risk malarial countries, I was mandated to take mefloquine and if at any time I refused, I would be terminated from Peace Corps. From then on, PCMOs mandated that PCVs take mefloquine once every week, which is more than the recommended dosage as defined by the CDC.

Throughout my service, I did exhibit several health issues related to impaired cognitive functioning. I consistently would misplace everyday items when in the States, I am the most organized person. I always blamed this behavior on the fact that I was in a new environment and was not acclimated to my surroundings. I would sleep more than sixteen hours a day, over twelve at night and a four-hour nap. I would always excuse this laziness as just adjusting to a new culture and speaking a different language. When I would be with other PCVs, if something was missing or somehow misplaced, I always blamed it on other PCVs and would often experience symptoms of paranoia that other PCVs would specifically target me and my belongings. While making dinner or reading in my hut, I would often think that I saw things out of the corner of my eyes and then blame it on insect or dust movement that I had never before experienced as I would not live with bugs inside my house in the States. I would often experience these situations as a reality of my life and often, find any of this abnormal behavior as excusable because I was in a developing country and was still adjusting to my new life without running water or electricity. However, throughout my two years' service, none of these behaviors dissipated and looking back, all of these behaviors intensified.

Despite understanding health threats and risks and taking precautions to avoid any medical and/or health issues, during my service, I did suffer through several health and medical issues. I had frequent fevers, was diagnosed with several parasites, endured several nights of diarrhea, and contracted chronic staph infection in the form of boils in which I have filed a FECA claim. Lastly and most importantly, during the last month of my service, I suffered severe dizziness and vertigo symptoms. When I called my Peace Corps Medical Officer (PCMO), he informed me that as it seemed unlikely there was a head injury, I could wait until I met with the PCMO for my Close of Service (COS) process. When I reached the capital

for my COS service and completed all paperwork to successfully finish my PC service, I did speak to the acting PCMO at the time who was a visiting nurse practitioner. She stated that I must have an ear infection and prescribed me anti-nausea pills. Before this time, I had never in my life been diagnosed with an ear infection nor have I ever had any health issues as it relates to my ears and ear anatomy.

From August 2012 to the present day, I continually suffer through intense bouts of dizziness, vertigo, and disequilibrium. As these symptoms had started when I was in Peace Corps, I successfully filed a FECA claim with the US Department of Labor (DOL). I have seen several specialists including an Ear, Nose, and Throat doctor, Ear, Nose, and Throat dizziness specialist, and a few primary physicians. With these prevalent symptoms, one would assume that my medical tests would reveal abnormalities or other varying test results that do not reflect normal levels. This is not the case. I have had several blood tests that have returned normal. I have had several hearing tests that have revealed normal results. I have also had an MRI that reflects a completely normal brain. Even though these tests come back normal, I still experience intense dizziness, vertigo, and disequilibrium episodes.

In June 2014 due to consistently researching my symptoms and experiences, I finally found a doctor who was able to understand my symptoms and offer a proposed diagnosis. This doctor met with me and further explained the cognitive and neurological damage that mefloquine imposes on individuals who ingest this drug. I now understand that I have a permanent brain injury. This injury has affected my life to the extent that I am uncertain about my future. As stated, before my PC service, I was a healthy, active, and rather normal functioning human being. This indicates to me that the drug is dangerous and my life will never be the same in the sense that I will forever experience intense and unanticipated episodes of dizziness, vertigo, and disequilibrium.

During my training and throughout my PC service, I was never advised of these side effects of mefloquine. The government was negligent with the dispersal of this medication. PC should have ensured that PCVs are not adverse to the drug, mefloquine, and the lack of monitoring and evaluation by the PCMOs reveal that they have not fulfilled their required role to the extent that I still suffer and my life has been miserable. After ingesting the drug, PCMOs should have sat down with each individual Volunteer who was prescribed mefloquine and talked about the possible side effects of the drugs to include neurotoxicity and chronic brain damage in addition to impaired cognitive abilities. Moreover, psychologists and neurologists should have conducted frequent and exhaustive tests and evaluations to ensure the health and the safety of each PCV, especially as each PCV is in a new, harsh living environment. Peace Corps was negligent as they should have known the drug they prescribed would result in intensive brain damage. They withheld this information from me and did not adequately inform me of the issues surrounding mefloquine to the extent that I could have chosen a different drug.

Therefore, I am filing this SF-95 form as a formal claim against Peace Corps as they were negligent.

Peace Corps

September 4, 2014

CERTIFIED MAIL NO. 7007 3020 0000 4975 0352
RETURN RECEIPT REQUESTED

Ms. Sara T. Thompson
1625 E Street NE, Apt #1
Washington, DC 20002

Re: Administrative Tort Claim of Sara T. Thompson

Dear Ms. Thompson:

We have reviewed the administrative tort claim you presented to the Peace Corps on August 27, 2014, relative to the alleged acts or omissions of employees of the Peace Corps occurring during your Peace Corps Volunteer service in Burkina Faso from June 2010 to August 2012. After careful consideration, it has been determined that your claim is barred on multiple grounds, including but not limited to the Federal Tort Claims Act's exception for claims arising in a foreign country, 28 U.S.C. § 2680(k). Accordingly, your claim must be and hereby is denied.

I am required by law (28 C.F.R. § 14.9(a)) to inform you that, if you are dissatisfied with the denial of this claim under the Federal Torts Claims Act, you may file suit in an appropriate United States District Court no later than six months after the date of mailing of this notification. 28 U.S.C. § 2401(b).

Very truly yours,

Bill Rubin
General Counsel



Document #5

1-1-1989

# Away from Justice and Fairness: The Foreign Country Exception to the Federal Tort Claims Act

Kelly McCracken



document #6

# AWAY FROM JUSTICE AND FAIRNESS: THE FOREIGN COUNTRY EXCEPTION TO THE FEDERAL TORT CLAIMS ACT

## I. INTRODUCTION

The concept of sovereign immunity developed from the English notion that "the King can do no wrong."[1] By 1834, sovereign immunity had become a fundamental principle of the American legal system.[2] According to Justice Holmes, the doctrine rests on "the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."[3] Legal scholars and commentators have, however, consistently criticized sovereign immunity as unfair and unnecessary.[4] This criticism, as well as judicial antagonism towards the doctrine, led Congress to enact the Federal Torts Claims Act (FTCA)[5] in 1946.

The FTCA waives the sovereign immunity of the United States government in actions involving torts committed by government officials and employees.[6] Generally, the FTCA provides that the United States may be held liable exactly as a private person would be, "in accordance with the law of the place where the act or omission occurred."[7] The FTCA contains several exceptions to this general rule,[8] however, including the exclusion of "claims arising in a foreign country."[9] This exception is known as the foreign country exception.

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1. COMMITTEE ON THE OFFICE OF ATTORNEY GENERAL, NATIONAL ASSOCIATION OF ATTORNEYS GENERAL, SOVEREIGN IMMUNITY: THE TORT LIABILITY OF GOVERNMENT AND ITS OFFICIALS 1 (1979) [hereinafter SOVEREIGN IMMUNITY]. For a general discussion of the historical development of the doctrine of sovereign immunity in the United States see *id.* at 1-8.

2. *See* United States v. Clarke, 33 U.S. (8 Pet.) 436 (1834).

3. Kawananakoa v. Polyblank, 205 U.S. 349, 353 (1907).

4. *See, e.g.*, Borchard, *Theories of Governmental Responsibility in Tort*, 28 COLUM. L. REV. 734 (1928); Borchard, *Governmental Responsibility in Tort*, 34 YALE L.J. 1 (1924); see also W. KEETON, PROSSER AND KEETON ON TORTS § 131, at 1032 (5th ed. 1984) in which the authors state that "[t]he description of immunities today is largely the description of abandonment and limitations on the immunities erected in an earlier day."

5. 28 U.S.C. §§ 1346(b), 2671-2680 (1982). See *infra* notes 23-34 and accompanying text for a discussion of the legislative history of the FTCA.

6. 28 U.S.C. §§ 1346(b), 2671-2680.

7. *Id.* § 1346(b). Federal district courts have jurisdiction over FTCA claims. *Id.* § 1346(a). Throughout this Comment, all references to courts are to United States federal courts.

8. *See, e.g., id.* § 2680(a) (discretionary functions); *id.* § 2680(h) (assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, interference with contract rights); *id.* § 2680(j) (combatant activity of the military).

9. *Id.* § 2680(k).

Only one United States Supreme Court decision, *United States v. Spelar*,[10] decided in 1949, has ever addressed the issue of the foreign country exception to the FTCA. According to the *Spelar* Court, Congress enacted the foreign country exception to insulate the United States from claims that would subject the United States to the laws of another nation.[11] Lower courts have since strayed from this purpose in cases concerning the exception.[12]

Lower courts have employed two basic tests to determine whether to apply the foreign country exception. The first concerns the definition of "foreign country."[13] This prong of the test was the main focus of the earliest decisions involving the foreign country exception.[14] Certain types of international locations were designated foreign countries,[15] and these designations have rarely been questioned. However, in determining whether a foreign country was involved, the courts in these early cases failed to arrive at a concrete method for deciding the meaning of the term "foreign."[16] The lack of any real standard is evidenced by a recent case in which the court struggled to decide whether the

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10. 338 U.S. 217 (1949).

11. *Id.* at 221.

12. *See, e.g.*, Cominotto v. United States, 802 F.2d 1127 (9th Cir. 1986); Eaglin v. United States, 794 F.2d 981 (5th Cir. 1986); Leaf v. United States, 588 F.2d 733 (9th Cir. 1978); Meredith v. United States, 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964). For a discussion of *Cominotto*, see *infra* text accompanying notes 113-18. For a discussion of *Eaglin*, see *infra* text accompanying notes 108-112. For a discussion of *Leaf*, see *infra* text accompanying notes 83-86. For a discussion of *Meredith*, see *infra* text accompanying notes 53-57.

13. The United States Supreme Court addressed the difficulty of defining foreign country in Burnet v. Chicago Portrait Co., 285 U.S. 1 (1932). *Burnet* involved interpretation of the Revenue Code:

> The word "country" in the expression "foreign country," is ambiguous. It may be taken to mean foreign territory or a foreign government. In the sense of territory, it may embrace all the territory subject to a foreign sovereign power. When referring more particularly to a foreign government, it may describe a foreign state in the international sense, . . . or it may mean a foreign government which has authority over a particular area or subject matter. . . . The term "foreign country" is not a technical or artificial one, and the sense in which it is used in a statute must be determined by reference to the purpose of the particular legislation.

*Id.* at 5-6.

14. *See, e.g., Meredith*, 330 F.2d at 11 (United States embassy buildings and grounds in Bangkok, Thailand within foreign country exception); Burna v. United States, 240 F.2d 720, 721 (4th Cir. 1957) (Okinawa foreign country although United States had temporary sovereignty over it); Brunell v. United States, 77 F. Supp. 68, 71-72 (S.D.N.Y. 1948) (Saipan foreign country although in possession and under control of United States by military conquest); Straneri v. United States, 77 F. Supp. 240, 241 (E.D. Pa. 1948) (Belgium foreign country even though under military control of United States).

15. *See Spelar*, 338 U.S. at 219 (air bases in Newfoundland on land leased to United States by Great Britain); *Meredith*, 330 F.2d at 11 (United States embassy in Bangkok, Thailand); *Brunell*, 77 F. Supp. at 72 (land in which United States acted as trustee).

16. *See, e.g., Meredith*, 330 F.2d at 10-11 (common sense reading of foreign country exception requires that embassies on foreign soil be considered foreign countries); *Straneri*, 77 F. Supp. at 241 (foreign country anywhere that United States Congress is not "supreme legislative body"); *Brunell*, 77 F. Supp. at 72 (foreign country anything other than "component part or a political subdivision" of the United States).

foreign country exception should apply to Antarctica.[17]

The second issue that a court confronts when analyzing the foreign country exception is determining where the claim arises. The FTCA directs courts to look at the place where the negligence occurred in order to determine where the claim arose.[18] However, it is not always clear what constitutes the negligence that proximately caused the injury or where that negligence occurred. Some courts recognize "headquarters claims," in which a claim is allowed, even if the government employee acted in a foreign country, when a claimant can show that that employee's actions were based on negligent guidance from an office in the United States.[19] Other courts refuse to recognize headquarters claims or any kind of "continuing tort."[20] Determining where a claim arose has become the focus of most of the recent cases involving the foreign country exception.[21]

This Comment addresses the problems currently plaguing courts in applying the foreign country exception. It also analyzes the policies behind the exception and examines whether the courts' decisions have furthered or hindered those policies. Finally, this Comment proposes a clear standard for courts to apply to reach decisions that are more equitable and more consistent with the goals of the FTCA.

## II. ADOPTION OF THE FTCA

Congress enacted the FTCA as part of the Legislative Reorganization Act

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17. Beattie v. United States, 756 F.2d 91 (D.C. Cir. 1985). The court in *Beattie* held that Antarctica was not a foreign country within the meaning of the foreign country exception because it was not and had never been subject to the law of any sovereign. *Id.* at 105-06.

The court's difficulty in reaching this decision is apparent from the fact that it was a two to one decision, with lengthy, separate opinions from each judge.

18. 28 U.S.C. § 1346(b) (1982). Under the FTCA:

> [T]he general directive is that the government is to be held "in the same manner and in the same extent as a private individual under the circumstances." The federal courts are directed to follow . . . the tort law of the state in which the tort occurred, including its choice of law rules.

W. KEETON, *supra* note 4, at 1034 (quoting 28 U.S.C. § 2674).

19. *See, e.g., Eaglin*, 794 F.2d at 984 (claim that army officials in United States failed to warn plaintiff of "black ice" hazards in West Germany); *Beattie*, 756 F.2d at 105 (claim that United States Navy air traffic controllers negligently caused airplane crash in Antarctica); *Leaf*, 588 F.2d at 736 (claim that officials in United States negligently planned and operated drug investigation in Mexico).

20. Occasionally a "continuing-tort" theory can be used to overcome the foreign country exception when a tort that continues over an extended period of time causes injury both in a foreign country and in the United States. *But see*, Grunch v. United States, 538 F. Supp. 534, 537 (E.D. Mich. 1982) ("Michigan law does not recognize a 'continuing negligence' cause of action which suffices to override the 'foreign country' exception of the FTCA.").

21. *See, e.g.*, Cominotto v. United States, 802 F.2d 1127 (9th Cir. 1986); Eaglin v. United States, 794 F.2d 981 (5th Cir. 1986); Sami v. United States, 617 F.2d 755 (D.C. Cir. 1979); Glickman v. United States, 626 F. Supp. 171 (S.D.N.Y. 1985); *In re* Agent Orange Product Liability Litigation, 580 F. Supp. 1242 (E.D.N.Y. 1984) [hereinafter *Agent Orange*]; *In re* Paris Air Crash of March 3, 1974, 399 F. Supp. 732 (C.D. Cal. 1975). See *infra* notes 72-118 and accompanying text for a discussion of these cases.

of 1946 (Reorganization Act).[22] In passing the Reorganization Act, Congress was directly responding to the growing number of private bills[23] in which the proponents sought appropriations of money in reparation of injuries caused by government employees and officials.[24] These bills were seriously impeding Congress' regular legislative work.[25] As part of the Reorganization Act, Congress prohibited private bills for claims that had a remedy under the FTCA.[26] Congress also had recognized that judicial support for the doctrine of sovereign immunity had eroded[27] and that justice demanded that individuals be able to recover for claims against the federal government, at least for some injuries.[28]

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22. 92 CONG. REC. 10048 (1946).

23. Prior to the passage of the FTCA, an individual could recover damages for torts committed by the United States or its employees only by presenting a private bill in Congress. There was no judicial remedy for torts committed by the government. *See* Pound, *The Tort Claims Act: Reason or History?*, 37 TUL. L. REV. 685, 689-90 (1963).

Alexander Holtzoff describes the system of bringing private bills to Congress as follows:

> Because of a lack of a judicial remedy with respect to claims against the Government, the custom of appealing to the legislature for relief originated in the very first Congress. The first private bill passed by the Congress of the United States for the purpose of adjusting an original claim became law on June 4, 1790. . . . As early as 1792, a private act of Congress recognizing a tort claim against the United States became law. . . .
>
> Presumably for want of any other remedy, it became the customary practice to handle claims against the Government by special legislation. Business of this type gradually grew in volume to a point at which it became a serious burden on the members of Congress.

Holtzoff, *The Handling of Tort Claims Against the Federal Government*, 9 LAW & CONTEMP. PROBS. 311 (1942) (footnotes omitted).

24. 92 CONG. REC. 10048 (1946); *see also* Pound, *supra* note 23, at 689-90.

25. On January 14, 1942, urging passage of the FTCA, President Roosevelt sent a message to Congress pointing out that over 6,300 private bills had been introduced in the last three Congresses. Armstrong and Cockrill, *The Federal Tort Claims Bill*, 9 LAW & COMTEMP. PROBS. 327 & n.6 (1942). The bills had cost over $144,000 per Congress, and less than 20% of the bills introduced had become law. *Id.*

See H.R. REP. NO. 2428, 76th Cong., 3d Sess. 8 (1940) in which the United States Attorney General discussed the "cumbersome" nature of private bills to Congress. See also Holtzoff, *supra* note 23, at 312, which quotes John Quincy Adams as saying that: "One half of the time of Congress is consumed by [private business], and there is no common rule of justice for any two of the cases decided. A deliberative assembly is the worst of all tribunals for the administration of justice." *Id.* (citing 8 J.Q. ADAMS, MEMOIRS OF JOHN QUINCY ADAMS 479-80 (1876)).

26. United States v. Muniz, 374 U.S. 150, 154 & n.6 (1963) (citing Legislative Reorganization Act of 1946, § 131, 60 Stat. 831, 2 U.S.C. § 190g); *see also* Dalehite v. United States, 346 U.S. 15, 24-25 (1953); Feres v. United States, 340 U.S. 135, 139-40 (1950).

27. *See supra* notes 1-5 and accompanying text.

28. During debate on the FTCA, the United States Attorney General stated that, "[t]he continued immunity of the Government to suit on common law torts does not seem to be warranted either as a matter of principle or as a matter of justice." H.R. REP. NO. 2428, 76th Cong., 3d Sess. 8 (1940); see also Blachly and Oatman, *Approaches to Governmental Liability in Tort: A Comparative Survey*, 9 LAW & CONTEMP. PROBS. 181 (1942) wherein the authors stated the modern problems with sovereign immunity as follows:

> The rapid growth of public services and functions in most countries, the large numbers of persons engaged in the civil service or in the military forces, and the

Congress included the following policies in the FTCA's statement of purpose:

> (1) a desire on the part of the federal government in the interests of justice and fair play to permit a private litigant to satisfy his legal claims for injury or damage suffered at the hands of a United States employee acting in the scope of his employment;
>
> (2) the need of the Congress to be relieved of the burden imposed by multitudinous bills for private relief arising from tort claims against government employees;
>
> (3) the advantage of an impartial judicial forum for both the complainant and the Government in which to discover the facts in the same manner as private law suits;
>
> (4) a desire of Congress to expedite the payment of just claims.[29]

Congress drafted the FTCA over a twenty-seven year period, beginning in 1919.[30] The 1942 draft of the FTCA excepted claims "arising in a foreign country in behalf of an alien."[31] A revised version of the bill[32] eliminated the last five words of the earlier version, resulting in the foreign country exception as it exists today—"arising in a foreign country."[33] Records of statements made at congressional hearings on the FTCA clearly indicate that the overall goal of Congress in enacting the foreign country exception was to prevent the United States government from becoming subject to the laws of another nation.[34]

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> increase in the number of risks brought about by mechanisms such as the automobile, the airplane, and other methods of transportation, means that an ever-increasing number of persons will suffer injuries resulting from governmental acts and operations. *A problem of great importance, then, is that of the responsibility of the state and its agents for such injuries.*

*Id.* (emphasis added). Since 1942, technological advances have made it even more likely that people will suffer injuries resulting from governmental acts or omissions. Thus, it has become even more important that the government assume responsibility for the injuries caused by its employees.

29. SOVEREIGN IMMUNITY, *supra* note 1, at 43.

30. See United States v. Spelar, 338 U.S. 217, 220 n.6 (1949), wherein the Court stated:

> Agitation for reform of the cumbersome private bill procedure bore its first fruit in H.R. 14727 introduced in the third session of the Sixty-fifth Congress in 1919. The subject was almost continuously before one House or the other until the final passage of the substance of the present Act by the Seventy-ninth Congress.

*Id.*

31. H.R. 5373, 77th Cong., 2d Sess., § 303(12) (1942).

32. H.R. 6463, 77th Cong., 2d Sess., § 402(12) (1942).

33. 28 U.S.C. § 2680(k) (1982).

34. In United States v. Spelar, 338 U.S. 217 (1949), the United States Supreme Court quoted dialogue that occurred at congressional hearings pertaining to the scope of the FTCA. The pertinent discussion was as follows:

> Mr. Shea. Claims arising in a foreign country have been exempted from this bill, H.R. 6463, whether or not the claimant is an alien. Since liability is to be determined by the law of the situs of the wrongful act or omission it is wise to restrict the bill to claims arising in this country. This seems desirable because the law of the

## III. APPLICATION OF THE FOREIGN COUNTRY EXCEPTION

### *A. An Attempt To Define Foreign Country*

In early cases interpreting the foreign country exception to the FTCA, courts broadly defined "foreign country" as it applies to the exception.[35] For example, in *Straneri v. United States*,[36] a district court held that a foreign country was anywhere that the United States Congress was not the "supreme legislative body."[37] Thus, in *Straneri*, the claimant could not recover for injuries sustained in Ghent, Belgium when a vehicle driven by a member of the United States Army struck him, notwithstanding that Belgium was under military control of the United States at the time.[38]

In *Brunell v. United States*,[39] another district court even more broadly defined "foreign country." The court held that recovery under the FTCA was limited to claims arising in a "component part or political subdivision of the United States."[40] In *Brunell*, the plaintiff alleged that she had been injured by a negligently operated army jeep that ran off the road and into a tree in Saipan.[41] The court determined that the United States trusteeship of Saipan did not affect Saipan's status as a foreign country.[42] Thus, early courts developed the general rule that, absent legislative intent to the contrary, a foreign country was any

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particular State is being applied. Otherwise, it will lead I think to a good deal of difficulty.

Mr. Robison. You mean by that any representative of the United States who committed a tort in England or some other country could not be reached under this?

Mr. Shea. That is right. That would have to come to the Committee on Claims in Congress.

*Id.* at 221 (quoting *Hearings on H.R. 5373 and H.R. 6463*, 77th Cong., 2d Sess. 35 (1942)). See *infra* notes 190-232 and accompanying text for a discussion of whether the courts have reached decisions consistent with this policy.

35. See *infra* notes 36-57 for a discussion of these cases.

36. 77 F. Supp. 240 (E.D. Pa. 1948). In *Straneri* the plaintiff was a merchant seaman in Ghent, Begium which was then under the military control of the United States following World War II. *Id.* On May 29, 1945 the plaintiff was riding a motorcycle when a vehicle operated by a member of the United States Army swerved into his lane. *Id.* Plaintiff suffered severe head injuries and on April 25, 1946, plaintiff committed suicide as a result of the consequences of those injuries. *Id.* at 241.

37. *Id.* The court went on to state that:

> [A]s one of the conditions precedent to recovery from the United States, the tort must have been committed on lands within the boundaries of the United States or its territories or possessions. All other lands are to be considered as foreign country [sic] irrespective of the degree of control the executive branch of the United States government might otherwise exert over them.

*Id.*

38. *Id.*

39. 77 F. Supp. 68 (S.D.N.Y. 1948).

40. *Id.* at 72.

41. *Id.* at 69.

42. *Id.* at 72. "Although . . . Saipan was in the possession and under the control of the United States by reason of military conquest and occupation, it cannot in any sense be deemed to have been either a component part or a political subdivision of this nation." *Id.*

place outside the territorial jurisdiction of the United States.[43]

In *United States v. Spelar*,[44] the United States Supreme Court applied that same general rule in its only interpretation of the foreign country exception to the FTCA. The Court was confronted with the issue of whether the foreign country exception to the FTCA barred recovery for a death occurring on a Newfoundland air base leased to the United States from Great Britain for ninety-nine years.[45] The claimant alleged that negligent operation of Harmon Field, the air base at which the crash occurred, caused her husband's death.[46] She based her cause of action on Newfoundland's wrongful death statute.[47] The Court held that the foreign country exception barred recovery because Great Britain was sovereign over the air bases.[48] Even though Great Britain had leased the base to the United States, the Court determined that it "remained subject to the sovereignty of Great Britain and lay within a 'foreign country.' "[49] Since the law to be applied was the law of Newfoundland,[50] the Court found that the case rested squarely within the foreign country exception, which Congress enacted to prevent the United States from becoming subject to another nation's laws.[51] The Court, therefore, denied the plaintiff any recovery under the FTCA.[52]

The Ninth Circuit purportedly added "common sense" to the definition of foreign country in *Meredith v. United States*.[53] The allegedly negligent acts and omissions in that case occurred within the grounds of the United States embassy in Bangkok, Thailand.[54] The court stated that while no one challenged the power of Congress to extend United States liability to claims arising at a United States embassy on foreign soil, a common sense reading of "foreign country" under section 2680(k)[55] led it to conclude that embassies on foreign soil are to be treated as foreign countries.[56] In so ruling, the court presumed that the law to be applied would be that of Thailand, since "obviously our embassy at Bangkok has no tort law of its own."[57]

A very broad definition of foreign country, under which virtually any place

43. *But cf.* Foley Bros. v. Filardo, 336 U.S. 281, 285 (1948) (applicability of labor law to Government contractors working on military bases not under lease to the United States).

44. 338 U.S. 217 (1949).

45. *Id.* at 218-19.

46. *Id.* at 218.

47. *Id.*

48. *Id.* at 219.

49. *Id.*

50. *See* 28 U.S.C. § 1346(b) (1982). Under the FTCA, the United States is liable as if it were a private person, "in accordance with the law of the place where the act or omission occurred." *Id.*

51. *Spelar*, 338 U.S. at 219.

52. *Id.*

53. 330 F.2d 9 (9th Cir. 1964).

54. *Id.* at 10.

55. *Id.* at 11. Unless otherwise indicated, all statutory citations are to Title 28 of the United States Code.

56. *Id.* at 10-11.

57. *Id.* at 10. *But see* Beattie v. United States, 756 F.2d 91 (D.C. Cir. 1984) (foreign

not actually within the United States was deemed a foreign country, emerged in these early cases.[58] *Beattie v. United States*,[59] a recent case concerning Antarctica, has apparently shifted the focus from physical location to sovereignty.[60] Although courts in earlier cases had discussed sovereignty,[61] the practical effect of those decisions was that in order to recover in tort against the United States, "the tort must have been committed *on lands* within the boundaries of the United States or its territories or possessions."[62] In *Beattie*, the District of Columbia Circuit held that since Antarctica was not subject to the sovereign power of *any* nation, it was not a foreign country even though Antarctica was physically located outside of the United States, and was not a United States territory or possession.[63]

Before *Beattie*, the question of the definition of foreign country, separating the United States from foreign countries based on physical location, seemed relatively well settled.[64] The court's decision in *Beattie*, however, makes it clear that there are still gaps in that definition.[65] Further, the fact that the court was divided 2-1 in *Beattie*[66] indicates that a more easily applicable standard is necessary in order for courts and claimants to have a more definite understanding of the bounds of the foreign country exception.

### *B. Shift Of Focus*

Notwithstanding the need for a clearer definition of foreign country, the majority of courts that have dealt with the foreign country exception in recent years have focused their inquiry on the other half of the exception. Rather than attempting to determine what a foreign country is, these courts have focused on providing definition and substance to the "arising in" language of the foreign country exception.

The foreign country exception to the FTCA excepts "claims arising in a

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country exception not applicable to Antarctica since Antarctica has no sovereign or law of its own).

58. While this may appear to be a fairly clear-cut area, and in most cases it is, there are still some problems with the courts' approach. See *infra* notes 155-89 and accompanying text for a discussion of whether the courts' decisions are consistent with the purposes and goals of the FTCA.

59. 756 F.2d 91 (D.C. Cir. 1985).

60. *Id.* at 94-95.

61. *See* Burna v. United States, 756 F.2d 91 (4th Cir. 1957) (temporary transfer of sovereignty over Okinawa does not change its status as foreign country); Brunell v. United States, 77 F. Supp. 68 (S.D.N.Y. 1948) (land conquered by United States, although under sovereignty of United States, did not become part of United States, thus was still foreign country); Straneri v. United States, 77 F. Supp. 240 (E.D. Pa. 1948) (lands outside boundaries of United States are foreign countries regardless of amount of control exerted by United States over them).

62. *Straneri*, 77 F. Supp. at 241 (emphasis added).

63. *Beattie*, 756 F.2d at 105.

64. *See* cases cited *supra* note 61.

65. *Beattie*, 756 F.2d 91.

66. *See supra* discussion at note 17.

foreign country" from coverage.[67] In earlier cases, the courts generally operated under an assumption that the negligence and the injury occurred in the same place.[68] Courts, however, no longer make that assumption. More recent courts have focused on the site of the negligence, as opposed to that of the injury, to determine where the claim arose.[69] Advances in technology and communication have increased the possibility that an act or omission in the United States can have repercussions somewhere else in the world. The courts in more recent cases, therefore, have closely examined the site of the negligence in order to determine whether the foreign country exception should apply.

Generally, a claim arises where the negligent act or omission occurs,[70] not where that act or omission has its "operative effect."[71] For example, in *In re Paris Air Crash of March 3, 1974*,[72] the plaintiffs sued the United States government for injuries sustained in a plane crash in France.[73] The court held that the plaintiffs' claims did not arise in a foreign country because the negligence that led to the crash[74] occurred in California.[75] Thus, even though the crash occurred in France, most certainly a foreign country, the plaintiffs were allowed to recover because the actual acts of negligence took place in the United States.[76]

Courts, therefore, have the task of determining what negligent act or omission caused the claimant's injury, as well as where that negligent act or omission occurred in order to determine whether a claim falls within the foreign country exception. Many courts allow recovery under a headquarters claim upon finding that negligence in the United States is very closely connected to an injury abroad.[77] Where a court finds no such connection, it will deny the claim be-

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67. 28 U.S.C. § 2680(k) (1982).

68. United States v. Spelar, 338 U.S. 217 (1949); Meredith v. United States, 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964); Straneri v. United States, 77 F. Supp. 240 (E.D. Pa. 1948); Brunell v. United States, 77 F. Supp. 68 (S.D.N.Y. 1948). See *supra* notes 36-57 and accompanying text for a discussion of the holdings of these cases.

69. See, e.g., *Agent Orange*, 580 F. Supp. 1242 (E.D.N.Y. 1984), wherein the court stated that "under the FTCA, a tort claim arises at the place where the negligent act or omission occurred and not where the negligence had its operative effect." *Id.* at 1254 (citing Richards v. United States, 369 U.S. 1, 9 (1962)); *see also* Knudsen v. United States, 500 F. Supp. 90 (S.D.N.Y. 1980) (all acts with respect to design of aircraft occurred abroad, thus claim arose abroad); *In re* Paris Air Crash of March 3, 1974, 399 F. Supp. 732 (C.D. Cal. 1975) (all claims arose in California).

70. Richards v. United States, 369 U.S. 1, 9 (1962).

71. *Id.* The place where the act or omission has its "operative effect" is the place of the actual injury or accident. Roberts v. United States, 498 F.2d 520, 522 n.2 (9th Cir.), *cert. denied*, 418 U.S. 1070 (1974).

72. 399 F. Supp. 732 (C.D. Cal. 1975).

73. *Id.* at 735-36.

74. *Id.* at 737-38. The alleged negligence included wrongful approval, certification and inspection of the airplane, and failure to require changes in the structure of the aircraft. *Id.*

75. *Id.*

76. *Id.* at 738.

77. See *infra* notes 83-126 and accompanying text for a discussion of headquarters claims.

cause the claim then falls within the foreign country exception.[78]

### C. Headquarters Claims

1. Recovery based on link between United States and foreign country

Some courts allow plaintiffs to recover under the FTCA, even though they have sustained injuries in a foreign country, based on a so-called headquarters claim.[79] In these cases, the claimant's injury, and often some act of negligence, have occurred in a foreign country.[80] The claimant still recovers, however, because the court ties the injury or the negligence that caused the injury to some action in the United States.[81] To recover under a headquarters claim, the plaintiff must connect the injury in a foreign country to a negligent act or omission in the United States.[82] For example, in *Leaf v. United States*,[83] owners of an airplane sued the United States government for negligence when their plane crashed during a Drug Enforcement Agency operation in Mexico.[84] The plaintiffs based their right to recovery on a headquarters claim, because the planning of the operation and the leasing of the plane took place in California and Arizona.[85] The Ninth Circuit held that the claim did not arise in Mexico since the negligent acts in the United States were the proximate cause of the injury.[86]

Courts have allowed headquarters claims in a variety of situations similar to *Leaf*. In *Glickman v. United States*,[87] for example, a district court found that a CIA program to administer drugs to unwitting persons originated in the United States even though some of the acts to implement that plan occurred in a foreign country.[88] The plaintiff recovered on a headquarters claim for injuries sustained as a result of being drugged and electro-shocked as part of the CIA program in France.[89] Since the CIA's negligence in developing and administering the drug program in the United States caused the plaintiff's injuries in France, the court allowed the plaintiff's headquarters claim.[90]

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78. See *infra* notes 108-26 and accompanying text for a discussion of causation as a bar to recovery.

79. *See, e.g.*, Sami v. United States, 617 F.2d 755 (D.C. Cir. 1979); Leaf v. United States, 588 F.2d 733 (9th Cir. 1978); Glickman v. United States, 626 F. Supp. 171 (S.D.N.Y. 1985); *Agent Orange*, 580 F. Supp. 1242 (E.D.N.Y. 1984).

80. *See Leaf*, 588 F.2d at 735.

81. *Id.* at 736.

82. *Id.*

83. 588 F.2d 733 (9th Cir. 1978). In *Leaf*, the plaintiffs leased their plane to an informant for the DEA who intended to use the plane to set up a drug smuggler. *Id.* at 735. The plaintiffs were unaware of the use to which the informant intended to put the plane. *Id.*

84. *Id.* at 734-35.

85. *Id.* at 735.

86. *Id.* at 736.

87. 626 F. Supp. 171 (S.D.N.Y. 1985).

88. *Id.* at 174.

89. *Id.*

90. *Id.*

Similarly, in *Sami v. United States*,[91] German officials wrongfully detained the plaintiff in Germany.[92] The plaintiff's arrest was the result of an error made by American officials regarding the plaintiff's capacity to remove his children from the United States in the midst of a custody battle.[93] Although German, not American, officials made the arrest, the plaintiff was allowed to recover against the American government.[94] The District of Columbia court found that the arrest was made only because of a communique sent from the United States by the Chief of the United States National Central Bureau (USNCB),[95] which is the United States' liaison with the International Criminal Police Organziation (Interpol).[96] The court therefore held the claim cognizable under the FTCA.[97]

Another example is *In re Agent Orange Product Liability Litigation*,[98] where the district court allowed the plaintiffs to recover for injuries sustained in Vietnam from exposure to Agent Orange.[99] The court found that the initial decision to use Agent Orange in Vietnam was made in the United States, as was the decision to continue using it.[100] Decisions relating to the specifications for Agent Orange also were made in the United States, and the court saw no reason to attribute mistakes in the use of Agent Orange to Vietnam rather than to the United States.[101]

These cases, therefore, demonstrate that the key to recovery in headquarters claims cases is connecting the negligent act or omission in the United States with the injury in a foreign country.[102] Under this theory, the courts have the difficult task of determining exactly where the negligence which caused an injury took place. In some cases, this inquiry also involves an initial determination of

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91. 617 F.2d 755 (D.C. Cir. 1979).

92. *Id.* at 758.

93. The Maryland appellate court called this case "an almost incredible history of marital warfare, with skirmishes occurring up and down the eastern seaboard of this country, as well as abroad." Sami v. Sami, 29 Md. App. 161, 163-64, 347 A.2d 888, 890 (1975).

94. 617 F.2d at 761-63.

95. The USNCB was, at the time, a bureau of the United States Treasury with eleven full-time employees whose salaries were paid by the United States government. *Id.* at 760. The court found that the USNCB acted "exclusively as an agent of the national [United States] government which created, staffed, financed and equipped it." *Id.*

96. *Id.* at 757-58.

97. *Id.* at 757.

98. 580 F. Supp. 1242 (E.D.N.Y. 1984).

99. *Id.* at 1255. Agent Orange was a chemical used by the United States military to defoliate the jungles of Vietnam. After the war, many soldiers who served in Vietnam experienced medical problems which they attributed to exposure to Agent Orange. These soldiers began to sue the chemical companies that had manufactured Agent Orange and voluminous, extremely complex litigation resulted. For a discussion of the procedural history of the Agent Orange litigation see the outline recently set out by the editors of the Brooklyn Law Review. *Procedural History of the Agent Orange Product Liability Litigation*, 52 BROOKLYN L. REV. 335 (1986).

100. 580 F. Supp. at 1254.

101. *Id.*

102. *See, e.g., Leaf*, 588 F.2d at 735-36.

which negligent act or omission the court should focus on.[103] Only then can a court decide whether the negligence occurred in a foreign country.

These cases often involve more than one negligent act. In *Agent Orange*, for example, negligent acts in both the United States and Vietnam contributed to the claimants' injuries.[104] In addition to determining where the negligence occurred, the court also had to decide *which* of the many negligent acts were salient to the plaintiffs' claims. This can be a difficult and confusing task, leaving room for a great deal of error or manipulation. In *Agent Orange*, the court could have decided that the negligent use of Agent Orange in Vietnam was the primary cause of the injury and could therefore have been the sole focus in the court's decision. The court could have reached an equally valid determination that the negligence underlying the plaintiffs' claim occurred in Vietnam, since no clear answer emerged from the facts.

### 2. Causation as bar to recovery

In several cases, plaintiffs have been unable to recover under a headquarters claim because they have failed to demonstrate a causal nexus between the negligence and the injury.[105] In these cases the courts have found no connection between an act or omission in the United States and the plaintiffs' injuries in a foreign country.[106] Therefore, the courts held that the headquarters claim did not apply and thus the foreign country exception barred plaintiffs' claims.[107]

For example, in *Eaglin v. United States*,[108] the plaintiff slipped and fell on a patch of "black ice" on a military base in West Germany.[109] She claimed that the United States negligently failed to provide her with adequate warnings about hazardous weather conditions and failed to instruct her in the proper means to deal with those conditions.[110] The plaintiff claimed that she should have been told of the hazards before she left her home in Louisiana.[111] The Fifth Circuit

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103. For example, in *Agent Orange*, the court stated that it felt no reason to attribute mistakes made in the use of Agent Orange to negligent acts in Vietnam rather than in the United States. Although there were negligent acts by United States employees in both countries, the court focused on the negligence in the United States. *Id.* at 1254-55.

The *Agent Orange* case exemplifies a court choosing to focus on actions within the United States when it would be equally plausible to focus on the actions that took place in a foreign country. It illustrates how courts can manipulate their analyses of the location of negligent acts to bring a claim within the foreign country exception or, conversely, to allow recovery.

104. *Agent Orange*, 580 F. Supp. at 1255.

105. *See, e.g.*, Eaglin v. United States, 794 F.2d 981 (5th Cir. 1986); Cominotto v. United States, 802 F.2d 1127 (9th Cir. 1986). For a discussion of *Eaglin*, see *infra* notes 108-12 and accompanying text. For a discussion of *Cominotto*, see *infra* notes 113-18 and accompanying text.

106. *See Eaglin*, 794 F.2d at 984; *Cominotto*, 802 F.2d at 1130-31.

107. *See Eaglin*, 794 F.2d at 984; *Cominotto*, 802 F.2d at 1131.

108. 794 F.2d 981 (5th Cir. 1986).

109. *Id.* at 982. The plaintiff was a civilian military dependent living on a United States Army base in West Germany. *Id.* at 981.

110. *Id.* at 982.

111. *Id.*

found that the plaintiff's generalized allegations of negligent training of military dependents were too attenuated from the injury to support a headquarters claim as to a simple slip and fall accident in West Germany.[112]

In another case, *Cominotto v. United States*,[113] the claimant penetrated a counterfeit operation for the United States Secret Service in Thailand.[114] Although he met with agents in San Francisco and Honolulu, he received specific instructions in Malaysia.[115] The claimant disregarded the instructions[116] and several suspects shot him in the leg.[117] The Ninth Circuit held that his disregard of instructions broke any chain of causation that may have existed between Secret Service activities overseas and in the United States, and thus a headquarters claim could not be supported.[118]

Causation is an issue in all negligence actions.[119] *Eaglin* and *Cominotto* may well have been correctly decided since claims in which the negligence is too remote from the injury should not be permitted.[120] However, the courts' ability to manipulate the causation issue further clouds the application of the foreign country exception where an existing lack of standards as to where a claim arises already makes application of the exception difficult enough. For example, the distinction between a case like *Eaglin*[121] and cases like *Glickman*[122] and *Agent Orange*[123] is difficult to draw. In all three cases, United States officials or employees in the United States controlled and supervised activities in a foreign country.[124] Yet, the plaintiffs in *Glickman* and *Agent Orange* were permitted to recover[125] while the plaintiff in *Eaglin* was not.[126] Courts have not set out a

112. *Id.* at 984. The court found no reason to infer that warnings about black ice should have been given in the United States. *Id.* Thus, the court concluded that plaintiff's allegations of deficient training were unsupportable. *Id.*

113. 802 F.2d 1127 (9th Cir. 1986).

114. *Id.* at 1128-29.

115. The agents in Malaysia told Cominotto to meet suspects only in the daytime, only in public places. They also told him not to get into an automobile or leave the city of Bangkok with any suspects. *Id.* at 1129.

116. Cominotto went with suspects, in their car, at night to a farmhouse outside of Bangkok. *Id.* at 1129.

117. *Id.*

118. *Id.* at 1130-31.

119. *See* W. KEETON *supra* note 4, § 41 at 263.

120. *Eaglin*, 794 F.2d at 981; *Cominotto*, 802 F.2d at 1127.

121. For a discussion of *Eaglin*, see *supra* notes 108-12 and accompanying text.

122. Glickman v. United States, 626 F. Supp. 171 (S.D.N.Y. 1985). For a discussion of *Glickman*, see *supra* notes 87-90 and accompanying text.

123. *Agent Orange*, 580 F. Supp. 1242 (E.D.N.Y. 1984). For a discussion of *Agent Orange*, see *supra* notes 98-101 and accompanying text.

124. In *Eaglin*, the United States Army controlled the military base in West Germany. 794 F. Supp. at 981-82. While day-to-day decisions were made on the base, officials in the United States ultimately controlled all military activities. In *Glickman*, CIA officials in the United States had authority over the operations in France. 626 F. Supp. at 173. In *Agent Orange*, the court found the decisions made in the United States concerning the use of Agent Orange controlled over decisions made in Vietnam. 580 F. Supp. at 1255.

125. *See supra* notes 87-90 and 98-101 and accompanying text.

clear method for determining when a connection between activities in the United States and injuries in a foreign country is sufficient to support a headquarters claim.

## IV. ANALYSIS

The decisions made by various courts regarding the foreign country exception to the FTCA have left a confusing picture. The definition of foreign country within the meaning of the exception is unsettled.[127] Additionally, it is particularly unclear where a court will consider a claim to have arisen.[128] In recent years, the courts have provided only vague decisions about what negligence caused the injury and have not articulated clear methods to determine where that negligence occurred.[129] An underlying problem with the courts' decisions is that they have become removed from the purposes of the FTCA and the limitations Congress intended to impose on the foreign country exception.[130] The following section explores those purposes and limitations and then demonstrates how courts have moved away from these underlying goals.

### *A. The FTCA: Justice and Fair Play*

Congress enacted the FTCA "in the interests of justice and fair play" to give private individuals relief for injuries resulting from the negligence of the United States government or its employees.[131] Congress' desire to allow suits against the government arose, at least in part, because of an academic and judicial trend that questioned the continuing acceptability of absolute sovereign im-

126. *See supra* notes 108-12 and accompanying text.

127. *See supra* notes 35-66 and accompanying text.

128. This is the problem with the more recent headquarters claim cases. *See supra* notes 83-126.

129. Causation has been a major issue for courts in virtually all recent cases dealing with the foreign country exception. Whether a claimant can show that some negligence in the United States caused his or her injury is generally determinative of recovery. *See supra* notes 119-26.

130. See *infra* notes 131-53 and accompanying text for a discussion of the purposes behind the adoption of the FTCA and the foreign country exception.

131. SOVEREIGN IMMUNITY, *supra* note 1, at 43; see also H.R. REP. No. 2428, 76th Cong., 3d Sess. 8 (1940), in which the United States Attorney General encouraged the enactment of the FTCA by saying:

> The subject of tort claims against the Government has long been a troublesome and vexatious matter. The present system, under which the Government may not be sued in tort and such claims can receive recognition only as a matter of grace by private acts of Congress, appears to be not only cumbersome, but also unfair to those persons who have meritorious claims. . . . The continued immunity of the Government to suit on common law torts does not seem to be warranted either as a matter of principle or as a matter of justice.
>
> A bill [the FTCA] which represents an attempt to meet this problem by permitting the Government to be sued . . . was drafted some time ago . . . . It passed the House of Representatives during the Seventy-Sixth Congress. Its enactment would constitute an important and constructive advance in jurisprudence.

*Id*; *see also supra* text accompanying notes 22-34.

munity.[132] Shortly after the enactment of the FTCA, Justice Frankfurter commented that "a steady change of opinion has gradually undermined continuing acceptance of the sovereign's freedom from ordinary legal responsibility."[133] The abrogation of much of the United States' sovereign immunity regarding tort claims resulted from a belief that it is unfair for an individual to bear the burden of an injury that society as a whole should bear.[134] When a government employee's negligence causes an injury, charging losses caused by that injury to the public treasury spreads that burden over society such that the burden on any one individual is slight.[135] On the other hand, when the burden falls on one individual, he or she could be left "destitute or grievously harmed."[136] According to Justice Black, Congress, in enacting the FTCA, "could, and apparently did, decide that this [one individual bearing the entire burden for a Government employee's negligence] would be unfair when the public as a whole benefits from the services performed by Government employees."[137]

Congress was not willing, however, to strip the United States of all immunity.[138] In addition to the general rule under the FTCA holding the United States liable for its torts, Congress enacted a series of exceptions.[139] However, exceptions to a statute do not stand alone; they are an integral part of the statute itself. Therefore, the purposes behind the enactment of each exception must be

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132. For example, see Pound, *supra* note 23, where the author characterized the injustice of the doctrine of sovereign immunity in the context of tort claims as follows:

> Before 1946 individuals injured by fault or negligence of the federal government encountered the medieval proposition that the King can do no wrong, taken over by the popular government of today. In time the government more and more began to take over and conduct much which had been done by private enterprise. This created a serious gap in the administration of justice. If the service was carried on by individuals those injured through its operations were protected. If it was conducted by the government there was no redress.

*Id.* at 689; *see also* H.R. REP. No. 2428, 76th Cong., 3d Sess. 8 (1940).

133. Larson v. Domestic and Foreign Corp., 337 U.S. 682, 708 (1949) (Frankfurter, J., dissenting).

134. *See* Rayonier, Inc. v. United States, 352 U.S. 315, 319-20 (1957).

135. *Id.*

136. *Id.*

137. *Id.*

138. In United States v. Spelar, 338 U.S. 217 (1949), the Court stated that although "Congress was willing to lay aside a great portion of the sovereign's ancient and unquestioned liability from suit, it was unwilling to subject the United States to liabilities depending upon the laws of a foreign power." *Id.* at 221. In Heller v. United States, 776 F.2d 92 (3rd Cir. 1985), *cert. denied*, 476 U.S. 1105 (1986), the court noted that "[c]lear congressional consent to suit for torts committed within the United States by its employees is found in the FTCA. In FTCA § 2680(k), however, Congress expressly withheld its consent to suit from " '[a]ny claim arising in a foreign country.' " *Id.* at 95.

139. 28 U.S.C. §§ 2680(a)-(n) (1982). These exceptions cover a range of activities from "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter," *id.* § 2680(b), to "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights," *id.* § 2680(h). This Comment focuses solely on the exception of "[a]ny claim arising in a foreign country." *Id.* § 2680(k).

reconciled with the basic notions of justice and fair play inherent in the adoption of the FTCA itself.

### B. *Keeping the United States from Becoming Subject to the Laws of Another Sovereign*

Congress' primary purpose in enacting the foreign country exception was to insulate the United States from the operation of foreign laws by limiting the ability of claimants to recover against the United States.[140] But, while courts have repeatedly reiterated this purpose,[141] they have lost sight of it when analyzing cases. In many of the cases in which the court's primary focus was to define foreign country,[142] those courts determined that a claim would not be allowed because the claim occurred at a place where another nation was technically sovereign.[143] Consistent with the exception's purpose, courts should conduct two inquiries to determine whether the United States would be subject to the laws of another sovereign. To apply the foreign country exception, a court must determine: (1) whether the tort occurred in a jurisdiction outside United States sovereignty; and (2) whether foreign law would necessarily apply in a given case.[144]

Many of the courts that have construed the foreign country exception have reached the first prong and then stopped.[145] But, the fact that another nation may technically have sovereignty over a particular place does not necessarily mean that the United States would be subject to the laws of that sovereign if sued for negligence. For example, in *Meredith v. United States*,[146] the Ninth Circuit did not allow the plaintiff to recover because it *presumed* that the law to be applied would be the law of Thailand, since "obviously our embassy in Bangkok has no tort law of its own."[147] Twenty-one years later, the District of Columbia Circuit reached the opposite result. In *Beattie v. United States*,[148] the court determined that the foreign country exception *did not* apply to Antarctica

140. H.R. 5373 and H.R. 6463, 77th Cong., 2d Sess. 35 (1942).

141. *See, e.g.*, Sami v. United States, 617 F.2d 755, 762-63 (D.C. Cir. 1979) ("It was not, we think, the difficulty of ascertaining foreign law but the prospect of unreasonably imposed liability which actuated the exemption.") (footnotes omitted); Brunell v. United States, 77 F. Supp. 68, 72 (S.D.N.Y. 1948) ("Congress . . . did not consent to expose the Government to claims predicated on the laws of a foreign country").

142. *See, e.g.*, Meredith v. United States, 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964); Burna v. United States, 240 F.2d 720 (4th Cir. 1957); Brunell v. United States, 77 F. Supp. 68 (S.D.N.Y. 1948); Straneri v. United States, 77 F. Supp. 240 (E.D. Pa. 1948).

143. *See, e.g.*, *Burna*, 240 F.2d at 721 (Japan retained residual sovereignty over Okinawa); *Straneri*, 77 F. Supp. at 241 (United States occupation of Belgium after World War II did not bring Belgium within sovereignty of United States).

144. Heller v. United States, 776 F.2d 92, 95-96 (3rd Cir. 1985), *cert. denied*, 476 U.S. 1105 (1986).

145. For example, in *Straneri*, 77 F. Supp. at 241, the court stated that any lands outside the boundaries of the United States "or its territories or possessions" were foreign countries.

146. 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964).

147. *Id.* at 10.

148. 756 F.2d 91 (D.C. Cir. 1985).

precisely because Antarctica *had no tort law of its own.*[149] Neither court, however, offered concrete reasons for its results. Consequently, whether the absence of "local" law dictates that the foreign country exception applies remains unclear.

Under the FTCA, the law to be applied is "the law of the place where the act or omission occurred."[150] Another nation's sovereignty over the land on which a United States military base or embassy is located is not, however, determinative of the fact that the foreign sovereign's law must be applied.[151] United States law may apply on overseas military bases and embassies,[152] and conflict of laws principles may dictate that the United States law is the one that should be applied.[153] Many courts, applying the foreign country exception, have denied claimants relief without determining that foreign law was necessarily the one to be applied.[154] The courts' approach, while seemingly in accordance with the purpose of the foreign country exception, may actually subvert the purposes of the FTCA. A better approach would remain within the limitations of the foreign country exception without undue interference with the purposes of the FTCA. In the following sections, this Comment explores such an approach.

### C. *Reconciling Foreign Country Exception Cases and the FTCA*

Congress enacted the FTCA to give relief to meritorious claimants who, because of the United States' sovereign immunity, were otherwise unable to recover unless they brought a private bill for reparations to Congress.[155] The foreign country exception limited the liability of the United States by excluding "claims arising in a foreign country."[156] This limiting exception must be invoked only in a manner consistent with the rest of the statute. Therefore, in accord with the statutory intent, the foreign country exception should be used to deny relief only when absolutely necessary. Nevertheless, many courts have

149. *Id.* at 105 (emphasis added).

150. 28 U.S.C. § 1346(b) (1982).

151. Had this been determinative, the court in *Meredith* would not have had to presume that foreign law applied. *Meredith*, 330 F.2d at 10. The applicability of foreign law would not have been subject to any doubt.

152. See *infra* notes 235-42 and accompanying text for a discussion of whether United States law should apply to overseas military bases and embassies.

153. For example, see *In re* Air Crash Disaster Near Saigon, South Vietnam on April 4, 1975, 476 F. Supp. 521 (D.D.C. 1979) [hereinafter *Saigon Air Crash*] wherein the court used an "interest analysis" conflict of laws approach to determine that the United States interests in the crash outweighed those of South Vietnam where the crash occurred. *Id.* at 526-28. The court thus held that United States law should apply. *Id.* at 529.

154. See *supra* notes 145-49 and accompanying text for a discussion of these cases.

155. H.R. REP. No. 2428, 76th Cong., 3d Sess. 8 (1940). See *supra* notes 131-39 and accompanying text for a discussion of the notions of justice and fair play underlying the enactment of the FTCA.

156. 28 U.S.C. § 2680(k) (1982). See *supra* notes 140-53 and accompanying text for a discussion of the purposes behind the enactment of the foreign country exception.

broadly interpreted the exception although a narrow reading is more consistent with both the purposes of the exception and of the FTCA in general.

The present broad reading of the foreign country exception by the courts has left many claimants with only private bills to Congress as a form of relief. While acknowledging that these cases often present problems with which judges can sympathize,[157] courts often state that the problem is one best left to administrative or political means, or to special legislation[158]—precisely the result Congress sought to avoid when it enacted the FTCA.[159]

### 1. Overbroad definition of foreign country

Courts' present approach to the definition of foreign country is both unjustified, unnecessary and overbroad. A more narrow definition could accomplish the goals of the foreign country exception and at the same time afford relief to a greater number of claimants.

Historical perspective reveals Congress' purposes in enacting the foreign country exception. At the time that Congress adopted the exception,[160] the world was in a state of turmoil and unrest.[161] Suspicion and distrust of foreign countries and their laws was a natural result of the world situation. Not surprisingly, Congress wanted to avoid subjecting the United States to the laws of another sovereign.[162]

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157. *See, e.g.*, Burna v. United States, 240 F.2d 720, 723 (4th Cir. 1957) ("The facts alleged present an appealing human problem, and if we were free to grant relief in such a case there would be every moral basis for doing so.").

158. Meredith v. United States, 330 F.2d 9, 11 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964). The court in *Meredith* noted that:

> Provisions of a number of other statutes point to a Congressional intention that claims for property damage, personal injury, or death arising out of activities of our military and civilian personnel abroad are to be dealt with by administrative or diplomatic means, or by special legislation, as may be appropriate, rather than by litigation under the Federal Tort Claims Act.

*Id.* (citations omitted).

However, one of the principal reasons for the enactment of the FTCA was to eliminate private bills of relief ("special legislation") because the time-consuming process was "not only cumbersome but also unfair to those persons who ha[d] meritorious claims." H.R. REP. NO. 2428, 76th Cong., 3d Sess. 8 (1940).

Thus, the FTCA, enacted for the specific purpose of avoiding private bills of relief, should be considered on its own. The fact that other statutes indicate that certain behavior is best left to "special legislation" is not indicative of congressional intent regarding the FTCA, especially in light of the clear intent expressed by Congress in enacting the FTCA.

159. H.R. REP. NO. 2428, 76th Cong., 3d Sess. 8 (1940).

160. Congress considered bills that eventually became the FTCA from 1919 until it was passed in its present form in 1946. United States v. Spelar, 338 U.S. 217, 220 n.6 (1949).

161. The United States, as well as most of Europe and the Far East, was either in the midst of or recovering from either World War I (1914-1918) or World War II (1939-1945) during the entire time that the FTCA was debated in Congress.

162. See *Spelar*, 338 U.S. at 221, where the Court, when discussing the passage of the FTCA stated: "Congress . . . was unwilling to submit the United States to liabilities depending upon the laws of a foreign power." *Id.*; *see also supra* notes 140-53 and accompanying text.

In the years following World Wars I and II, countries became much more interrelated and thus the definition of foreign country blurred. In 1949, when the United States Supreme Court decided *United States v. Spelar*,[163] Justice Frankfurter stated that, "[t]he very concept of 'sovereignty' is in a state of more or less solution these days;"[164] the "entangling relationships"[165] between the United States and other nations make the term "foreign country" difficult to define.[166] It seems clear that, as Justice Frankfurter concluded, "[a] 'foreign country' in which the United States has no territorial control does not bear the same relation to the United States as a 'foreign country' in which the United States does have territorial control."[167]

For purposes of other congressional legislation,[168] courts have determined that military bases on foreign soil are United States possessions.[169] The FTCA clearly extends to possessions of the United States.[170] As stated by one court, a requirement for recovery under the FTCA is that "the tort must have been committed on lands within the boundaries of the United States or its territories *or possessions*."[171] Thus, military bases must logically be viewed as non-foreign countries. Courts dealing with the foreign country exception, however, have refused to consider overseas military bases and embassies as United States possessions.[172]

In *Vermilya-Brown Co. v. Connell*,[173] the United States Supreme Court considered this distinction in the context of the Fair Labor Standards Act and deemed United States military bases in Newfoundland to be United States possessions.[174] Nevertheless, the Court had no trouble finding the same military bases that it deemed possessions in *Vermilya-Brown* to be foreign countries in

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163. 338 U.S. 217 (1949).

164. *Id.* at 224 (Frankfurter, J., concurring).

165. *Id.* at 223 (Frankfurter, J., concurring).

166. *Id.* at 224 (Frankfurter, J., concurring).

167. *Id.* (Frankfurter, J., concurring).

168. *E.g.*, Fair Labor Standards Act, 28 U.S.C. § 201 (1982).

169. See, for example, Vermilya-Brown Co. v. Connell, 335 U.S. 377 (1949), in which the Court held that an employee who worked overtime on a United States air base in Newfoundland could maintain an action for extra wages, penalties and interest because the base was a United States possession for purposes of the Fair Labor Standards Act. *Id.* at 380; *see also infra* notes 173-74 and accompanying text.

170. Straneri v. United States, 77 F. Supp. 240, 241 (E.D. Pa. 1948).

171. *Id.* (emphasis added).

172. *See Spelar*, 338 U.S. at 219 (long-term lease of airbase from Great Britain to United States did not transfer sovereignty to United States; thus, base was not United States possession); *see also Straneri*, 77 F. Supp. at 241 & n.3, in which the court limited "the United States or its territories and possessions" to "[t]he forty-eight States, including the District of Columbia and federal reservations, Alaska, Hawaii, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, Samoa and other Pacific Island possessions." *Id.*

173. 335 U.S. 377 (1949).

174. *Vermilya-Brown* dealt with claims under the Fair Labor Standards Act rather than the FTCA, but the same military bases that were involved in *Spelar*, located in Newfoundland and leased to the United States from Great Britain for 99 years, were involved. *Id.*

*United States v. Spelar*, a case dealing with the foreign country exception.[175] Concurring in *Spelar*, Justice Frankfurter discussed the difficulty of defining the term foreign country, but agreed that under the FTCA the military bases were foreign countries.[176] Justice Jackson, in a concurrence, stated that if the *Spelar* decision was inconsistent with *Vermilya-Brown*, the Court should have retreated from *Vermilya-Brown*.[177] If courts are to stay within the purposes and goals of the FTCA,[178] however, they should retreat from the *Spelar* approach.

### 2. Away from justice and fairness

The courts should not be so quick to distinguish a case like *Vermilya-Brown*. If such a case were followed, rather than distinguished, claimants could recover under the FTCA even when their claims arose on overseas military bases or embassies. Narrowing the foreign country exception would better serve the interests of fairness and justice by permitting more meritorious claimants to recover under the FTCA.[179]

Many of the claimants harmed by the foreign country exception are overseas, serving in some sort of governmental service.[180] These claimants must be allowed to recover if the foreign country exception is to be reconciled with the purposes and goals of the FTCA itself. For example, the spouse of a United States serviceperson[181] stationed overseas may not be able to recover for govern-

175. *Spelar*, 338 U.S. at 218-19. See *supra* text accompanying notes 44-51 for a discussion of the facts of *Spelar*.

176. *Id.* at 224 (Frankfurter, J., concurring).

177. *Id.* at 225 (Jackson, J., concurring).

178. *See supra.* notes 131-39 and accompanying text.

179. The courts' approach, however, is not overbroad with respect to certain claimants. For example, when an alien brings a suit against the United States, the bar to recovery set out by the foreign country exception is not unjust and unfair to the extent that it is when an American citizen is involved. While as a matter of policy a government should compensate those whom it injures, the interest in such compensation may be greater when it is a sovereign's own citizens who have been injured. There is support for this in the legislative history of the FTCA. An early version of the foreign country exception exempted claims "arising in a foreign country in behalf of an alien." H.R. 5373, 77th Cong., 2d Sess. § 303(12) (1942). Although the final version of the exception did not contain the phrase "in behalf of an alien," H.R. 6463, 77th Cong., 2d Sess. § 402(12) (1942), the principle behind excluding such claims is sound.

Additionally, an alien presumably has more recourse in his or her own country, which has a strong interest in protecting its own citizens, than does an American stationed in that country. Thus, an alien is more likely to be able to recover against a United States official or employee sued in his or her personal capacity in a foreign country than is an American in the same situation.

180. The majority of cases in which courts have dealt with the foreign country exception have concerned injuries occurring on United States military bases or embassies on foreign soil. *See* United States v. Spelar, 338 U.S. 217 (1949) (United States air base in Newfoundland); Eaglin v. United States, 794 F.2d 981 (5th Cir. 1986) (United States army base in West Germany); Meredith v. United States, 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964) (United States embassy in Bangkok, Thailand).

181. The ability of members of the United States military to recover under the FTCA raises

mental torts. The same spouse would have no trouble recovering if the serviceperson were stationed on a base in the United States.[182] This result is potentially unequitable.

Congress enacted the FTCA because of the unfairness in not permitting claimants to recover against the government when those same claimants could have recovered had they been injured by private individuals.[183] Sending Americans and their families abroad, as the United States government does with military and embassy personnel, then not allowing them to recover when injured by United States officials or employees is particularly unfair. Thus, through their broad approach to the foreign country exception, courts have moved away from the purposes of the FTCA—and away from fairness.

Admittedly, the purposes of the FTCA do not stand alone. The foreign country exception cases must also be reconciled with the purposes of the exception itself.[184] While courts have moved away from the purposes of the FTCA,[185] they have generally kept within the purposes of the foreign country exception by refusing to explore whether foreign law necessarily applies in a given case.[186] Courts assume that foreign law applies and thus state that because Congress intended the foreign country exception to insulate the United States from the laws of another sovereign, the foreign country exception bars recovery.[187] The courts' practice of simply assuming that foreign law applies results in many claimants with otherwise meritorious claims being denied recovery.[188] That result does not coincide with the idea that under the FTCA, for reasons of fairness, meritorious plaintiffs should be allowed recovery.

Fairness and justice as contemplated by Congress in enacting the FTCA remain the ultimate goals in tort claims against the United States.[189] In light of these goals, courts are applying the foreign country exception too broadly. Cases involving foreign countries may also implicate other concerns, such as the applicability of foreign law. Even in those cases, however, courts can reach more equitable results, without subjecting the United States to foreign law, by narrowing the foreign country exception. The narrowing of the foreign country

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other problems and issues that are beyond the scope of this Comment. See Feres v. United States, 340 U.S. 135 (1950), for a discussion of the primary bar to recovery under the FTCA for members of the military.

182. The foreign country exception does not come into play in such situations, because the bar to recovery under the FTCA is removed.

183. *See* H.R. REP. No. 2428, 76th Cong., 3d Sess. 8 (1940).

184. *See supra* notes 140-53 and accompanying text.

185. The FTCA is primarily concerned with fairness and justice. *See supra* notes 131-39 and accompanying text.

186. Congress enacted the foreign country exception to keep the United States from being subjected to the laws of another sovereign. H.R. REP. No. 2428, 76th Cong., 3d Sess. 8 (1940). *See supra* notes 140-53 and accompanying text.

187. *See, e.g.*, Meredith v. United States, 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964).

188. *Id.*

189. *See* H.R. REP. No. 2428, 76th Cong., 3d Sess. 8 (1940).

exception is essential if the courts are to remain true to the focus of the FTCA. Courts can accomplish this narrowing without undermining the purposes of the foreign country exception by looking more closely at the law to be applied in the particular situation.

### *D. Reconciling Foreign Country Exception Cases with the Congressional Purpose Behind the Foreign Country Exception Itself*

Determining whether an area is a foreign country does not end the inquiry under a foreign country exception analysis.[190] Although several early cases found that the foreign country exception applied to any area outside of United States boundaries, its territories or its possessions,[191] Congress did not intend a strictly geographical limitation.[192] The following language, which would have imposed a positive geographical limitation on the FTCA, was proposed as an exception to the FTCA in 1940: "This act shall be applicable only to damages or injury occurring within the geographical limits of the United States, Alaska, Hawaii, Puerto Rico or the Canal Zone."[193] Yet Congress chose not to adopt this language, and did not put any strict geographical limitation on the FTCA.[194] Congress chose instead the negative limitation[195] of the foreign coun-

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190. To bring a claim within the foreign country exception a court must determine both: (1) that the tort occurred in a jurisdiction outside United States sovereignty; and (2) that the United States is subject to liability based on foreign law. Heller v. United States, 776 F.2d 92, 95-96 (3d Cir. 1985), *cert. denied*, 476 U.S. 1105 (1986).

191. For example, in Straneri v. United States, 77 F. Supp. 240 (E.D. Pa. 1948), the court stated that:

> [A]s one of the conditions precedent to recovery from the United States, the tort must have been committed on lands within the boundaries of the United States, or its territories or possessions. All other lands are to be considered as foreign country [sic] irrespective of the degree of control the executive branch of the United States government might otherwise exert over them.

*Id.* at 241; *see also* Brunell v. United States, 77 F. Supp. 68 (S.D.N.Y. 1948) ("Although . . . Saipan was in the possession and under the control of the United States by reason of military conquest and occupation, it cannot in any sense be deemed to have been either a component part or a political subdivision of this nation."). *Id.* at 72.

192. Beattie v. United States, 756 F.2d 91, 95 (D.C. Cir. 1984). The *Beattie* court explored the legislative history of the foreign country exception, *id.* at 94-95, and then stated:

> Although the legislative history does not point decisively to any answer, the weight of the evidence is in favor of the concept that Congress did not intend to limit the application of the FTCA to the United States and its territories and possessions. . . . Rather, the legislative will seems to be as the Supreme Court summarized it in *Spelar*, that "though Congress was ready to lay aside a great portion of the sovereign's ancient and unquestioned immunity from suit, it was unwilling to subject the United States to liabilities depending upon the laws of a foreign power."

*Id.* at 95 (citing United States v. Spelar, 338 U.S. 217, 221 (1949)).

193. *Id.* at 94 (quoting *Hearings on S. 2690 Before a Subcommittee of the Senate Committee on the Judiciary*, 76th Cong., 3d Sess. 38 (1940)).

194. *Id.* at 95.

195. The current foreign country exception is a negative limitation in the sense that it states that "[t]he provisions of . . . section 1346 [the FTCA] shall *not* apply to . . . (k) [a]ny claim arising in a foreign country." 28 U.S.C. § 2680(k) (1982) (emphasis added). The alternative

try exception, making the exception a statement of where the FTCA will not apply rather than where it will.[196]

Congress' choice has made the courts' work more difficult. No easily applicable standard can be gleaned from the language of the exception. Although courts have accepted the proposition that the foreign country exception was meant to prevent the United States from becoming subject to the laws of another nation,[197] they have had trouble translating this purpose into consistent rulings. Courts have used two basic methods, one that allows claims[198] and one that does not,[199] in an attempt to stay within the command of Congress and keep the United States free from liabilities imposed under the law of another sovereign.

### 1. Assumption that foreign law applies

One judicial approach has been to assume that foreign law applies in a given situation, thereby giving the claimant no opportunity to recover under the FTCA. At least one court has explicitly used this approach and several others have used it by implication. *Meredith v. United States*,[200] a 1964 Ninth Circuit case, is the best example of a court assuming without analysis that foreign law applied. Acknowledging that the purpose of the foreign country exception was to prevent the United States from being subject to the laws of another sovereign, the court stated that "obviously our embassy at Bangkok has no tort law of its own."[201] That being the case, the court determined that "[p]resumably the law applicable on these premises would be that of Thailand," and thus the foreign country exception would apply to bar recovery.[202] This presumption is not necessarily a valid one.

There are several reasons why United States law should apply to cases involving American citizens and the United States government which arise out of incidents taking place on military bases and embassies abroad. Chief among these reasons is that otherwise the United States government can send its citizens abroad and abandon its responsiblity to them. Although a sovereign can decide when it will permit itself to be sued, it seems particularly unfair to deny

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approach, involving a positive limitation, would have been that which was suggested to Congress: restricting the FTCA to a specific geographic area. *See Beattie*, 756 F.2d at 94.

196. *See id.* at 94-95.

197. *See* United States v. Spelar, 338 U.S. 217, 221 (1949) (Congress unwilling to subject United States to laws of foreign power); Sami v. United States, 617 F.2d 755, 762 (D.C. Cir. 1979) (exemption actuated by prospect of unreasonable liability based on foreign law); *Brunell*, 77 F. Supp. at 72 (Congress did not consent to exposing United States to claims based on law of foreign countries).

198. *See, e.g.*, Glickman v. United States, 626 F. Supp. 171 (S.D.N.Y. 1985); *In re* Paris Air Crash of March 3, 1974, 399 F. Supp. 732 (C.D. Cal. 1975).

199. *See, e.g.*, Meredith v. United States, 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964).

200. 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964).

201. *Id.* at 10.

202. *Id.*

recovery to those citizens who are sent abroad in government service.[203]

In *Beattie v. United States*,[204] the negligence of United States Navy air traffic control personnel occurred in an area that had no tort law of its own—Antarctica. The court found that the foreign country exception should not apply.[205] Although Antarctica is one of the largest continents in the world, it has no sovereign.[206] In *Beattie*, the court decided that since there was no sovereign, and thus no indigenous law, there was no reason that the foreign country exception should apply.[207]

This principle—not applying the foreign country exception when there is no indigenous law—should also apply to United States military bases, embassies, and other government installations located on foreign soil. Concededly, there are differences between a place like Antarctica, which has no indigenous law of its own, and a United States base on foreign soil, which is situated in a location that does. In fact, the key distinction between cases like *Beattie* and cases like *Meredith* is that in the *Meredith*-type cases a foreign sovereign power encompasses the area in which United States bases and embassies are located, and in the *Beattie*-type cases there is an absence of foreign sovereignty.[208] Nevertheless, as in Antarctica the United States retains enforcement power over foreign country outposts and over the people who inhabit them.[209]

Thus, courts should consider United States bases and embassies overseas to be in positions similar to the "no man's land" of Antarctica. The nations on which these bases sit retain sovereignty, yet the United States retains enforcement power; neither nation is solely in control.[210] Therefore, although a military base or embassy may technically have no law of its own, no compelling

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203. *See infra* notes 235-42 and accompanying text.

204. 756 F.2d 91 (D.C. Cir. 1986).

205. *Id.* at 98.

206. *Id.* at 93.

207. *Id.* at 98.

208. The United States has treaties with many of these nations which recognize the sovereignty of the nation in which the installation is located. *See, e.g., Heller*, 776 F.2d at 96 n.3 (citing Agreement Between the United States of America and the Republic of the Phillipines Concerning Military Bases, March 14, 1947, as amended January 7, 1979, 30 U.S.T. 863, T.I.A.S. No. 9224).

209. *Id.*

210. The Agreement between the United States and the Phillipines, cited in *Heller*, provides as follows:

> 1. The bases covered by this Agreement are Phillippine military bases and shall be under the command of Phillipine Base Commanders.
> 2. The United States Commanders shall exercise command and control over the United States Facility, over United States Military personnel, over civilian personnel in the employ of the United States Forces, over United States equipment and material, and over military operations involving United States Forces.
> 3. In the performance of their duties, the Base Commanders and the United States Commanders shall be guided by full respect for Phillippine sovereignty on the one hand and the assurance of unhampered United States military operation on the other.

*Id.* (citing Agreement Between the United States of America and the Republic of the Phillip-

reason exists to apply the law of the foreign nation rather than that of the United States. On the other hand, at least one reason[211] exists to apply the law of the United States: the congressional intent behind the FTCA.[212]

Where United States law can be applied it should be applied so that these claimants are not left "destitute or grievously harmed."[213] In accordance with this principle, in cases such as *Meredith*, where there is some basis for applying the law of the United States, the courts should do so. Courts have not hesitated to apply United States law when given the choice between United States law or the law of an unfriendly sovereign. For example, in *In re Agent Orange Product Liability Litigation*,[214] the court focused on the law of the United States rather than the law of Vietnam, even though the injuries and much of the negligence had occurred in Vietnam.[215] The court found no policy reason to apply the foreign country exception since South Vietnam, where Agent Orange was used, no longer existed and "North Vietnam, the jurisdiction that has replaced South Vietnam . . . , was at war with the United States and it was in the prosecution of the war that the exposure to Agent Orange took place."[216]

Where a possibility exists that United States law could be applied, such as on overseas military bases and embassies, the courts should not restrict themselves as the court did in *Meredith*.[217] Rather, the courts should apply the principle espoused in *Agent Orange* to all areas where there may be policy reasons for choosing United States law over foreign law,[218] not just in areas where there

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pines Concerning Military Bases, March 14, 1947, as amended January 7, 1979, 30 U.S.T. 863, 879, T.I.A.S. No. 9224).

211. There are other reasons as well. For example, in the majority of the foreign country exception cases, a conflict-of-laws "interest analysis," as set out by the District of Columbia Circuit in Saigon Air Crash, 476 F. Supp. 521, 526-27 (D.D.C. 1979) would nearly always counsel for the application of United States, rather than foreign, law. The primary interest pointing to application of United States law is the United States federal government's interest in its "courts providing a just and reasonable resolution of claims" in cases involving government negligence. *Id.* at 527.

212. *See supra* notes 131-39 and accompanying text.

213. Rayonier v. United States, 352 U.S. 315, 320 (1957).

214. 580 F. Supp. 1242 (E.D.N.Y. 1984).

215. The court stated that it was not clear where the majority of the negligence had occurred, and as long as it was at least questionable, there was no reason to apply the law of Vietnam. *Id.* at 1255.

216. *Id.* at 1254 (citing *In re* Agent Orange Product Liability Litigation, 580 F. Supp. 690, 707 (E.D.N.Y. 1984)). See also *Saigon Air Crash*, 476 F. Supp. at 527-28, in which the court held that the interests of the United States were "paramount" over any interests of Vietnam. Although *Saigon Air Crash* dealt with a wrongful death statute, rather than the FTCA, the principle is the same—in a case in which the United States has the strongest interest in the claimants' recovery, United States law should be applied. A concern about possible interference with another nation's sovereignty must be taken into account when courts balance the interests involved. Courts should apply United States law only when the United States interests, especially the interest in compensating the claimant, emerge as the strongest interests of all those implicated in a suit.

217. Meredith v. United States, 330 F.2d 9 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964).

218. *See supra* notes 160-86 and accompanying text.

is a hostile sovereign. Courts can stay within the bounds of the foreign country exception with a narrower approach by looking more closely at what law can and *should* apply, rather than by making assumptions as the court did in *Meredith*.

### 2. Headquarters claims

Other courts have taken an entirely different approach.[219] The allowance of a headquarters claim permits a claimant to recover since at least part of the negligence is found to have occurred in the United States.[220] A headquarters claim case falls outside of the foreign country exception's prohibition against claims "arising in a foreign country,"[221] because a court finds that the claim, or part of the claim, actually arose in the United States. For example, in *Glickman v. United States*,[222] the claimant was drugged and electro-shocked as part of a CIA operation in France.[223] Even though many of the acts that caused the injury occurred in France, the plaintiff recovered because the court found that the program originated in the United States.[224]

This course of action is consistent with both the purpose of the foreign country exception[225] and the purpose of the FTCA,[226] but it does not clearly define when a claim will be allowed. The difficulty lies in the very nature of tort law. A tort committed in the United States can have far-reaching repercussions. This is especially clear in cases involving plane crashes. For example, in *In re Paris Air Crash of March 3, 1974*,[227] negligent inspection and certification of a plane in the United States resulted in the crash of that plane in Paris, France.[228] Those injured by the crash should clearly have been able to recover against the United States, since the United States is responsible for inspecting planes and certifying them to fly. In analyzing the cases under the FTCA, the place to be considered is where an act or omission occurred, not where that act or omission had its operative effect.[229] In a plane crash case, these places are clearly distinct, and applying the foreign country exception is not necessary under a headquarters claim analysis.

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219. *See* Glickman v. United States, 626 F. Supp. 171 (S.D.N.Y. 1985); *In re* Paris Air Crash of March 3, 1974, 399 F. Supp. 732 (C.D. Cal. 1975).

220. See *supra* notes 83-126 and accompanying text for a discussion of cases applying headquarters claims.

221. 28 U.S.C. § 2680(k) (1982).

222. 626 F. Supp. 171 (S.D.N.Y. 1985).

223. *Id.* at 174.

224. *Id.*

225. The purpose of the foreign country exception is to insulate the United States from liability based on the laws of another sovereign. *See supra* notes 131-39 and accompanying text.

226. The primary purpose of the FTCA is to allow meritorious claimants to recover against the United States for its torts. *See supra* notes 131-39 and accompanying text.

227. 399 F. Supp. 732 (C.D. Cal. 1975).

228. *Id.* at 737.

229. Richards v. United States, 369 U.S. 1, 9 (1962).

On the other hand, in many foreign country exception cases, applying headquarters claim analysis is much less clear. Generally, headquarters claims are permitted where the claimant can show that the negligence involved somehow originated in the United States.[230] Where there is a break in causation, as in all tort cases, claimants may not recover.[231]

Foreign country exception cases are even more complicated than ordinary tort cases. Several more possible intervening factors arise in foreign country exception cases, because great distances, and often time lags, are involved. While claimants who cannot show any connection to the United States should properly be denied recovery, those claimants who do allege a connection should be given every opportunity to proceed on their claim.

The courts' current approach to headquarters claims leaves potential claimants with little guidance as to when a claim will be allowed. Some courts refuse to recognize headquarters claims at all.[232] This refusal reflects too narrow an approach. The allowance of headquarters claims should therefore be broadened, rather than narrowed, since such broadening could be accomplished within the bounds of the foreign country exception while allowing more claimants to recover, thereby achieving the purposes of the FTCA.

## V. PROPOSAL

A strictly geographical approach to the definition of foreign country is clearly incorrect.[233] Courts must focus on the law to be applied in a particular situation. The foreign country exception should be construed as prohibiting cases arising under foreign law, rather than prohibiting those that arise in a foreign country in a strictly geographical sense.[234] This could occur in several

230. *See* Sami v. United States, 617 F.2d 755, 757 (D.C. Cir. 1979) (plaintiff recovered for wrongful arrest in Germany by German officials since arrest was result of communique from United States' liaison with Interpol); Leaf v. United States, 588 F.2d 733, 736 (9th Cir. 1978) (plaintiff recovered for loss of plane in Mexico during drug operation where planning of operation and leasing of plane took place in California and Arizona); *Glickman*, 626 F. Supp. at 174 (plaintiff recovered for injuries resulting from being drugged and electro-shocked in France since CIA program to administer drugs originated in the United States).

231. *See* Cominotto v. United States, 802 F.2d 1127 (9th Cir. 1986) (plaintiff denied recovery because he disregarded instructions given by United States Secret Service agents in United States and Malaysia, thus breaking chain of causation that may have existed between those instructions and his injury in Thailand); Eaglin v. United States, 794 F.2d 981 (5th Cir. 1986) (plaintiff denied recovery for injuries suffered as a result of slip and fall in Germany because connection between failure to warn before she left United States and accident too remote).

232. *See, e.g.*, Grunch v. United States, 538 F. Supp. 534 (E.D. Mich. 1982).

233. This is apparent based both on courts' language, Beattie v. United States, 756 F.2d 91, 95 (D.C. Cir. 1984) ("the weight of the evidence is in favor of the concept that Congress did not intend to limit the application of the FTCA to the United States and its territories and possessions"), and on the fact that courts have not limited their decisions to a strict geographical interpretation. This is evidenced by the fact that courts have allowed many claims in which an injury occurred in a foreign country.

234. The legislative history supports this construction. *See supra* notes 141-53 and accompanying text.

ways.

### A. Defining Foreign Country

#### 1. Military bases and embassies

In the case of United States military bases and embassies located on foreign soil, foreign law should not necessarily apply.[235] The relationship of bases and embassies to the United States is such that they should be treated as though they are United States possessions, rather than as foreign countries.[236] The United States exercises a great deal of control over foreign bases. Foreign installations are like miniature cities that are virtually self-contained. United States citizens make up the populations of these "cities." If bases and embassies are treated as United States possessions, the foreign country exception would not apply,[237] and persons injured by the United States on those bases and embassies could recover under the FTCA.[238] Additionally, the fairness policies behind the adoption of the FTCA provide a strong incentive for courts to apply United States rather than foreign law to overseas military bases and embassies.[239]

Conflict of laws interest analysis also makes it clear that United States law should apply to bases and embassies located on foreign soil, at least when the claimant is a United States citizen.[240] The United States has a strong interest in permitting recovery by its own citizens, stronger than any interest that the foreign country in which the injury may have occurred has.[241] Based on these policy considerations it does not, as one court suggested, seem "reasonable that torts occurring on American military bases are barred by the foreign country exception, despite the fact that the enforcement authority on base is American."[242]

#### 2. Broadened headquarters claims

In other cases, United States law must be applied because the tort occurred entirely, or in part, in the United States. These are the headquarters claim cases.[243] The headquarters claim should not be abandoned or denied by

235. *See supra* notes 168-78 and accompanying text.

236. *See supra* notes 168-78 and accompanying text.

237. Even courts that take a geographical approach to the foreign country exception recognize United States territories and possessions as within the geographical realm of the United States. *See, e.g.*, Straneri v. United States, 77 F. Supp. 240, 241 (E.D. Pa. 1948).

238. Under this approach, if courts apply United States law, deserving claimants can recover under the FTCA, notwithstanding the foreign country exception. On the other hand, if courts apply foreign law, the foreign country exception bars recovery for otherwise meritorious claimants.

239. *See supra* notes 131-39 and accompanying text.

240. *See supra* note 153 and accompanying text.

241. *See* Saigon Air Crash, 476 F. Supp. 521, 527-29 (D.D.C. 1979).

242. Heller v. United States, 776 F.2d 92, 97 (3d Cir. 1985), *cert. denied*, 476 U.S. 1105 (1986).

243. *See supra* notes 83-126 and accompanying text.

courts,[244] but rather should be broadly defined. When the United States government causes an injury it should compensate for that injury.[245] Courts should not deny recovery merely because the injury resulting from government negligence in the United States occurred in a foreign country.[246] Any legitimate connection to the United States should be allowed to be the basis for a headquarters claim.[247]

Allowing broadly defined headquarters claims will not disturb the goals underlying the foreign country exception. Since the negligence in such cases occurred in the United States, there is no basis for applying foreign law. The purpose of the foreign country exception is to prevent the application of foreign law,[248] not recovery by claimants whose injury happened to occur in a foreign country. A broad approach will also help attain the primary goal of the FTCA—recovery for meritorious claimants.[249] Courts should thus give claimants a great deal of leeway in presenting their cases. Unless there is a definite break in causation between negligence in the United States and injury in a foreign country,[250] the claim should be allowed.

### *B. What Law Applies*

One problem with the proposition that United States law should apply to overseas military bases and embassies is the question of what law to apply. One court stated that "it is [not] the duty of the federal courts to create rules governing liability for tortious acts and omissions on the premises of American embassies and consulates abroad."[251] While the legislature may ultimately have to formulate such rules, this area should be "admitted as [an] additional exception to the proposition that there is no federal *general* common law."[252]

However, the problem of deciding what law is applicable occurs less frequently in the headquarters claims cases than in the military bases or embassy cases. This is so because, in order to bring a headquarters claim, the plaintiff

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244. See Grunch v. United States, 538 F. Supp. 534 (E.D. Mich. 1982) wherein the court refused to "recognize a 'continuing negligence' cause of action which suffices to override the 'foreign country' exception of the FTCA." *Id.* at 537.

245. This was the result contemplated by Congress when it enacted the FTCA. *See supra* notes 131-39 and accompanying text.

246. Under the FTCA courts are directed to look at the place of the tort rather than of the injury. 28 U.S.C. § 1346(b) (1982). *See also* Richards v. United States, 369 U.S. 1, 9 (1962).

247. See *supra* notes 83-126 and accompanying text for a discussion of the courts' current approach to headquarters claims. The current approach takes a much more narrow view than that suggested here.

248. *See supra* notes 140-53 and accompanying text.

249. *See supra* notes 131-39 and accompanying text.

250. *See* Cominotto v. United States, 802 F.2d 981 (9th Cir. 1986) (plaintiff ignored instructions and was subsequently shot in leg); for a full discussion of *Cominotto*, see *supra* notes 113-18 and accompanying text.

251. Meredith v. United States, 330 F.2d 9, 10 (9th Cir.), *cert. denied*, 379 U.S. 867 (1964).

252. Engdahl, *Immunity and Accountability for Positive Governmental Torts*, 44 U. COLO. L. REV. 1, 79 (1972).

must show a connection with some specific act in the United States.[253] The law applied can then be the law of the place where that act occurred. The headquarters principle could also be applied in the case of military bases and embassies abroad to decide what law should apply. The conflict-of-laws interest analysis conducted by the Court in *Saigon Air Crash* demonstrates that the connection between the United States and military and diplomatic outposts abroad is quite strong.[254] Communication between the United States and the embassy or base is often constant. Broad policy decisions governing the embassies or bases are made in the United States, and the ultimate authority over the embassies or bases rests in the United States. Thus, based on interest analysis, the law to be applied at an overseas base should be that required by the choice of law rules of the jurisdiction in the United States where the ultimate authority over that base is located.[255]

By using such an approach, the areas in which the United States would be subjected to the laws of another sovereign would be narrowed and the foreign country exception would consequently be narrowed as well. Thus, even though the foreign country exception would be applied in fewer cases, Congress' purpose of not permitting claims in cases where the United States would be subject to the laws of another sovereign would still be served. Additionally, this approach makes it more probable that meritorious plaintiffs would recover—the result intended by Congress.[256]

## VI. CONCLUSION

In acknowledgment of the fact that sovereign immunity in many cases is no longer fair or necessary, Congress in 1946 enacted the Federal Tort Claims Act. Under the FTCA meritorious claimants are able to recover against the federal government as they would against a private party. However, because of the broad approach taken by the courts to the foreign country exception to the FTCA, many otherwise meritorious claimants are denied recovery. The policy and purposes behind the FTCA, as well as those behind the foreign country exception, point to a different result.

In order to reach fairer results in cases involving the foreign country exception, courts must do several things. First, they must redefine the term foreign country as it is used in the FTCA. The focus must be on the law to be applied rather than on geographical boundaries. Second, courts must not apply the foreign country exception to cases involving military bases and embassies on foreign soil. Third, courts should continue to base recovery on headquarters claims and should allow recovery whenever there is a legitimate connection between

253. *See supra* notes 83-126 and accompanying text.

254. *See* Saigon Air Crash, 476 F. Supp. 521 (D.D.C. 1979).

255. In many cases this would most likely be laws of the District of Columbia or adjacent states such as Virginia, where most of the ultimate authority for acts of the federal government are located.

256. *See supra* notes 131-39 and accompanying text.

negligence in the United States and an injury in a foreign country. These steps would lead to a more narrow foreign country exception, under which a greater number of deserving claimants would recover.

This Comment has examined the policy and purposes behind the FTCA, as well as those behind the foreign country exception. In terms of those policies and purposes, the courts' current approach to cases involving the foreign country exception is unnecessary and unwarranted. A narrower approach to the foreign country exception would be more consistent with the policy goals of the FTCA and at the same time address more effectively the concerns of the foreign country exception. This Comment urges such an approach.

*Kelly McCracken**

* The Author wishes to thank Professor Daniel Selmi for his guidance and suggestions throughout the preparation of this Comment.

# UNITED STATES DISTRICT COURT

for the

District of Columbia

Sara T Thompson
*Plaintiff/Petitioner*

v.

Peace Corps
*Defendant/Respondent*

Civil Action No.

## APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: N/A

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

The World Bank
1818 H Street NW
Washington, DC 20433

My gross pay or wages are: $ 66,029.00 , and my take-home pay or wages are: $ 46,220.00 per *(specify pay period)* 07/01/2014-06/30/2015 .

3. *Other Income.* In the past 12 months, I have received income from the following sources *(check all that apply)*:

| | | |
|---|---|---|
| (a) Business, profession, or other self-employment | ☐ Yes | ☑ No |
| (b) Rent payments, interest, or dividends | ☐ Yes | ☑ No |
| (c) Pension, annuity, or life insurance payments | ☐ Yes | ☑ No |
| (d) Disability, or worker's compensation payments | ☐ Yes | ☑ No |
| (e) Gifts, or inheritances | ☐ Yes | ☑ No |
| (f) Any other sources | ☐ Yes | ☑ No |

*If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.*



document # 7

**UNITED STATES DISTRICT AND BANKRUPTCY COURTS**
**FOR THE DISTRICT OF COLUMBIA**

SARA THOMPSON
1625 E ST. NE APT #1
WASHINGTON, DC 20002

VS. CIVIL ACTION NO.

PEACE CORPS
PAUL D. COVERDALL PEACE CORPS
1111 20TH STREET NW
WASHINGTON, DC 20526

**COMPLAINT**

1. I am a thirty-two year old female who is currently living in Washington, DC.

2. Prior to joining Peace Corps in June 2010, I led a very healthy, active lifestyle to include running marathons, participated in yoga classes without any issues during class, and pursued an overall active lifestyle.

3. When I was twenty-six, I applied to become a Peace Corps Volunteer during the month of January 2009.

4. By March 2010, I was offered and accepted an assignment to become a Girls' Education and Empowerment Peace Corps Volunteer (PCV and heretofore, Peace Corps Volunteers are referred to as PCVs) for Burkina Faso, West Africa.

5. In June, 2010, I flew to Philadelphia, PA for pre-service training.

6. After two days of crash courses in Peace Corps policy, cross-cultural training, and a consulate visit, I flew to Burkina Faso to begin a rigorous three months training regarding safety and security issues, cross-cultural matters, medical and health safety, language training, etc.

7. In August 2010, I successfully passed my three months of pre-service Peace Corps training and was sworn in as an official Peace Corps Volunteer.

8. From the moment that I started training in Burkina Faso, I was given anti-malarial medication, called mefloquine, (also known as the brand name, Lariam but will, heretofore, be referred to as the generic name of mefloquine) in concentrated doses


document #1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Sara Thompson,

Plaintiff,

v.

Peace Corps *et al.*,

Defendants.

Case: 1:15-mc-00330
Assigned To : Unassigned
Assign. Date : 3/16/2015
Description: Miscellaneous

ORDER DENYING *IN FORMA PAUPERIS* REQUEST

Plaintiff Sara Thompson has submitted to the Clerk of Court a complaint and an application to proceed *in forma pauperis* (IFP). Parties instituting a civil action are required to pay the applicable filing fee unless granted IFP status. *See* 28 U.S.C. §§ 1914, 1915. Whether to permit or deny an application to proceed IFP is within the sound discretion of the Court. *See Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir.), *cert. denied*, 488 U.S. 941 (1988); *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir.), *cert. denied*, 375 U.S. 845 (1963). "[C]ourts will generally look to whether the person is employed, the person's annual salary, and any other property or assets the person may possess." *Schneller v. Prospect Park Nursing and Rehab. Ctr.*, No. 06-545, 2006 WL 1030284, *1 (E.D. Pa. Apr. 18, 2006), *appeal dismissed*, 2006 WL 3038596 (3d Cir. Oct. 26, 2006).

An individual need not "be absolutely destitute to enjoy the benefit of the [IFP] statute," *McKelton v. Bruno*, 428 F.2d 718, 719 (D.C. Cir. 1970), quoting *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). But a party should demonstrate that because of



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document # 9 3

poverty, the party cannot "pay or give security for the costs . . . and still be able to provide [for] the necessities of life." *Id.* at 719-20 (internal quotation marks omitted).

Plaintiff is employed earning more than $66,000 annually. Her combined cash and investments exceed $15,000. Plaintiff lists no extraordinary debt or expenses incurred by circumstances beyond her control, and she lists no dependents. The court finds that plaintiff has not made the requisite showing to proceed IFP.

Accordingly, it is

ORDERED that plaintiff's application to proceed *in forma pauperis* is DENIED, and this miscellaneous action is closed. Plaintiff may resubmit the complaint with the $400 filing fee applicable to civil actions lodged in this court.

Randolph O. Mott
United States District Judge

DATE: March 13th, 2015