

“THE LEGAL BRIEF”

Advice to the Guardians of the Great Lakes



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October 2008 - INTERNATIONAL TRAVEL BY MOTOR VEHICLE

SPECIAL EDITION

This edition of The Legal Brief was prepared from a recent legal opinion from COMDT (CG-0945), the Office of Claims and Litigation. Coast Guard members (active duty, reserve, Coast Guard civilian employees and Auxiliary) taking government owned, privately owned or rental vehicles across the border into Canada for official purposes should be aware of the information contained in this newsletter. Because of the importance of this issue, we have gone beyond our normal one page "brief."

Background - The North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), signed in 1951, is used by the U.S. and Canada to handle issues that arise from the movement of military forces and their support personnel within each other's country. The SOFA covers members of a "Force" and it's "Civilian Component." "Force" is defined as the uniformed military service personnel of each of the contracting countries. "Civilian Component" is defined as the "accompanying civilian personnel" of a Force. **Note** - a contractor working for the Coast Guard is excluded from coverage under the NATO SOFA.

When Coast Guard members travel into Canada under orders and in the performance of official duties, they are covered under the terms of the NATO SOFA. "In the performance of official duties" generally means required incident to your orders; side trips for personal reasons arguably are not covered. For instance, stopping at a restaurant on the way is likely covered, but stopping at a Best Buy (unless purchasing required supplies for your trip) would not be covered. Article VIII of the SOFA provides certain protections for Coast Guard members if they are involved in a car accident injuring a third party. One of these protections extends to being held personally liable so long as you are in the performance of official duties. Coast Guard members should carry their Government Identification card as well as a Copy of their Travel Orders to present to Canadian Law Enforcement personnel in the event they are involved in an accident.

If Arrested or Detained in Canada - If a member is arrested or detained by Canadian Law Enforcement personnel, the member should first **contact the U.S. Consulate in Toronto at (416) 595-6506 between 9 a.m. and 5 p.m. or at (416) 201-4100 after hours.** Members may call collect. If permitted, the member should also contact their command; otherwise, you should ask the U.S. Consulate to do so for you.

How the Claims Process Works - The typical process followed under the NATO SOFA is for the injured party (a Canadian Citizen) to file a claim with the Canadian Government who accepts, investigates, adjudicates and pays the claim. The Canadian Government then would forward the claim to the United States for reimbursement.

Coast Guard members Served with Court Papers in the U.S. - While not typical, Coast Guard members could be served in the U.S. with notice of a lawsuit for an accident that occurred in Canada. This could happen if the injured party personally sues the Coast Guard driver because they don't know that the Coast Guard driver was under orders and in the performance of his official duties at the time of

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the accident. If this happens, contact your servicing legal office immediately. Members assigned to D9 Commands should follow the guidance in D9INST 5890.5 and contact the D9 legal office at (216) 902-6010 or after-hours through the D9 Command Center at (216) 902-6117.

If you are Involved in an Accident - Anyone involved in an accident in Canada should immediately contact their servicing legal office. Members assigned to D9 commands can reach the D9 Legal Office at (216) 902-6010 or through the D9 Command Center at (216) 902-6117. At a minimum you must have the following information: (a) the injured parties' names; (b) full home address and phone number; (c) the date and location of accident; and, (d) the name of any local law enforcement office that responded to the accident. The legal office will forward the information via the chain of command to the Department of Defense office responsible for handling Canadian claims

Transit between two U.S. Locations through Canada - The NATO SOFA arguably could allow Canada to deny that the agreement is applicable because the “transit” benefits only the United States. However, Canada is currently interpreting this section broadly to cover Coast Guard members transiting from one U.S. location to another for convenience through Canada. As such, current Coast Guard policy is that transit trips are permissible and will be considered covered under the NATO SOFA.

Driving a Privately Owned Vehicle (POV) - It is important to understand that the NATO SOFA protects Coast Guard members in the performance of official duties from personal liability. The SOFA provisions do not afford protection for damage to a Coast Guard member's POV. The Coast Guard member may file a claim with the Coast Guard for the loss or damage to their POV. **Be aware that the claim will most likely be denied if the Coast Guard member/claimant was either partly or wholly responsible for the accident.** Practically speaking, this means if a Coast Guard member is involved in an accident where a third party is physically injured as well as the both the Coast Guard members and the third party's car is damaged, the Coast Guard will protect the Coast Guard member from the injured parties' claims and litigation for both the physical injury as well as the damage to the vehicle of the third party. The Coast Guard member's health insurance/worker's compensation might cover the cost of any physical injury to the Coast Guard member. However, the Coast Guard member would then need to file a claim with the Coast Guard to recover for the damage to his own car. If the Coast Guard member was at all responsible, the Coast Guard member's claim would be denied by the Coast Guard. The Coast Guard member would likely look to their own private insurance to cover losses to their POV.

Prior to traveling to Canada in a POV, Coast Guard members should contact their private insurance carrier to ensure their coverage extends while driving in Canada. Each person is individually responsible for contacting their automobile insurance carrier. Coast Guard members should check to see if their insurance company has a blanket exclusion from coverage for any insured who is involved in an accident while driving their POV for any official U.S. duties. This means that if you drive your POV to a luncheon in Canada for the Coast Guard and are involved in an accident, your carrier will not provide coverage or defend you because your carrier believes you should be covered by the Coast Guard. If this is your carrier's policy and you were responsible for the accident, neither the Coast Guard nor your automobile insurance carrier will pay for the damage to your vehicle. **You may have to pay out of your own pocket.**

Rental Vehicles - Coast Guard members taking a rental vehicle to Canada MUST ENSURE that the rental car is covered by the Military Surface Deployment and Distribution Command (SDDC) U.S. Government Rental Car Agreement. To ensure this, make your reservation through your official government travel office. Because you will have the protections from the SDDC car rental agreement, you should not elect the optional insurance.