

Federal Malpractice Tort Claims and Urban Indian Organizations

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Future FTCA Claims Against Urban Sites in Federal Court



*"One hundred thousand dollars isn't nearly a large enough settlement, your Honor.
After all, my client deserves something too."*

IHS National Perspective Tort Claim Review

Tort claim review process has evolved from over a 30-year experience with analysis and review of medical malpractice tort claims, involving care provided at both IHS and tribally operated facilities and programs. Urban Indian Organizations now included!





IHS RISK MANAGEMENT TEAM

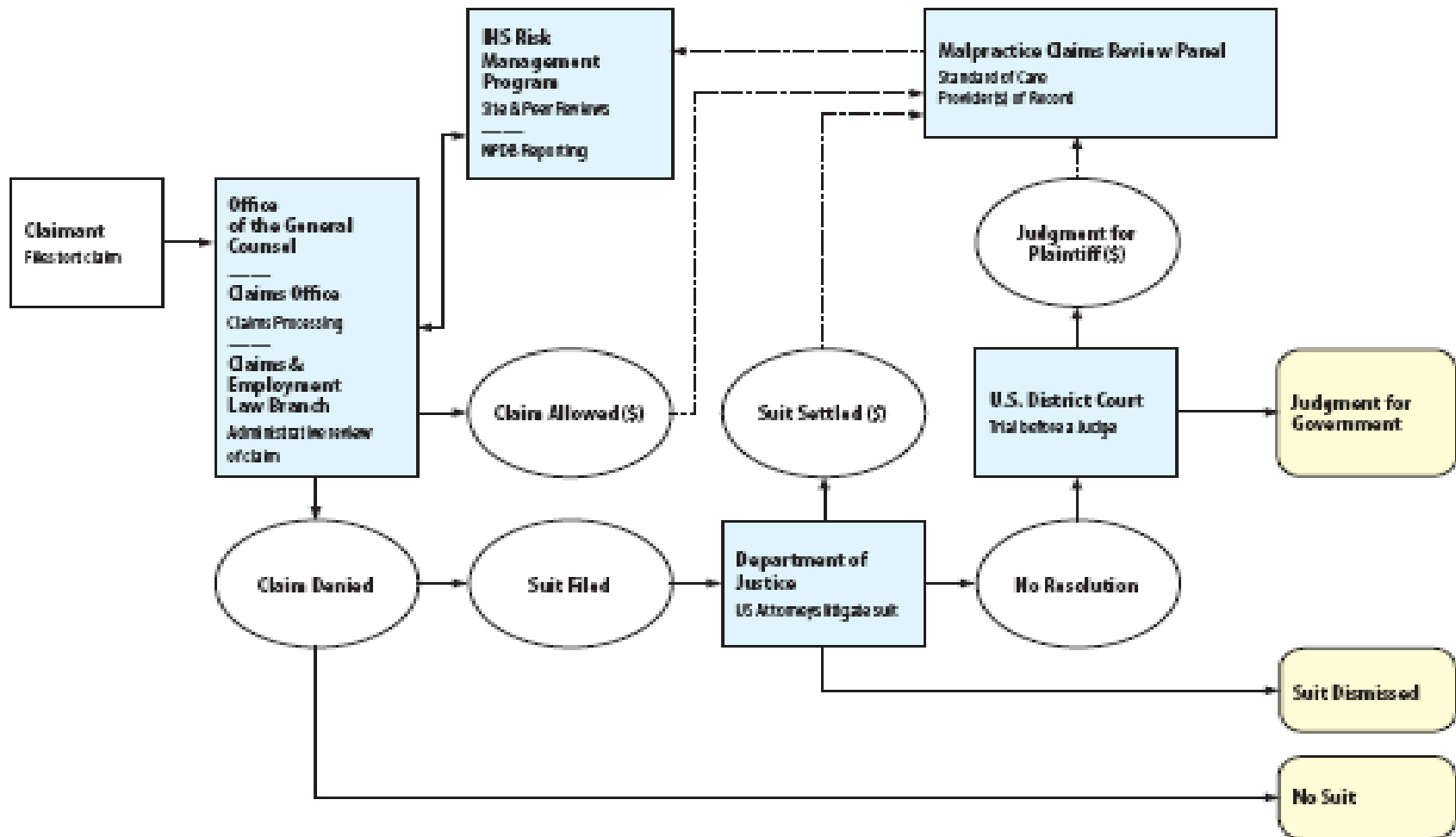
- Paul Fowler, DO, JD, FCLM,
- Each Urban Site should Designate a local Risk Manager



Driving Forces

- 1946: Federal Tort Claims Act—Fed. Gov. assumes its employees' liability for certain negligent acts
- 1988: FTCA extended to Tribal programs
- 1990: National Practitioner Data Bank opened, established by 1986 Health Care Quality Improvement Act
- 2021: FTCA extended to Urban programs

The FTCA Claims Process – Complex & Confusing



FTCA COVERAGE

Federal Tort Claims Act is a waiver of sovereign immunity for malpractice claims against the US and its employees who are acting within the scope of their federal duties.

IHS, Tribal and Urban employees has no personal liability, the United States has responsibility for the claim and defending the eventual federal lawsuit.

However, providers can be placed into the NPDB and reported to State Licensing Board if the Government settles the claim.





1. THE MALPRACTICE CLAIMS PLAYERS – Step by Step

1. HHS Claims Office
2. IHS Risk Management Program
3. Service Unit Risk Management
4. OGC Attorneys
5. Department of Justice and AUSAs
6. HHS Medical Claims Review Panel



2. IHS Risk Management

- Coordinate Agency review of claims
- Inform and engage providers
- Work with OGC/DOJ attorneys
- Issue Recommendation to Allow or Deny Claim
- Issue Recommendations on Causation and Damages
- Present Paid Cases to HHS MCRP Panel
- Maintain Case Files & Statistics
- Report to NPDB and State Licensing Boards
- Provide feedback and information to sites for quality improvement activities

INHERENT RESIDUAL FEDERAL FUNCTIONS



- Coordinating federal mandated processing of Malpractice FTCA claims filed against IHS, Tribal and now Urban facilities.
- Representing the Agency when paid Claims are presented for mandatory review to HHS MCRP.
- Representing the Agency as Administrator for National Practitioner Data Bank mandated reports.
- Representing the Agency and filing mandatory Reports to State Licensing Boards.
- Representing the Agency in responding to mandatory requests from outside credentialing organizations.

MEDICAL MALPRACTICE FTCA CLAIMS



- Communicating with urban healthcare practitioners who provided the care in question.
- Examining issues related to standard of care.
- Working directly with federal attorneys at OGC and the Department of Justice.
- Working with local risk managers where the incident occurred.
- Maintaining case files and database of all malpractice claims filed against IHS since 1986 and providing analysis of data for Agency, Department, and Congress when requested.
- Providing case summaries, outcome information, and risk management recommendations to local IHS, Tribal facilities, Urban officials, and Area Chief Medical Officers.

PRIVATE LIABILITY COVERAGE vs FTCA COVERAGE

UNDER FTCA Coverage:

- Department of Justice attorneys represent the USA, not the Urban provider directly.
- Urban Provider has no right to trial before peers, there is no jury trial allowed.
- Urban Provider has not right to refuse settlement of claims and is then subjected to mandatory MCRP review, National Data Bank reporting, and immediate State Board license review upon settlement of the claim.





3. Urban Service Unit Risk Management

- Site evaluation of incident and written review
- Identification of providers involved, required information, and notification
- FTCA Coverage Information



**Everything you ever wanted to know
about Risk Management but were
afraid to ask**

Website for Risk Management:

Now playing at an IHS Internet Website near you:

**<https://www.ihs.gov/riskmanagement/ftca/> or
www.ihs.gov, under Risk Management**