



KAISERSLAUTERN LEGAL INFORMER

FIRST IN SUPPORT

Fall 2005

SJA's Corner...

We recently received confirmation that the Kaiserslautern Legal Services Center won both the Army Chief of Staff Award for Excellence in Legal Assistance for FY 2004 and The Judge Advocate General's Award for Excellence in Claims Support for FY 2004.

Kaiserslautern is one of only two law centers in Europe to win both of these coveted awards (the other being our 21st TSC law center in Mons, Belgium).

I am proud of the accomplishments of our world-class legal team. The recent addition of Mr. Joerg Modellmog as our full-time German Attorney-Advisor in Kaiserslautern will help us remain "*First in Support*" when it comes to providing quality legal services to the Kaiserslautern Military Community.

COL Scott Arnold
Staff Judge Advocate

A Never Ending Contract – Automatic Renewal Clauses

By Joerg Modellmog

In Germany most contracts come with a lot of small print. It's small, it's in German and it's in legal terminology. All these criteria discourage or prevent customers from reading it.

Yet, not knowing the language is no excuse if the customer nevertheless signed the contract. Often the salesperson eloquently talks about his product in English. If so, don't be afraid to get a pen out and write his words down in the contract. Have him co-sign and that way you can prove what he told you.

Some clauses are so common that they might not get the necessary attention right away. The buyer seldom asks how to terminate a contract that he/she is just about to sign. Yet, cell phone contracts, insurance contracts, and Bahn Cards

all establish an ongoing relationship because they contain an automatic renewal clause in their small print.

Don't mistakenly assume a 1 or 2-year period as the contractual time when it comes to Bahn Cards or cell phone contracts. You will remain obligated under the contract unless you terminate in a timely manner. The stated period merely refers to the time during which the contract can NOT be terminated no matter what.

Under an automatic renewal clause the contract will run for the specified period and, shortly BEFORE that period is up, renew itself for an additional period. These are contracts for an indefinite period of time that will require affirmative action by the consumer in order to prevent the contract from being renewed.

Generally, the termination notices have to be sent at least 3 months BEFORE the contract is up for renewal, otherwise you will be on the hook until the next renewal phase or at least for an additional year. However, feel free to send them earlier and as soon as possible.

Like most termination notices, no reasons need to be given for the termination but the contractual party MUST sign them. Without a (special) POA, a spouse cannot terminate the other spouse's contracts.

If you are unsure how to write a termination notice or you have further questions, make an appointment by calling DSN 483-8848 or Commercial 0631-411-8848.

Article 139 Claims

Have you ever been the victim of either theft or the reckless or intentional destruction of property at the hands of a soldier? If so, did you know that you might be able to recover your loss through the use

of an Article 139 claim against the soldier who caused the loss?

Article 139 of the Uniformed Code of Military Justice provides a means of

redress to any person, military or civilian, who believes that a member of the Armed Forces of the United States has willfully damaged or wrongfully taken his property.

Article 139 Claims (cont'd)

An Article 139 claim is a complaint made to the brigade level commander (Special Court-martial Convening Authority, SPCMA) of the offender. The commander orders an investigation to determine if the soldier is at fault. If the preponderance of the evidence established fault, the commander directs finance to take money out of the offender's pay and give it to the injured soldier.

When does Article 139 apply?

The key words in Article 139 are "willfully damaged" or "wrongfully taken," essentially meaning vandalism or theft.

An investigating officer ("IO") must find that the offender intended the act causing the loss or exercised conduct showing a reckless or wanton disregard of the claimant's property rights. An Article 139 claim is appropriate if it is shown, for example, that a particular soldier stole personal property, such as a stereo or camera or cash, and that property is not recoverable. An Article 139 claim is also appropriate if a soldier intentionally vandalizes an automobile or willfully destroys or damages a claimant's personal property (*e.g.*, during an argument).

When does an Article 139 NOT apply?

Article 139 does not apply to claims for property damage resulting from negligence (such as most fender-bender traffic accidents), or for death or personal injury. Article 139 generally does not apply to disputes over debts, contracts, or over ownership of property. Article 139 also does not include claims for remote or consequential damages. For example, if Private A has to rent a car because Private B wrecked Private A's car, Private A

can recover only the reasonable value of the damage to the car.

How does one file an Article 139 claim?

An Article 139 claim is a signed written claim for a definite amount submitted against a soldier through his brigade level commander. Absent good cause, you must submit the complaint within 90 days of the incident giving rise to the claim. Although you may submit the complaint to any commander in the offender's or claimant's chain of command or to the Claims Office, the recipient must forward it to the SPCMA of the offender within two working days. The SPCMA then must appoint an IO within four days of the receipt of the claim. The IO completes the investigation within 10 days of receipt of the claim and submits the report to the SPCMA who refers the report to the claims office for legal review. The Brigade S1 is responsible for monitoring the progress of the investigation. After review, the claim is returned to the SPCMA for approval or disapproval. If the SPCMA approves the claim, he directs the Finance and Accounting Office to withhold the amount approved from the pay of the offending soldier and pay it directly to the claimant. The approval authority and procedure differs slightly for claims in excess of \$5,000.00.

Article 139 claims provide an opportunity unique in the military to force the wrongdoer to directly compensate victims for property damage or destruction. Command emphasis is required to ensure that these investigations are completed quickly. Many of the offenders are pending elimination or court-martial and speedy processing of the Article 139 claim is essential to ensure the claimant is paid. Once the offender is no longer receiving military pay, the claimant may have no other remedy for his loss.

Identity Theft

By Jim Wiley

Everyone shudders at the uttering of the words “Identity Theft.” Identity theft occurs when someone illegally appropriates your name, Social Security number, credit card number, or some piece of your personal information for his or her own use, without your knowledge, to commit fraud or theft.

Some examples of identity theft include:

- Opening a credit card account, using your name, date of birth, and Social Security number. When they use the credit card and do not pay the bills, the delinquent account is reported on *your* credit report.
- Establishing cellular phone service in your name.
- Opening a bank account in your name and writing bad checks on that account.

The Federal Government created a new web site that is very useful if you are faced with problems concerning identity theft. The site provides access to an affidavit that is often accepted by a number of agencies and corporations that will aid in resolving the problem of identity theft. A copy of the affidavit can be obtained at <http://www.consumer.gov/idtheft/index.html>. If you find yourself a victim of identify theft, the Federal Trade Commission recommends you immediately take the following four steps.

1. Contact the fraud departments of any one of the **three major credit bureaus** to place a fraud alert on your credit file. The fraud alert requests creditors to contact you before opening any new accounts or making any changes to your existing accounts. As soon as the credit bureau confirms your fraud alert, the other two credit bureaus will automatically be notified to place fraud alerts. Once the alert is placed, you may order a free copy of your credit report from all three major credit bureaus.
2. Close the accounts that you know or believe have been tampered with or opened fraudulently. Use the **ID Theft Affidavit** when disputing new unauthorized accounts.
3. File a police report. Get a copy of the report to submit to your creditors and others that may require proof of the crime.
4. **File your complaint** with the FTC. The FTC maintains a database of identity theft cases used by law enforcement agencies for investigations. Filing a complaint also helps us learn more about identity theft and the problems victims are having so that we can better assist you.

If you need further assistance please call Legal Assistance at DSN 483-8848. [Note: this article was prepared using materials from www.jagcnet.army.mil and www.dol.gov]

**THE
KAISERSLAUTERN
LEGAL SERVICES
CENTER**

Bldg. 3210, Kleber Kaserne

Officer in Charge

Captain Marvin McBurrows

**Noncommissioned Officer in
Charge**

SFC Anthony Armbrister

The Kaiserslautern Legal Services Center bids a fond farewell and wishes good luck to our Senior Paralegal, Master Sergeant Angela Moore. MSG Moore is moving on to become First Sergeant at The Judge Advocate General's School in Charlottesville, Virginia.

Historical Fact:

The Army has relied upon lawyers since July 29, 1775, when the Second Continental Congress selected Colonel William Tudor of Boston, a 25-year-old Harvard graduate and pupil of John Adams, to serve as the first Judge Advocate of the Army.

USERRA, Reemployment Rights

By Jim Wiley

If you are a mobilized Reservist who was employed before entering active duty, you still have rights to that employment. On 13 October 1994, the President signed the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§ 4301-4333. USERRA replaces the Veterans' Reemployment Rights (VRR) law. It is important to note that USERRA applies only to federal military service. Reemployment rights for military service resulting from orders originated by a state's governor (non-federal orders) are covered by various state statutes and regulations, not by USERRA.

In general, an employer must promptly reemploy the service member. "Promptly" means within days, not months. Generally the reemployment position should be the same one the person would have attained had he or she remained continuously employed during the period of military service.

Among its other protections, USERRA prohibits discrimination and reprisal against any person in federal employment (initial employment, reemployment, retention, promotion, or receiving any employment benefit) because of that person's military membership, application for membership, performance of, application for, or obligation for, military service.

You can seek enforcement of your USERRA rights through the Department of Labor Veterans' Employment and Training Service (VETS). The Department of Labor Website lists local VETS offices at www.dol.gov/vets/aboutvets/contacts/main.htm. These offices can provide assistance if you are experiencing problems with an employer or simply have questions,

For further information please contact the Kaiserslautern Legal Services Center's Legal Assistance Office at DSN 483-8848. This article was prepared using materials from www.jagcnet.army.mil and www.dol.gov.

*We're on the Web
See us at:*

WWW.21TSC.ARMY.MIL/AERJA

Officer in Charge
483-7711

Claims
483-8414/8862

Legal Assistance
483-8848

Military Justice
484-7416

International Law
484-7684

**Tax Assistance
Center**
483-7688

**Trial Defense
Service**
483-8165

SEPARATION AGREEMENTS

By CPT Desiree Helmick

Separation Agreements are contracts between spouses when they decide to live separate and apart from each other. They are **AGREEMENTS**, which means that both parties sign voluntarily. A spouse cannot be forced to sign an agreement. Coercion, fraud, undue influence, or lack of knowledge will void the terms of a separation agreement.

Separation agreements resolve many issues such as division of property, debts, custody, and support. However, child custody, visitation, and child support agreements are not binding on the courts. They can be modified by the courts if the court determines such a modification is in the best interest of the child or children.

While a separation agreement can do many things, there are a few things it **cannot** do. A separation agreement **cannot** permanently waive child support or visitation rights. Child support and visitation are rights of the children of the marriage and cannot be waived by the parents. A separation agreement **cannot** divorce the parties nor can it legitimize adultery. As long as the parties are still married, sexual relations with someone other than their spouse is adultery and is punishable under state law and the UCMJ (for soldiers). A separation agreement **cannot** force the service member to designate the spouse as beneficiary on his or her SGLI. In Ridgeway v. Ridgeway, 454 U.S. 46 (1981), the U.S. Supreme Court stated that a member's beneficiary for SGLI is whomever he or she has selected at the time of his or her death, regardless of agreements or court orders to the contrary.

Retirement benefits are marital property and subject to division. Separation agreements can (and should) deal with retirement benefits. Even if the parties cannot agree on a division of benefits, the parties should reserve this issue for later agreement between themselves or court decision and the separation agreement should include such a reservation clause. Silence is not golden in this case. If the separation agreement is silent as to retirement benefits, this could mean that the issue is *waived*! Why? Because most separation agreements include a general release clause which states that any rights or claims not set out in the agreement are waived. That is a potentially expensive mistake that can be avoided.

Finally, entering into a separation agreement while stationed overseas has additional implications which need to be considered before signing the agreement. It is a good idea to get a lawyer's help with these issues. As a military member or family member you are entitled to the assistance of an American or German legal assistance attorney.

Your local legal assistance office can help you through the issues outlined in this article. If you wish to make an appointment, please call DSN 483-8848 or commercial 0631-411-8848.

Kaiserslautern Legal Services Center

This article is based, in part, on an excerpt from LAMP: SILENT PARTNER," distributed by The Judge Advocate General's School through the Kaiserslautern Legal Services Center's Legal Assistance Office, located in Building 3210, Kleber Kaserne.

IDENTITY THEFT

The following is an example of an identity theft scam. Such messages are often sent electronically or through the mail. Although it looks very official, it's purpose is not to give you money but rather to obtain personal information about you. Such information can be used to steal your identity. If you receive this letter or a similar letter, please disregard and discard it. If you have already provided information, please visit us at the Kaiserslautern Legal Services Center where we can help you to protect your identity.



INTERLOTTO COMMISSION



Spanish Lotto 6-49  SPANISH EL GORDO

Calle Romano Nº 19 Planta 5, 28014 Madrid, Spain.
Tel / Fax: +34 665 44 88 63

FROM: THE DESK OF DIRECTOR
INTL.AWARD PROMOTION PROGRAM DEPT.
Ref. file N°: GF 0022- 0034-1166
Ticket: N°: 4 5 5 6 4

03 / 09 / 05

RE: FINAL AWARD NOTIFICATION.

DEAR BENEFICIARY.

We are pleased to inform you on the release of the SPANISH EL GORDO AWARD PROGRAM held on the 22ND DECEMBER, 2004, but due to mixed up of names and addresses, the results were later released on the 1ST of SEPTEMBER, 2005.

Among the 195 participating finalist playing 25,000 full tickets in the fifth series, from a pool of EU. €187,200,000. 00 (ONE HUNDRED AND EIGHTY SEVEN MILLION AND TWO HUNDRED THOUSAND EUROS) in cash, your number. 4 5 5 6 4 with serial number 698-75 drew the lucky number : 5 - 17-24-34-47-49 which consequently won a prize in the 2nd category. However, your number has been approved for a lump sum payout of EU. €960,000.00 (NINE HUNDRED AND SIXTY THOUSAND EUROS) in cash, which was credited to a file ref n°: 0022-0034-1166. CONGRATULATIONS !!!!!

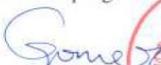
All participants were selected from a computer ballot system drawn from 25,000 names from Asia, Australia, New Zealand, Middle East, Europe, Africa, South and North America, as part of our intl promotion program. For security reason, your award certificate has been deposited with a security company registered to your file claim number. Please forward all claims to them as a bond has been placed on your award, that no one can be able to redact even a cent from the money , until it get's to you as the rightful beneficiary, due to some problem we encountered in our last two years program.

You are hereby advised to keep this award away from public notice until your claim has been confirmed and prize remitted to you as this is a part of our security protocol to participants. Meanwhile, your fund have been deposited with a security company insured to your name which are responsible for handling and remittance of won prizes and fund until they are accurately disbursed. The deadline for this notice is the 26TH SEPTEMBER, 2005. Non-compliance within this time / period may result in disqualification and the insured prizes will be returned to the MINISTERIO DE ECONOMIA Y HACIENDA as an unclaimed fund, to be used for internal revenue.

Since we have insured and secured your fund, please forward your claim to [MR. ALBERTO BUENO BUENO, Foreign Operation Manager AXA SEGUROS S.A](#) at Tel. +34 660 07 41 26, Fax. +34 655 65 91 23, and also fax the form we include with this letter to them for handling and payment procedures. NOTE: That you have to pay in return ten percent (10%) of the price you received to the (IBERO PROMOTION S.A) after which you have received the money in your designated account in your country, for they are the promotion company that bought your ticket.

Congratulations once again from all staff and, thank you for being chosen in our International Lotto Commission award program.

Sincerely,


MR. RAUL GOMEZ
MANAGING DIRECTOR



BATCH N°: GF2005FT



020001005891133213GF



