

UTAH'S "MACHINE GUN FIRE" IN HERRIMAN CAUSED BY NATIONAL GUARD TRAINING EXERCISE

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On September 19, 2010, a National Guard training exercise at Camp Williams in Herriman, Utah, caused a wildfire to rapidly spread from the Camp to the residential neighborhoods nearby. The wildfire burned over 4,300 acres and caused more than 1,652 homes to be evacuated. Three homes were completely destroyed and one home was mostly destroyed. Other residents reported smoke damage and other property damage. Residents dubbed the blaze the "Machine Gun Fire."

The day of the National Guard training exercise, a Red Flag Warning had been issued by the National Weather Service cautioning that the hot and windy conditions could easily lead to a wildfire. According to the National Guard, a miscommunication led to the decision to conduct the training exercise while a Red Flag Warning was issued. Shrapnel from machine gun fire ignited tinder-dry brush according to the National Guard. Lt. Col. Hank McIntyre of the Utah National Guard issued an apology for the chain of events that led to the Guard conducting a live-fire exercise during a Red Flag Warning.

In the weeks following the wildfire, the National Guard set up a claims center in Herriman, Utah, where residents could

submit claims for damages caused by the wildfire. Later, the claims process was transferred to the U.S. Army Claims Service at Fort Carson, Colo. The Army has denied subrogation claims on the basis that the National Guard Claims Act bars subrogation claims. In the denial letters we have seen, an appeal must be postmarked not later than 60 days from the date of the denial letter.

In addition to the appeals, we are attempting to pursue a claim under the Federal Tort Claims Act (FTCA). We will be submitting a Freedom of Information Act request to gather more information on whether a subrogation claim is permissible under the FTCA for the damages caused by the "Machine Gun" wildfire. In addition to the 60 day deadline we have seen in the denial letters, other statute of limitations may apply to government claims. Under the FTCA, a claimant has two years to submit a claim to the appropriate government agency. Following either a denial of the claim or six months after sending the claim, the claimant has six months to file suit. To ensure that any possible claims are not waived, please contact Cozen O'Connor as soon as possible for assistance in pursuing claims related to this fire.