

CHAPTER 14

ACCIDENT DAMAGE CLAIMS

TABLE OF CONTENTS

14.1	Introduction	14-1
14.2	Policy	14-2
14.3	Completion of Repairs	14-2
14.4	Contracted Repairs	14-2
14.5	Billing Amount.....	14-2
14.6	Timely Billing.....	14-3
14.7	Special Damage Claims.....	14-3
14.8	Guide Rail Damage on a P3 Bridge.....	14-3
14.9	Tort Claims	14-4
14.10	Photographs	14-4
14.11	Hits and Runs.....	14-4
14.12	Vandalism	14-4
14.13	Restitution.....	14-4
14.14	Billing Procedures	14-5
14.15	Collection Action	14-6

14.16 Property Damage Releases..... 14-7

14.17 Inquiries..... 14-8

14.18 Record Retention 14-8

Previous editions of this chapter are hereby rescinded in whole and replaced by this edition.

14.1 INTRODUCTION

A tort is a civil wrong which causes one party to suffer loss or harm resulting in legal liability for the party who commits the tortious act. Under tort law, the Department has a cause of legal action to recover repair or replacement costs of property damaged as a result of the negligent operation of a registered or unregistered vehicle or piece of equipment (e.g., construction equipment or farm equipment). The cause of legal action may not necessarily be a crime, as the harm may be due to negligence which does not amount to criminal negligence.

Tort law is different from criminal law in that: (1) torts may result from negligent, but not intentional or criminal actions, and (2) torts have a lower burden of proof such as preponderance of evidence rather than beyond a reasonable doubt.

DEFINITIONS

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meaning given to them in this section.

"ARD" - Accelerated Rehabilitation Disposition. A program whereby restitution for damages is made through order of a district magistrate or court order.

"BOM" - Bureau of Maintenance.

"DEPARTMENT" - The Pennsylvania Department of Transportation.

"DUNNING" - A demand for payment.

"EUP" - End User Procedures. Step by step instructions on specific subjects to be used during processing.

"FORM M-212" - Department form for reporting the cost and status of accident damage repairs. Also known as "Reimbursable Activity Report" and "RAR."

"MAY" - Indicates that an action is permitted but not required.

"NON-REPORTABLE ACCIDENT" - An accident is non-reportable if no injury occurred and the vehicle is drivable.

"PAYROLL ADDITIVE" - Indirect labor costs (e.g., insurance, leave, retirement, etc.) expressed as a percentage of the hourly wage.

"RAR" - Reimbursable Activity Report, Department form M-212 for reporting the cost and status of the accident damage repairs and various other reimbursable activities. Also known as "Reimbursable Activity Report."

"REPORTABLE ACCIDENT" = An accident is reportable only if there is injury or the vehicle must be towed.

"SHALL" - Indicates that an action is required or mandatory.

"SHOULD" - Indicates that an action is recommended but not required.

"DAMAGE CLAIM" - An accident damage claim involving repairs of guide posts, signs, equipment, etc., that are damaged due to negligent operation of a registered or unregistered vehicle or piece of equipment (e.g., construction equipment or farm equipment) where the operator or owner is identified through a reportable or non-reportable police report or is Self-Reported.

"SPECIAL DAMAGE CLAIM" - An accident damage claim involving repairs which necessitates the maintenance of detailed cost accounting records with individual project control; (e.g., repair of a damaged pedestrian overpass, replacement of a damaged bridge beam, replacement of an overhead lighted expressway sign, repair of buildings, repair of tunnel lighting, etc.) claims that may or may not be repaired within 1 year.

14.2 POLICY

This chapter establishes Department policy and governing rules for the recovery of repair or replacement costs arising from the negligent operation of a registered or unregistered vehicle or piece of equipment (e.g., construction equipment or farm equipment) where the tortfeasor (operator or owner) is:

1. Identified through a reportable police accident report filed under §3751 of the Motor Vehicle Code or
2. Through a non-reportable police accident similar in form and content of the aforementioned reportable police accident report or
3. Is Self-Reported. (Note - If Self-Reported enter detailed notes about the incident on the RA notification).

From time to time, BOM will forward to the county a copy of the non-reportable police accident report(s) it receives from the Pennsylvania State Police Department.

The district or county should visit their state and municipal police stations to obtain a copy of the police accident report(s) or assignment report(s) that they will use to prepare their RA notifications.

The district and county shall not release copies of the police accident reports to non-Department personnel.

The RAR Coordinator shall be notified about all Department damage (e.g. guide rail, signs, bridges, barrier, equipment, etc.), and police reported incidents; involving accidents that include traffic control and/or cleanup.

14.3 COMPLETION OF REPAIRS

The repair of accident damage shall meet the Standards of Care established by the Department. You shall review all known damage areas for safety concerns and schedule repairs accordingly. Strict adherence to the Standards of Care is necessary to limit tort liability exposure. Standards of Care are available in the Maintenance Manual (PUB 23).

14.4 CONTRACTED REPAIRS

Contracts for the repair of accident damage may be let to supplement Department maintenance forces. Estimating quantities in the bid proposal for accident damage contracts should be based on a survey of existing damage and on experience related to contracts for the repair of accident damaged property.

Updating of highway features (e.g., replacing damaged outdated post/cable guide rail with a panel system, replacing outdated guide rail end treatments, etc.) to meet current design standards shall be included in contracts whose primary purpose is the repair of accident damaged property, and those repair updates (only for the section of guide rail damaged) can be billed to the operator or owner who caused the damage to PennDOT property. Historically, most bid items in accident damage contracts are standard construction items. Standard construction items should be used to promote more competitive bidding. Signatures are required on the guide rail repair sheets or any other repair documentation with signature blocks.

14.5 BILLING AMOUNT

Actual costs are the best legal measure of damages. Actual costs, whether contract or Department force, shall be used when completing the damage details tab of the RA notification.

When billing for rented lights or barricades with flashers ("lighting equipment") that are placed at accident sites, only the costs incurred for the period starting on the date of lighting equipment site placement through the date the accident-related repair work is completed should be included on the invoice. Up to three additional days of lighting equipment costs following the date the repair work is completed may be included as part of the invoiced amount when justified by operational reasons (for example, if repair work is completed on a Friday prior to a holiday, and the lighting equipment cannot be collected until the following Tuesday). If invoicing for any such post-repair lighting equipment costs, the district or county damage claim coordinator shall specify the operational reason for these additional costs in the RA notification description box.

14.6 TIMELY BILLING

Collection of damage claim invoices are more difficult if the claim is not presented until several years after the accident. The two-year Statute of Limitations does not run against the Commonwealth (*re: Commonwealth of PA v. Bishop*, 439 A. 2d 101(1981)); however, the Department will generally comply with the Statute of Limitations. The Department may bill beyond two years if the Damage Recovery Unit and Office of Chief Counsel find cause.

It is recommended, that once the repairs have been completed, to invoice within sixty calendar days. We do not recommend invoicing for damage claims that are older than two years. Additionally, District RAR Coordinators should backfill County RAR Coordinator vacancies. If any Department damage (e.g., bridges, Department equipment or highway lighting structures, etc.) is expected to take a longer than normal amount of time to be repaired, it is recommended that the RAR coordinator contact the insurance company and put them on notice that an invoice is forthcoming, but may not be available for some time.

14.7 SPECIAL DAMAGE CLAIMS

It is recommended that the District RAR Coordinator contact the insurance company regarding the special damage claim. Most insurance companies will have an adjuster or expert on site for an independent review of damages and they may even discuss repairs with the appropriate district staff (i.e., bridge unit, etc.). This often helps to minimize any disagreements once the claim is presented to the insurance company. The District RAR Coordinator shall contact the Planning & Programming Supervisor to obtain a special WBS element number and shall distribute it to all involved in any aspect of the repair and/or replacement of the special damage claim. This may include design, construction, and maintenance personnel.

Special damage claims involve repairs that necessitate detailed records with individual project control. Special damage claims may include damaged roads (pavements), bridges (beams, columns, etc.), tunnels (lighting, etc.). In some instances, this may include large overhead expressway signs.

The debtor is entitled to a complete explanation of all expenses. The more clearly the claim is presented at the outset, the more likely it will be paid in full without the necessity of time consuming litigation. A well-documented claim is vital to proving our loss to the debtor, the insurer, or the court, should litigation be required. The Engineering District shall maintain a file containing:

1. A clear copy of the police accident report.
2. Names, titles, and contact information of any department employee who witnessed the accident damage.
3. Photographs from various angles taken as soon as possible after the accident and before, during, and after repair.
4. A brief explanation of each photograph (including date, location, and the name of the person taking the photos).
5. A copy of the preliminary (bridge, overhead sign, tunnel lighting, etc.) damage report.
6. Two copies (one redacted and one not redacted) of the most recent (bridge, overhead sign, tunnel lighting, etc.) inspection report prior to the accident.
7. Construction plans of new repairs (if any).
8. Invoices and a breakdown of labor costs and daily record reports.

14.8 GUIDE RAIL DAMAGE ON A P3 BRIDGE

Any damage(s) that occur(s) to guide rail that connects to a Public-Private Partnership (P3) Bridge and is within the final maintenance limits shall be repaired in accordance with [Publication 104](#) – RBR Maintenance Guidance Document. For instructions on processing RA notifications, refer to the Damage Recovery Program (RAR Public-Private Partnership (P3)) - EUP.

14.9 TORT CLAIMS

For the situations of fatalities and serious injuries denote CRASH TORT in the RA notification description field. On the Damage Details tab of the RA notification complete the Insurance Details section.

This will require contacting the appropriate insurance company to obtain a claim number, mailing address, and how to address the invoice. In cases where the driver is deceased and there is insurance, the Debtor Details tab/invoice shall be addressed; Estate of (example: Estate of John A Doe c/o Safe Auto Claim#1234). In cases where the driver is deceased, and there is no insurance, the Debtor Details tab/invoice shall be addressed; Estate of (example: Estate of John A Doe and the drivers home address).

14.10 PHOTOGRAPHS

Photographs shall be included with all claim files. Before and after digital color photos shall be taken of any accidents that cause damage(s) to Department property or require a response from department forces for traffic control and/or accident clean-up. Additionally, repair photos shall be taken of the front and back of all signs repaired by Department forces, clearly showing the repair date written on the sign. ALL DEPARTMENT FORCE PHOTOS shall be date timestamped. The photos shall be linked to the RA notification. This is necessary to document the extent of the damage(s) incurred and the subsequent repair work performed. Photographs have a very significant effect in convincing insurance companies to reimburse the Department for its damages.

It is recommended that individuals use the "GeoSnap" mobile app that may be downloaded from the PennDOT App Catalog on Department issued iPhones and iPads. This mobile app will date/timestamp photos which is preferable by insurance companies. The Apple installed camera app does not visibly include a date/timestamp on the photo.

14.11 HIT AND RUNS

The County shall complete an RA notification by following the procedures defined in the Accident Damage Claims training manual.

For accidents which are not investigated by the police, the county may document the damage on a form M-212 for their records.

The periodic review of the hit and run records should continue until six months has elapsed since the accident site was identified.

14.12 VANDALISM

The county shall not enter these claims in as an RA notification. When the county is informed of damages (graffiti) caused to roads, equipment, buildings, signs, etc., without any type of motor vehicle involvement, the damages shall be accounted for in SAP through a general customer invoice "FB70 transaction", done by a County Accounting Assistant or District Fiscal Office.

14.13 RESTITUTION

In the property damage context, restitution will generally be available in situations in which the driver has been charged with one or more misdemeanors or felonies that result in the criminal case being transferred from a Magisterial District Court to a Court of Common Pleas. So, a good rule of thumb is that if the criminal case includes misdemeanor or felony charges, not just summary offenses, it will likely be transferred to a Court of Common Pleas, at which time restitution may be sought. Such charges will typically center on misdemeanors or felonies such as driving under the influence (DUI), fleeing police, and homicide by vehicle. "Damage Claim Coordinators shall pursue restitution whenever the tortfeasor is facing misdemeanor or felony charges regarding a crash that damaged PennDOT property, regardless of whether the tortfeasor is reported to have vehicle insurance or not. A coordinator may refrain from filing for restitution or may withdraw a request for restitution if already filed, only if/when they receive reasonable assurance from the tortfeasor's insurance company that PennDOT's invoice will be paid in full. Reasonable assurance means

written confirmation from the tortfeasor's insurance company that the insurance company will pay the Department's claim in full, though it is not necessary for release terms to have been negotiated or a release signed, nor for payment to have been received.

Any Damage Claim Coordinator seeking exception to this general RAR restitution policy for a particular claim may contact their Regional Damage Recovery Manager, who will review the claim, and reason(s) for the requested exception to the policy, with Office of Chief Counsel as necessary, and who may approve such case-by-case exceptions. A Regional Damage Recovery Manager, in coordination with the Office of Chief Counsel, may also permit modified adoption of the RAR Restitution policy for particular counties and/or for a particular period of time as warranted by documented factors outside the Damage Claim Coordinator's control (e.g. if filing restitution requests in a county proves unduly burdensome, due to a lack of responsiveness or cooperation on the part of that County's District Attorney's Office/Victim Witness Coordinator's Office).

You can verify if a driver has been charged using the link and instructions in the Restitutions EUP from the Accident Damage Claims training manual. For further restitution guidance, please see OCC's memo, "Seeking Restitution as Part of the Damage Recovery (RAR) Process," also in the Accident Damage Claims training manual.

To file restitution, contact the DA's Office and ask to be connected to the Victim Witness Coordinator (some counties have slightly different titles for this position or office) to inquire about filing for restitution. You can usually search for your County's Victim Witness Coordinator on the web too, and sometimes there is a direct phone or email contact listed on the DA's Office's website. Let the coordinator know you would like to file restitution; ask if you need to fill out a form, and if so, if (s)he can email it to you; and what documentation you need to submit (just PennDOT's invoice or photographs, contractor's invoice, etc.).

Make sure to add this additional information to your notification once you have obtained it from the Courthouse:

- Name of Individual(s)
- Case or Docket No. (In the Description field)
- Dept. Property that was Damaged
- Location of the Damaged Dept. Property
- Date of Motor Vehicle Accident
- Police Report No.

Once restitution has been awarded," email PennDOT's Accounts Receivable section and inform them that restitution has been awarded. PennDOT's Accounts Receivable section will determine whether to change the dun block, if necessary, to reflect this status.

The county shall not hold any restitution checks. All checks shall be forwarded to the Office of Comptroller's Operations immediately upon receipt.

Office of Comptroller Operations
Attn: BAFM Accounts Receivable
555 Walnut St 9th floor
Harrisburg, PA 17101

14.14 BILLING PROCEDURES

The Department does not usually direct bill insurance companies. Additionally, the Department generally bills the operator of the registered or unregistered vehicle or piece of equipment (e.g., construction equipment or farm equipment). Whenever it is determined that the operator was acting as an agent of the owner we bill the owner of the registered or unregistered vehicle or piece of equipment (e.g., construction equipment or farm equipment). The Department will also contact the debtor's insurance company and send it a courtesy copy of the invoice and supporting documentation at the time of invoicing.

Districts and Counties shall use the CRASH Records Reports (CRS0010, CRS0011, CRS0012 & Interactive CRASH Summary Report) housed within the PennDOT Data Integration Facility (PDIF) to identify recoverable damages to PennDOT property. This database enables District and County Accident Damage Claim Coordinators to easily search for crashes by District/County/State Route. Additionally, information from the PDIF summary report of CRASH records, shall be used to look up police reports that have a high probability of accident damage(s) to PennDOT property. A designated County representative shall use this information to conduct a property damage survey to determine if Department property has been damaged. The District or County Damage Claims Coordinator shall notify the affected municipality whenever they are aware of damage to township or borough property (e.g., street sign, guide rail, etc....) found. The municipality shall be notified by the most reasonable method available (US Postal Service, telephone, e-mail or in-person).

There shall only be one RA notification per accident. There shall only be one invoice per accident. The Regional Damage Recovery Manager shall review the damage details tab of the RA notification for general conformance with established procedures, tort exposure, and content that is understandable by a layperson. The Regional Damage Recovery Manager will bill notifications passing the quality control review. Notifications not meeting the criteria will be referred to the District or County for revision, or to close the notification.

The Fleet Management Division shall track recoverable equipment damage costs arising from accidents for which a police accident report is filed (per Dept. policy, all Dept. equipment accidents involving a private citizen shall be reported to the state or local law enforcement agency).

The Fleet Management Division shall create and modify all equipment related RA notifications. In the event that there is or are other PennDOT damage(s), the Fleet Management Division shall coordinate with the County Damage Claims Coordinator to also include those costs in the RA notifications. It is the Fleet Management Division's responsibility to aggregate all damage costs and shall notify the Regional Damage Recovery Manager for billing purposes.

The Regional Damage Recovery Manager does not maintain supporting documentation of equipment damage costs; therefore, they may direct the Fleet Management Division to provide documentation or explanation to the debtor or the debtor's agent, as needed.

14.15 COLLECTION ACTION

A receivable account is established in SAP Accounts Receivable through an integration with SAP Plant Maintenance. Payment terms are 30 Calendar days. On day 45; the Finance Division, Bureau of Fiscal Management duns the debtor. On day 75; a second letter goes out the debtor. On day 105; the delinquent accounts are referred to the Office of the Attorney General or Office of Chief Counsel, as appropriate.

The Finance Division may establish a payment plan upon request of the debtor.

The Department of Transportation is a government agency and does not offer discounts. No allowance shall be made for depreciation or betterment. Pennsylvania law measures damage to public service structures as the cost of reproduction without regard to depreciation or betterment. The cost of reproduction, not a fractional cost based on the age of the structure, is the proper measure of damage.

NOTE - The non-depreciation provision outlined in the previous paragraph does not apply to damage claims for Department equipment. We do not depreciate equipment that does not have a seat or steering wheel. All damage claims for Department equipment shall be forwarded to the Fleet Management Division (FMD) for them to determine and create the appropriate RA notification. Questions on department equipment related damage claims should be directed to the FMD at 717-787-4299.

Claims should not be compromised merely because the debtor is uninsured or underinsured, nor should a discount be applied for expedited payment.

14.16 PROPERTY DAMAGE RELEASES

Property damage releases are frequently submitted to the Department by an insurance company or attorney on behalf of a driver (tortfeasor) who caused a motor vehicle accident that damaged PennDOT property (e.g., a bridge, guide rail, etc.). A property damage release legally releases the parties named therein from any further financial liability pertaining to the accident damage claim, in return for full or partial payment of the property damages. In other words, once signed, the Department will be unable to legally recover any further damages related to the accident covered by the release from any of the parties named in the release. This means that any costs for property damage associated with the accident that may become known—possibly weeks, months, or even years later—will not be recoverable.

OCC, in consultation with the BOM, has developed a standardized “Property Damage Release”. The Department will insist that insurance companies and other entities accept this standard Department release, to the degree practical. This property damage release does not contain unacceptable terms, such as indemnification provisions, and will contain signature lines for both OCC and a District official who has been authorized to sign property damage releases. OCC will make modifications to the Department’s standard release in a given situation when circumstances warrant, such as when there is justification for including the insured in the release or when OCC negotiates different release language with an insurance company or other entity.

The property damage release process includes the following steps:

1. Review of property damage release by OCC upon receipt from insurance company, attorney, or other entity. (Please note: If a District receives a property damage release directly from an insurance company, attorney, or other entity, please email a scanned copy of the release and accompanying correspondence to RA-pdOCCcollections@pa.gov and mail the hardcopy original to OCC at: Department of Transportation, Office of Chief Counsel, Collections Counsel—Highway Construction and Claims Division, P.O. Box 8212, Harrisburg, PA 17105.)
2. OCC will review the release and incorporate the relevant details into the Department’s standard property damage release. OCC will then email the standard release to the Assistant District Executive—Maintenance (ADEM), or District Executive (designee) who will be granted authority to sign the releases in the signature database. Releases are to be reviewed and returned to OCC within fourteen (14) business days of receipt.
3. The ADEM will review the release and ensure that all costs for repairs or replacement have been included in the accident damage claim as referenced in the release. To this end, the ADEM will consult with necessary District and County personnel (e.g., Design, Construction, and/or Maintenance personnel in both the District and County) to ensure that all costs for repairs, replacement, and ancillary charges, such as for traffic control/detour work related to the incident, have been included in the accident damage claim invoice. Once verified, the release must be notarized with signature and date by the ADEM or designee.
 - A. If the release only covers part of the amount due, the ADEM will consult with necessary District and County personnel, as well as OCC as necessary, in determining whether the District will consent to a release for the lesser amount. Please note: If the property damage release only covers part of the amount due, but the amount offered in settlement exhausts the insured’s policy limits, OCC will request documentation of these limits from the insurance company, confirm the policy limits would be exhausted by the offered amount, and provide the District with a copy of this documentation when emailing it the release.
4. The ADEM will reply to OCC’s email, attaching the signed release. The ADEM will mail the hardcopy original signed release to OCC at: Department of Transportation, Office of Chief Counsel, and Collections Counsel—Highway Construction and Claims Division, P.O. Box 8212, Harrisburg, PA 17105.
5. OCC will review the returned release to ensure the ADEM has signed and dated it. OCC will then sign the hardcopy release upon its arrival and submit the satisfactory release to the insurance company, attorney, or other entity.

Signature Authorization for Property Damage Releases must be completed (i.e., [STD-275](#) and [OS-275](#)) whenever the Assistant District Executive-Maintenance (ADEM) or District Executive (designee) positions become vacant and are permanently filled. During a position vacancy, an individual acting in either position shall also complete the aforementioned signature authorization to ensure redundancy in the process.

Form [STD-275](#) will need to be completed and sent via interoffice mail to the Principle for Signature (i.e., Deputy Secretary for Highway Administration). The "Delegation" check box shall be checked on [STD-275](#) since the Deputy Secretary for Highway Administration is delegating signature authorization for Property Damage Releases.

Mail the original signed [STD-275](#) and the [OS-275](#) together to:

PennDOT Bureau of Office Services
Pcard & Administrative Services Unit - 5th FL
400 North Street
Harrisburg, PA 17120

14.17 INQUIRIES

The Regional Damage Recovery Manager receives inquiries from the debtor or the debtor's agent or insurance carrier. In order to preserve the integrity of the file and to maintain an audit trail, all inquiries shall be submitted by postal mail at:

PA Department of Transportation
Damage Recovery Unit
P.O. Box 2857
Harrisburg, PA 17105

or by electronic mail at: DamageRecovery@pa.gov Inquiries regarding the identification, location, or extent of damage billed may be referred for investigation, comment, or action by the Regional Damage Recovery Manager to the District, County, or Fleet Management Division. Regional Damage Recovery Manager may, in its discretion, direct the County, District, or Fleet Management Division to respond directly to the debtor or the debtor's agent. The Regional Damage Recovery Manager shall refer inquiries regarding liability and case law to the Office of Chief Counsel. Districts and Counties shall respond to all inquiries within 72 hours.

14.18 RECORDS RETENTION

Records shall be retained in accordance with [Publication 527](#), PennDOT Records Management Program. Records not addressed in [Publication 527](#) may be retained at-will. Scan all required documents and link to the SAP RA notification. They should be retained until a year has elapsed from the date the repairs were completed.