CHAPTER 370: CLAIMS AGAINST THE STATE OF MONTANA

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370 CLAIMS AGAINST THE STATE OF MONTANA

The State of Montana has a general liability self-insurance program (Title 2, Chapter 9, Part 2, MCA) administered by the Tort Claims Division, Department of Administration, Sam W. Mitchell Building, Helena, MT 59620; telephone (406) 444-2421 and website: http://discoveringmontana.com/doa/rmtd/claims/agenciesreportclaims.asp.

A. Contractor Claims

See Appendix of this manual for the Contract Claims Worksheet and refer to the table on the next three pages.

B. Employee Claims

Employee claims from regular State employees and EFFs must be submitted through your home unit and are covered under applicable State regulations. Claims will be processed according to the applicable State procedures. (See the NWCG Interagency Incident Business Management Handbook, Chapter 70, "Information to be provided to the Claimant", and refer to the table on the next three pages.)

See Appendix for suggested guidelines of personal possessions allowable for claim reimbursement.

C. Tort Claims

Refer to the table on the next three pages.

Guidelines for Incident Claims Handling on DNRC Incidents

EMPLOYEE CLAIMS

Lost / Stolen / Destroyed personal property of Government employee

Form AD-382 for USDA FS employees, Form DI-570 for DOI BLM employees. Either form is acceptable for state employees

Consult list of allowable items for employee personal items (300 manual)

If applicable, advise employee of items "not recommended" for possession at Incidents (see list above) unless ordered on the resource order. ie: camera, laptop

If items lost/stolen/destroyed are valid for employee possession at Incidents, follow documentation guidelines below.

TORT CLAIMS

Involves alleged negligence or wrongdoing by government or government employees. ie:negligently set backfire burns house, or other government employee's negligent action results in personal injury or damage to property or equipment

Form SF-95 - Claim for Damage / Injury / Death - Provide this form when person states desire to file claim or expresses the opinion that some compensation should be made.

Do not admit any liability or responsibility for damages on the part of the government until full investigation is made and agency legal staff is consulted.

Follow documentation guidelines below.

CONTRACT CLAIMS

Damaged equipment belonging to private contractor on incident

No official form. Provide contractor with "Contract Claims Worksheet" as a guide to information required by DNRC to process a claim.

Minor damage ie: blown tire, dents, scratches

Vehicle accidents

Minor vehicle damage, no injuries

Major damage, related injuries and/or fatalities

Contact local law enforcement

Follow accident investigation procedures in 900 Manual.

Refer to new (11/04 version) EERA General Clauses, #9, Loss, Damage, Destruction. Note differences for equipment hired unoperated vs. fully operated.

Operator of equipment hired fully operated is responsible for operating the equipment within its operating limits and for the overall safety of the equipment. Govt is not liable for any damages unless they are due to govt negligence.

For equipment hired unoperated, govt is liable for damages unless they are due to normal wear and tear, mechanical failure, or contractor negligence.

Gather all documentation possible while at the Incident. This may include, but is not limited to: claimant statements, supervisor statements, applicable IMT personnel statements, witness statements, photos, receipts, and estimates for repair. All personal statements must include a signature and the printed name, address, phone number, and home unit of the person making the statement. **Retain copies of all documentation** regarding status of claim or potential claim, notes from conversations regarding claims, and any actions taken regarding claims in the Claims portion of the Incident Finance Package. Notify Finance Section, Safety Officer, as applicable, and Line Officer of claims or potential claims as appropriate.

Comp/Claims Unit/Finance Section investigates and documents on Incident Claims and Accident Log

Employee should take copies of documentation back to home unit, have home unit settle claim and bill incident.

Comp/Claims Unit/Finance Section investigates and documents on Incident Claims and Accident Log.

Refer to Line Officer. When possible tort is involved, Line Officer must consult with agency legal staff and Tort/Claims Div. before any settlement is made.

Comp/Claims Unit/Finance Section investigates and documents on Incident Claims and Accident Log.

Retain all documentation for actual claims and potential claims in Incident Finance Package. Refer to Line Officer or other jurisdictional Land Office personnel responsible for researching and/or settling Incident claims. See chp 20/70 IIBMH for details.

*****Remember: When you receive any written request for compensation/reimbursement for damages for a specific amount of money, you have received a CLAIM. Treat it as such and attempt to obtain all relevant documentation at the Incident. Furnish all documentation to Line Officer / Host Land Office at close of Incident.**

Guidelines for Incident Claims Handling on DNRC Incidents - continued

EMPLOYEE CLAIMS

Common Examples of Employee Claims Usually Reimbursed

~Fire burned over camp, tent and personal belongings destroyed
~Personal items stolen from tent while employee is on duty
~Prescription eyeglasses broken during the course of duty
~Nomex pants not returned after sent to laundry service

Common Examples of Employee Claims NOT Usually Reimbursed

~Camera/cell phone/laptop etc stolen or lost - items not ordered on resource order
~Boots stolen out of bed of truck while employee is at dinner -- {employee negligence caused opportunity for theft to occur}
~Prescription eyeglasses broken after being left on seat of chair {employee negligence...}

Note:

Check with employee's home unit to see if compensation was made there and charged to the incident before directly compensating employee for any loss or damage suffered.

TORT CLAIMS

Common Examples of Tort Claims Usually Reimbursed

~Government set backfire burned fence, home, or other improvements on private property
~Engine backed into private fence
~Vehicle accident between private contractor's vehicle and government vehicle, where government driver was determined to be at fault

Common Examples of Tort Claims NOT Usually Reimbursed

~Vehicle collision between private contractor's vehicle and government vehicle, where contractor was determined to be at fault
~Uncontained fire burned fence, home or other improvements on private property

Note:

All potential tort claims must be processed through Risk Management Tort Division of DOA.

Line officers or others handling tort claims should be very sensitive to the short and long range effects of the claim under consideration.

Use sound judgement, consider possible repercussions, consult with Forestry Division, DNRC legal counsel as necessary. Must consult with Risk Mgt, Tort Div. of DOA.

Never admit fault or liability until or unless a final settlement is made.

CONTRACT CLAIMS

Common Examples of Contract Claims Usually Reimbursed

~Heavy equipment (hired fully operated) slid down slope into a tree, cause was determined to be govt employee's negligence in directing the equipment
~Snag felled by govt employee falls on parked equipment
~Logs or rocks rolling downhill damaged equipment, or equipment was burned up {assume govt negligence in directing the placement of the equipment}

Common Examples of Contract Claims NOT Usually Reimbursed

~Heavy equipment (hired fully operated) slid down slope into a tree, no govt negligence found. {Operator was responsible for operating the equipment safely and within its operating limits.}
~Normal wear and tear from fireline duty - ie: damage to painted surfaces from minor dings, dents, and scratches, dirty air filters, dirty interiors, flat tires, chipped windshields, etc
~Damage caused by contractor/operator negligence, speeding, or other reckless driving
~Damage caused in a vehicle accident between private contractors {Advise them to contact their own insurance carriers}

Note:

Commonly, contractor claims will require further research or investigation after the incident is over. You may need to obtain additional estimates, pictures of the damaged vehicle, clarification of witness statements, or other information as required, before determining a fair settlement.

Consult FAM Bureau, Forestry Division &/or DNRC legal counsel as necessary.

Normally, do not offer compensation based on one estimate for repair obtained by contractor - Obtain additional estimates from unbiased vendors to ensure the best deal on repair or replacement. Keep depreciation in mind.

Thorough pre-use and post-use inspections are often critical in the settlement of contractor claims. Pictures or videos are especially helpful.
At pre-use inspection or EERA sign-up, the contractor should have been told that normal wear and tear on a fireline is probably different from what they encounter in their normal workplace. Dings, dents, scratches, etc are common and normally not eligible for reimbursement.

Chapter 70 of the IIBMH states that a claim consists of a "written demand for a specific amount of money or other objects of value..." When a claimant furnishes this, the Line Officer must view it as a claim. **DNRC must respond to all claims, regardless of type of claim, dollar amount involved, or government personnel's opinion of the merit of the claim. Response must be in writing, and may consist of denial or settlement.** When a claim is denied, every effort should be made to provide claimant with the reasons for denial.

There is no longer a claim threshold amount that will automatically require FAM Bureau or Forestry Division's approval of settlement. However, Line Officers and other personnel evaluating claims at the Area level should exercise sound judgment. **Claims of a sensitive nature or high dollar amount (>$10,000) should merit consultation with Legal, Bureau, or Division personnel as applicable. Risk Management/Tort must always be involved in claims alleging tort (negligence, wrongdoing) on the part of the government.**