

## INFORMATION PAPER

SUBJECT: Claims for “Hit-and-Run” Incidents

1. Purpose. To provide information about how hit-and-run claims are evaluated under the Army Claims Program.
2. The Army can only pay claims that meet certain requirements. There are two broad categories of claims that the Army is authorized to pay. First, a claim for loss or damage that is incident to service. Second, a claim for loss or damage caused by the negligence of a government employee.
3. Under the Personnel Claims Act (PCA), claimants are reimbursed for loss or damage that is incident to their service or is somehow related to their status as a Soldier or civilian employee. The payment of such a claim is not required by any law but is a gratuitous payment authorized by Congress to prevent Soldiers and employees from suffering certain losses. The PCA is not intended to serve as insurance. Not every loss that takes place on a military installation is covered by the PCA. Generally, only those losses caused by “extraordinary hazards” are covered. Such hazards include “fire, flood, hurricane, and other unusual occurrences.” The PCA clearly does not cover losses that are common place events.
4. The most frequent basis for paying a claim under the PCA is for loss caused by an unusual occurrence. The determination of what constitutes an unusual occurrence is often very fact specific. If, in any given circumstance, your chances of suffering a particular loss are the same whether you are a civilian or a DOD employee, then that event would not qualify as an unusual occurrence.
5. The Claims Pamphlet (DA Pam 27-162) gives very specific guidance concerning certain types of loss. A hit-and-run incident is one such type of loss. DA Pam 27-162, para 11-5(c), provides that collisions, including hit-and-run collisions, are not unusual occurrences. The likelihood of sustaining a hit-and-run loss is the same regardless of your status. Unfortunately, hit-and-run incidents are common events that could occur virtually anywhere you park your car. For that reason, the Army does not pay for such damage under the PCA unless the vehicle was being used under orders for the convenience of the government at the time it was damaged.
6. DA Pam 27-162, para 11-5, provides that if a claim is not payable under the PCA it will be considered as a tort claim. A tort claim asserts that damage or loss was caused by negligence. Negligence occurs when one person has a duty toward another person, fails to perform that duty, and causes loss or damage.
7. Congress has passed legislation allowing individual citizens to make tort claims against the United States government in certain circumstances. The Federal Tort Claims Act (FTCA) authorizes payment of claims arising from the wrongful or negligent acts of military or civilian employees of the Department of Defense who were acting within the scope of their employment at the time of loss or damage.
8. Before any claim can be paid under the FTCA, two all important factors must be present. First, there must be proof of negligence. Second, the negligent act must have been done by a government employee in the scope of his or her duties. If these factors can not be proven the claim can not be paid, regardless of where the loss took place or who the “victim” of the loss is.
9. Applying these rules to a hit-and-run situation, the government can not pay such claims. Most often in a hit-and-run incident, there is no way to determine who caused the damage. Therefore, there is no way to establish who was negligent. Without proof that a government employee was negligent the claim can not be paid under the FTCA.