



Tort Claims

A *tort* is any wrongful or negligent act (not involving breach of contract) for which a civil action can be taken. It also includes the failure to act when an act is reasonably expected or required.

As the State may become involved in litigation arising from an accident where tort liability is involved, it is extremely important that investigation of accidents be thorough and reports detailed and well documented. The report is the responsibility of the Resident Engineer. The Structure Representative may be requested to assist in the preparation of reports for accidents involving the bridge work.

Because of the physical difficulty of locating and interviewing witnesses and other interested parties and because job conditions are apt to change overnight, accidents which involve potential State liability must be investigated promptly. The accident scene should be photographed, witnesses interviewed and necessary measurements taken as soon as possible following an accident; otherwise it may be too late.

An investigation report should include the following, if available and pertinent.

- a. Legible copy of the Form R-103 report when damage to State highway property is involved.
- b. Legible copy of the California Highway Patrol accident report or the local police accident report.
- c. Name and address of State's contractor, together with the contract number and dates of execution and final acceptance of the contract.
- d. References to the special provisions, standard specifications or change orders relating to the situation giving rise to the accident, if applicable.
- e. Encroachment permits, maintenance agreements, cooperative agreements, or other documents pertaining to the situation giving rise to the accident.
- f. A map or drawing of the scene of the Accident showing the location where the accident occurred, with measurements, the location of permanent *or* temporary warning signs and devices and the path of travel of the vehicles involved.
- g. Photographs of the damage and of the accident site. A complete photographic record of the accident site and all pertinent features in the area shall be made before any remedial

work is done. Whenever the Resident Engineer can conveniently do so, photographs of any vehicles involved should also be taken.

- h. Statements from Department of Transportation employees who may have witnessed the accident or who have knowledge of the situation concerning the accident.
- i. Any other pertinent information which can be obtained from other public agencies.

Of foremost importance is the necessity that initial investigations and photographs be made without delay. Prompt investigation is particularly important in construction zone or work area accidents where conditions frequently change. Discretion must be exercised in determining the intent and scope of additional investigation dependent upon the seriousness of the accident and the amount of damage. Reports should contain factual data, not opinions or conclusions regarding the cause of the accident and liability of the State.

It is imperative that caution be exercised in the matter of supplying engineering plans, photographs, reports or other data in response to requests by private attorneys or investigators where the data is or might be used in connection with a pending or potential claim against the State. In order to maintain control over the release of such information all such requests should be referred to the District Claims Officer. Information or data in response to such requests should not be given without prior authorization of the District Claims Officer.

All claims for damage against the State are required to be filed by the claimant with the State Board of Control in Sacramento. State employees cannot accept claims nor can they act as a forwarding agency to the Board. The law does not require that claims be filed with individual State employees. All employees who receive inquiries regarding claims should refer the matter to the District Claims Officer.