

Claims Report
U.S. Army Claims Service

Personnel Claims Note

Damage to Rental Cars
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Common claims arising from the use of a rental vehicle by government travelers are those alleging property damage, personal injury, and death.¹ This article presents an updated overview of the processes for handling such claims as they arise worldwide. A key issue is identifying the claimant: is the claimant the rental agency (or an agent of the rental agency) or a third party?

There are three general methods for processing claims arising from use of a rental vehicle. The first method is through the travel card. The second, through the Defense Travel Management Office (DTMO) rental agreement. And the third, through the rental company as a contract claim.

A. Government Travel Card

Currently, the DoD travel card is a Citibank Visa Travel Card.² On 30 November 2008, Citibank replaced Bank of America as the bank providing the Department of Defense (DoD) government travel card. This change, however, does not alter the coverage provided by the card. Visa provides rental coverage benefits to government travelers who “[i]nitiate and complete the entire rental transaction with [an] eligible Visa card, and [d]ecline the vehicle rental company’s collision damage waiver (CDW/LDW) option, or similar provision, if offered by the auto rental company.”³ The coverage is for loss or damage to the rental vehicle only; Visa does not provide third-party coverage.⁴ If the rental agency insists that the traveler purchase the company’s insurance or damage waiver, the government traveler should contact the Visa Benefit Administrator for assistance.⁵ If the government traveler pays for the car rental with a credit card other than the Visa Travel Card, the protection is invalidated.

Visa’s coverage is primary coverage and pays first in any claim.⁶ The traveler must contact the Visa Benefits Administrator in order to trigger the coverage in the event of automobile loss or damage. Contact must be made within forty-five days from the date of loss or damage.⁷ However, Visa does not cover any charges associated with a delay in reporting the incident, such as storage charges.⁸

The coverage applies to most rental vehicles rented for thirty-one consecutive days or less.⁹ This coverage applies to loss or physical damage of the vehicle (but not personal belongings in the vehicle), loss-of-use charges arising from the loss or damage, and reasonable towing charges.¹⁰ However, coverage is not available for vehicles rented in Israel, Jamaica, the Republic of Ireland, or Northern Ireland,¹¹ and excludes antique and luxury cars, vans designed to carry more than eight

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¹ Throughout this article, the terms *government traveler* and *traveler* refer to Department of Defense employees in official travel status.

² Visa Travel Card, http://usa.visa.com/government/payment/travel_card/index.html (last visited Mar. 11, 2009).

³ Auto Rental Collision Damage Waiver, http://usa.visa.com/government/payment/card_benefits/bft_auto_rental.html (last visited Mar. 11, 2009) [hereinafter VISA Auto Rental Collision Damage Waiver Website] (follow “How do I activate this benefit?” hyperlink).

⁴ *Id.* (follow “What is *not* covered?” hyperlink).

⁵ For contact numbers, see App.

⁶ VISA Auto Rental Collision Damage Waiver Website, *supra* note 3 (follow “What type of coverage is this?” hyperlink). Note that Visa pays first only if the “rental is primarily for business purposes.” *Id.*

⁷ *Id.* (follow “How do I file a claim?” hyperlink); *see also* App. (providing contact information).

⁸ *Id.*

⁹ *Id.* (follow “What is covered?” hyperlink).

¹⁰ *Id.*

passengers, cargo vans, trucks, and motorcycles.¹²

Visa also excludes coverage for misuse of the rental vehicle.¹³ The exclusions include off-road operation of the rental vehicle, losses due to hostility, confiscation by authorities, lack of due care by the renter (e.g., leaving the keys in an unattended vehicle), intentional acts by the driver, and driving under the influence of drugs and alcohol.¹⁴

To report an incident, the traveler must contact Visa within the time limits described above, then file by mail or online.¹⁵ Either method requires the traveler to provide a Visa claim form, evidence that the rental was made and paid for with the Visa Travel Card, a scope statement from the renter's unit, the rental agency's accident report form, a police report, an itemized estimate or repair bill, and photographs of the damage.¹⁶ The Visa Benefits Administrator must receive these documents within ninety days of the date of loss or damage.¹⁷

Although most Executive Branch departments use Visa, some use MasterCard. MasterCard provides similar coverage (except it excludes all foreign countries), limits the total liability for damage to the rental vehicle to \$50,000, and includes a few other specific conditions.¹⁸ To report a claim using the U.S. Government MasterCard, call MasterCard's toll-free number within thirty days of the loss or damage, and provide documentary evidence within 180 days.¹⁹ The coverage is for the loss or damage to the rental vehicle only, and does not provide third-party coverage.²⁰

B. DTMO Rental Agreement

The second method of processing the claims is through the Defense Travel Management Office (DTMO) rental agreement (Agreement). This method requires travelers to be proactive. In fact, travelers must use rental agencies that participate in this Agreement, when available.²¹ This Agreement is a master agreement with many major rental companies in the United States and abroad.²² The DTMO was formerly known as the Military Traffic Management Command, and many still refer to the DTMO rental agreement as the "MTMC Agreement." The correct designation is the U.S. Government Car Rental Agreement Number 3, which became effective on 1 October 2002.²³

The Agreement provides coverage for loss or damage to the rental vehicle and third-party liability coverage for property damage, personal injury, or death arising from a collision with a vehicle rented under the terms of the Agreement.²⁴ Paragraph 7 of the Agreement contains certain requirements to trigger its application to a particular rental.²⁵ Once triggered, however, it overrides any contrary provision in the actual rental contract signed by the traveler, except for commercial,

¹¹ *Id.* (follow "What is *not* covered?" hyperlink).

¹² *Id.* (follow "What types of rental vehicles are *not* covered?" hyperlink).

¹³ *Id.* (follow "What is *not* covered?" hyperlink).

¹⁴ *Id.*

¹⁵ VISA Automobile Rental Collision Damage Waiver Claims Service, <https://www.eclaimsline.com/Default.aspx?> (last visited Mar. 11, 2009).

¹⁶ VISA Auto Rental Collision Damage Waiver Website, *supra* note 3 (follow "How do I file a claim?" hyperlink).

¹⁷ *Id.*

¹⁸ MasterCard Commercial Guide to Benefits, http://www.mastercard.com/us/business/en/pdf/Commercial_GTB.pdf (last visited Mar. 11, 2009) [hereinafter MasterCard Benefits Guide].

¹⁹ *Id.*; *see also* App. (providing contact information).

²⁰ *Id.*

²¹ JOINT FEDERAL TRAVEL REGS. para. U3415 B1a (Jan. 1, 2009) [hereinafter JFTR].

²² Domestic & Foreign Rates Tables at the DTMO, <http://www.defensetravel.dod.mil/Sections/Rent.cfm#ccrates> (follow "domestic (CONUS) ceiling rates" hyperlink; then follow "international (OCONUS) ceiling rates" hyperlink) (last visited Mar. 31, 2009) [hereinafter Domestic & Foreign Rates Tables] (providing a list of participating companies). In addition, a list of contacts for those companies may be found at <http://www.sddc.army.mil/sddc/Content/Pub/660/cben660.pdf> (last visited Mar. 11, 2009).

²³ Defense Travel Mgmt. Office, U.S. Government Car Rental Agreement No. 3 (Oct. 1, 2002), *available at* http://www.defensetravel.dod.mil/Docs/CarRentalAgreement_050508.pdf [hereinafter Agreement No. 3].

²⁴ *Id.* para. 9a.

²⁵ *Id.* para. 7.

special, or promotional government programs.²⁶

To trigger the Agreement's coverage, a government traveler must be in official travel status.²⁷ Travelers can authenticate that status by presenting the rental agency a copy of official travel orders or authorization at the time the traveler collects the vehicle.²⁸ Presenting a government travel card (MasterCard or Visa) also authenticates official travel status.²⁹ Since travelers are required to use the commercial travel office and the government travel card under the Travel and Transportation Reform Act of 1998³⁰ absent an exception to policy, the commercial travel office should automatically provide the rental agency with authentication of travel status. Nevertheless, the traveler should always use the government travel card to invoke both the terms of the Agreement and the coverage the card provides.

The Agreement does not apply to fleet rentals.³¹ Units desiring to reserve a fleet of vehicles should consider this important element, and determine whether their needs would allow drivers to rent the required vehicles individually, thereby invoking this coverage.

In return for this coverage, paragraph 2 of the Agreement obligates the Government to pay a government administrative fee (GARS) of five dollars per day on the rental agreements.³² Claims personnel should examine the executed rental agreement in a claim to see if this fee was charged; if so, the Agreement applies even if all other requirements have not been met.³³

Under the Agreement, all government employees age eighteen or older and properly licensed are authorized to operate the rental vehicle without being listed as authorized drivers in the rental agreement.³⁴ While the Agreement specifically covers such non-authorized drivers, the government MasterCard may not cover loss or damage caused by a driver not listed as an authorized driver in the rental agreement.³⁵ Thus, the traveler should specify all potential drivers in the rental agreement as authorized drivers.

The Agreement provides total coverage for loss or damage to the rented vehicle with no limitation.³⁶ This coverage includes towing, administrative costs, loss of use, and other charges arising from the loss or damage.³⁷ The Agreement, however, lists eleven exceptions to coverage. These eleven exceptions refer to improper use of the vehicle (racing, commercial uses, towing or pushing another vehicle, operation across international boundaries without authorization, off-road travel, or training and tactical maneuvers) or improper driver activity (obtaining the vehicle through fraud, intentional damage, operation by a non-authorized driver (as defined in the Agreement), operation by a driver under the influence of alcohol or drugs, or theft of the vehicle when the driver cannot produce the keys or show they were stolen in a robbery).³⁸

The Agreement applies to standard rental cars—generally, economy through full-size classes, with some companies including station wagons, sport utility vehicles, mini- and full-size vans, and pickup trucks.³⁹ The Domestic and Foreign Rates tables list the types of vehicles for each participating rental agency.⁴⁰ Units requiring vehicles not covered should

²⁶ *Id.* para. 1.

²⁷ *See id.* (Agreement No. 3 governs rental of cars only when such rental is authorized by the federal government).

²⁸ *Id.* para. 7.

²⁹ *Id.*

³⁰ Pub. L. No. 105-264, 112 Stat. 2350; *see also* JFTR, *supra* note 21, para. 030301A.

³¹ Telephone Interview with Christine Braswell, Military Surface Deployment & Distrib. Command Rental Car Program Administrator (Oct. 2005).

³² Agreement No. 3, *supra* note 23, para. 2.

³³ The GARS fee is specific to the DTMO agreement; its inclusion incorporates the terms of the agreement. *See id.* para. 9.

³⁴ *Id.* para. 8.

³⁵ *See* MasterCard Benefits Guide, *supra* note 18.

³⁶ *See* Agreement No. 3, *supra* note 23, para. 9b.

³⁷ *Id.*

³⁸ *Id.* (“The above exceptions are not valid where prohibited by state law.”).

³⁹ *See, e.g.,* Defense Travel Mgt. Office, Domestic Rental Car Ceiling Rates (Mar. 1, 2009), *available at* <http://www.defensetravel.dod.mil/Docs/DomesticCeilingRates.pdf>.

⁴⁰ *See* Domestic & Foreign Rates Tables, *supra* note 22.

consider whether using several covered vehicles, with the liability coverage under this Agreement, may better meet their needs than using one or more non-covered vehicles.

Should the vehicle become lost or damaged, the traveler should report the incident to the rental agency immediately, obtain a police report, if available, and complete a rental company accident report.⁴¹ The traveler should remind the rental agency that the coverage provided by the Agreement applies.

The traveler should provide the rental agency with both a valid official mailing address, and telephone number at the time of rental and when notifying the rental agency of loss or damage to the vehicle.⁴² If the rental agency desires to file a claim for loss or damage to the vehicle, they must file the claim with the traveler's office, and not the traveler.⁴³ The Agreement prohibits the rental agency from billing the government traveler's credit card for the loss or damage, and prohibits rental companies outside the United States from charging non-waivable excess fees for loss or damage to a rental vehicle unless those fees are mandated by law.⁴⁴

If the vehicle is lost or damaged due to one of the listed exceptions (for example, if the vehicle is stolen because the traveler left the keys in the ignition), the rental agency must bill the traveler's unit directly, and not the traveler.⁴⁵ If the unit determines that the traveler was within the scope of his employment when the loss or damage occurred, the unit pays the rental agency's claims from the unit temporary duty funds used to pay the travel, using its servicing Defense Finance and Accounting Service.⁴⁶ If the unit determines that the traveler was not acting within the scope of his employment when the loss or damage occurred (for example, if the driver was under the influence of alcohol), then the unit will inform the rental agency, and the rental agency may proceed against the traveler individually.⁴⁷

C. Contract Claim Under the Rental Agreement

Finally, if neither the government travel card benefits nor the DTMO Agreement apply to the rental, the loss or damage of the rental vehicle is processed as a contract claim under the rental contract. The standard commercial rental contract contains a provision making the renter liable for all loss or damage to the vehicle, and Army Regulation (AR) 27-20 excludes claims arising under the provisions of contracts.⁴⁸ The traveler must pay the damage claim and submit a claim for reimbursement on his travel voucher through the servicing claims office for adjudication. With the claim, the traveler must include any police report, traffic citations, witness statements, traveler's statement, itemized bills or estimates of repair, and other supporting documentation.⁴⁹ Should the amount of damage exceed the traveler's government travel card limit, the rental agency may submit its bill, with the same evidence required from the traveler, directly to the servicing finance office.⁵⁰ In either case, the claim should contain contact information for any third party liable for the damage, so that the Government may recoup its loss from that party.⁵¹

D. Third-Party Tort Claims

Third-party tort claims are adjudicated and paid or denied under the appropriate chapter of AR 27-20, *Claims*. Remember, the government travel card program provides no third-party coverage. If the rental was covered under the

⁴¹ See Agreement No. 3, *supra* note 23, para. 11.

⁴² *Id.* para. 3. Note that at the time of rental, the traveler need only provide this information if the rental company requests it. *Id.* As a matter of practice, however, it makes sense to provide this information even absent a request, especially since this information is necessary to process any future claims.

⁴³ *Id.* para. 9c.

⁴⁴ *Id.* para. 2.

⁴⁵ *Id.*

⁴⁶ JFTR, *supra* note 21, ch. 3, para. U3415c(5).

⁴⁷ Agreement No. 3, *supra* note 23, para. 9c.

⁴⁸ U.S. DEP'T OF ARMY, REG. 27-20, CLAIMS para. 2-28h (8 Feb. 2008).

⁴⁹ U.S. DEP'T OF DEFENSE, FINANCIAL MGMT. REG. 7000.14-R, vol. 9, para. 040704 (3 Mar. 2009).

⁵⁰ *Id.* vol. 9, para. 040705.

⁵¹ *Id.*

DTMO Agreement, however, the third party should be directed, upon receipt of a claim against the United States, to file a claim with the rental agency for the benefits provided in paragraph 9a of the Agreement.⁵² That paragraph requires the rental agency to provide \$100,000 per person for claims of death or personal injury, with a maximum of \$300,000 per incident, and \$25,000 property damage per incident.⁵³ Since this coverage is primary and claimants must mitigate their damage, claims offices should inform the claimant that this amount will be deducted from any damages the United States will pay, and should monitor the progress of the third party's claim against the rental agency.

Upon receipt of a third-party claim in an incident covered by the Agreement, the claims office should contact the unit to determine the traveler's scope status, and investigate whether any exceptions to the Agreement apply. The claims office should attempt to obtain a written acknowledgment of insurance coverage from the rental car company, refer the claimant to the rental agency, explain the agreement's coverage, and inform the claimant of his responsibility to mitigate his damages by filing a claim against the rental company. The claims office should also inform the claimant that it will refrain from final action on the claim until the rental company has resolved its portion of the claim. Claims offices should work with the rental agency to ensure any settlement agreement between the third party and the rental agency includes the United States and its driver in the release of liability provisions for the covered amounts.⁵⁴

If a traveler reports to a claims office that he has been sued by a third party for injury or property damage arising from in-scope travel, the claims office should verify the traveler's status with the unit. For claims arising under the Agreement, the claims office should investigate to see if any exclusions apply, determine from the rental agency if any insurance coverage applies, and contact U.S. Army Claims Service (USARCS) for assistance in substituting the United States as the defendant and removing the case to federal district court. The claims office should contact the claimant, inform it of the traveler's status, and request that the claimant voluntarily dismiss the suit. If the traveler was not within the scope of duty when the claim arose, the claims office should so inform the claimant, the traveler, and the traveler's personal insurance company, if any.⁵⁵

Units should note that vehicles rented by government travelers for official travel do not become government property, and are not proper subjects for conducting a financial liability investigation of property loss under AR 735-5, *Policies and Procedures for Property Accountability*.⁵⁶ That regulation applies to leased vehicles, and not to incidental rentals for authorized travel.⁵⁷

E. Collisions with Government Vehicles

Claims by rental agencies for damage to their vehicles caused by collisions with government-owned vehicles (GOVs) are also usually covered by the DTMO Agreement. Under paragraph 9 of the Agreement, the rental agency must maintain liability insurance that "will protect the United States Government and its employees" in claims arising from use of vehicles rented under the Agreement.⁵⁸ Furthermore,

[t]he conditions, restrictions and exclusions of the applicable insurance for any rental shall not be less favorable to the Government and its employees than the coverage afforded under standard automobile liability policies. When more favorable insurance terms are required under applicable state or foreign country law, such terms will apply to the rental.⁵⁹

⁵² Claimants have a responsibility to mitigate their damages. The coverage provided by the Agreement is primary, not secondary. See Agreement No. 3, *supra* note 23, para. 9c; VISA Auto Rental Collision Damage Waiver Website, *supra* note 3 (follow "What type of coverage is this?" hyperlink); MasterCard Benefits Guide, *supra* note 18.

⁵³ Agreement No. 3, *supra* note 23, para. 9c.

⁵⁴ U.S. DEP'T OF ARMY, PAM. 27-162, CLAIMS PROCEDURES para. 2-62d (21 Mar. 2008).

⁵⁵ *Id.* para. 2-62e.

⁵⁶ See U.S. DEP'T OF ARMY, REG. 735-5, POLICIES AND PROCEDURES FOR PROPERTY ACCOUNTABILITY (28 Feb. 2005).

⁵⁷ *Id.* glossary (defining Army Property as "all property under Army control"). As the government does not "own" the rented vehicle (title does not pass, but remains with the rental agency), the rental car is not "Army Property" subject to the Financial Liability Investigation process.

⁵⁸ Agreement No. 3, *supra* note 23, para. 9.

⁵⁹ *Id.* para. 9a.

Since the Agreement requires rental companies to protect the Government and not just the renters, the typical state insurance provisions governing claims apply. Most states do not permit an insurer to sue its insured for damages caused by the insured. In the case where a GOV causes damage to the rental vehicle, the rental agency (acting as the insurer for the Government) would not be permitted to claim the damages against its insured (the Government, as owner and employer of the GOV driver).⁶⁰ Claims offices should deny such claims with a reference to paragraph 9a of the Agreement and the applicable state insurance law or regulation.

F. Conclusion

The use of rental vehicles on official travel is a common occurrence in military operations worldwide. Unfortunately, so is loss of or damage to those vehicles. Unit budgets are at risk for claims by rental agencies for damage to the rental vehicles, and the U.S. Treasury is at risk for third party claims. To avoid this unnecessary risk, units should train travelers to be proactive in avoiding potential liability by stressing safe driving, using the government travel card, and renting from a DTMO-participating rental agency. While unit mission may override the claims protection, unit commanders should make the decision with full knowledge of the available coverage.

⁶⁰ *See id.* In essence, the rental agency is the insurer of the government. No state permits an insurer to sue its insured to recover funds paid on a claim by the insured for covered property.

Appendix

Credit Card Provider	Telephones	Web sites
VISA	(800) VISA-911 (847-2911) (410) 581-9994 (collect if outside US)	http://usa.visa.com/government/payment/card_benefits/bft_auto_rental.html Report claims to this number within 45 days of their occurring.
MasterCard	(800) MC-ASSIST (622-7747) 636-722-7111 (collect if outside US)	http://www.mastercard.com/us/business/en/pdf/Commercial_GTB.pdf Report claims to this number within 30 days of their occurring.