

Appendix 12

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THIRD PARTY CLAIMS AND DAMAGE CLAIMS

In a *third party claim* (as defined in the Alberta Public Works Act), anyone working for or providing materials to the Contractor may file a claim against the Contractor. The list could include any or all of the following: a Subcontractor(s), labourers, or others providing material or services on the Contract.

A *damage claim* (insurance claim from the public) is a claim for injury, loss or damage arising in connection with the work. The most common damage claim is for cracked or broken windshields due to winter sanding.

- a) **Procedure for third party claims** – When a Subcontractor, supplier, etc., files a third-party claim with Alberta Transportation there is a time-sensitive process that must be followed. The Maintenance Contract Inspector needs to note when he received the claim in his diary, then pass it on to the Operations Manager the same day.
- Third party claims must be submitted **in writing**. Verbal statements are not sufficient.
 - The OM must **immediately date stamp and forward** any submission to Program Management Branch.
 - Claims must be acted on immediately because there is a statutory 90-day limit for filing claims under the Public Works Act from the last day the claimant worked or provided services or materials on site.

Over the 90-day limit – Although the Public Works Act has a 90-day limit for filing claims, there is no time limit in the contract itself. Therefore, a claimant should never be denied the opportunity to file a claim, even after the 90-day period has expired. (There is a similar 120-day limit in the labour and material bond for filing claims with the bonding company. The Public Works Act also states that a claim should not be filed within 30 days of the date the claimant last worked.)

- If the claim is legitimate and the Contractor is unable or unwilling to settle the claim, AT may follow any of these courses of action:
 - determine the value of the claim and pay the claimant directly from holdback funds
 - pay the disputed amount into court for judicial determination
 - if funds are insufficient, refer the claim to the bonding company for settlement
- b) **Procedure for damage claims** – Damage claims must be submitted in writing. AT staff must follow this procedure for claims under \$1,500 (\$2,000 for new or extended Contracts subject to Edition 5 Specs):
1. Claimant notifies Department/Consultant that Claimant's property has been damaged.
 2. Department/Consultant forwards claim to Contractor.

3. Contractor responds to claimant in writing with copy to Department.
4. If Contractor denies liability, Claimant comes back to Department saying he doesn't agree with the Contractor.
5. Department forwards claim to the Adjuster.
6. Adjuster advises Claimant in writing of his decision, with copies to the Contractor and Department.
7. If Claimant disagrees with Adjuster, he comes back to the Department.
8. Department advises Claimant that if he is dissatisfied with the Adjuster's decision he should pursue the matter through legal avenues like small claims court or deal with it as an insurance issue through his insurance carrier.

NOTE: If the damage is **GREATER THAN \$1,500** (\$2,000 for Edition 5 Specs) it **CANNOT** be forwarded to the Adjuster.

In that case, if the Claimant comes back to the Department saying he doesn't agree with the Contractor's decision, then there would be a step 4A where the Department advises the Claimant that we can do nothing further for him and if he wishes to pursue the issue his course of action would be to take the Contractor to court or have his insurance carrier try to resolve the issue.

Under the terms of the *General Specifications* of the *Standard Specification for Highway Maintenance*, the Contractor is required to review any damage claim received, then respond to the claimant in writing, with a copy to the OM.

The *General Specifications* section also outlines a third party evaluation process for disputed minor damage claims of value less than \$1,500 (\$2,000 for Edition 5 Specs). Where the claimant disagrees with the Contractor's response, the OM will refer claims of less than \$1,500 to an independent adjuster for evaluation. This independent adjuster deals with each claim on an individual basis, getting comments from both sides. If the adjuster agrees with the Contractor's response, AT pays the adjuster's fee. If the adjuster disagrees with the Contractor's response, the Contractor pays the adjuster's fee.

Once the Contractor has responded to the claimant in writing stating his position, AT, with the exception of the above noted minor damage claims, considers the matter closed. For cases where the claimant disagrees with the Contractor's response or the adjuster's response where the claim is less than \$1,500 (\$2,000 for Edition 5 Specs), the OM will suggest that the claimant consider other (legal) avenues to resolve the dispute.

The claimant is not to be provided with the Contractor's insurer's name. The claimant has the legal right to obtain the insurer's name from the Contractor but not from AT.

If the MCI receives a request for information regarding a claim, the request should be forwarded to the OM.

ALBERTA TRANSPORTATION PROCEDURES FOR DAMAGE CLAIMS

QUESTION: HOW CAN I FILE A CLAIM FOR DAMAGES?

ANSWER: Your claim must be in writing and contain the following information:

- Date
- Time
- Location
- Estimate of damage
- Description of the incident
- Your name and address (Phone number optional)

Forward your claim to the Alberta Transportation office at the address on the accompanying letter

QUESTION: WHAT HAPPENS TO MY CLAIM?

ANSWER: Alberta Transportation personnel will forward your claim to the contractor for his action.

The contractor will respond to you in writing, setting out his position with respect to your claim. He will either settle your claim or, if he considers your claim to be invalid, will provide reasons why your claim is being rejected. If you do not hear from the contractor within two weeks please advise the Alberta Transportation office at the address on the accompanying letter

QUESTION: WHAT IF I DISAGREE WITH HIS REASONS?

ANSWER: If you are unsatisfied with the contractor's response, the next course of action available to you is dependant on the value of your claim:

- If your claim is in an amount that is **GREATER than \$1,500.00** ([\\$2,000 for new or extended Contracts subject to Edition 5 Specs](#)) your only recourse would be to pursue the issue either through legal avenues. (ie. small claims court), or deal with it as an insurance issue through your insurance carrier.
- If your claim is in an amount that is **LESS than \$1,500.00** ([\\$2,000 for new or extended Contracts subject to Edition 5 Specs](#)) your claim file can be forwarded to an independent adjuster who will review your file and give his decision based on the information in that file and the contract terms.

QUESTION: WHO IS THIS ADJUSTER AND WHAT CAN HE DO FOR ME?

ANSWER: The adjuster is an individual who has been retained by the department with the concurrence of the contractor industry, to review claim files as they relate to the contractor's responsibility in the contract, and make a considered decision on the validity and value of the claim. He has expertise in the insurance adjustment area and a history of familiarity with this type of claim. His decision is binding on the Contractor and the Department.

QUESTION: HOW DO I GET MY CLAIM TO THE ADJUSTER?

ANSWER: In situations where you and the contractor cannot agree to a settlement, please advise the Alberta Transportation office at the address on the accompanying letter and the Department will forward the claim file containing your claim and the contractors response to the adjuster.

Under the terms of his agreement with the Department, the adjuster will review the file and make a considered decision on the validity and amount of the claim. He will advise you in writing of his decision and forward copies of this decision to the contractor and the department. The adjuster's decision is binding on the contractor and the department. If he rules in your favour, the contractor is obliged to pay the amount of the decision.

QUESTION: WHAT DO I DO IF THE ADJUSTER RULES AGAINST ME?

ANSWER: The adjuster is neither a judge nor a mediator. His authority is restricted to making a decision based on whether or not the contractor followed the conditions of his contract.

The adjuster's review is based on the written information provided to him and under the terms of his agreement, is not rescindable. Once his decision is made the department cannot assist either the contractor or the claimant to have the decision changed.

If the adjuster does rule against you and you are unsatisfied with his response, you still have the right to pursue the issue through legal avenues (ie. Small claims court), or discuss the matter with your insurance carrier.

[DATE]

[CLAIMANTS NAME]
[ADDRESS]

DEAR [CONTACT PERSON]

RE: [CONTRACT NUMBER –PROJECT NUMBER]
Damage Claim Filed Against [CONTRACTOR'S NAME]

We have received your letter dated [DATE OF LETTER], regarding damage involving [TYPE OF DAMAGE AND LOCATION]. As you are aware, the work on [PROJECT NUMBER] was under contract with [CONTRACTOR NAME], [ADDRESS & PHONE NUMBER].

[INSERT PARAGRAPH A, OR B]

A	The Department has forwarded a copy of your letter to the contractor with a request that they investigate and deal with your concerns.
B	Before the Department can forward a copy of your letter to the contractor with a request that they investigate and deal with your concerns, we will require some additional information. Please supply us with [LIST OF INFORMATION REQUIRED]

For your information, I am attaching an outline of the damage claims procedure as adopted by Alberta Transportation.

If you have any questions or require assistance please contact our office at:

(ADDRESS)
(PHONE NUMBER)
(FAX NUMBER)

Yours truly,

[PROJECT SPONSOR]
[TITLE]

enclosure

(Letter A)

Date

address

Dear: contact person

**RE: CONTACT PERSON – PROJECT NO.
DAMAGE CLAIM FILED AGAINST - CONTRACTOR'S NAME**

We have received your letter dated **date**, regarding damage involving **type of damage and location**, and the contractor has denied your claim.

[INSERT PARAGRAPH A, B OR C]

A	In accordance with the enclosed damage claims procedure, the Department has forwarded your claim to an independent adjuster for a decision on this issue
B	Before the Department can forward your claim to the adjuster, we will require some additional information. Please supply us with List of Information required
C	We are sorry but, since your claim is greater than \$1,500.00 (\$2,000 for new or extended Contracts subject to Edition 5 Specs), the department cannot provide any further assistance on this matter. If you are dissatisfied with the response from [CONTRACTOR NAME], you still have the option to pursue this matter through other legal avenues (i.e. Small claims court), or deal with it as an insurance issue through your insurance carrier.

For your information, I am attaching an outline of the damage claims procedure as adopted by Alberta Transportation.

If you have any questions or require assistance please contact our office at:

address
phone number
Fax Number

Yours truly,

project sponsor
fax number

enclosure

(Letter B)

[DATE]

[CLAIMANTS NAME]
[ADDRESS]

DEAR [CONTACT PERSON]

**RE: [CONTRACT NUMBER –PROJECT NUMBER]
Damage Claim Filed Against [CONTRACTOR’S NAME]**

We have received a copy of a letter dated [DATE] sent to you from [CONTRACTOR] denying any compensation for the damages to your vehicle on the above noted Alberta Transportation highway contract. Please be advised that, if the damage to your vehicle is less than \$1,500.00 ([\\$2,000 for new or extended Contracts subject to Edition 5 Specs](#)), the department has a damage claims procedure that may be of some assistance to you.

For your information, I am attaching an outline of the damage claim guidelines which is in a question and answer format. Once you have read the guidelines, and if you disagree with the contractor’s response to you, please forward your claim in writing to our office at the address below. Your claim must contain the date, time and location of the incident as well as an estimate of the damages and a description of the incident so that we can forward it to the adjuster for a second opinion:

If you have any questions or require assistance please contact our office at:

(ADDRESS)
(PHONE NUMBER)
(FAX NUMBER)

Yours truly,

[PROJECT SPONSOR]
[TITLE]

enclosure