

4/7/2003

Information on Rental Cars and Government Employee Liability

Compiled from information provided by:

Janet Arling, Claims Specialist, USDA Forest Service, Washington Office
Micki Tourtelotte, Claims Specialist, USDA Forest Service, Northern Region

The following information is pertinent to employees' use of rental vehicles for official business:

Under the **Federal Tort Claims Act (FTCA), 28 USC 2671-2680**, the government has waived its sovereign immunity under circumstances where damages/injury to a third party are caused by the negligent or wrongful act or omission of a federal employee acting within the scope of employment under circumstances where the United States, if a private person, would be liable in accordance with the law of the place (state) where the act or omission occurred.

As long as a federal employee rents a vehicle (for official business) through a car rental company participating in the **U.S. Government Car Rental Agreement** (managed by Headquarters, Military Traffic Management Command) and abides by the terms of that Agreement (renting a "covered" vehicle, only authorized drivers driving the vehicle, operating the vehicle only on paved, graded, state or professionally maintained roads, or driveways [unless the car rental company has agreed to allow off-road use in writing beforehand], as well as other terms under Agreement), and the employee has waived the car rental company's CDW/LDW coverage - then, under the Agreement, the car rental company is responsible for any damages to the rental vehicle, as well as any third party damage and injuries - regardless of whether there was negligence on the part of the government employee.

Government employees are required to follow the terms and conditions of the U.S. Government Car Rental Agreement. If the terms and conditions are violated, the Agreement is null and void, and the terms and conditions of the actual individual car rental agreement, signed by the employee (renter of the vehicle), apply. Most individual car rental agreements have strict liability clauses, which means the renter will be personally liable for all damage to the vehicle, regardless of the cause.

Note: Many participating car rental companies exempt certain vehicle types, such as four-wheel drives, SUVs, vans, etc., from the Agreement.

The following three scenarios should help to clarify the above information:

- (1) **An employee rents a "covered" vehicle**, appropriately waives the CDW/LDW, and follows all the terms and conditions of the U.S. Government Car Rental Agreement. In this situation, the car rental company would be responsible for all damages to the rental vehicle, as well as any third party vehicle damage/personal injury, **regardless of whether the government employee was negligent**. The car rental company could not make claim against the government or the employee, as long as the vehicle was rented/operated under the terms and conditions of the Agreement.

- (2) **An employee rents a vehicle** and waives the CDW/LDW coverage offered by the car rental agency. However, either the type of vehicle rented is **not a “covered” vehicle under the U.S. Government Car Rental Agreement, or the terms and conditions of the Agreement are violated**. Therefore, the U.S. Government Car Rental Agreement is null and void, and there is no insurance coverage on the vehicle. If an incident occurs where the **employee is negligent** (runs a red light) and causes damage to the rental vehicle (and/or third party), the car rental company could file a claim against the government for damage to their vehicle (and/or the third party could file a claim against the government for damage/injury). The claim would be processed under the FTCA as a tort claim against the government, and likely allowed because **the government is liable when damage occurs as result of employee negligence** if the employee is acting within the scope of employment.
- (3) **An employee rents a vehicle** and waives the CDW/LDW coverage offered by the car rental agency. However, either the type of vehicle rented is **not a “covered” vehicle under the U.S. Government Car Rental Agreement, or the terms/conditions of the Agreement are violated**, and therefore, there is no insurance coverage on the vehicle. Damage occurs to the rental vehicle and such damage is not caused by a government employee (someone “keys” the rental vehicle; an unknown third party backs into the parked rental vehicle). In this case, there is **no negligence on the part of the government employee**, so it cannot be processed under the FTCA. **In this situation, there is no authority for the government to pay the damage to the rental vehicle**, even if we wanted to. But **the individual employee remains “strictly liable” to the car rental company for the damage**, because the employee signed the company’s car rental agreement.

Therefore, we suggest that, **to protect employees from the risk of personal liability**, when the type of vehicle or vehicle use cannot be covered under the U.S. Government Car Rental Agreement, the vehicle(s) be rented through the procurement process (EERA, BPA). In that case, any damage that occurs to the vehicle is handled by the government under the terms of that agreement. In those cases, the agreement is not with the individual employee, but rather, is with the government.

The U.S. Car Rental Agreement, rates and participating companies can be viewed on the Web at: www.mtmc.army.mil/frontDoor

Select "Passenger"

Select "Carriers & Programs"

Select "Car Rental Carriers"

"Car Rental Agreement" "Car Rental Agreement Number 3"
(copy of U.S. Government Car Rental Agreement)

"Ceiling Rates" "Car Rental Domestic Rates"

(rental rates for vehicles under the U.S. Government Car Rental Agreement)

"Participating Companies"

(list of government representatives for participating companies - not for making reservations)