

TAKE-1

**FINANCIAL LIABILITY
INVESTIGATION of PROPERTY
LOSS (FLIPL)**

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



FINANCIAL LIABILITY INVESTIGATION OF PROPERTY LOSS (“FLIPL”)

The Army uses FLIPLs to account for lost, damaged, or destroyed property. The FLIPL is governed by Army Regulation 735-5, Policies and Procedures for Property Accountability, and DA PAM 735-5, and is an investigation into the facts and circumstances surrounding the lost, damaged or destroyed property.

1. Q. WHO CONDUCTS THE FLIPL INVESTIGATION?

A. An Investigating Officer, appointed by the chain of command of the responsible soldier, conducts a thorough investigation to determine the cause of the loss. The Investigating Officer gathers the facts and then determines who, if anyone may be responsible. Once a determination is made, the Investigating Officer recommends whether or not that individual should be held financially liable.

2. Q. WHAT FACTORS DETERMINE WHETHER I CAN BE HELD FINANCIALLY LIABLE FOR THE LOST, DAMAGED, OR DESTROYED PROPERTY?

A. If your negligence, deliberate, or willful actions caused a loss to the government, you will be held liable.

3. Q. WHAT IS NEGLIGENCE?

A. Negligence has four factors;

1. You were responsible for the equipment;
2. You were culpable (that is, you did not fulfill your responsibility);
3. Your culpability was the proximate cause of the loss;
4. The Army has actually suffered a monetary loss.

4. Q. HOW MUCH CAN I BE REQUIRED TO PAY?

A. You can be held liable for the entire monetary loss to the government. The loss is determined using the item’s current fair market value and depreciation. Generally, the amount of liability cannot exceed one month’s pay base, however, you can be charged the full amount under certain circumstances. Base pay is determined at the time of the incident, not when actual liability is recommended.

5. Q. WHAT IS A REBUTTAL STATEMENT?

A. You have the right to submit a rebuttal statement on your own behalf. You have 30 calendar days from the date of hand delivery of the FLIPL packet to reply. This request is attached to the FLIPL, and is returned to the Investigating Officer.

6. Q. WHAT HAPPENS NEXT?

A. The Investigating Officer sends the FLIPL and the rebuttal through the chain of command to the Approving Authority. Administrative Law attorneys will review the FLIPL and the rebuttal to determine if the survey is legally sufficient.

EXAMPLE

DEPARTMENT OF THE ARMY
A Battery, 3d Battalion, 27 Field Artillery Regiment (MLRS)
Fort Bragg, NC 28307-5000

[YOUR OFFICE SYMBOL]

[DATE]

MEMORANDUM THRU [NAME OF APPOINTING AUTHORITY], Commander, 3d Battalion, 27th Field Artillery Regiment (MLRS), Fort Bragg, NC 28307-5000

FOR [NAME OF APPROVING AUTHORITY], Commander, 27th Field Artillery Regiment (MLRS), Fort Bragg, NC 28307-5000

SUBJECT: Rebuttal Statement, Investigation of Property Loss No. ____ - ____ , \$1063.80

I hereby submit this statement rebutting the recommendation of financial liability against me for the loss of Government property investigated under subject investigation of property loss.

1. **SUMMARY[WRITE A BRIEF SUMMARY OF YOUR CASE].** This statement is in response to Financial Liability Investigation of Property Loss (“FLIPL”) No. ____ - ____, in which I am being recommended to pay \$1063.80 for the loss of a M-60 machine gun. The Investigating Officer’s recommendation of liability against me is erroneous because he failed to prove the element of negligence. Without serious proof of negligence, there is no theory of liability upon which I can be held financially liable. Therefore, I request disapproval of the Investigating Officer’s recommendation.
2. **STATEMENT OF FACTS[WRITE OUT YOUR SIDE OF WHAT HAPPENED. DO NOT EDITORIALIZE ON WHO YOU THINK IS AT FAULT. JUST BRIEFLY TELL WHAT HAPPENED].**
 - a. This FLIPL resulted when a Multiple Rocket Launcher System (MLRS) accidentally drove into an observation post and severely damaged an M-60 machine gun.

- b. The incident precipitating the FLIPL occurred when an MLRS tracked vehicle damaged an M-60 machine gun. The MLRS approached the observation post I was manning. As the vehicle approached to within fifteen meters, I signaled to the vehicle to stop. However, the occupants misunderstood the signal, and turned sharply into the observation post.
- c. The incident occurred at about 1930 hours, during the month of December, 2002. IT was after sunset, so visibility was poor.

3. **DEFENSES TO ALLEGED NEGLIGENCE.** The Investigating Officer has alleged negligence on my part. However, he has not shown I was negligent. Without evidence of the essential elements of negligence, I cannot be held financially liable.

- a. Standards: AR 735-5, paragraph 13-30b(1) states that before a person can be held financially liable, the “facts must show that he or she violated a particular duty of care toward the property though negligence or willful misconduct. Further, the negligence or willful misconduct was the proximate cause of the loss, damage, or destruction of the property.”
- b. In accordance with AR 735-5(b)(2), simple negligence is defined as the absence of due care by an act or omission of a person which lacks the degree of care for the property that a reasonably prudent person would have taken under similar circumstances to avoid loss, damage, or destruction to the property.” Negligence is made up of four parts: Responsibility, culpability, proximate cause, and loss.
- c. I am not negligent because the four elements require for a finding of negligence are not met.
 - i. Responsibility: As the observation post (OP) guard, it was my responsibility to challenge each vehicle entering the training area. When a vehicle approached, I would signal the driver to stop and ask for the password. Once the correct password was given, I would allow the vehicle to enter.

It was not my responsibility to direct the MLRS. Once the vehicle entered, the vehicle’s commander should have disembarked and acted as a ground guide to direct the vehicle to its position. Therefore, it was the driver and commander’s responsibility to ensure that the vehicle was safely located. It was not, and never has been my responsibility to give the incoming vehicles directions on where to turn.
 - ii. Culpability: I did everything a reasonable and prudent specialist acting as an OP guard would have done in similar circumstances. To signal the vehicle to stop, held up the flashlight, and when the vehicle was about fifteen meters away, I turned it off. However, it is not unusual for the OP guard to wave the cone flashlight to make sure the vehicle sees it from that distance. I have done this before, and never before has this caused an accident. Because I am not culpable, I should not be liable.
 - iii. Proximate Cause: AR 735-5, para. 13-30c, states that proximate cause is the natural and continuous sequence of events unbroken by a new cause that produces the loss, damage, or destruction. Even if there is sufficient evidence to find that I had a duty, and breached that duty (which I strongly believe there is not), there were intervening facts that were the immediate and proximate cause of the loss. According to AR 735-5, c-11c(2), an

“intervening cause is a new and independent force that breaks causal connection between the original wrong-doing and the injury. It becomes the direct and immediate cause itself.” Furthermore, “if the result of the negligence was not one which might have been reasonably foreseen, then the negligence was not the proximate cause of the result. Without a doubt, the true cause of the damage to the machine gun was the MLRS occupant’s failure to follow standard safety procedures for clearing the vehicle for movement. It was not, and never has been, my responsibility to give the incoming vehicles directions on where to turn. Thus, the MLRS should not have turned when it mistook my signal to stop because it was not supposed to take directions from me anyway. Without being the proximate cause, I should not be liable.

- iv. Loss: It is not clear from the Investigating Officer’s report whether or not the value of the M-60 machine gun was depreciated. If it was not, AR 735-5 requires that the value of the lost equipment be depreciated. Furthermore, because it was the responsibility of both the MLRS driver and commander to drive and direct the vehicle, they too should be held partially liable.

- 4. **CONCLUSION.** The conclusion of this FLIPL is legally insufficient. First, my role as OP guard was not to give directions to the MRLS, so they should not have turned when the misunderstood my stop signal. Second, I did not breach my real duty as the OP guard as I did correctly signal the vehicle to stop (the misunderstanding was on the MLRS’s part). Third, the proximate cause of the loss was the MLRS occupant’s failure to follow well known, and standard operating procedures for that particular environment. In the alternative, if I am held liable, I request that the amount of liability be canceled because it would cause severe and undue hardship. I have a seven year old child and a wife to support. They should not be made to suffer because of this unfortunate incident. If this cannot be canceled, I request that collections of the money be extended over a 12 month period.

[YOUR NAME]
[RANK], U.S. Army