FORT SAM HOUSTON LEGAL ASSISTANCE OFFICE
FINANCIAL LIABILITY INVESTIGATION OF PROPERTY LOSS

I. INTRODUCTION - In today's modern Army, Soldiers are faced with the great responsibility of safeguarding the use, custody, and control of valuable government property. From TA-50 to a government vehicle, if you are responsible for Government property that is damaged, destroyed, or lost, you may be the subject of a Financial Liability Investigation of Property Loss (FLIPL) to determine if you should be held financially liable for the loss. This process used to be known as the Report of Survey. For you to be held liable, the FLIPL must show that your willful misconduct or negligence caused the property to be damaged, destroyed or lost. Army Regulation (AR) 735-5, Chapter 13, governs the FLIPL system. It can be found at **www.usapa.army.mil**.

II. RIGHTS IF THE FINANCIAL LIABILITY OFFICER RECOMMENDS LIABILITY - If the financial liability officer (FLO) recommends that you should pay for the loss or damage, the FLO must allow you to examine the entire FLIPL and to submit a rebuttal statement. Additionally, the FLO must inform you of your right to inspect and copy Army records relating to the FLIPL, to submit statements or other rebuttal evidence and to obtain legal advice from a Judge Advocate. In order to rebut the FLIPL, you must submit your evidence to the FLO within certain time limits.

A. *Time Limits* - The time limits for submitting rebuttal statements vary depending on how the FLO notified you. If you were notified in person, then you have 7 calendar days from that date to submit your rebuttal. If you are notified by mail and you live in the same country as the FLO, then you have 15 days from the date the FLIPL was mailed to respond. If you are in a different country from the FLO, you have 30 days from the date the FLIPL was mailed to respond.

B. *Legal Assistance* - You are entitled to legal assistance for the review and assistance of your rebuttal. You must gather your evidence and prepare a statement of what happened prior to visiting the Legal Assistance Office. The Legal Assistance attorney can help you prepare your rebuttal and review it. The post library has computers you can use to prepare your rebuttal. Please bring in a hard copy of your rebuttal and the diskette on which you wrote your rebuttal.

C. *Content of Rebuttal Statement* - To properly rebut the FLO's recommendation, you must know the basis for that recommendation. Therefore, it is vital that you carefully read the entire FLIPL and examine all the evidence that is attached. In order for the FLO to recommend

liability, he or she must find, based on the evidence in the report, that you willfully or negligently caused the property to be lost or damaged.

1. Willful Misconduct – To find you liable, the FLO must establish that your intentional wrongful or unlawful act or omission resulted in a loss of Government property.

2. Negligence and Proximate Cause – To find you liable, the FLO must establish that you were negligent and that your negligence was the proximate cause of the loss. A four-part test must be followed before determining financial liability. 1) You must have a **duty** to care for the property. This duty can arise in numerous ways such as: signing for the property; supervising persons using the property; custodial responsibility; or having physical possession of the property. 2) You must have **breached** the above-described duty of care. Whether you have breached the duty of care depends upon the circumstances in each case. The standard that is to be applied is whether you acted in a manner that a reasonable person would have acted if faced with the same situation. Acts or omissions can cause breaches. 3) Your negligence (breach of duty) was the **proximate cause** of the loss. The breach of the duty cannot be merely a potential factor in the cause of the loss, but rather the act or omission that actually caused the loss. 4) There must be a **loss** to the government, which includes loss of accountability. The FLO may also determine gross negligence resulted in the loss. To find gross negligence, the FLO must establish that in addition to breaching the four-part test above, your conduct was an extreme departure from the course of action to be expected of a reasonably prudent person, all circumstances being considered. A gross negligent act is characterized by a reckless, deliberate, or wanton disregard of the foreseeable consequences.

3. Evidence - You should gather any documents, photos, statements, and other evidence that will support your position. Write a statement that explains why the FLO's recommendation is erroneous and why your evidence supports your position. You should avoid including extraneous issues or emotional comments within your rebuttal. Simply stick to the facts.

III. PROCESSING FLIPLs.

A. The FLO must consider your rebuttal statement. If the FLO believes that you are still liable, he or she forwards the report to the Staff Judge Advocate for legal review. If it is determined to be legally sufficient then it is forwarded to the Approving Authority, who then makes the decision whether or not to hold you liable.

B. The Approving Authority, generally your battalion commander, will notify you in writing if he or she intends to hold you liable. This letter will also inform you of the following rights:

1. To receive legal advice from the local Legal Assistance Office.

2. To inspect and copy Army records relating to the FLIPL.

3. To request reconsideration based on legal error. The request for reconsideration must be requested within 30 calendar days from the date the commander notified you. Collection from

your pay is stopped pending the outcome of your request for reconsideration. The request for reconsideration should initially be submitted to the Approving Authority. If liability is still recommended the report will be submitted to the Appeal Authority, which is usually your Brigade Commander. He or she will then act on your request for reconsideration.

4. To request extension of the collection period.

5. To request remission or cancellation of the indebtedness under the provisions of AR 600-4 (enlisted personnel only). However, you must request this before the entire amount is collected from your pay. Further collection action is stopped pending the outcome of your request for remission or cancellation.

6. To submit an application to the Army Board for Correction of Military Records (ABCMR) under the provisions of AR 15-185. Requests to the ABCMR must usually be filed within 3 years of discovery of the grounds for the request.

If you do not exercise the above rights or if you are unsuccessful, then the amount you owe will be withheld from your pay within 30 to 60 days.

IV. AMOUNT OF LIABILITY - The government can require you to pay the entire amount of money lost by the government. The loss is determined using the lost item's current fair market value and depreciation. IAW AR 735-5, para.13-32c(4), you will not pay more than one month's base pay, unless you are fall into one of the following categories: accountable officers; persons losing public funds; Soldiers losing personal arms or equipment; or persons who lose, damage, or destroy government quarters, furnishing or equipment in quarters due to gross negligence or willful misconduct. Base pay is determined at the time of the incident, not when the FLIPL is completed.

If you have any questions, contact the Legal Assistance office at (210) 221-2282/2353.

SAMPLE FLIPL REBUTTAL #1
(Lost TA-50)
[Unit Letterhead]

[Your unit's office symbol] [Date]

MEMORANDUM FOR Commander, [Name of unit], Fort Sam Houston, Texas 78234

SUBJECT: Rebuttal Statement, Financial Liability Investigation of Property Loss No. ____
Your rank and name, SSN, Amount of money charged

1. **PURPOSE.** Pursuant to AR 735-5, chapter 13, I am submitting this Rebuttal Statement to the recommendation of liability against me in Financial Liability Investigation of Property Loss (FLIPL) Number 4815162442. The financial liability officer recommended that I pay $120.62 for the loss of my TA-50.

2. **FACTS.**

a. [Explain what happened. Do not discuss who you think is at fault]. This property loss resulted when I was injured during an FTX at Camp Bullis on 26 July 2005. We were rappelling down the rappel tower that day. I climbed to the top of the tower and was hooked up by the Rappel Master. I was on the ledge and starting to go down about 25 feet when a powerful wind gust caused me to lose my balance and dangle upside down. While dangling, I struck my head on the tower. I was dangling and swinging upside down for about fifteen minutes until I fell about 10 feet to the ground. After my TA-50 and rappelling equipment was removed from me, I was transported to Brooke Army Medical Center. The medical staff assured me they had the technology to fix me. After a few days at BAMC, I was released onto convalescent leave.

b. Before going on leave, I called my unit. When I stopped at my unit, I saw TA-50 on the floor of my room. Unfortunately, the TA-50 that I saw was not mine. I later learned that while I was at the hospital, my equipment was stored in the Operations office, and then transferred to my room. Because I was hurt, and somewhat dazed, my friend put all of the TA-50 in my wall locker.

c. Due to the severity of my injuries, I took 14 days of convalescent leave, instead of the planned seven days. Upon my return, I inspected my TA-50. I immediately recognized that some of the equipment was not mine. Somehow, the wrong LBE, ballistic helmet, and goretex gloves were mistakenly placed in my ruck sack.

3. **NEGLIGENCE AND PROXIMATE CAUSE.** [Many of the sections below can be copied into your rebuttal statement]. The FLO has not proven that my negligence resulted in the loss. Without proof of these elements, there is no theory of liability upon which I can be held liable.

a. AR 735-5, para. 13-28(b)(l), 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 through negligence or willful misconduct. Further, the negligence was the proximate cause of the loss.

b. AR 735-5, para. 13-28(b)(2) defines simple negligence 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." Before I can be found liable, I must be found negligent. My negligence must have also been the proximate cause of the loss or damage.

(1) Responsibility: I was not responsible for the TA-50 at the time of loss. I agree that at one time I possessed the TA-50. Due to my condition following my rappel, however, I could not maintain positive control of my equipment. Because I was unconscious, it was the responsibility of the rappel tower personnel to collect my TA-50. Furthermore, the FLO was wrong to focus on my responsibility to account for the TA-50 upon my return from the hospital. The rappel tower personnel had already lost my TA-50 by the time I arrived at the hospital. Thus, when I returned from the hospital, although fit to fight, it was impossible for me to account for my equipment. Also, even though the doctors were able to get me functioning again, when I left the hospital I was dazed and exhausted. That is why I was ordered on convalescent leave (see Enclosure 2). I am enclosing copies of my medical files as further proof of my condition at that time (see Enclosures 3 and 4). Clearly, I acted responsibly at all times, including when I secured the equipment until I could properly take accountability. Therefore, since I was not responsible at the time of the property loss, I cannot be held liable.

(2) Culpability: I was not culpable for the loss of the TA-50. According to AR 735-5, para.13, a person found to have personal responsibility for property to be liable, he must fail to "exercise reasonable and prudent actions to properly use, care for, and safeguard all Government property in his or her physical possession." I did everything a reasonable and prudent person would have done under similar circumstances. Since I was unconscious, I could do nothing. When I returned from the hospital, my friend locked all of my TA-50 in my wall locker. I had no reason to believe the TA-50 in my ruck sack was anyone's other than mine. I did everything that could have been expected of me. As such, I am not culpable and request that this recommendation be dismissed.

(3) Proximate Cause: AR 735-5, paragraph 13-28(c) states that proximate cause is "the natural and continuous sequence [of events] unbroken by a new cause [that] produced the loss." In section 26, the FLO stated that he based his findings on the fact that twelve days passed from the jump until I gained positive accountability of my equipment. There is no causal connection between the two events. My equipment was lost by the Soldiers at the rappel tower, before I returned from the hospital. Additionally, my equipment was locked in my wall locker, so the same equipment was there when I returned from leave. Clearly, the proximate cause of the loss

was sloppy accountability procedures by rappel tower personnel. When they gathered equipment belonging to injured jumpers, they likely tossed it into the back of a truck. All the equipment was probably switched at that time. My actions did not cause the loss, therefore this recommendation should be dismissed.

4. **CONCLUSION.** I am not liable for the lost government equipment. The FLO cannot prove that: I was responsible at the time of loss, I was culpable, or I proximately caused the loss. Further, the loss was improperly calculated. Absent proof of these essential elements of negligence, I cannot be held liable for the loss. If I am found liable, however, I request the amount of liability be canceled due to personal financial problems. If this is impossible, I request the amount be collected over a twelve-month period.

4 Encls
1. FLIPL No. ____
2. Nursing Discharge Summary
3. Medical Record Dated ____
4. Health Record

[Your Name]
[Your Rank], U.S. Army

SAMPLE 2 FLIPL REBUTTAL
(HAND RECEIPT HOLDER FOR LOST PROPERTY)
[Letterhead]

1. **Purpose.**

2. **Facts.**

a. On 17 June 1997, I received eight M88 equipment bags for the four battalion M88 Medium Recovery Vehicles from SGT Wrench. I took the bags to the motor pool and secured them in the storage room. Two bags were to be issued to each M88 crew chief. During this time period, the M88s were being moved from the line batteries to the Service Battery, Battalion Maintenance Section. When I received the bags from, the M88s had not yet moved to the Battalion Maintenance Section. Therefore, I could not issue the bags immediately because I did not know who would be occupying the M88s. After the vehicles arrived in our section, there were on going discussions about changing personnel on the vehicles. I did not attempt to issue out the bags until all personnel movements had been made and the bags were needed for a field exercise.

b. The equipment bags were secured in the storage room. In July 1997, the welding shop and the storage room were consolidated into one room. The equipment in the storage room was moved to an enclosed area in front of the motor pool, where it is presently located. I did not participate in the movement of equipment. After the move had been completed, I checked on the equipment for which I was accountable. The bags were located on the top shelf of the cabinet in the center of the rear cage. I corroborated that eight bags were in the new storage area after the welding shop and storage room had been consolidated (Exhibit F).

3. **Negligence.**

a. I properly safeguarded the bags by placing them in the storage room. IAW AR 735-5, Chapter 13, I am not automatically liable for the loss of equipment for which I am the hand receipt holder. I can be held liable for the loss only if I was negligent with respect to the property. The storage room was locked on the outside double doors along with another lock on the inside cage door. The storage room also met the required standards IAW AR 190-51, Physical Security. The storage room not only held the bags, but also contained the welders' equipment, toolboxes, the Herman Nelson Heater, and other shop equipment. Under AR 190-51, para. 3-22c, portable hand tools, tool sets or kits, and shop equipment should be secured in a locked building or room meeting the requirements for a secured storage structure. The storage room met those requirements. Additionally, the keys to the storage room were controlled. The keys to the locks of the room were stored upstairs in the lock box behind the Battalion Motor Sergeant's desk. The primary key custodian was SGT Flintstone and the alternate was SPC Rubble. To control access, only the battalion maintenance personnel were authorized to sign out the keys for use of the steam cleaners stored inside the storage room.

b. I was not negligent by securing the bags in the storage room. AR 735-5, para. 13-29(b)(2), defines simple negligence 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 reasonable, prudent person would have taken under similar circumstances, to avoid loss, damage, or destruction to the property." A reasonably prudent person is an average person, not a perfect person. The bags were not left out in an open area, they were secured under lock and key. The area was secure when the bags were stored there. Furthermore, the storage room continues to be operated in the same manner today, and houses government equipment and tools.

c. A reasonably prudent person would have waited to issue the bags to the crew chiefs of the M88s after the personnel changes on the M88s were complete. The bags were not being used by the M88s because we were not in the field during this time period. In September, when we were preparing to go to the National Training Center, and after all the personnel changes had been made, I went to the storage area to issue out the bags for use by the chiefs of the M88s.

4. **Proximate Cause.**

a. I cannot be held liable for the loss of the bags in the storage room because I was not the proximate cause of the loss. IAW AR 735-5, para. 13-29(c), even if I was negligent in failing to issue the bags sooner, to be found liable my negligence must have been the proximate cause of the loss; to be liable, whatever I did or failed to do must have been the actual cause of the loss to the government. The mere fact of loss does not establish proximate cause. The FLIPL must prove that some act or omission of mine constituted negligence, and that same act or omission was "the cause that, in a natural and continuous sequence, unbroken by a new cause, produce[d] the loss or damage, and without which the loss or damage would not have occurred." AR 735-5, Terms.

b. The bags were properly secured and were moved to the new storage area. The bags were properly stored pursuant to regulation. SPC Jetson stated that when he was cleaning the storage room, he found the box with only two of the bags inside it (Exhibit C). The bags must have been stolen for the loss to occur. The proximate cause of the loss is the person or persons who stole the bags.

5. **Conclusion.**

2 Encl
1. Exhibit C, FLIPL No. ____
2. Exhibit F, FLIPL No. _____

[Your Name]
[Your Rank], U.S. Army

SAMPLE 3 FLIPL REBUTTAL
(TRAFFIC ACCIDENT)
[Letterhead]

1. **Purpose....**

2. **Facts....**

3. **Negligence.** I was not driving negligently. According to paragraph 13-28, AR 735-5, "[b]efore a person can be held financially liable, the facts must show that he or she, through negligence or willful misconduct, violated a particular duty involving care of the property... Whether a person's acts or omissions constitute negligence depends on the circumstances of each case. Negligence under some circumstances may not reflect negligence under other circumstances." The FLO must also consider when determining negligence, "the person's age, *experience*, physical condition, and special qualifications."

a. The FLO based his conclusions on the accident occurring at 1700. He states, "When reenacting the accident, (at 1655 according to Encl. 2) the sun was not in SPC McGoo's or MAJ Fudd's eyes....It wasn't until approximately 1730 that the sun was shining in the reenactor's eyes." In my first written statement (Exhibit 1), I wrote that I had been operating at 1700 and had just finished spraying down 1st platoon's culvert site. I then sprayed two other areas. This all took time, so to think the accident occurred exactly at 1700 is an error. Additionally, the sun sets at different times on different days (Encl. 8).

b. I do not feel enough emphasis was placed on the sun affecting the accident. In exhibit L, SPC McGoo stated, "at approximately 1720 hours, the sun is in the windshield, creating a glare. At this time I asked SGT Hammer for his construction helmet. When I put on the construction helmet, the sun was in my eyes. I lowered my head to avoid the sun....At approximately 1730, Private Beatle and I went across the culvert, and I told him that the sun was affecting my driving." Please note the position of the sun in the various time differences in exhibits M through P (Encls. 4-7). As with SPC McGoo, the sun did affect my driving that day.

c. Just before the accident occurred, I was listening to SGT Hammer as he instructed me on what we needed to do next. I was not engaged in conversation with him, and he was not distracting me from the road. He was simply doing his job as an NCO. I say this to refute the finding that my glancing at him to acknowledge his instruction was the proximate cause of the accident (See Findings). Rather, it was the sun, dust, and my lack of experience hauling a water distributor that caused the accident. Again I will remind you that this was my first time hauling a water distributor, I was not licensed on that piece of equipment, and I was working in a training environment under the supervision of SGT Hammer. In a training environment there must be room for mistakes, or it would not be training. If our supervisors were not willing to accept the risks as well as the responsibility for this training, then I should not have been assigned to operate in the dangerous and challenging conditions of the El Indio project site.

d. Finally, the suggestion that I was "driving too fast for visibility conditions" (See Findings) just isn't proven. First, there weren't any skid marks evidencing speeding. Additionally, it is common knowledge that the M920 does not have rapid acceleration from a stationary position. The FLO states that the turn around point and the culvert were only 500 feet from each other. (Encl. 2) After turning the truck around and getting back on the road, I had neither the distance nor the time to be speeding.

4. **Argument.**

a. Respectfully request that I not be held financially liable. I have been operating the M920 since September 2004 without any accidents or speeding tickets. I was also recognized for my driving ability during the Advanced Warfighting Experiment at the National Training Center in May 2005, at which time I received an Army Achievement Medal. To add to my untarnished driving record, I have never received so much as a negative counseling statement during my entire 2 1/2 year term of service. The end result is that I am sorry that I was in an accident. The thought that I could have really hurt or even killed someone else or myself has shaken me up much more than losing a paycheck. Please consider this before you decide my financial liability.

b. AR 735-5, para. 13-41(b), allows the approval authority to lower the amount of liability at his discretion. It states, "The approval authority may reduce in whole or in part the amount of the individual's financial liability when the approval authority determines that the evidence documented in the investigating officer's findings indicates that the amount should be reduced because of the nature and circumstances surrounding the damage or loss." Under the circumstances, I conducted myself as best I could under the circumstances. If I am found financially liable for the loss, please consider reducing in whole or part the amount of my liability.

5. **Conclusion ...**

8 Encl
1. Exhibit I, FLIPL No. ____
2. Exhibit K, FLIPL No. ____
3. Exhibit L, FLIPL No. ____
4. Exhibit M, FLIPL No. ____
5. Exhibit N, FLIPL No. ____
5. Exhibit O, FLIPL No. ____
6. Exhibit P, FLIPL No. ____
7. List of Sunrise and Sunsets for the week of _____.

[Your Name]
[Your Rank], U.S. Army