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TO:  Director, Preliminary Plans Review Bureau PHOTOGRAM. LANDSCAPE RECEIVED FACILITIES DESIGN SUBDIVISION NOV 14 1975	<h2 style="text-align: center;">ENGINEERING INSTRUCTION</h2> <p style="text-align: center;">NEW YORK STATE DEPARTMENT OF TRANSPORTATION</p> <p style="text-align: center;">SUBJECT: DAMAGE BY PUBLIC TRAFFIC</p> <p style="text-align: center;">Subject Code: 7.30</p>
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APPROVED: <u>R. R. Kelly</u> R. R. Kelly, Assistant Deputy Chief Engineer (Construction)	

Under Section 107-09, Damage of the Standard Specifications of January 2, 1973, payments to the Contractor may be made for the repair or replacement of certain permanent elements of the highway that are damaged by public traffic. Payment for damages shall be made only after the Contractor has demonstrated to the satisfaction of the Regional Director that he has made every reasonable effort to collect the costs from the persons responsible for the damage. The following guidelines are set forth as an aid in determining reasonable effort.

The standard of reasonable action must be measured against the amount of damage done. For example: Where a delineator has been struck, a few casual inquiries of potential witnesses, such as project personnel, may constitute reasonable effort. Where a section of guide rail or a light pole has been destroyed, significantly more effort would be required to be considered reasonable. In these cases, the Contractor should certainly be making considerable investigations to locate the responsible individual and should demand reimbursement from that individual and his insurance company in writing.

In light of the list of items contained in Section 107-09, most damages would not be extensive enough to require actual litigation by the Contractor, In addition, the Contractor does not have much incentive to vigorously progress such actions as he will not see himself in a position to gain or lose by the outcome. These actions might best be brought by the State.

In the rare instances where the Regional Director preliminarily concludes that reasonable effort should include court action, the Office of Legal Affairs should be consulted prior to making any final determination. Complete details of the accident and the damage estimates must be forwarded to the Office of Legal Affairs at this time.

If the Office of Legal Affairs agrees that court action is the proper action to be taken and that the court action should best be pursued by the State, then the following steps must be taken. First - make the assignment of the Contractor's action for damages to the State of New York. Second - pay the Contractor for his cost of repairing the damages. This will prevent the Contractor's receiving double payment for the repair work and will allow the State to recover the damages from the party responsible for such damages.

RRK:LG