

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. XI. Y
9/10/2024

TO: Mayor and Council
FROM: Kenneth Jordan
Municipal Counselor

Theran Parker
1513 SE 13th Street
Moore, OK 73160
Ward 4 (Location of Incident)
\$249.08
Recommended for DENIAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges claimant's vehicle was damaged on October 27, 2023, when it struck a pothole while traveling northbound on South Sooner Road near SE 87th Street in Oklahoma City. Damages are alleged in the amount of \$249.08, the cost of parts and labor to replace the front passenger side rim. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

To the extent that the state is required by law to maintain a road, street, or highway within the territorial limits of a political subdivision, the political subdivision shall not be liable for any loss occurring from a defect or dangerous condition in the area required to be maintained by the state.

51 O.S. 2023 Supp. § 155.1.

This office is in receipt of information from the Streets Maintenance Division of the Public Works Department regarding this incident. This information indicates that the pothole is located on a stretch of road maintained by the Oklahoma Department of Transportation. Therefore, the City of Oklahoma City is not liable for this incident. Claimant has been provided with the contact information for the Oklahoma Department of Transportation.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

JRS

DENIED

Manoucher Shoureh
2517 NW 44th Street
Oklahoma City, OK 73112
Ward 2
\$148.56
Recommended for DENIAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges claimant's vehicle was damaged on July 9, 2024, when it struck a pothole while traveling at or near Interstate 44 between Classen Avenue and Pennsylvania Avenue in Oklahoma City. Damages are alleged in the amount of \$148.56, the cost of replacing two tires. This amount is supported by documentation.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or a political subdivision shall be liable for loss resulting from its torts or the torts of its employees acting within the scope of their employment subject to the limitations and exceptions specified in The Governmental Tort Claims Act and only where the state or political subdivision, if a private person or entity, would be liable for money damages under the laws of this state. The state or a political subdivision shall not be liable under the provisions of The Governmental Tort Claims Act for any act or omission of an employee acting outside the scope of the employee's employment.

51 O.S. 2023 Supp. §153(A).

According to the Oklahoma Supreme Court, a prima facie case of negligence is established by showing the following: "(1) a duty owed by the defendant to protect the plaintiff from injury, (2) a failure to properly exercise or perform that duty and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care." *McKellips v. Saint Francis Hospital, Inc.*, 741 P.2d 467, 470 (Okla. 1987) (citations omitted).

Proximate cause has two components - legal causation and cause in fact. *Id.* Cause in fact is determined by the "but for" test: "The defendant's conduct is a cause of the event if the event would not have occurred but for that conduct." *Id.* (citations omitted). "Proximate cause" is also a synonym for "legal cause." BLACK'S LAW DICTIONARY, 804 (6th Ed. 1990). To clarify this issue, the Oklahoma Supreme Court has further defined proximate cause: "The proximate cause of an event must be that which in a natural and continuous sequence, unbroken by an independent cause, produces the event and without which the event would not have occurred." *Gaines v. Providence Apartments*, 750 P.2d 125, 126-27 (Okla. 1987) (citations omitted).

To the extent that the state is required by law to maintain a road, street, or highway within the territorial limits of a political subdivision, the political subdivision shall not be liable for any loss occurring from a defect or dangerous condition in the area required to be maintained by the state.

51 O.S. 2023 Supp. § 155.1.

This office is in receipt of information from the Streets Maintenance Division of the Public Works Department regarding this incident. This information indicates that the pothole is located on a stretch of road maintained by the Oklahoma Department of Transportation. Therefore, the City of Oklahoma City is not liable for this incident. Claimant has been provided with the contact information for the Oklahoma Department of Transportation.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be denied, and we so recommend.

JRS