

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

Council Agenda
Item No. IX. CB
8/13/2024

TO: Mayor and City Council

FROM: Kenneth Jordan
Municipal Counselor

Resolution authorizing the Municipal Counselor to waive service of process and to confess judgment without admission of liability in the amount of \$2,802 and all the costs of the action in the Oklahoma County District Court in the claim filed by Smith Kor Investments LLC. Ward 6.

Claimant's address:
1450 Exchange Avenue
Oklahoma City, OK 73108

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges on June 20, 2024, a wall in claimant's business was damaged when City employees mowing a nearby area struck a rock that was thrown into a sheet metal wall of claimant's business, resulting in the wall being punctured. Damages are alleged in the amount of \$2,802, the cost of parts and labor for wall sheet metal repair. 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).

The office is in receipt of information from the Streets and Drainage Maintenance Division of the Public Works Department regarding this incident. This information indicates that maintenance crews were performing work in the area near the claimant's business when the rock was launched through the wall of claimant's business.

Based on the above information and applicable Oklahoma law, it is the opinion of this office that this claim should be approved, and that the Municipal Counselor should be authorized to Confess Judgment without admission of liability in the amount of \$2,802 and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.

JRS