

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

Council Agenda
Item No. IX. BM
3/12/2024

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 \$6,294.83 and all the costs of the action in the Oklahoma County District Court in the claim filed by Dustin Merryfield. Ward 6.

Claimant's address:
5600 Hidden Fawn Circle
Mustang, OK 73064

This office acknowledges receipt of a claim from the above-referenced claimant, in which the claimant alleges that on October 3, 2023, a City solid waste receptacle fell off a City vehicle and struck claimant's vehicle while traveling on I-44 at or near NW 10th Street in Oklahoma City. Claimant alleges damages in the amount of \$7,454.69, the cost of repairing the front bumper, right headlight, hood, and right fender, and diminishment of value. This amount is supported by documentation. This claim was previously approved by City Council on January 22, 2024, in the amount of \$4,589.69; however, after City Council approved his claim, the claimant supplemented his claim and demanded \$2,865 for the alleged diminished value of the vehicle. After negotiation, the Municipal Counselor's Office has agreed to recommend, and the claimant has agreed to accept, \$6,294.83 as full and final settlement of any and all claims arising from the alleged incident.

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 Supreme Court of Oklahoma has further stated that the driver of a motor vehicle must always use that degree of care which is reasonable and prudent under the circumstances. *Agee v. Gant*, 412 P.2d 155 (Okla. 1966).

This office is in receipt of information from the Solid Waste Management Division of the Utilities Department regarding this incident. This information indicates that on October 3, 2023, a blue 90-gallon cart was blown off a City vehicle. Solid Waste Management received a call reporting a 90-gallon blue cart on I-44 between NW 10th Street and NW 23rd Street that struck a vehicle. This information does not indicate any improper action by claimant.

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 \$6,294.83 and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.

SRS