

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

Council Agenda
Item No. XI. AB
8/15/2023

TO:	Mayor and Council	Teresa Alexander 6621 South Harvey Avenue Oklahoma City, OK 73139 Ward 4 \$495
FROM:	Kenneth Jordan Municipal Counselor	
AGENDA CLAIM # a		Recommended for DENIAL

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges that on April 26, 2023 and May 9, 2023, she experienced plumbing issues at her home located at 6621 South Harvey Avenue. She further alleges that when a plumber came out, he pulled plastic bags, paper towels, and a rubber glove from her private line. Damages are alleged in the amount of \$495, the cost of a plumber snaking the line twice. 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 this 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 this act for any act or omission of an employee acting outside the scope of his employment.

51 O.S. 2018 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 Line Maintenance Division of the Utilities Department regarding this incident. This information indicates that no issues were found in The City's sewer line before or after a City crew flushed the line on May 9, 2023. Additionally, in July 2023, The City found that the customer's houseline had settled into the City's sewer main which damaged the sewer main and caused flow issues on the main line.

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.

SRS

Christina Griffin
1719 NW 7th Street
Oklahoma City, OK 73106
Ward 6
\$6,893.35
Recommended for DENIAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges her vehicle was damaged on May 19, 2023 when it struck a damaged section of road under railroad tracks while traveling on NW 3rd Avenue in Oklahoma City. Damages are alleged in the amount of \$6,893.35, the cost of performing an alignment, replacing part of the frame, and replacing parts of the front suspension. 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 this 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 this act for any act or omission of an employee acting outside the scope of his employment.

51 O.S. 2018 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. 2011 § 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 street defect is located on a section of road maintained by the railroad company that operates the line; however, the City is without sufficient information as to which railroad company operates the line. Therefore, the City of Oklahoma City is not liable for this incident. Claimant has been provided with this information.

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.

SRS