

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

Council Agenda
Item No. IX. BN
5/21/2024

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 \$8,000 and all the costs of the action in the Oklahoma County District Court in the claim filed by Jacob Foote. Ward 7.

Claimant's address:
2329 Pinon Place
Edmond, OK 73013

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges that on February 14, 2024, at approximately 12:30 pm, claimant's vehicle was struck by an Oklahoma City Solid Waste vehicle near the intersection of East Memorial Road and North Eastern Avenue. Claimant alleges damages in the amount of \$20,347.74, the cost to transport and repair the vehicle. After negotiations, Claimant has agreed to accept, and this office has agreed to recommend \$8,000, as full and final settlement of all aspects of this claim. This amount is supported with documentation and reflects the replacement value of the vehicle.

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. §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 the Official Oklahoma Traffic Collision Report regarding this incident and information from the Solid Waste Division of the Utilities Department. This information shows that, on February 14, 2024, claimant was travelling northbound on North Eastern Avenue and the City driver was driving a trash collection truck in front of the claimant. The information further shows that the City driver saw he missed a trash can on Eastern Avenue, so he immediately began to back up and backed into the vehicle driven and occupied by claimant and his daughter. The Traffic Collision report specifies that the City driver's improper backing contributed to the collision. The report attributes no improper action to the 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 sum of \$8,000, and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.

MKG