

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

Council Agenda  
Item No. XI. U  
11/5/2024

TO:	Mayor and Council	Malik Trotter 208 Wimbledon Rd Midwest City, OK 73130 Ward 6-Incident Location \$326.28
FROM:	Kenneth Jordan Municipal Counselor	
AGENDA CLAIM # a		Recommended for APPROVAL

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages to claimant's vehicle windshield on August 5, 2024, when rocks flew off of a Public Works dump truck at or near 1-40 eastbound and South Portland Avenue in Oklahoma City. Damages are alleged in the amount of \$326.28, the cost of windshield replacement. 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 Public Works regarding this incident. This information indicates that OKC Public Works vehicles were at the location indicated on August 5, 2024. Rocks flew off the bed of the truck and damaged the claimant's windshield.

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

JW