

DENIED

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

Council Agenda
Item No. XI. AA
3/11/2025

TO: Mayor and Council
FROM: Kenneth Jordan
Municipal Counselor

Steve Carpenter
906 NE 32nd Street
Oklahoma City, OK 73105
Ward 7
\$2,363.28
Recommended for DENIAL

AGENDA CLAIM # a

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges damages to his 2004 Mercury Grand Marquis on May 3, 2024, when concrete being poured for a driveway splashed onto the claimant's vehicle at or near 906 NE 32nd Street in Oklahoma City. Damages are alleged in the amount of \$2,363.28, the cost of parts, supplies, and labor to remove the concrete, sand the body panels, and repaint the vehicle. 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).

Section 155 of the Governmental Tort Claims Act provides, in pertinent part, that the state or a political subdivision shall not be liable if the loss or claim results from:

18. An act or omission of an independent contractor or consultant or his or her employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred.

51 O.S. 2023 Supp. §155(18).

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 Engineering Division of the Public Works Department regarding this incident. This information indicates that the concrete work was not performed by a City employee but was instead performed by an independent contractor.

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.

JRS/cjh

DENIED

Troyce Whatley
11212 Fairways Avenue
Yukon, OK 73099
Ward 1
\$1,522.06
Recommended for DENIAL

AGENDA CLAIM # b

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges his vehicle was damaged on November 15, 2024, when it struck a jagged edge on the shoulder of the roadway while traveling at or near Old Highway 4 and NW 10th Street in Oklahoma City. Damages are alleged in the amount of \$1,522.06, the cost of parts and labor to replace four rims, one tire, and the right front fender well liner and push pins. 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).

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. 2023 Supp. § 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 pothole is located on a stretch of road maintained by the Oklahoma Department of Transportation. Therefore, the City of Oklahoma City is not liable for this incident. Claimant has been provided with the contact information for the Oklahoma Department of Transportation.

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.

JRS