

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

Council Agenda  
Item No. IX. CI  
8/27/2024

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 \$15,500 and all the costs of the action in the Oklahoma County District Court in the claim filed by Jorge Gutierrez-Ibarra. Ward 4.

Claimant's address:  
504 SE 69th Street  
Oklahoma City, OK 73149

This office acknowledges receipt of a claim from the above-referenced claimant, in which the claimant alleges that on August 9, 2023, claimant's vehicle was damaged when an Oklahoma City Police vehicle driven by an OCPD officer made a wide left turn on a red light located at the intersection of westbound I-240 Service Road and Shields Boulevard colliding into the front quarter panel and front passenger side of claimant's vehicle. The claimant filed his claim alleging personal injuries only. As a result of this accident, the claimant alleges to have suffered aggravated soft-tissue injuries to his neck, upper and lower back, and right wrist. Claimant's counsel has provided supporting documentation of personal injuries to the claimant in the amount of \$9,287.46 sustained as a result of this accident. The claimant is represented by attorney, Ryan Polchinski of the Daniel M. Davis law firm.

The claimant's counsel and Linda Samuel-Jaha, counsel for the City, have engaged in settlement negotiations. Counsel for the City has agreed to recommend \$15,500 as full and final settlement of all aspects of City's involvement in this incident, including any future medical expenses or property damage claims. The claimant, through her counsel, has agreed to accept this amount.

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 Oklahoma City Police Department and the Official Oklahoma Traffic Collision Report regarding this incident. This information indicates that the City vehicle was traveling northbound approaching a red light at the intersection of I-240 Service Road and south Shields Boulevard. Claimant had just passed through the intersection of south Shields Boulevard and I-240 Service Road. The City vehicle after stopping, made a wide left turn continuing through a red light. Due to the Officer's wide left turn he collided into claimant's vehicle. This information indicates that the Officer made an improper turn from direct course. The Officer was not responding to an emergency. This information further indicates no 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 \$15,500 and all costs of the action in the District Court. If Council agrees, a Resolution to that effect has been prepared.

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