

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

Council Agenda
Item No. IX. BV
9/27/2022

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 \$37,500 and all the costs of the action in the Oklahoma County District Court in the claim filed by Liv Proper Estates LLC and Li Tegenu. Ward 7.

Claimant's address:
Attorney address
705 NW 4th Street
Oklahoma City, OK 73102

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges on October 1, 2021, October 18, 2021, October 24, 2021, April 4, 2022, June 8, 2022 and June 9, 2022 claimant experienced wastewater floods on the City's sewer mainline segment servicing its duplex property at 717 and 719 NE 14th Street. As a result of the alleged sewer backups, the claimant has alleged negligence, nuisance, trespass, and inverse condemnation. Claimant has submitted documentation of property damages in the amount of \$21,839. Claimant further alleges damages exceeding the limits of the Governmental Tort Claims Act. After negotiations, this office has agreed to recommend, and claimant has agreed to accept, \$37,500 as a full and final settlement of all aspects of this claim, including, but not limited to, property damage, negligence, nuisance, trespass, inverse condemnation and any and all declaratory and injunctive relief. Claimant has also agreed to install a backflow preventer at the property.

Section 153(A) of the Governmental Tort Claims Act provides:

- A. The state or 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.

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).

This office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this claim. This information shows that prior to May 20, 2022, all the subject alleged backups were likely caused by the claimant's private line; however, on May 20, 2022, City crews discovered a structural deficiency on the mainline segment serving claimant's property. Subsequently, the June 10, 2022 backup was found to be caused by a defect on the City mainline segment due to a sludge stoppage. Further, the City has scheduled a dig up to replace a previous defective repair in this line segment. The investigation of this claim showed in the event of litigation, there is a possibility the City could be liable for the alleged damages due City crews ultimately finding a defect on the City's mainline segment.

Based on the above information and applicable Oklahoma law, it is the opinion of this office this claim should be approved, and the Municipal Counselor should be authorized to Confess Judgment without admission of liability in the sum of \$37,500, and all costs of the action in the District Court, and the requirement that the claimant install a backflow preventer. If Council agrees, a Resolution to that effect has been prepared.