

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

Council Agenda
Item No. IX. CA
11/22/2022

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 \$13,000 and all the costs of the action in the Oklahoma County District Court in the claim filed by Fred Mercer. Ward 8.

Claimant's address:
11305 Quail Creek Road
Oklahoma City, OK 73120

This office acknowledges receipt of a claim from the above-referenced claimant in which claimant alleges on June 27, 2021, claimant experienced a wastewater flood on the City's sewer mainline segment servicing his property at 11305 Quail Creek Road. The claimant has demanded payment of \$20,000. Based on claimant's documentation of damages, the depreciated value of the allegedly damaged property, and amounts paid by claimant's insurance, claimant's actual damages are approximately \$13,000. Based on this amount, and after negotiations, this office has agreed to recommend, and claimant has agreed to accept, \$13,000 and the requirement that he install a backflow preventer at the subject property as 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.

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. 2011 §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).

Applicable law holds that a municipality is not liable for damages resulting from a sewer backup unless the municipality had prior notice, actual or constructive, of a nuisance or defect in the sewer line which it failed to abate within a reasonable time and such nuisance or defect resulted in damage to the claimant. *Oklahoma City v. Romano*, 433 P.2d 924, 927 (Okla. 1967).

This office is in receipt of information from the Line Maintenance Division of the Utilities Department regarding this incident. This information confirms that the claimant experienced a wastewater flood at this address on June 27, 2021. This information further shows this flood was caused by a defect in the City's mainline segment servicing claimant's address, specifically a blockage caused by grease buildup.

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 \$13,000 and all costs of the action in the District Court, and the requirement the claimant install a backflow preventer at his property. If Council agrees, a Resolution to that effect has been prepared.

SRS/MKG