

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

Council Agenda
Item No. XI. M.1&2
11/22/2022

TO: Mayor and City Council

FROM: Kenneth Jordan, Municipal Counselor

1. Joint Resolution with the Oklahoma City Municipal Facilities Authority approving settlement of the subrogation claim related to payment of medical bills paid through Workers' Compensation against the proceeds recovered on behalf of Stephen Cathey, arising out of injuries sustained in an automobile accident on November 20, 2020;

AND/OR

2. Enter into executive session on advice of the Municipal Counselor to receive confidential communications from its attorney concerning the above pending litigation, as authorized by 25 O.S. (2021) §307(B)(4), because disclosure would seriously impair the ability of the public body to conduct the pending litigation in the public interest.

On or around November 20, 2020, an Embark bus driver who is employed by The City of Oklahoma City, Stephen Cathey, was involved in an automobile accident that was caused by a third party and resulted in injuries to Mr. Cathey. As a result of the injuries sustained, Mr. Cathey and the OCMFA have incurred billed medical charges. The City/OCMFA has paid approximately \$76,777.25 in Workers' Compensation medical and related expenses, according to documentation provided by Risk Management Division of the Finance Department.

Mr. Cathey retained Daniel M. Davis, Esq. as legal counsel and through such representation claims have been filed against the third-party insurance carrier. Mr. Cathey's legal counsel has requested the City/OCMFA agree to a settlement of the subrogation claim for the amount that the City is entitled by statute, 85A O.S. § 43 - \$39,725.89. The other settlement monies available will be used for attorney's fees and compensation for Mr. Cathey's additional damages.

This office has reviewed the file and based upon the facts of this case, and the related case law, it is the recommendation of this office that the City/OCMFA settle this subrogation claim for \$39,725.89.

By prior Joint Resolution of The City of Oklahoma City and the Oklahoma City Municipal Facilities Authority, the Municipal Counselor, or his designee, has been granted authority to settle and subrogate paid Workers' Compensation Subrogation claims that are in the amount of \$40,000 or less. The City's subrogation interest in this claim exceeds this amount. Therefore, the City Council and OCMFA must vote whether to approve the settlement of subrogation.

If Council or OCMFA Trustees desire to further discuss the merits of this case, it is the

recommendation and advice of the Municipal Counselor that the Council/Authority retire to executive session as permitted by 25 O.S. (2022 Supp.) § 307(B)(4), to discuss the issues and resolution of this case. However, if Council/Trustees agree with the recommendation of this office, a Resolution approving the settlement of the subrogation claim and authorizing the Municipal Counselor to take any appropriate action to settle the subrogation interest has been prepared for Council's consideration and approval.

ZAW