

Resolution

Version 2.5 released on 6/29/23
Use for all types of Resolutions



CITY COUNCIL USE ONLY

Date Received: _____
Committee Date: _____
1st Agenda Date: _____

Tracking #: _____
Committee: _____
Hearing Date: _____
2nd Agenda Date: _____

CITY CLERK USE ONLY

☐ Scanned Date: 12.20.2023
☐ Posted Item #: 2312.02975

All department items requiring Council approval must be submitted through the Mayor's Office.

Primary Details

Board Approval

Department: Legal
Contact Name: Komron Takmil (tmd)

Resolution Type: Authorizing Sinking Fund Credit or Payment

Amount: \$165,000.00
Case Number: CJ-2021-1386

Description (Subject): Payment of Lawsuit

Section: _____ Township: _____

Lot: _____ Block: _____

Other Board Name

Email: ktakmil@cityoftulsa.org

Owner-Grantor: Edson M. and Grace N. Oliva

TMAPC Number: _____

Bid/Project Number: _____

Range: _____

Address: _____

City Council Approval

☒ Yes ☐ No

Phone: 9185967717

Council District: _____

Budget

Funding Source(s): _____

TOTAL:

Approvals

Department: _____
Legal: _____
Board: _____
Mayor: _____
Other: _____

Date: 12.15.23
Date: 12/15/23
Date: _____
Date: DEC 20 2023
Date: _____

Policy Statement

Background Information

On November 15, 2023 Mayor Bynum approved settlement in this matter in the amount of \$165,000.00. The Journal Entry was signed by the Judge and filed with the court on December 14, 2023. (See attached JE)

Summation of the Requested Action

Request Council approve Resolution and Mayor approve payment of this lawsuit and direct Finance to issue a check in the amount of \$165,000.00 made payable to Edson M. & Grace N. Oliva, Plaintiffs; Carr & Carr, Attorneys; TeamCare, TDI, OKPT, OKMSS, Drs. Traub & Sparks, Cate Chiropractic, and TOC/Tri-Mod, lien holders and forward to City Legal for further processing.

Emergency Clause?

☐ Yes
☐ No

Reason for Emergency Clause

Processing Information for City Clerk's Office

Post Execution Processing

- ☐ Mail vendor copy (addtl signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Addtl governmental entity approval(s) required

Additional Routing and Processing Details

Please forward executed RFA and Resolution to City Legal for further processing.

(Published in the Tulsa World,
_____, 2023.)

RESOLUTION

A RESOLUTION AUTHORIZING PAYMENT IN FULL OF A JUDGMENT SETTLEMENT, FROM SURPLUS MONIES IN THE SINKING FUND; AND DECLARING AN EMERGENCY.

WHEREAS, on the ____ day of _____, 2023, in Case No. CJ-2021-1386, filed in the District Court for Tulsa County, State of Oklahoma, judgment was entered based on a settlement agreed to by and between Edson M. Oliva and Grace N. Oliva, Plaintiffs, and the City of Tulsa, Defendant, in the sum of One Hundred Sixty-Five Thousand Dollars and 00/100 (\$165,000.00), representing principal judgment, interest, costs and attorney fees, was entered against the City of Tulsa, which settlement has been approved by the Court; and

WHEREAS, it appears from a survey of the Sinking Fund that there is a surplus of cash and investments in said fund, over and above accrued liabilities and statutory obligations, which would allow the City of Tulsa to pay said judgment in full, including court costs and interest thereon; and

WHEREAS, it is desirable and in the best interest of the City of Tulsa to make such present payment out of the City's Sinking Fund, and thereafter reimburse the Sinking Fund from subsequent tax levies, as provided by 62 O.S. '435.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TULSA, OKLAHOMA:

Section 1. That the City Clerk and the City Treasurer of the City of Tulsa be, and the same hereby are, authorized to consummate and complete the payment of said judgment by drawing the following warrant on the City of Tulsa's Sinking Fund:

To the order of EDSON M and GRACE N. OLIVA, Plaintiffs; CARR & CARR, Counsel for Plaintiffs; TEAMCARE, TDI, OKPT, OKMSS, Dr. TRAUB, Dr. SPARKS, CATE CHIROPRACTIC, TOC/TRI-MED, lien holders the sum of One Hundred Sixty-Five Thousand Dollars and 00/100 (\$165,000.00); the same representing the full amount of the judgment, interest, costs and attorney fees, now due and owing to the Plaintiffs in the lawsuit identified above.

Section 2. That the City Clerk and the City Treasurer of the City of Tulsa be, and the same hereby are, authorized and directed to properly advise the Tulsa County Excise Board by appropriate reports, of the prepayment of said judgment in order that said Board may include

said prepaid judgment as a necessary and lawful expense of the Sinking Fund of the City of Tulsa, Oklahoma, for which appropriate tax levies may be made to replenish said Sinking Fund, as provided by the provisions of Title 62 of the Statutes of the State of Oklahoma.

Section 3. That an emergency exists for the preservation of the public peace, health and safety, by reason whereof this Resolution shall take effect immediately from and after its passage, approval, and publication.

ADOPTED by the Council: _____ (Date)

ADOPTED as an emergency measure: _____ (Date)

Chairman of the Council

OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____
Date Time

G.T. Bynum, Mayor

By _____
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: _____,
Date

Time

Mayor

(Seal)
ATTEST:

City Clerk

APPROVED:

City Attorney

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

EDSON M. OLIVA and GRACE N. OLIVA)

Plaintiffs,

vs.

CITY OF TULSA,

Defendant.

)
)
)
)
)
)
)

Case No. CJ-2021-1386
Judge Greenough

DISTRICT COURT
FILED
DEC 14 2023
DON NEWBERRY, CLERK
STATE OF OKLA. TULSA COUNTY

JOURNAL ENTRY OF JUDGMENT UPON AGREED SETTLEMENT

NOW ON this 13TH day of DEC, 2023, this matter comes before the undersigned Judge. Plaintiff, Edson M. Oliva and Grace N. Oliva, appear by and through their attorney of record, Blake D. Beeler with Carr & Carr, and Defendant City of Tulsa, appears by and through its attorney of record, Komron Takmil, Assistant City Attorney.

The Court, having reviewed the allegations set forth in Plaintiffs' Petition, having reviewed the Defendant's *Offer of Proof* filed herein on the 5 day of Dec, 2023, evidencing that the statutory requirements pursuant to 62 O.S. § 362 have been met and that the judgment proceeds being paid by the Defendant to the Plaintiffs herein shall be paid from the City of Tulsa's Sinking Fund which has sufficient funds available to pay said judgment as evidenced by the Affidavit of Chad D. Becker attached as Exhibit "A" to the Defendant's *Offer of Proof*, and the Court being advised that the City's Mayor has authorized a compromised settlement in the sum of One Hundred Sixty- Five Thousand Dollars and 00/100 (\$165,000.00) and the Court being satisfied that Plaintiffs fully understands the nature of this action with regard to its finality which precludes additional or further compensation for damages arising from the occurrence of the event identified in Plaintiffs' Petition and, upon being further advised by Plaintiffs that it is their desire to settle the entirety of all claims and causes of action relating to

the events identified in their Petition, including costs and fees, upon payment in the sum of One Hundred Sixty- Five Thousand Dollars and 00/100 (\$165,000.00), the Court finds:

1. That the Court has jurisdiction over the subject matter of this lawsuit and the parties hereto;

2. That Plaintiffs for themselves and in their representative capacity are fully aware of their rights in this matter and it is Plaintiffs' desire to compromise their right to trial by jury;

3. That Plaintiffs desire to accept as full, final, and complete settlement the sum of One Hundred Sixty-Five Thousand and 00/100 (\$165,000.00), for any and all damages, losses, fees, and expenses sustained as a result of the events identified in Plaintiffs' Petition;

4. That this settlement is not an admission that the City of Tulsa, or its employees were negligent, but is only a recognition of the uncertainty of trial;

5. The Plaintiffs have agreed to dismiss with prejudice or forgo any and all claims against any employees of the City of Tulsa individually;

6. That by agreement of the parties, Defendant's payment to Plaintiffs will stand as full compensation to Plaintiffs in their personal and representative capacity and preclude any further or separate action by Plaintiffs or those they represent against City of Tulsa, a municipal corporation, or any of its employees, arising from or relating to the events described in Plaintiffs' Petition;

7. That the City has agreed to settle Plaintiffs' lawsuit in the sum of One Hundred Sixty-Five Thousand Dollars and 00/100 (\$165,000.00);

8. That the City shall pay the Plaintiffs from the City of Tulsa's Sinking Fund which has sufficient funds available to pay said judgment; and

9. That all parties request this Court to approve and finalize their mutual settlement;

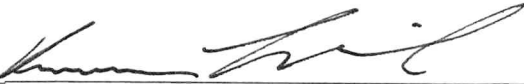
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that Plaintiffs for themselves and in their representative capacity have and recovers from the Defendant City of Tulsa, Oklahoma, damages in the total sum of One Hundred Sixty-Five Thousand Dollars and 00/100 (\$165,000.00), as full, final, and complete compensation for any and all damages, losses, fees, and expenses incurred or sustained incident to the events described in Plaintiffs' Petition and that said damages shall be paid from the City of Tulsa's Sinking Fund which has sufficient funds available to pay said judgment; and

IT IS FURTHER ORDERED BY THE COURT that Plaintiffs' claims against Defendant City of Tulsa are dismissed with prejudice and that payment to Plaintiffs by Defendant City of Tulsa will preclude any further or separate action by Plaintiffs against Defendant City of Tulsa or any employee of Defendant City of Tulsa arising from or pertaining to the events described in Plaintiffs' Petition.

KELLY M. GREENOUGH *12/13/2023*
JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM AND CONTENT:

By: *Blake D. Beeler*
Blake D. Beeler
Carr & Carr
1350 S.W. 89th Street
Oklahoma City, OK 73159

By: 

Komron Takmil, OBA #33282
Assistant City Attorney
City of Tulsa
175 East Second Street, Suite 685
Tulsa, Oklahoma 74103
(918) 596-7717
(918) 596-9700 Facsimile

Legal Records

Version 2.8 released on 6/29/23

For torts, lawsuits, settlements, and other legal actions. Use other more specified RFAs for other record types including Contracts, MOUs, Election Actions, Worker's Compensation Orders and Miscellaneous

Legal



CITY COUNCIL USE ONLY

Date Received: _____
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CITY CLERK USE ONLY

☐ Scanned Date: _____
☐ Posted Item #: _____

All department items requiring Council approval must be submitted through the Mayor's Office.

Primary Details

Legal Action Type

Lawsuit - Settlement

Court Order Date

Council Approval

☐ Yes ☒ No

Department

Legal

Contact Name

Komron Takmil (tmd)

Email

ktakmil@cityoftulsa.org

Phone

9185967717

Incident Date

11/10/19

Legal Case No.

CJ-2021-1386

Amount

\$165,000.00

Name

Edson and Grace Oliva

Originating Department

Water and Sewer

Date Filed City Clerk

9/30/20

Budget/Payments

Funding Source(s) / Checks to be Issued

TOTAL:

Approvals

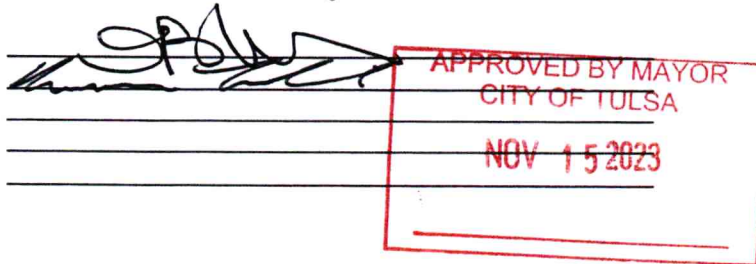
Department:

Legal:

Board:

Mayor:

Other:



Date: 11-13-23
Date: 11/13/2023
Date: _____
Date: _____
Date: _____

Summary

Background Information

On November 10, 2019 Edson Oliva was southbound on South Harvard near 64th Street when a city vehicle pulled out from a private drive onto South Harvard and collided with Mr. Edson's vehicle. His sister, Oliva, was a passenger in the vehicle and 26 weeks pregnant at the time. As a result of his injuries in this accident, Mr. Edson underwent surgery on his left shoulder and will need a second shoulder surgery in the future. After giving birth in February 2020, Ms. Oliva received chiropractic treatment and steroid injections for the injuries suffered in the accident. The City has negotiated a settlement of both claims in the amount of \$165,000.00; \$125,000.00 for Edson Oliva and \$40,000.00 for Gace Oliva. (See attached memo)

Summation of the Requested Action

Request Mayor approve settlement in this matter in the amount of \$165,000.00 and return to the Legal Department for further processing.

Other Pertinent Information

Processing Information for City Clerk's Office

Post Execution Processing

- ☐ Mail vendor copy (add'l signature copies attached)
- ☐ Must be filed with other governmental entity
- ☐ Add'l governmental entity approval(s) required

Additional Routing and Processing Details

Please return executed RFA to City Legal for further processing

INTER-OFFICE CORRESPONDENCE

To: Mayor G.T. Bynum
From: Komron Takmil, Assistant City Attorney
Date: November 13, 2023
Subject: Settlement Approval, Case No. CJ-2021-1386

On November 10, 2019, Plaintiff Edson Oliva was southbound on South Harvard Avenue near E. 64 St. S. by Southern Hills Country Club when a City vehicle pulled out from a private drive onto South Harvard Avenue and collided with Plaintiff's vehicle. Mr. Oliva's sister, Grace Oliva, was a passenger in the vehicle and 26 weeks pregnant at the time of the collision. Ms. Oliva was transported to Saint Francis Hospital with complaints of abdominal pain.

City employee Dalton Martin was the driver of the City F-250 truck and was pulling out of the private drive for Southern Hills Country Club on the West side of Harvard Avenue to turn left but his view to the North was blocked by trees. His passenger, City employee Jonathan Olsen, exited the vehicle and walked up to the edge of the roadway to get a better view of the southbound traffic. Mr. Olsen returned to the truck and told Mr. Martin it was clear to proceed but as Mr. Martin pulled halfway in the southbound lane he collided with Plaintiff's vehicle. After investigating the incident, the City bears responsibility for the occurrence of the motor vehicle accident.

Plaintiff's Medical Bills and Medical Prognosis

As a result of the collision on November 10, 2019, Plaintiff Edson Oliva claims he sustained hyperextension of his neck, mid to low back, blunt trauma to both the left and right knee, and a left shoulder sprain. Plaintiff first presented to a physician assistant at St. Francis Hospital on November 10, 2019. He was examined in emergency by Kjetil R. Lauritsen PA with complaints of pain in both knees. PA Lauritsen noted in her records that he had no neck, back, or shoulder pain. Additionally, X-rays of both knees found no abnormalities. Plaintiff received supportive measures for the pain and discharged. Plaintiff saw Dr. David Traub at Heritage Medical Clinic on November 20, 2019, for pain in his neck, mid to low back, both knees, and left shoulder. Dr. Traub referred Plaintiff to Tulsa Diagnostic Imaging for an MRI and to Oklahoma Physical Therapy for evaluation. Plaintiff completed four visits of physical therapy before being referred to Dr. Gregory Holt at The Orthopedic Center on December 10, 2019, for further evaluation of his left shoulder. Dr. Holt determined that Plaintiff likely had an anterior labral tear in the shoulder and ordered a magnetic resonance arthrogram for confirmation.

Dr. Holt reviewed the arthrogram and confirmed the labral tear in the left shoulder along with loose body and recommended an arthroscopy of the left shoulder. Dr. Holt performed the surgery at the Center for Ortho Reconstruction & Excellence. Plaintiff continued his physical therapy and had multiple follow-up visits with Dr. Holt regarding the shoulder. In his last follow-up visit with Dr. Holt on October 10, 2021, Plaintiff was still experiencing instability in the shoulder which likely require another surgery. To this date, Plaintiff has not had the second left shoulder surgery.

As a result of the diagnosis for future surgery, the City referred Mr. Oliva for an IME at Advanced Orthopedics to evaluate the severity of his injuries and need for future surgery.

Dr. Clio Robertson at Advanced Orthopedics examined Mr. Oliva and evaluated his medical records. Dr. Robertson concluded that Mr. Oliva's back pain, knee pain, and shoulder injury are a direct result of the motor vehicle accident of November 10, 2019, and that he will require further surgery in order to regain a stable shoulder. The adjusted medical bills related to this accident to date are \$50,623.38, with another \$50,000 approximately needed for future shoulder surgery and physical therapy based on billing for the first shoulder surgery.

Plaintiff Grace Oliva claims she sustained neck, abdominal, and tail bone pain. Plaintiff first presented to a physician at St. Francis Hospital on November 10, 2019. She was examined in emergency by Dr. Robert Sterling, Dr. David Duvall, and Dr. Carol Milner. She was kept for observation due to persistent contractions. Plaintiff had no leakage of fluid or bleeding and was discharged on November 12, 2019. Plaintiff returned to do emergency at St. Francis Hospital on November 12th after experiencing abdominal and back pain at home. She was examined again by Dr. Sterling, kept for observation, and discharged on November 13th. Plaintiff saw Dr. David Traub at Heritage Medical Clinic on November 20, 2019, for low back pain. Dr. Traub assessed Plaintiff for hyperextension injury of thoracic spine, hyperextension injury of lumbar spine, and Coccydynia and scheduled a follow-up in two weeks.

Plaintiff was admitted to Labor and Delivery by Dr. Sterling at St. Francis Hospital on February 25, 2020, for active labor. Dr. Sterling's notes state that both mother and infant recovered well and in stable condition. Plaintiff had a follow-up visit with Dr. Traub on October 7, 2020, for her lower back and coccyx pain 11 months after the accident. Plaintiff explained that the delay was due to her isolation after the pregnancy because of the pandemic. Dr. Traub recommended an MRI and possible cortisol injection in the lower back. On October 11, 2020, Plaintiff was referred to Cate Chiropractic by her mother and was scheduled for treatment 3 days a week for 5 weeks for back and coccyx pain. Plaintiff was referred for an MRI on November 13, 2020, at Tulsa Diagnostic Imaging by Chiropractor Thomas Cate. The MRI showed a disc protrusion at L4/L5. Between November 23, 2020, and December 4, 2020, Plaintiff completed 4 chiropractic treatments at Cate Chiropractic. On December 9, 2020, Dr. Traub had a telephone visit with Plaintiff to discuss the MRI from November 13th. Dr. Traub's assessment was that Plaintiff has a disc protrusion at L5-S1 and believed the coccyx to be fractured. From January 20, 2021, to March 17, 2021, Plaintiff completed another nine chiropractic treatments at Cate Chiropractic. On April 1, 2021, Plaintiff was referred to Dr. Jason Sparks, DO for a surgical consult. Dr. Sparks' assessment of the MRI was a herniation at L4/L5 and a smaller herniation at L5-S1 and recommended an MRI of the cervical spine. Plaintiff had a follow-up visit with Dr. Sparks for MRI assessment of the cervical spine that showed a 2mm disc bulge at C5/6 and C6/7. Dr. Sparks also administered an epidural steroid injection and recommended continued chiropractic treatment. Plaintiff had a follow-up visit with Dr. Sparks on April 27, 2021, for another steroid injection. Dr. Sparks assessment was that the chiropractic treatment and injections were helpful and that while there were sub 2mm bulges at C5/6 and C6/7 there was no significant stenosis or nerve compression. Plaintiff was released from chiropractic treatment on July 23, 2021, after completing 25 chiropractic visits. As a result of the extended time of treatment, the birth after the accident, and the 11-month gap between follow-up visits with Dr. Traub, the City referred Ms. Oliva for an IME at Advanced Orthopedics

to evaluate the severity of her injuries and to determine if the spinal and coccyx injuries were a direct result of the accident or related to the pregnancy or event after the collision.

Dr. Randall Hendricks, a spinal fellowship trained and four times Board Certified Orthopedic Spinal Surgeon with 37 years of practice experience at Advanced Orthopedics, examined Ms. Oliva and evaluated her medical records. Dr. Hendricks concluded that MRI images from November 13, 2020, do, in fact, identify disc protrusion and compression of the L5 nerve root and small T2 signal change within the peripheral border of the annulus. Dr. Randall's opinion was that typically this type of injury occurs the day of the injury and last from four to six months. Being that the MRI study was completed one year after the accident Dr. Randall found it very unlikely the motor vehicle accident would be the cause of the T2 signal change and the disc protrusion at L5-S1 and it is his opinion, that more like than not, the findings are secondary to activities within that four-to-six-month window before the MRI.

Dr. Randall also noted that the sub-2-millimeter disc bulges noted are in his opinion, physiologic bulging and given that we live on a planet with gravity, these bulges were considered normal and that there absolutely no indication that these small physiologic disc bulges have anything to do with the motor vehicle accident given the study was completed seventeen months after the collision. Dr. Randall also noted that the MRI timeline for the lumbar spine and coccyx injury suggests an injury within four and one-half to six months before the study was completed. Therefore, the timeline suggests the injury took place sometime between May 1, 2020 and perhaps mid-June, up until the MRI study date, meaning the MRI images would not likely be related to the motor vehicle accident. Dr. Randall's calculations suggest the MRI findings occurred after the delivery of Ms. Oliva's child in February. The adjusted medical bills arguably related to this accident for Ms. Oliva to date are \$24,617.67.

Settlement

In their lawsuit, each Plaintiff is seeking \$175,000 in damages for reimbursement of their medical bills as well as pain and suffering.

Using the authority you previously provided for \$150,000.00 for Edson Oliva's claim, we have negotiated a settlement with the Plaintiff to resolve this matter for \$125,000.00. Using the authority you previously provided for \$40,000.00 for Grace Oliva's claim, we have negotiated a settlement with the Plaintiff to resolve this matter for \$40,000.00. The negotiated settlements will include execution of a Release and Settlement of all claims by the Plaintiffs as well as a Dismissal With Prejudice of the pending lawsuit against the City.

The City Legal Department recommends that you approve settlement for \$125,000.00 for Edson Oliva and \$40,000 for Grace Oliva.

Respectfully,

Komron Takmil
Assistant City Attorney