



# City of Norman, OK

Municipal Building Council  
Chambers  
201 West Gray Street  
Norman, OK 73069

## Text File

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### Title

RESOLUTION NO. R-1213-131: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY DON BLAKE UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF DON BLAKE V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC 2010-01945A; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT AND ALL ATTENDANT COSTS IN THE WORKERS' COMPENSATION COURT, OKLAHOMA CITY, OKLAHOMA; AND AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO SUBSEQUENTLY PURCHASE SUCH WORKERS' COMPENSATION COURT JUDGMENT FROM THE RISK MANAGEMENT INSURANCE FUND.

### body

**BACKGROUND:** Don Blake was a Detective with the Norman Police Department who filed Workers' Compensation Case WCC 2010-01945 A on February 23, 2012, alleging injury to his head and jaw on July 26, 2008. Mr. Blake, through his attorney, has approached this office concerning settlement of his Workers' Compensation claim against the City of Norman. Council discussed this case in Executive Session on May 7, 2013. A settlement offer for this claim in the amount of \$107,250 is being presented to City Council for consideration.

### DISCUSSION:

Nature of Claim. Donald W. Blake was a Detective with the Norman Police Department. He was hired as a Police Officer on June 10, 1983 and reclassified to Master Police Officer on December 10, 1987. He separated from employment on March 26, 2009, accepting a position with the Cleveland County Sheriff's Department.

He filed Workers' Compensation Claim No. WCC 2010-01945A on February 23, 2010, for injuries he sustained during a foot pursuit on July 26, 2008. He was struck by a fleeing vehicle and flipped into the air landing on his head. He sustained a concussion, laceration to the left backside of head, dislocation of the jaw and subsequent bruising.

Medical Treatment. Mr. Blake was transported by ambulance to Norman Regional Hospital Emergency Room. He was treated for the laceration and given medications for the laceration. Surgery was performed on the jaw on October 23, 2008. Thereafter, treatment of his jaw-related issues resulting from the accident were treated by Dr. H. Grant Ritchey, D.D.S. The initial assessment was to proceed with conservative treatment in order to avoid surgery. On July 15, 2011, Mr. Blake was referred to an oral surgeon who removed several teeth. Thereafter, conservative treatment was used during the healing process including recurring TMJ which returned after that issue had been resolved five to six years prior to this incident.

The removal of the teeth caused an abnormal jaw closure and acute pain due to trauma anomalies in relationship of the jaw to the cranial base in addition to issues with the left side of the face and neck. Dr. Ritchey has continued to treat Mr. Blake over a prolonged period of time, and he continues to be his primary treating dentist.

### Evaluations.

Jaw. On January 18, 2011, Mr. Blake was seen by Dr. John A. Munneke, M.D., D.D.S. At that time he reviewed an MRI which indicated some changes in the mandibular condyles bilaterally in addition to

other degenerative changes. Dr. Munnike opined that Mr. Blake needed reevaluation for an oral surgical standpoint. Dr. Munneke saw Mr. Blake on January 10, 2012 and opined that Dr. Ritchie should continue treating Mr. Blake for continued issues that might arise from the TMJ/mandible standpoint.

Head. On May 2, 2012, Dr. Munneke opined that Mr. Blake should continue treatment with Dr. David Johnsen for his psychological issues.

Ratings. On June 28, 2012, Mr. Blake was evaluated by Dr. Hugh G. McClure who opined that Mr. Blake sustained 39% PPD due to the head injury; 10% PPD for TMJ/Teeth; and 14% psychological to the body as a whole. These percentages, taken together, are 49% PPD or the amount of \$70,805. Further, Dr. McClure opined that continued medical maintenance would be required. This is the City's maximum exposure.

On October 22, 2012, Dr. Munneke provided a PPD rating of 15% due to the injury to Mr. Blake's head and 10% due to exacerbated psychological symptomatology with 5% pre-existing. These ratings total 20% body as a whole for the laceration and concussing injuries. Dr. Munneke further provided a PPD rating of 10% to Mr. Blake's oral cavity due to the persistent dysfunction of his right TMJ and opined continued medical maintenance of this issue will be on-going with a possibility of future surgery. There is no impairment rating to the cervical spine (neck). These ratings total 30% PPD to the body as a whole or the amount of \$43,350. Dr. Munneke also recommended continued medical maintenance.

Continued Medical Maintenance. Continued medical maintenance in the form of psychological sessions, pain management prescriptions and annual dental and periodic orthodontia replacement could be awarded by the Court if this issue were to go to trial. That maintenance could reasonably be anticipated until Mr. Blake is of social security age.

Issues for Trial. Should this case proceed to trial, there is no question that Mr. Blake's injuries arose out of and in the course of his employment with the City. Therefore, the issue before the Workers' Compensation Court would be the nature and extent of Mr. Blake's injuries or the Permanent Partial Disability (PPD) to Mr. Blake's head and jaw due to this injury. Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions regarding the extent of permanent partial impairment.

The Worker's Compensation Court Trial Judge is free to make a ruling within the range of the medical evidence presented at the time of trial. Therefore, the City's maximum exposure to compensate Mr. Blake for his injuries is 49% PPD or \$70,805. In addition, it is a reasonable certainty that Mr. Blake would also be awarded continued medical maintenance.

Settlement Offer. City Staff has negotiated with Mr. Blake, through his attorney, a proposed settlement on a Compromise Settlement basis for a lump sum payment of \$107,250 which represents 40% PPD to the body as a whole in the amount of \$57,800, disfigurement in the amount of \$3,600 and future medical in the amount of \$45,850. A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims in the Workers' Compensation case. Moreover, the Compromise Settlement offer is in keeping with what the City has been ordered to pay in past years in similar cases including continued medical maintenance by the Workers' Compensation Court.

Should this case proceed to trial, it is reasonably possible that the City could be ordered to pay more than the settlement offer. This Compromise Settlement is beneficial to Mr. Blake in that it provides certainty for an award. It is also beneficial to her because the entire settlement amount is being paid in a lump sum rather than at a weekly rate over a period of time.

If this Compromise Settlement offer is approved, payment to Mr. Blake and his attorney would be paid 40% PPD to the body as a whole or \$57,800, disfigurement of \$3,600 and \$45,850 for future medical costs for a total of \$107,250.

Furthermore, if the case was settled in this manner, the City would incur additional costs and fees of: Workers' Compensation Administration Fund Tax in the amount of \$1,156; Special Occupational Health & Safety Fund Tax in the amount of \$433.50; Workers Comp Court Filing Fee in the amount of \$140.00; and Cleveland County Court Filing Fee in the amount of \$125.70. These additional costs and fees total

\$1,855.20 which brings the total cost of this Compromise Settlement to the City to \$109,105.20.

**RECOMMENDATION:** For the reasons outlined above, it is believed this Compromise Settlement offer is fair, reasonable, and in the best interest of the City. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Blake and her attorney in a lump sum. The Compromise Settlement would be certified to the Cleveland County District Court to be placed on the property tax rolls for collection over the next three years in accordance with 85 O.S. § 313, 51 O.S. § 159, and 62 O.S. § 361, *et seq.* Certifying the order to the property tax rolls would, in effect, reimburse the City's Workers' Compensation Fund over the next three years.