



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: R-1819-56**

**File ID:** R-1819-56

**Type:** Resolution WCC

**Status:** Consent Item

**Version:** 2

**Reference:** Item 29

**In Control:** City Council

**Department:** Legal Department

**Cost:**

**File Created:** 12/04/2018

**File Name:** Workers' Comp Settlement-Tommie Johnson III v.  
CON (CM-2016-06766 R-L. Shldr)

**Final Action:**

**Title:** RESOLUTION R-1819-56: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY TOMMIE JOHNSON III UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *TOMMY JOHNSON III V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE NO. 2016-06766 R; DIRECTING THE LEGAL DEPARTMENT TO THEN FILE SUCH SETTLEMENT AND ALL ATTENDANT COSTS IN THE WORKERS' COMPENSATION COMMISSION, OKLAHOMA CITY, OKLAHOMA; AND AUTHORIZING AND DIRECTING THE FINANCE DIRECTOR TO SUBSEQUENTLY PURCHASE SUCH WORKERS' COMPENSATION COMMISSION JUDGMENT FROM THE RISK MANAGEMENT INSURANCE FUND.

**Notes:** ACTION NEEDED: Motion to adopt or reject Resolution R-1819-56; and, if adopted, direct payment of claims in the amount of to \$17,707.97 which will constitute judgment against the City of Norman.

ACTION TAKEN: \_\_\_\_\_

**Agenda Date:** 12/11/2018

**Agenda Number:** 29

**Attachments:** Johnson-R-1819-56 cc12-11-18, Johnson-R-1819-56  
PR-cc12-11-18

**Project Manager:** Jeanne Snider, Assistant City Attorney

**Entered by:** deedra.vice@normanok.gov

**Effective Date:**

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

### Text of Legislative File R-1819-56

Body

**BACKGROUND:** Tommie Johnson is a police officer with the Norman Police Department. On October 12, 2016, he filed a workers compensation claim alleging a single incident injury to the left shoulder about November 2015, while participating in the police academy's defensive tactical training. The City admitted this claim and it proceeded through the normal litigation process. Prior to a trial being scheduled to determine compensability, Mr. Johnson has agreed to settle this claim in the total amount of \$16,957.50. The settlement offer is being

presented to City Council for consideration. It is recommended that this settlement be accepted.

**DISCUSSION:** Initially, Mr. Johnson felt his shoulder was dislocated and was able to manually return it back into place. He subsequently reinjured it and was seen at Immediate Care of Oklahoma on December 4, 2015. A magnetic resonance imaging (MRI) exam was performed December 14, 2015 revealing a history of a dislocation and complete tear of anterior inferior labrum and Hill-Sachs lesion. He was seen by Dr. Steven Schultz and treated conservatively with anti-inflammatory medication; however, due to continued pain and limitations was referred to Dr. Mark Moses. He underwent left shoulder arthroscopic labral and Bankart repair on January 12, 2016, followed by rehabilitative course of post-operative physical therapy and was released, having achieved maximum medical improvement, with no restrictions, on June 8, 2016, and returned to work June 9, 2016.

**Issues for Trial:** The primary issues to be tried in this case before the Workers' Compensation Commission are the extent of Mr. Johnson's injuries and whether the injuries to his left shoulder were permanent in nature. Permanent partial disability is a factual determination made by the Workers' Compensation Commission Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

On November 28, 2016, Mr. Johnson was initially rated by J. Arden Blough, M.D. who opined (as a scheduled member) 59% upper extremity permanent partial impairment to the left shoulder as well as entitlements to continuing medical maintenance benefits, in the nature of prescription medication, injections, or any treatments his treating physician deems necessary with respect to this injury. On October 18, 2018, Lonnie Litchfield, M.D. provided a supplemental report to Dr. Arden Blough's report, who has since retired, and opined (as a scheduled member) 41% upper extremity permanent partial impairment to the left shoulder or (conversion combining multiple impairments within a single region) 18.84% (\$21,348.00) whole person impairment.

On February 22, 2017, the medical expert for the City, Dr. Kent Hensley opined 6% (\$6,783.00) impairment to the whole man regarding the left shoulder and entitlements to continuing medical maintenance would not be required. On November 15, 2018, Dr. Hensley provided a supplemental report to Dr. Litchfield's supplemental report dated October 18, 2018 and opined that his rating remained the same as previously set forth in his February 22, 2017 report. He reported that maximum impairment available for a shoulder condition is 60% impairment to the upper extremity, or 36% impairment to the whole man and Dr. Blough's rating would imply total loss of function of the shoulder which Mr. Johnson does not demonstrate. Dr. Hensley further noted that allowing a combination of methods to be used is inconsistent with the Guides and inconsistent with the Supreme Court decision. The City's maximum exposure for total PPD would be \$21,348.00.

**Trial:** This case proceeded through the normal litigation process; however, Mr. Johnson has agreed to a settlement of this case as outlined below. If a trial was held in this case, the Judge could determine nature and extent of the injury and re-injury of the left shoulder and award permanent partial disability within a range of the doctors' opinions.

**Proposed Settlement:** The proposed settlement to close this case on a "Compromise Settlement" basis is for a lump sum payment of \$16,957.50 (less attorney fee) representing 15% permanent partial disability to the body as a whole.

It is felt that this settlement closing of this case is fair and reasonable. A Compromise Settlement is beneficial to the City in that it is a full, final and complete settlement of any and all claims and closes out any continued medical treatment in these Workers' Compensation cases. This settlement is beneficial to Mr. Johnson in that it provides certainty for an award. It is also beneficial to Mr. Johnson because the entire settlement amount is being paid in a lump sum rather than at a weekly rate over a period of time.

Furthermore, if the case is settled in this manner, the City would incur additional costs and fees of Workers' Compensation Administration Fund Tax in the amount of \$339.15; Special Occupational Health & Safety Tax in the amount of \$127.18; and Workers Comp Commission Filing fee in the amount of \$140.00. In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$144.14.

These additional costs and fees total \$750.47, which brings the total cost of this settlement to the City to

\$17,707.97.

Adequate funds are available in the Order/Settlements Account (043-3002-415.21-31).

**RECOMMENDATION:** For the reasons outlined above, it is believed this Compromise Settlement 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. Johnson and his 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 85A O.S. § 107, 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.