



City of Norman, OK

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

Master

File Number: R-1314-34

File ID: R-1314-34	Type: Resolution WCC	Status: Consent Item
Version: 1	Reference: Item No. 31	In Control: City Council
Department: Legal Department	Cost: \$18,519.24	File Created: 08/22/2013
File Name: WCC Bernhardt	Final Action:	

Title: RESOLUTION NO. R-1314-34: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN OKLAHOMA, AUTHORIZING COMPROMISE SETTLEMENT OF A CLAIM FILED BY JEFFERSON B. BERNHARDT UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF JEFFERSON B. BERNHARDT V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC-2013-02846 K; 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 JUDGMENTS FROM THE RISK MANAGEMENT INSURANCE FUND.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution No. R-1314-34; and, if adopted, direct payment of claims in the amount of \$18,519.24 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 09/10/2013

Agenda Number: 31

Attachments: Resolution R-1314-34, PR Bernhardt

Project Manager: Jeanne Snider, Assistant City Attorney

Entered by: denise.johnson@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File R-1314-34

body

BACKGROUND: Jefferson B. Bernhardt is a Fire Captain with the Norman Fire Department. He filed Workers' Compensation Case No. WCC 2013-02846 K on March 13, 2013 alleging injury to his left knee on March 25, 2012. The case proceeded through the normal litigation process and, through settlement negotiations, has agreed to settle his claim for the amount of \$17,765. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION:

Nature of Claim. Mr. Bernhardt is a Fire Captain with the Norman Fire Department. He was hired on April 8, 1985 as a firefighter. He was promoted on November 5, 1993 to Fire Driver Engineer and to his current position as Fire Captain on October 1, 1998. He alleges a single incident injury to his left knee on March 25, 2012 when he was exiting a fire truck responding to an emergency call.

Issues for Trial. Should this case proceed to trial, there is no question that Mr. Bernhardt's injury 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. Bernhardt's injury or the Permanent Partial Disability (PPD) to Mr. Bernhardt's left knee due to this incident. Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and/or medical records regarding the extent of permanent partial impairment.

Mr. Bernhardt was initially treated at Norman Regional Occupational Medicine on March 29, 2012. After a period of conservative treatment, Mr. Bernhardt had arthroscopic surgery by Dr. Vytaitas Ringus on April 5, 2012. Thereafter, he went through a program of physical therapy from which he was released on May 4, 2012. He returned to full work duty with no work restrictions on May 5, 2012. Dr. Ringus considered him at maximum medical improvement with no permanent work restrictions on May 16, 2012.

On June 29, 2013, Mr. Bernhardt was evaluated by Dr. Lance E. Rosson, who opined 36% PPD to the leg for his injuries. This rating equates to \$31,977 PPD. Although the City did not have Mr. Bernhardt evaluated by one of its rating physicians, it is not anticipated that a rating higher than 10% PPD would have been opined.

Settlement. On July 16, 2013, the City entered into settlement negotiations with Mr. Bernhardt and his attorney. City Staff has negotiated a proposed settlement on a Compromise Settlement basis for a lump sum payment of \$17,765 which represents 20% PPD to the left knee. 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 settlement offer is in keeping with or lower than what the City has been ordered to pay in past years in similar cases 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 due to the nature of Mr. Bernhardt's injury and arthroscopic surgery. However, because of the short length of time from the date of injury to his return to work, this settlement is fair and reasonable. This settlement is beneficial to Mr. Bernhardt in that it provides certainty for an award. It is also beneficial to him 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 settlement offer is approved, payment to Mr. Bernhardt and his attorney would be paid at PPD rate as set out above which is slightly over one-third difference in the medical opinion rate and the settlement rate.

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 \$355.30; Special Occupational Health & Safety Fund Tax in the amount of \$133.24; 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 \$754.24, which brings the total cost of this settlement to the City to \$18,519.24.

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. Bernhardt 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 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.