



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1415-108

File ID: R-1415-108	Type: Settlement	Status: Consent Item
Version: 2	Reference: Item No. 26	In Control: City Council
Department: Legal Department	Cost: \$14,212.00	File Created: 06/16/2015
File Name: Compromise Settlement - Jesse Duffey v. City of Norman		Final Action:

Title: RESOLUTION R-1415-108: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY JESSE DUFFEY UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF JESSE DUFFEY V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC 2014-10080X 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.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1415-108; and, if adopted, direct payment of claims totaling \$14,868.53 which will constitute judgment against the City of Norman.

ACTION TAKEN: _____

Agenda Date: 06/23/2015

Agenda Number: 26

Attachments: Text File, Duffey Resolution - 1415-108 6-23-15,
Duffey Reqs 6-23-15 CC

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Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
2	City Council	06/23/2015					

Text of Legislative File R-1415-108

Body

BACKGROUND:

Jesse Duffey was a water line maintenance worker. He filed a workers' compensation claim on October 23, 2014, as a result of an injury to his right thumb/hand while he was driving a dump truck over a high curb. The case proceeded through the normal litigation process. A trial is scheduled for June 22, 2015. Mr. Duffey has

agreed to settle his claim in WCC 2014-10080 X in the amount of \$14,212 (20% PPD). The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

DISCUSSION:

Mr. Duffey began his employment with the City of Norman in the Utilities Department, Water Line Maintenance, on April 2, 2007. Mr. Duffey separated from employment with the City of Norman on August 15, 2014. There is no question Mr. Duffey injured his right thumb/hand on April 1, 2013, while driving a dump truck over a high curb. In the process the steering wheel spun and grabbed his right thumb, hyperextending the thumb.

Mr. Duffey received medical care and treatment at Norman Regional Occupational Medicine and a MRI and physical therapy was recommended. On May 21, 2013, Dr. Vogel performed surgery due to a partial or complete tear of his ulnar collateral ligament and was placed in a post-op splint. On May 21, 2013, Dr. Vogel placed Mr. Duffey in a thumb spica brace and restricted use of his right hand for two weeks. After further physical therapy and a flexor tendon sheath injection on September 3, 2013, Dr. Vogel released Mr. Duffey to full duty on October 11, 2013.

Issues for Trial. The issue to be tried before the Workers' Compensation Court is how much, if any, permanent disability Mr. Duffey suffered due to his injury to his right thumb/hand ("nature and extent" of permanent disability). Permanent partial disability is a factual determination made by the Workers' Compensation Court Trial Judge based on doctors' opinions and medical records regarding the extent of permanent partial impairment.

Mr. Duffey was evaluated by Dr. Lonnie Litchfield on October 29, 2014, for injury to his right thumb/hand. Dr. Litchfield opined 34% PPD to the right hand for a total amount of \$24,160.40 and continued medical maintenance. The City had Mr. Duffey evaluated on December 2, 2014, by Dr. Kent Hensley who opined 14% PPD to the right thumb (not hand) for a total amount of \$2,984.52.

Trial. This case proceeded through the normal litigation process. A trial was scheduled for June 22, 2015. However, prior to the trial, Mr. Duffey offered to settle this case for 20% to the right hand (\$14,212). If a trial was held in this case, the Judge could determine nature and extent of the injury to his right thumb and/or hand anywhere within the range of the doctors' opinions as stated above. It is likely the Judge would determine the injury was to Mr. Duffey's hand due to the surgery and post-op splints and brace to the right hand.

Proposed Settlement. The proposed settlement to the case on a "Compromise Settlement" basis is for a lump sum payment of \$14,212. In a case involving a surgical procedure, it is not uncommon for awards following trial to reflect 15% to 25% PPD to the affected body part. In this case, it is likely the court will find injury to the hand. A 20% settlement to the hand reflects one-half of the expected range of award at trial.

It is felt that this settlement closing 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. Duffey 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.

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 \$284.24; Special Occupational Health & Safety Tax in the amount of \$106.59; and Workers Comp Court Filing fee in the amount of \$140.

In addition, the City would incur an additional cost and fee for the Cleveland County Court Filing Fee in the amount of \$125.70 for both cases.

These additional costs and fees total \$656.53, which brings the total cost of this settlement to the City to \$14,868.53.

RECOMMENDATION: For the reasons outlined above, it is believed this Compromise Settlement is fair, reasonable, and in the best interest of the City. It is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the Compromise Settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Duffey 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.