



# City of Norman, OK

Municipal Building  
Council Chambers  
201 West Gray  
Norman, OK 73069

## Master

**File Number: R-1516-12**

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<b>File ID:</b> R-1516-12	<b>Type:</b> Resolution WCC	<b>Status:</b> Consent Item
<b>Version:</b> 2	<b>Reference:</b> Item 21	<b>In Control:</b> City Council
<b>Department:</b> Legal Department	<b>Cost:</b> \$37,000.00	<b>File Created:</b> 08/04/2015
<b>File Name:</b> Workers' Compensation Settlement for Jason Miller	<b>Final Action:</b>	

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**Title:** RESOLUTION R-1516-12: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA AUTHORIZING COMPROMISE SETTLEMENT OF THE CLAIM FILED BY JASON MILLER UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF JASON MILLER V. THE CITY OF NORMAN, WORKERS' COMPENSATION CASE NO. WCC 2014-07030 H 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-1516-12; and, if adopted, direct payment of claims in the amount of \$37,000 which will constitute judgment against the City of Norman.

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

**Agenda Date:** 08/11/2015

**Agenda Number:** 21

**Attachments:** Resolution, Purchase Reqs Miller

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

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

**Effective Date:**

### History of Legislative File

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Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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### Text of Legislative File R-1516-12

Body

**BACKGROUND:** Jason Miller began his employment with the City of Norman Fleet Division as an auto service tech on May 14, 2012. He was promoted to field service mechanic II on February 11, 2013. On July 16, 2014, he filed a workers' compensation claim for a single incident injury to his back when he slipped and fell on the ice on December 9, 2013, when hooking up a tow truck. Mr. Miller has agreed to settle his claim in WCC 2014-07030 H in the total amount of \$37,000. The settlement offer is being presented to City Council at this time. It is recommended that this settlement be accepted.

**DISCUSSION:** On December 9, 2013, Mr. Miller slipped and fell on the ice, landing on his back, when hooking

up a tow truck. He was sent for medical treatment at Norman Regional Occupational Medicine. After conservative treatment, he had a MRI on January 3, 2014 and epidural steroid injections in March and April. On March 25, 2014, he was referred to Dr. William Harris. He had three more epidural steroid injections through May 22, 2014. On July 23, 2014, Mr. Miller requested a change of physician with the Oklahoma Workers' Compensation Court and was seen by Dr. Brent Hisey on September 5, 2014. Dr. Hisey recommended physical therapy with Dan R. Norris. He received physical therapy treatment from September 18, 2014 through November 3, 2014. Mr. Miller had a Functional Capacity Evaluation on February 25, 2015. After review of the Functional Capacity Evaluation, Dr. Hisey advised Mr. Miller has a permanent 60 pound weightlifting restriction and pushing/pulling limit of 50/60 pounds. Dr. Hisey released Mr. Miller from his care on March 6, 2015.

A Fitness for Duty hearing was held on April 25, 2014. After review of his medical records, and statements from Mr. Miller, he was separated from employment with the City of Norman on May 16, 2014, due to lifting restrictions.

Issues for Trial. The issues to be tried before the Workers' Compensation Court is temporary total disability from February 2014 to March 6, 2015, how much, if any, permanent disability Mr. Miller suffered due to his injury to his lumbar spine ("nature and extent" of permanent disability), continuing medical maintenance, and vocational rehabilitation. 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.

Dr. Kent Hensley evaluated Mr. Miller on June, 3, 2015, and opined 11% (\$17,765) impairment to the whole man regarding the lumbar spine. Dr. Stephen Wilson evaluated Mr. Smith on March 30, 2015, and opined a 40% (\$64,600) permanent partial impairment to his lumbar spine. Dr. Wilson also recommended conservative pain management.

Trial. This case proceeded through the normal litigation process. A motion for trial has been requested. However, prior to the trial, Mr. Miller offered to settle this case for a total of \$37,000. If a trial was held in this case, the Judge could determine nature and extent of the injury to his lumbar spine anywhere within the range of the doctors' opinions as stated above.

Proposed Settlement. As noted above, the maximum exposure for permanent partial disability is 40% (\$64,600). Dr. Hensley's opinion was 11% (\$17,765) PPD for this injury. The settlement offer is 19% (\$30,685) which is less than one-third of the difference in the medical evidence to be presented at trial. In addition, the offer would include \$2,500 for vocational rehabilitation and \$3,815 to close out any future medical or pain maintenance. The settlement total is \$37,000.

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. Miller 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 \$740;  
Special Occupational Health & Safety Tax in the amount of \$277.50; 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.

These additional costs and fees total \$1,283.20, which brings the total cost of this settlement to the City to \$38,283.20.

**RECOMMENDATION:** For the reasons outlined above, it is believed this Compromise Settlement is fair,

reasonable, and in the best interest of the City. Due to the permanent lifting and pushing/pulling limit, 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. Miller 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.