



## Legislation Text

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**File #:** R-1819-73, **Version:** 2

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**RESOLUTION R-1819-73:** A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AUTHORIZING JOINT PETITION SETTLEMENT OF THE CLAIM FILED BY RICHARD HARTLESS UNDER THE PROVISIONS OF THE WORKERS' COMPENSATION STATUTES OF THE STATE OF OKLAHOMA IN THE CASE OF *RICHARD HARTLESS V. THE CITY OF NORMAN*, WORKERS' COMPENSATION COMMISSION CASE NO. 2018-01111 A; 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.

**BACKGROUND:** Richard Hartless, a former firefighter for the City of Norman Fire Department, filed Workers Compensation Commission Case No. 2018-01111 A on February 26, 2018 alleging an injury to the back while pulling a fire hose on July 24, 2016. The claim was admitted by the City of Norman and it proceeded through the normal litigation process. Prior to a trial being held, Mr. Hartless has agreed to settle this claim in the amount of \$5,652.50 representing 5% body as a whole permanent partial disability to the back. The settlement offer is recommended and is being presented to the City Council for consideration.

**DISCUSSION:** Mr. Hartless was a 31 year employee of the City of Norman who was hired as a Firefighter on July 22, 1985. He separated from employment with the City of Norman, retiring on January 24, 2017.

**Medical Treatment.** Mr. Hartless was seen by Dr. Penwell the day following his injury. He was treated conservatively to include a brief course of physical therapy. He was sent for a magnetic resonance imaging (MRI) exam of the thoracic lumbar spine on August 11, 2016 which revealed chronic facet joint degenerative changes with no disc herniation. He was referred for orthopedic evaluation by Dr. Fong due to continued symptomatology and was treated conservatively to include additional physical therapy. On September 13, 2016, Dr. Fong reported that he was at maximum medical improvement from a surgical standpoint and trigger point injections were recommended. Mr. Hartless underwent a series of trigger point injections by Dr. Hancock. He then was seen by Dr. Odor and underwent facet joint injections, bilateral facet joint medial branch blocks, and radiofrequency ablations before reaching maximum medical improvement with permanent restrictions on January 25, 2018.

**Issues for Trial.** The primary issues to be tried in this case before the Workers' Compensation Commission are the extent of Mr. Hartless' injuries and whether the injuries to his back was 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.

Mr. Hartless was rated by Lonnie Litchfield, M.D. on July 18, 2018 who opined 9% (\$10,174.50) permanent partial impairment to the lumbar spine as well as entitlements to continued care in the form of pain management in regard to his chronic pain, assigned pain management specialist for treatment, and given entitlements for prescription medications or any treatments his treating physician deems necessary in regard to this injury,

On November 6, the medical expert for the City, Dr. Kent Hensley opined a 3% (\$3,391.50) permanent partial impairment to the whole man regarding the lumbar spine and entitlements to continuing medical maintenance would not be required. The City's maximum exposure for total PPD would be \$10,174.50.

**Trial.** This case proceeded through the normal litigation process; however, Mr. Hartless 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 to the back and award permanent partial disability within a range of the doctors' opinions.

**Proposed Settlement.** The proposed settlement to close this case on a "Joint Petition" basis is for a lump sum payment of \$5,652.50 (less attorney fee) representing 5% permanent partial disability to the body as a whole.

It is felt that this settlement closing of the case is fair and reasonable. A 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. Hartless in that it provides certainty for an award.

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 \$113.05; Special Occupational Health & Safety Tax in the amount of \$42.39; 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 \$439.58, which brings the total cost of this settlement to the City to \$6,092.08.

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

**RECOMMENDATION:** For the reasons outlined above, it is believed this settlement is fair, reasonable, and in the best interest of the City. Due to Mr. Hartless' years of service with the City of Norman, it is not anticipated a more favorable ruling for the City could be achieved by further litigation. Acceptance of the settlement would require the payments as outlined above. If approved, the settlement amount would be paid to Mr. Hartless and his attorney in a lump sum. The 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.