




OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2022-016

TO: Mayor and Council

FROM: Chris Hall 
Assistant City Attorney

DATE: July 18, 2022

MEETING: August 9, 2022

RE: Damage claim of
Brandi Butler-Christensen and Kyle Christensen
4305 SW Brandon Lane
Lawton, Oklahoma 73505

Submitted in the amount of \$14,726.69 on May 20, 2022

RECOMMENDATION: Approval in the reduced amount of \$14,232.13

BASIS OF CLAIM: Claimants, Brandi and Kyle Christensen, are the owners of a 2018 Ford Expedition that was being driven by Brandi Butler-Christensen on May 14, 2022. Claimants allege Brandi was behind a fire truck at a stop sign at 17th and F Avenue, when a LATS bus was trying to make a turn and the fire truck backed up to give it more room and struck the front end of their Expedition. Claimants have submitted a final invoice for repair in the amount of \$13,282.52 from Billingsley Ford. An invoice from Enterprise Rental car in the amount of \$949.61, and a booster seat in the amount of \$67.90. Total amount of claim is \$14,300.03.

DATE OF DAMAGE: May 14, 2022

FACTS: According to the Official Oklahoma Traffic Collision report, on May 14, 2022, a City of Lawton, Fire Truck (unit 1), was stopped at a stop sign at 17th & F Avenue heading westbound when a LATS bus was turning eastbound on SW F Avenue from traveling southbound on 17th Street. The Fire Truck driver advised he backed up to give the bus more room to turn, which resulted in the rear of the fire truck colliding into the front of Unit 2, the Claimant's 2018 Ford Expedition driven by Brandi Butler-Christensen. The report states that the unsafe/unlawful contributing factors to the accident was the City of Lawton vehicle backing improperly.

LEGAL BASIS FOR APPROVAL OF CLAIM: A municipality's tort liability is governed by the Oklahoma Governmental Tort Claims Act (GTCA), 51 O.S. § 151 *et seq.* A tort is a legal wrong, independent of contract, involving violation of a duty imposed by general law, statute, the Constitution of the State of Oklahoma, or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment. 51 O.S. § 152 (17).

Under the GTCA, a municipality is liable for its torts or the torts of its employees acting within the scope of their employment, subject to the limitations of the GTCA, and only in matters where a private person or entity would be liable for damages under the laws of the State. 51 O.S. § 153 (A) & (B).

Generally, a person is guilty of negligence and liable for damages when the person (1) owes a duty of care to a plaintiff, (2) the person breaches that duty, and (3) the breach was the proximate cause of the plaintiff's injury. *Kamphaus v. Town of Granite*, 2022 OK 46, ¶ 8; *Miller v. David Grace, Inc.*, 2009 OK 49, ¶ 11.

As to the duty of care in this situation, Oklahoma motorists must exercise ordinary care in keeping a lookout consistent with the safety of other vehicles, property, and persons. *Rosamond v. Reed Roller Bit Co.*, 292 P.2d 373 (Okla. 1955); *Townley's Dairy v. Creech*, 476 P.2d 79 (Okla. 1970). Ordinary care is defined in Oklahoma Statutes, Title 25, Section 4 and further explained in the Oklahoma Uniform Civil Jury Instructions Section 9.3 as "the care which a reasonably careful person would use under the same or similar circumstances." Title 25 O.S. Section 4 and the Oklahoma Uniform Civil Jury Instructions Section 9.2 define negligence as the failure to exercise ordinary care to avoid injury to another's person or property.

This office recommends approval of this claim because in this instance:

1. The City employee could be found to have breached his duty of care, and that breach of duty may constitute negligence for which the City could be held liable.

The reduced amount was determined based on the actual amount of the Billingsley Ford invoice, which was \$13,282.52 and the actual receipts from Enterprise Rental Car in the amount of \$949.61. It is not recommended that the City pay for the car seat. The car seat was not occupied and due to the low impact, the car seat would not have sustained any damage.

CHRIS HALL
DEPUTY CITY ATTORNEY


Mincie Beamesderfer, CLA
Claims Investigator