



City of Grand Island

Tuesday, February 14, 2006

Council Session

Item G1

**Receipt of Official Document - Tort Claim for Maria Bartlett on
Behalf of Tyler Kventensky**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: February 14, 2006

Subject: Receipt of Official Document – Tort Claim filed by Maria Bartlett on Behalf of Tyler Kventensky

Item #'s: G-1

Presenter(s): RaNae Edwards, City Clerk

Background

The City of Grand Island has received a Tort Claim on January 27, 2006 from Jeremiah J. Luebbe, Attorney for Maria Bartlett on behalf of Tyler Kventensky alleging certain claims which took place on or about July 7, 2005 in connection with a bicycle accident. A copy of this claim is attached to comply with the Nebraska Political Subdivision Tort Claims Act.

Discussion

This is not an item for council action other than to simply acknowledge that the claim has been received.

Recommendation

City Administration recommends that the Council take no action other than acknowledge receipt of the claim.

Sample Motion

Motion to approve acknowledgement of the Tort Claim filed by Jeremiah J. Luebbe, Attorney for Maria Bartlett on behalf of Tyler Kventensky.

THE LAW OFFICES OF

Lauritsen, Brownell, Brostrom, Stehlik, Myers & Daugherty, P.C.

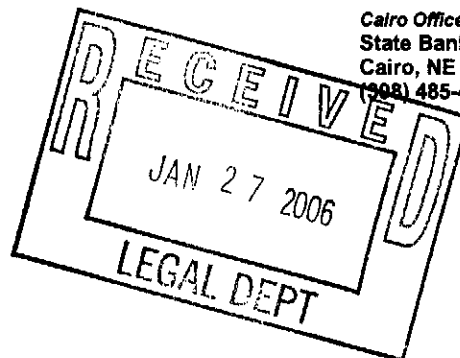
A Limited Liability Organization

724 West Koenig Street • P.O. Box 400 • Grand Island, NE 68802-0400 • Telephone : 308-382-8010 • Fax: 308-382-8018

Please respond to above office

Walter P. Lauritsen (1990)
John R. Brownell (2005)
Kevin A. Brostrom
Galen E. Stehlik
Denise D. Myers
Rachel A. Daugherty
Jeremiah J. Luebbe
Stacie A. Goding

Cairo Office
State Bank of Cairo
Cairo, NE 68824
(308) 485-4232



January 26, 2006

Doug Walker
City Attorney's Office
P. O. Box 1968
Grand Island, NE 68802

Re: Our Client: Maria Bartlett on behalf of Tyler Kventensky
Your Claim: 283032
Your Insured: City of Grand Island
Date of Loss: 7/7/05
Our File No: 05-4522

Dear Mr. Walker:

Pursuant to our telephone conversation of January 25, 2006, please consider the copy of my letter to Connie Jarzynka of EMC Insurance Companies, dated January 23, 2006, to constitute the written tort claim for purposes of Neb. Rev. Stat. § 13-919 and the Political Subdivisions Tort Claims Act with regards to Tyler Kventensky's bicycle accident of July 7, 2005.

Thank you for your consideration in this matter. I look forward to hearing from EMC Insurance Companies and/or the Grand Island City Legal Department with regards to this matter.

Sincerely,

LAURITSEN, BROWNELL, BROSTROM,
STEHLIK, MYERS & DAUGHERTY, PC, LLO

A handwritten signature in black ink, appearing to read "Jeremiah J. Luebbe".

Jeremiah J. Luebbe
jeremiahl@lauritsenlaw.com

kdn

COPY

THE LAW OFFICES OF

Lauritsen, Brownell, Brostrom, Stehlik, Myers & Daugherty, P.C.

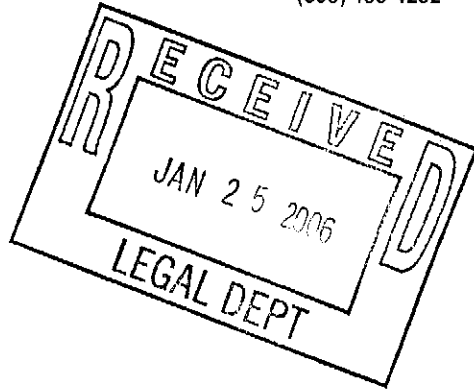
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Cairo, NE 68824
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January 23, 2006

Connie Jarzynka
EMC Insurance Companies
P. O. Box 2070
Omaha, NE 68103-2070

Re: Our Client: Maria Bartlett on behalf of Tyler Kventensky
Your Claim: 283032
Your Insured: City of Grand Island
Our File No: 05-4522
Date of Loss: 7/7/05

Dear Ms. Jarzynka:

As you are aware, this office represents Tyler Kventensky, a seven year old Grand Island resident, with regards to the above-referenced matter. Enclosed please find the settlement package I have been authorized to submit to EMC Insurance and the City of Grand Island with regards to this claim. This correspondence is submitted for settlement purposes only and its admissibility is therefore governed by the Nebraska Rules of Evidence and Rules of Civil Procedure.

As I have already forwarded you medical records from Grand Island Ear, Nose & Throat (Dr. Knudsen) and an imaging report from St. Francis Medical Center, the only additional medical record I am forwarding you herewith is a letter from Dr. Knudsen answering my queries (which I am also including) with regards to the permanency of Tyler's facial scar. Further, my October 11, 2005 correspondence to you also included medical bills totaling \$8,954.23 (with index). The only medical visit since that time was Tyler's 12/27/2005 check-up with Dr. Knudsen. Thus, I am enclosing an updated billing statement from Grand Island Ear, Nose & Throat, along with an updated medical billing index. Further, on October 14, 2005, I forwarded you a CD-ROM disk containing numerous images of the scene of the incident as well as Tyler's facial injuries. Please contact me should you have any questions regarding documentation of Tyler's special damages.

Connie Jarzynka
January 23, 2006
Page 2

On or about July 7, 2005, Tyler was riding his bicycle in the vicinity of Wasmer Elementary School along Koenig Street in Grand Island. Tyler was riding his bicycle westbound on the sidewalk adjacent to the fence running outside the school along Koenig Street. Tyler had been riding his bicycle through mud puddles that day, and when Tyler proceeded down the western-most driveway (which runs from the street into the playground at Wasmer), Tyler wrecked his bike while attempting to ride through a water-filled mud puddle at the foot of the driveway. Tyler tumbled his bicycle end-over-end when the front bicycle tire abruptly dropped significantly, due to the front bicycle tire encountering a nine inch depression from the bottom of the pothole to the top of the water. Because of the water's murky discoloration, young Tyler could not discern the depth of the puddle/pothole and Tyler was injured significantly. Tyler suffered a chin laceration, disruption to his occlusion, had an apparent open bite deformity, and a CT scan revealed and confirmed bilateral subcondylar fractures. In essence, Tyler broke his jaw in two places and had a significant gash on his chin, which was sutured shut. Tyler's jaw was wired shut for two weeks during the middle of the summer of 2005.

As indicated in the enclosed letter from Dr. Knudsen, dated January 9, 2006, the 5/8 inch-wide, moon-shaped scar on Tyler's chin, while having healed adequately, is indeed permanent. Thus, the facial scar will be an ongoing reminder for Tyler throughout his natural life.

This incident has had a profound effect upon Tyler's life above and beyond the permanent facial scarring. Beyond the fear and shock of the incident itself, the weeks following Tyler's surgery were quite miserable for young Tyler, as is understandable considering the fact that the young boy was relegated to eating through a straw during the middle of the summer. Further, Tyler was forced to basically cease and desist all normal, seven year old activities for the weeks immediately following the incident. While Tyler eventually resumed riding a bicycle, to this date Tyler appears apprehensive and tentative in doing so, as he is overly careful not to ride through any puddle of water whatsoever. Tyler often rode bicycles with his family prior to the incident—by his mother's observation, however, this incident has clearly removed some of the joy Tyler previously experienced when he participated in this leisurely activity.

Liability in this case is clear. The City of Grand Island is the negligent political subdivision. The nine-inch deep pothole was located at the nexus of the driveway leading to Wasmer Elementary's playground and the city street maintained by the City of Grand Island, the pothole itself located within the city street. The pothole, along with the surrounding curb area, was in a deteriorated, unreasonably dangerous state of disrepair and its proximity to the elementary school provides significant foreseeability of injury. Indeed, my client has information that the school's custodian had problems with snow removal due to the pothole. Tyler, as a seven year old boy, is only required to live up to the standard of care

Connie Jarzynka
January 23, 2006
Page 3

of a reasonable boy of a similar age. The murky and discolored water in the pothole at the time of the incident indicates that no reasonable boy could have discerned the difference of this particular mud puddle from any other mud puddle. However, the fact that the pothole was nine inches deep makes clear that the City's negligence was the proximate cause of this accident.

In readying this settlement package, I consulted a national database of plaintiff and defense verdicts, Jury Verdict Research, to determine a fair, equitable, and appropriate monetary figure for settlement of Tyler's claim. Jury Verdict Research® was founded in 1961 by an attorney in Ohio, and personal injury plaintiff and defense attorneys and insurance professionals across the United States evaluate their personal injury cases and claims using Jury Verdict Research®.

Jury Verdict Research® maintains the only nationwide database of more than 245,000 plaintiff and defense verdicts and settlements resulting from personal injury claims. The data are reported, tabulated and analyzed to determine values, trends and deviations for more than 400 injuries and 300 liabilities including vehicular liability, products liability, business negligence, medical malpractice and more. The cases are collected in an impartial manner, with an equal emphasis on plaintiff and defense verdicts and settlements, and with no intentional bias toward extreme awards or geographic regions.

Enclosed please find a copy of the Jury Verdict Research® "Analysis Information" and "Verdict Analysis" we have prepared taking into account several factors present in this claim, and utilized by the Jury Verdict Research® database to arrive at a "Probable Verdict Amount" should this claim go to trial. The two analyses are fairly self-explanatory, but I will run through them regardless. Information about the venue, plaintiff, and defendant are used, along with the type of action (for instance, a non-motor vehicle accident where the negligence alleged is negligent maintenance of a road by a political subdivision), as these factors tend to influence the fact finder in arriving at a verdict. No admission of liability has been made, which explains that datum entry.

With regards to the injuries, facts of the injuries suffered by Tyler have been entered into the Jury Verdict Research® Software, and because the bilateral fracture of Tyler's jaw constituted the bulk of the medical special damages in this matter, the fractured jaw, without nerve damage, is used as Tyler's primary injury. The City was negligent, not intentional, and according to Dr. Knudsen and Tyler's dentist, J. B. Anderson, Tyler has no impairment related to the jaw injury. Information regarding Tyler's second injury, the facial scarring, has also been utilized as well.

Next, the Jury Verdict Research® Software requires further details of the claim in order to adjust the probable verdict amount, such as whether the plaintiff was drinking, the types of witnesses anticipated, etc. Tyler would certainly utilize testimony from Dr. Knudsen to

establish the permanency of Tyler's scarring, and to describe the mechanics of Tyler's fractured jaw. Another child was riding bicycles with Tyler that day, and she would be utilized as an eyewitness, along with Darla Gardner and Tina Valdez of Grand Island, who came upon the scene of the accident shortly thereafter. Given the nature of Tyler's injuries and medical special damages, I doubt that the defense would utilize a medical expert, and other expert witnesses are unlikely. "Other witnesses" for both plaintiff and defendant was also entered, on the possibility that awareness of the pothole became an issue.

Moving on to the Verdict Analysis, the amount of medical expenses to date is a major factor in the Jury Verdict Research® Analysis. While Dr. Knudsen did tell Tyler's mother, Maria, that Tyler could have surgery in the future to remove the scar, Dr. Knudsen's letter advises that such surgery wasn't needed at this time and therefore no future medical expenses have been claimed. Based upon the amount of medical specials and the nature of Tyler's primary and second injuries, the Jury Verdict Research® data has indicated that the Total Base Injury Value in this matter is **\$92,916**.

Following the computation of the Base Injury Value, adjustments described above are analyzed by the Jury Verdict Research® Software to adjust the verdict amount upwards or downwards, as appropriate. Because Hall County, Nebraska is the venue and the defendant is a governmental entity, the amount is adjusted down 5% due to historical data. However, the witness information results in an increase in the probable verdict amount approximately another 5%, and we end up with a final probable verdict amount of **\$92,915**. (The adjusted probable verdict amount is not applicable, as the Jury Verdict Research® Software is taking into account the estimated \$4,500 in unpaid medical bills currently outstanding—i.e., not paid by a subrogated carrier).

Finally, the Jury Verdict Research® analysis indicates that the probability of a verdict for Tyler in this matter is 63%, which is rather high for this software and in real life, as well. The fact that Tyler has eyewitnesses is significant in making this determination. Thus, according to this highly-respected and oft-used analysis, should this matter go to trial there is a **63% probability that Tyler would be awarded a verdict of \$92,915**.

Further, enclosed please find copies of eight verdict reports from the Nebraska attorney's "Casemaker Online database" which I have found in searching for reports of Nebraska verdicts where scarring is involved. By my calculation, the average "multiplication factor" in these eight verdicts is 9.6. Significantly, the "barely noticeable" scar case from York County resulted in an award 18.7 times the special damages, the Merrick County case utilized a 9.1 multiplication factor, and the Scottsbluff County case used a 7.5 factor in arriving at the final verdict amount.

Connie Jarzynka
January 23, 2006
Page 5

As a result, I have been authorized to submit a demand of \$85,000.00 in exchange for a full and final settlement of Tyler's claims. The above research supports a demand in this amount. Maria Bartlett would likely invest the majority of the \$85,000 in an annuity/structured settlement. We would appreciate a response by February 24, 2006. Thank you.

I look forward to speaking with you regarding this in the near future. For your information, a copy of this correspondence has been mailed to the City of Grand Island's legal department so that no confusion ensues regarding any notice requirement under Nebraska law.

Sincerely,

LAURITSEN, BROWNELL, BROSTROM,
STENLIK, MYERS & DAUGHERTY, PC, LLO



Jeremiah J. Luebbe
jeremiahl@lauritsenlaw.com

kdn
Enc.

pc: Maria Bartlett
City of Grand Island Legal Dept.