

certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.



WINTER 2003

**CERTIORARI**

Journal of Consumer Advocacy



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WINTER 2003

# CERTIORARI

## Journal of Consumer Advocacy

CONSUMER INFORMATION FOR THE CLIENTS AND  
FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

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### CONSUMER

## Case Settled Involving Fueling Fire Caused by Static Electricity

**L**ydia Cloud was fueling her pickup truck at Ma & Pa's Grocery and Gas in Bristow. She started filling the tank by engaging the hold-open latch and letting go of the nozzle. She then reached inside the truck, turning the ignition switch to check the fuel gauge, without starting the vehicle.

As she turned around and grasped the nozzle to release the fuel flow, she saw flames around the fuel filler neck. She tried to take the nozzle out when suddenly a large fire erupted and Cloud ran from the truck with her clothes afire. A bystander tackled her and helped smother the flames that engulfed her chest, arms, and head.

Cloud's suffered serious burns on her hand and torso.

An investigation by Frasier, Frasier & Hickman concluded the fire was ignited by a buildup of static electricity. It also revealed a failure to post warning information at the fuel pump and defects in the design of the fuel pump nozzle.

Frasier, Frasier & Hickman filed a lawsuit in Cloud's behalf, in Creek County District Court. Defendants included Dover Corporation, manufacturer of the pump nozzle, and Phillips Petroleum, which warns consumers of this danger in this part of the country, but did not in Bristow.

A trial was scheduled for February. But Cloud recently accepted an out-of-court settlement. The amount of the settlement was not disclosed, at the request of defendants.



Jim Frasier

### "Stop Static" and Refuel Safely

Always be cautious while filling a vehicle's fuel tank – especially during cold, dry weather when a buildup of static electricity is most likely to occur.

In 2002, the Petroleum Equipment Institute began gathering data on vehicle refueling fires that appeared to be caused by static electricity. Since then, more than 150 of these incidents have been documented. Most occurred between November and March.

Static electricity may build up when a motorist re-enters the vehicle during fueling. When the motorist then returns to the vehicle fill pipe during or at the end of refueling, the static may discharge at the fill point, causing a flash fire or sustained fire with gasoline refueling vapors. In some cases, fires accelerated when the fueling nozzle was dropped and failed to stop the flow of gasoline.

The best way to avoid a fueling fire caused by static electricity is to stay outside the vehicle while refueling.

However, if a motorist must reenter the vehicle during fueling, they should discharge any static electricity before returning to the fill point. Touching a metal part of the vehicle or some other metal surface with a bare hand may safely discharge static electricity.

"Ms. Cloud is lucky to be alive," said Jim Frasier. "The problem of flash fires during vehicle refueling is a growing problem that fueling equipment manufacturers and distributors are aware of – but slow to prevent. Never re-enter your vehicle when refueling and never pull the nozzle out of the tank if there is a fire; just run."

## Supreme Court Upholds Worker In Unlawful Termination Case

The Oklahoma Supreme Court recently upheld the state law prohibiting workers from being fired because they are temporarily disabled by an on-the-job injury.

"This case reaffirms a key provision in the Oklahoma Workers' Compensation Act," said Frank Frasier. "And it also points to the absolute importance of workers properly documenting their injury by filing a Form 3."

Section 5(B) of the Workers' Compensation Act states: "No person, firm, partnership, corporation, or other entity may discharge any employee during a period of temporary total disability solely on the basis of absence from work."

A Form 3 is formerly known as the "Employee's First Notice of Accidental Injury And Claim For Compensation." The form must be filed to fully enforce an injured worker's rights.

The case began in 1998, when Gwen Haskins was employed at a Git-N-Go convenience store in McAlester.

Haskins suffered cumulative trauma injury to her knee and reported it to management. Haskins had surgery and filed her Form 3.

Following surgery, Haskins' doctor restricted her from work for eight months. While recuperating, Haskins stayed in touch with her supervisor by phone. But she learned she had been terminated only when she received a COBRA

notice that her employ benefits had ended.

During this time, the Workers' Compensation Court found that Haskins had sustained a compensable cumulative trauma injury on her knee. Later, the Court awarded Haskins temporary total disability benefits for the time she was recovering from surgery.

Frasier, Frasier & Hickman filed a lawsuit in Tulsa County District in November 2001 on Haskins behalf, alleging Git-N-Go had terminated her employment while she was temporarily totally disabled. Both the Oklahoma Court of Appeals and the state Supreme Court both upheld Haskins claim that she her termination was in violation of Section 5(B) of the Workers' Compensation Act.

Haskins and Git-N-Go recently settled the case out of court. She is working at another job.

"Ms. Haskins' Form 3 was on file weeks before her employment was terminated. Otherwise, she may not have had much recourse to prove she was illegally discharged," Frasier said.

"Many people think the paperwork is a hassle and unnecessary in situations where a worker is injured on the job. But changes in our state's Workers' Compensation laws in recent years make this documentation more important than ever before," Frasier said.

## Frequently Asked Questions – and Answers – About Bankruptcy

**Q:** *How do I know whether or not I should file bankruptcy?*

**A:** Bankruptcy is appropriate for individuals who owe way more money than they could ever pay.

**Q:** *When should I file?*

**A:** You may file at any time. However, there are some circumstances in which it would be beneficial to wait until a later time to file. For instance if you have recently lost a job, you may want to wait until you have new employment before filing. Also, if you are injured or ill, you would probably want to wait until all medical expenses have been incurred before filing. This is recommended because once you file a bankruptcy, any new debts would not be included in the bankruptcy.

**Q:** *What can I keep? What will I lose?*

**A:** Current law allows Oklahomans to keep much of the property they already own when filing bankruptcy. In many cases, individuals who file bankruptcy do not lose any property at all. All equity in your home is exempt, and up to \$3,000 equity in an automobile is exempt for each person filing. Other exemptions under Oklahoma law include 75 percent of your income for the last 90 days, most clothing and household

items, workers compensation benefits, 401(k) and IRA accounts, retirement plan income, and Social Security benefits. Generally, you can keep property you own on which you still owe money. Income tax refunds are not exempt, and may have to be surrendered if received during a bankruptcy.

**Q:** *If I am behind on my house payments or car payments, will filing bankruptcy save my house or car from foreclosure?*

**A:** It depends what type of bankruptcy you file. If you file a Chapter 7 bankruptcy, a foreclosure or repossession proceeding will only be delayed for a few weeks, but will not be stopped. If you file a Chapter 13 bankruptcy, you may have an option to save your property from being foreclosed and repossessed.

**Q:** *Will a bankruptcy include all of my debts?*

**A:** All of your debts must be identified and listed in your bankruptcy. Many debts are "discharged" at the end of your bankruptcy, which means that you no longer owe them. However, you may choose to keep some debts, such as your house payment and car payment (so you can keep that property!), and some debts cannot be discharged, such as child support, some taxes, and most student loans.



**R**ecent news stories trumpeted the scare story. “Physicians Face Malpractice Insurance Rate Increase!” headlines blared. The alleged cause? You guessed it ... frivolous lawsuits.

But what you didn't hear in the news reports: the insurance company is owned by doctors, the increase does not reflect the actual loss experience of the majority of Oklahoma doctors – and the company reinsures itself at huge costs.

Oklahoma physicians screamed to high heaven when the Physicians Liability Insurance Company of Oklahoma – aka

The (doctors') insurance company is owned by doctors; the increase does not reflect the actual loss experience of the majority of Oklahoma doctors – and the company it reinsures itself at huge costs.

PLICO – announced it would increase premiums by 82 percent. Some physicians asserted the skyrocketing premium cost would force them to suspend various medical services or practice in another state. Several of them appealed the premium increase to the Oklahoma Insurance Commissioner who ordered the increase spread over three years.

Now, ironically, several Comanche County doctors unhappy with the Insurance Commissioner's ruling have filed their own lawsuit asked a district court judge to overturn his decision. Is it another frivolous lawsuit? Guess it really depends on whose ox is being gored, as the saying goes.

Well, let me take a stab at some truth ... because the FACTS are not frivolous. According to the Associated Press:

*“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”*

**Franklin D. Roosevelt**  
January 20, 1937

- The number of deaths due to prescription error – 7,400
  - The national cost due to hospital negligence - \$17 to 29 billion
  - The number of Americans claiming they or a family member has experienced a medical or prescription error: 1 in 5
  - Surgical teams accidentally leave clamps, sponges, and other tools inside about 1,500 patients each year, nationwide.
- So, whose lawsuit is frivolous?

Yours, according to the medical profession, if you seek a legal remedy to negligence, error, or accident by your doctor.

And while the doctors are busy suing each other, they want you to just take it easy. In fact, take two aspirin and get plenty of bed rest.

VOTE

## Voter Registration Deadline January 9 for Presidential Primary

Oklahoma's presidential preferential primary election will be February 3, 2004 – a new date for this election.

The voter registration deadline to be eligible to vote in this election is January 9. Voter registration applications may be submitted at any time. However, a valid application must be received at a motor license agency or a designated voter registration agency, or post-marked (if submitted by mail), more than 24 days prior to an election in order for the applicant to participate in that election.

A person who is eligible to register to vote must be at least 18 years old, a United States citizen, and a resident of Oklahoma. A person who has been convicted of a felony may not register until a period of time equal to the original judgment and sentence has expired.

Voter registration applications are available at your County Election Board, post offices, tag agencies, libraries and many other public locations. The registration form may be downloaded from the Oklahoma State Election Board website at [www.state.ok.us/~elections/voterreg.html](http://www.state.ok.us/~elections/voterreg.html).

WORLD WIDE WEB

## New, Improved Frasierlaw Now On-Line

Frasier, Frasier & Hickman LLP's presence on the World Wide Web has been enhanced, improving services available to the Firm's clients. The site features the Firm's Workers' Compensation Guide and past issues of the Certiorari newsletter, as well as information about Frasier, Frasier & Hickman and its attorneys.

The Frasierlaw website can be found at [www.frasierlaw.com](http://www.frasierlaw.com).

“The new website layout should be easier to navigate,” said Frank Frasier, who oversaw the project. “We have also tried to make it easier to contact our offices through e-mail.”

Also, in future issues the Certiorari newsletter will be made available by e-mail to clients and friends of the Firm who have registered their e-mail address. The new Frasierlaw website features a handy subscription form for the e-mail newsletter.

“We have had many requests to make Certiorari available by e-mail. Now we will be able to do that, if we have a working e-mail address,” Frasier said.