

SPRING 2008

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Journal of Consumer Advocacy



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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.

EDUCATION

Scholarship Applications Available

The Julia Fredin Fraiser Foundation is accepting scholarship applications from high school seniors preparing to continue their education. The Foundation also is accepting renewal applications for those students who have previously received scholarships.

Applications for new and renewal scholarships may be obtained by calling, writing or coming into the office of Frasier, Frasier & Hickman LLP. The application deadline is June 1, 2008.

Julia Fredin Frasier passed away in 1996. She was married for 50 years to the firm's founding partner Tomy Frasier. The Foundation was organized in recognition of her great interest in the education of young people.

During her life, Julia Frasier financially helped many students and encouraged many more to continue their education. She set an example that the Foundation aspires to continue.



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

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Hickman, LLP**
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CASE FILE

Insurance Company Settles Bad Faith Claim

In November 2004, Michael Callaghan was injured during the course of his employment at American Airlines. Initially, he thought he could handle matters on his own and tried to have his employer's Workers' Compensation insurance carrier provide him the medical treatment that he needed.

However, Callaghan soon realized that he was going to need the assistance of a lawyer to get appropriate care and treatment, because the insurance company did not

with their policy holders fairly and in good faith," Frasier said. "Recently, the Oklahoma State Supreme Court handed down a decision expanding that responsibility to deal with persons who are covered by Workers' Compensation insurance policies".



Frank Frasier

"The lesson to be learned here is that insurance companies are no different than anyone else in that they must follow the law."

want to provide him the care and treatment it thought was appropriate for his injuries.

Ultimately, a judge of the Workers' Compensation Court agreed with Callaghan and lawyers from Frasier, Frasier & Hickman.

The judge ordered that Callaghan receive the reasonable and necessary medical treatment. Afterwards, the insurance company chose not to abide by the Court's Order or pay for the medical treatment. This caused even greater delay and Frank Frasier filed a lawsuit alleging the insurance company's failures to deal with Mr. Callaghan fairly and in good faith.

"Insurance companies are obligated to deal

Nearly two years after being injured, Callaghan's lawsuit was settled out of court.

"The lesson to be learned here is that insurance companies are no different than anyone else in that they must follow the law," Frasier said.

"If they disagree and don't want to pay for the treatment and a court orders them to do it, they have to be like everyone else in this state and follow an order of the Court. Otherwise they are going to be in greater trouble".

Holding insurance companies accountable for their actions – or inactions – is another way Frasier, Frasier & Hickman fights for its' clients every day.

Taxpayers Have Rights Even During Collection Proceeding

The Internal Revenue Service has beefed up its enforcement – including the use of private debt-collection services – in an effort to recover nearly \$300 billion in unpaid federal income taxes.

Congress and revenue agents themselves have criticized the private collection program and cited alleged abuses. However, there are several things that are prohibited during the tax collection process. These include:

- Unusual contact with a taxpayer - contacting them before 8 a.m. or after 9 p.m., or at an unusual location or time, or at a location which is known or should be known to be inconvenient to the taxpayer.
- Direct contact with a taxpayer without representative consent - contact directly without the consent of the taxpayer's Power of Attorney.
- Contact at taxpayer employment when prohibited - contacting a taxpayer at their place of employment

when it is known or should be known that the taxpayer's employer prohibits the taxpayer from receiving such communication.

- Harassment/abuse use/threat of use - conduct which is intended to harass or abuse a taxpayer, or conduct which uses or threatens to use violence or harm;
- Use of obscene or profane language to abuse.
- Continuous phone calls with intent to abuse - causing a taxpayer's telephone to ring continuously with harassing intent.
- Phone calls without making full identification disclosure - contacting a taxpayer by telephone without providing a meaningful disclosure of the IRS employee's or contractor's identity.

Taxpayers have rights. Even if the IRS alleges the unpaid taxes are owed. If these prohibited acts occur to you, contact Frasier, Frasier & Hickman, LLP.

CASE FILE

Land Condemnation Cases Reveal Phony Appraisals

Highway construction projects are active all across Oklahoma - and many of the paving projects are being laid on the backs of landowners who are treated to lowball offers and stall tactics.

"The state and federal governments have begun to fund a lot of highway projects," said Jim Frasier. "And with these projects come grossly inadequate offers of compensation to property owners whose land is taken by condemnation."

Some believe that these lowball offers are "phony appraisals" that cost the property owner time ... and money and hastening their desire to "settle for less."

By law, the state and cities may take private property if it is needed for public purposes such as building and improving roads and highways. However, the government must fairly compensate the private landowner for the taking. This includes the value of the land and improvements affected and other issues such as drain-

age and flooding that may affect adjacent property.

If the landowner does not accept the government's offer, then the property owner may ask for a jury trial.

At trial, the property owner has the burden of establishing the value of compensation.

However, when the property owner prevails, the state must pay their attorney fees and other expenses, such as the cost of expert witnesses.

The state's practice is to use the threat of endless litigation to coerce property owners to accept below-market offers for condemned property.

"This is often successful, especially when the property owner needs funds quickly. But when these phony appraisals are challenged, the results can be worth the time and effort by a long shot," Frasier said.

If you own property subject to condemnation proceedings, consult an attorney experienced in real estate and condemnation law.



Jim Frasier



Important elections will take place this summer and fall. And now is the time for every eligible voter to make sure they are registered and are educated as to the issues and candidates that will be on the ballot.

State and federal offices – except president and vice president – are subject in Oklahoma to a primary election on July 29 and run-off primary on August 26. The general election – featuring the presidential election – will be on November 4.

In Oklahoma, new voters and those that change their registration must do so at least 24 days before an election to eligible to vote in that contest. That means that Friday, July 4, is the last day to register or change registration and be eligible to vote in the primary election.

State Sen. Kenneth Corn has proposed “same-day” registration that would allow, as its nickname suggests, voters to be registered on election day. The purpose is to get more Oklahomans to vote. This is a great proposal and hopefully will become law. Several states already allow registration and voting on the same day and the procedure has worked well.

In recent years, Oklahoma has moved to increase voter registration - and voting. So-called “motor voter” registration allows voters to register and change registration on a simple form that can be dropped off at vehicle tag agencies, election board offices – or the self-address form can be dropped in the mail. Gone are the days when paid voter registrars were required to make all voter transactions.

Oklahomans now can vote by mail-in absentee ballot or by “in-person” or “walk-in” absentee voting at the county

“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**

election board on the Friday, Saturday and Monday preceding Tuesday election day.

There is no good excuse not to be registered to vote – and to vote in every election.

Still, many Oklahomans do not register to vote – or vote when registered. In the recent, hotly contested presidential primary, only about half the registered voters in Tulsa County participated. And in a recent, highly publicized Tulsa city council primary election, only about ten percent of the registered voters took the time to vote.

This is shameful.

Do the right thing. Make sure you are properly registered. Become familiar with issues important to you and the candidates running for office. And then vote ... and remind your friends and colleagues to, also.

There is no good excuse not to.

—Jim Frasier

CASE FILE

Lawsuit Filed Challenging Controversial Immigration Law

Frasier, Frasier & Hickman LLP is participating in a taxpayer lawsuit challenging a controversial immigration law passed last year by the Oklahoma Legislature.

Steve Hickman and Tulsa University law professor Jim Thomas filed the lawsuit alleging that House Bill 1804 violates several provisions of the Oklahoma constitution. The lawsuit was filed in Tulsa County District Court against Gov. Brad Henry and the Tulsa County Board of Commissioners.

Other lawsuits have been filed by several groups in federal court.

Some provisions of the controversial HB 1804 took effect in November. Other provisions will go into effect in July.

The new law makes it illegal to knowingly transport illegal immigrants, creates state barriers to hiring illegal immigrants, and requires proof of citizenship to receive

certain government benefits.

“We basically are asking the court to strike down House Bill 1804 in its entirety,” Hickman said.

The Oklahoma Constitution (in Article 5, Section 48) states, “The Legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a Bureau of Immigration in this State.”

Thomas said HB 1804, in effect, creates such a bureau. The law also violates the Oklahoma Constitution, he said, because it covers more than one subject. The practice is known as “log-rolling.”

Hickman and Thomas called the law “draconian.” Neither has any monetary interest in the case.

“This is strictly a legal issue,” Thomas explained. “The Legislature ought to follow the Constitution.”