

WINTER 2008

CERTIORARI

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.

**Happy
Holidays**

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

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CASE FILE

Family Compensated for Tragic Loss in Death

Dr. Shawn Lee was a chiropractor with a successful practice in Coweta. In early October 2006, Dr. Lee was returning to his clinic after having lunch at home with his wife and two young children. Nothing was out of the ordinary, traveling along Highway 72, until an oncoming semi-trailer dump truck suddenly jack-knifed in front of him and struck his vehicle.

Dr. Lee, 32, was killed instantly. He left behind a wife and two boys, three and five years old.

Dr. Lee was traveling the opposite direction and had no time to avoid the collision, according to a witness.

The investigation determined that Hopkins was negligent in the operation of the truck over the speed limit and the manner in which he attempted to avoid a collision with Smith.



Frasier

**All parties agreed to mediation and a settlement finally was reached,
on the condition the amount would not be released.**

Frasier, Frasier & Hickman LLP investigated the accident on behalf of the family and found responsibility for the accident on two fronts. An intoxicated driver, Charley C. Smith, had pulled suddenly onto the four-lane highway and swung into the center-most lane. Smith pulled in front of a semi-trailer dump truck owned by Sherwood Construction Co. and driven by employee Jerry Hopkins. Hopkins swerved the truck from the right – or outside lane he was traveling in – to the center lane where Smith had swung his vehicle. Hopkins hit his breaks and caused the truck to jack-knife.

Frasier, Frasier and Hickman, LLP, filed a wrongful death lawsuit in Wagoner County District Court against Smith, Hopkins, and Sherwood Construction. All parties agreed to mediation and a settlement finally was reached, on the condition the amount would not be released.

“Drivers should always be alert and on the defensive,” said Jim Frasier. “You never know when another driver may be impaired or make bad decisions.

“This was a tragic case,” said Jim Frasier. “At least Dr. Lee’s wife and young sons will have some compensation for their loss.”

DISABILITY

Americans With Disabilities Act (ADA) Amendments Act Of 2008 Takes Effect in January

The ADA Amendments Act was recently enacted and becomes effective January 1, 2009. This law restores the ADA's original hopes and expectations of protecting the handicapped that have been eroded by the Republican-controlled federal court system.

After the ADA was passed in 1990, the courts began to narrowly interpret the definitions of handicap and impairment to the extent that almost no one was covered. The courts gave employers virtually free rein to discriminate against those who were physically and mentally limited. This included a limited view of protection by the US Supreme Court.

The new amendments help to restore the original promise of the law to prohibit discrimination. They require that the ADA be construed liberally in favor of a broad range of coverage. The new law will hopefully overturn court decisions refusing to apply the ADA to people with such diseases as diabetes, epilepsy, heart

disease, mental problems, and cancer.

The new amendments limit the consideration of "mitigating measures" in determining disability. That is, they require the courts to look at the disability without considering medications, prosthetics, hearing aids, and so forth. They also require that an impairment be considered without regard to whether it is dormant, in remission, or episodic, when deciding if a major life activity is impaired.

The new amendments broadly clarify what major life activities are when considering a disability. These activities now include such things as thinking and concentrating, eating and working.

"All in all, the new law puts the teeth back into the protections for the disabled," says Frasier, Frasier & Hickman, LLP, attorney Steve Hickman. "This law will restore the ability of the disabled to be measured by what they can do, not by their limitations."

IN MEMORIAM

Worker advocates contributed much in their lifetime

Oklahoma workers lost two of their strongest longtime advocates recently.

Carl Oldham, longtime International staff representative of the United Steelworkers of America, passed away in October.

Carl worked from the inside to help plant workers organize at several plants. Then, as a labor official, he fought for worker rights. He led strikes that demanded respect and reward for workers. Carl represented the CE Natco employees in obtaining \$8 million for the company's illegal lockout.

Carl realized that a second prong of protecting workers is political. He originated and promoted a sign shop which allowed cash-strapped, but labor-friendly, candidates to have the signs printed. Carl worked tirelessly to make sure workers were well-represented in government.

Tom Riddle, longtime IAFF local official and consultant to the state IAFF organization, the Professional Fire Fighters of Oklahoma, passed away in November.

Tom was a treasure trove of knowledge on how public

sector bargaining worked, the history of what employers could and could not do, and the history of what had been negotiated for firefighters throughout the state. "Whenever a question came up, Tom had seen it before," says Steve Hickman. "He would have the story about what had happened years ago and through that story could answer how the question would be answered."

For decades, Tom was the union-side representative of Oklahoma fire fighters in arbitration for their contracts and grievances. Always an advocate for the working man and woman, still he was widely respected by city advocates, lawyers, and arbitrators for his straightforward and upfront way of dealing with people.

Tom had an amazing insight into which fights could be won and which should be held off to another day. He takes with him an irreplaceable knowledge of how the public sector collective bargaining system works.

The attorneys and staff at Frasier, Frasier & Hickman, LLP, will miss both of these men. And our condolences go to their families.



My brother Tomy had a favorite quotation. He first heard it, as a boy, listening to the radio broadcast of President Franklin D. Roosevelt's second inaugural address. Tomy prominently displayed the quotation; even having it printed on the back of his business cards.

"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."

Those words came near the end of Roosevelt's remarks on January 20, 1937, to begin his second term. And they made a lifelong impression on my brother.

Exactly 24 years later, another inaugural address. This one by John F. Kennedy on January 20, 1961. Like Roosevelt before him, Kennedy appealed to the American people to reach for the greatness within themselves.

"And so, my fellow Americans, ask not what your country can do for you; ask what you can do for your country."

The phrase would shape the values of a generation of Americans.

Kennedy and Roosevelt both summoned the best of America. Now, another President will speak to the American people.

Barack Obama, like Roosevelt and Kennedy, will face a nation beset with unprecedented challenges. And, like these predecessors, Obama will need the cooperation of the American people, if things are to be turned around.

"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**

Maybe we should all get started, without having to be asked. Let's all include in our New Year's resolutions the promise to determine what we each can do for our country, to make sure we provide enough for those who have too little; to strengthen the foundation upon which our democracy is built.

Together, the American people can effect change. We have done it before. And we will do it again.

—Jim Frasier

CONSUMER

Oklahoma OKs Transfer on Death Deeds

Oklahomans now may hold property in a Transfer on Death deed that allows the property to pass to a beneficiary, upon the owner's death, without the need for probate proceedings.

Approximately nine other states already authorize Transfer on Death deeds. Oklahoma's Nontestamentary Transfer of Property Act took effect November 1.

The new law allows an owner of real property to have full control of the property while alive but to pass that property upon death to a named beneficiary, without the need for Probate Court proceedings.

This arrangement is similar to a Payable on Death checking account. Oklahoma also allows these accounts, along with Transfer on Death registration of securities.

The Transfer on Death deed must be set up in a format prescribed by law and the property owner signature(s) notarized, to avoid probate proceedings. Then it must be filed with the County Clerk. The deed requires no taxes – and can be amended at any time.

If you are considering a Transfer of Death deed, call Frasier, Frasier and Hickman, LLP.