

CERTIORARI

Journal of Consumer Advocacy

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

Page 23

The State
of Workers' Comp

Page 23

Wrongful
Termination

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● **CASE FILE**

Jury Finds for Couple in Case of Bad Faith

In 2012, Charlene and Willie McCrary discovered a leak problem with their sewer piping due to settling of the slab of their home. They immediately filed a claim with Country Mutual Insurance Company with whom they had carried homeowners insurance since 2005.

The McCrarys' policy did not cover repair of the leak or any damage caused by the leak, but the policy did cover the cost of accessing the sewage pipe for repair. Over the course of a year, the McCrarys would discover four leaks in their sewage pipe. In each of the first three instances, Country Mutual paid the cost of accessing the leak, less a \$1,000 deductible each time.

Before the fourth claim could be filed, the company canceled the McCrarys' insurance policy and refused to pay for accessing the fourth leak – although all the leaks were related to the same slab problem. Country Mutual claimed because it had cancelled the McCrarys' policy in mid-term, it was not longer liable.

The McCrarys brought the situation to the attention of Frasier, Frasier & Hickman,

LLP, and a review of the policy revealed the couple should have been subject to only one deductible – not three – and the fourth claim should be covered notwithstanding Country Mutual's cancellation of the policy.

The McCrarys attempted mediation, but the insurance company would not budge.

Finally, a lawsuit was filed in state court alleging that Country Mutual had not dealt with the McCrarys fairly and in good faith. The company then had the case moved to federal court.

A jury trial ensued and the jury found in the McCrarys' favor, not only awarding a judgment that covered the cost of the two additional deductible payments and the McCrarys' cost for access-

ing the fourth leak – but also awarding damages to the couple.

"This case should have never seen the courthouse door, if the company was operating in good faith," said Frank Frasier, who handled the case with George Miles. "Fortunately, our civil justice system provides protection for families and consumers against the greed of big companies."



● WORKERS

The State of Workers' Comp

The new Workers' Compensation law went into effect about 2 ½ years ago. It was Draconian and as anti-worker as it could be. Where are we now?

Some of the worst provisions in the new law have been struck down. For example, under the new law a very restrictive method of determining disability was to be applied; that has been stricken down. Also, under the new law, if a person went back to work, their PPD benefits, or "settlement", would go away; that has been stricken down. Under the new law an employer could set up its own Workers' Compensation system, where it decided for itself whether a person was hurt or not; that will not be upheld.

On a number of other things, the Oklahoma Supreme Court has held that the new law did not change from the old law. For example, the new law attempts to make an injury compensable only if there were no other contributing factors. However, the courts have held that where the on-the-job injury was the "straw that broke the camel's back", then the medical treatment to repair the situation was covered. The new law attempted to take away injuries where a person was in the employee parking lot. But the courts have said that the new law does not change anything, and the workers are covered.

There have been a couple of areas where the more stringent new law has been upheld. One limits the power of the Supreme Court to review a decision. Another has to do with whether the employer can terminate an employee who has been injured. Under the old law, a worker could be terminated only if it was finally determined that he

could not go back to work; under the new law, he can be terminated if any doctor says that he cannot go back, whether other doctors agree or not.

It should also be considered that the current Republican administration is appointing all the Workers' Compensation decision makers; they tend to be much chintzier in the amount of awards that they make.

All-in-all, the new law may not ultimately turn out to be the barrier to compensation that business hoped and, the Supreme Court is still very concerned that the "grand bargain" of Workers' Compensation (guaranteeing some relief in exchange for not being able to sue the employer) is not breached. But, on many things, what the fallout will be is not certain.

Two more things to consider. First, under the new law, the statute of limitations is one-year from the date of injury, or the last payment of benefits, whichever is later. The old law had a two-year statute of limitations. Second, on cumulative trauma injuries, such as carpal tunnel injuries, wear and tear to back, knees, etc., or hearing loss, the law that applies is dependent upon when the injured person was first aware that there was a growing problem. Thus, if the person was aware prior to February 1, 2014, the claim would fall under the old law. The statute of limitations, however, does not begin to run until the last date of exposure, when the person retires or is promoted to a job where there is not continuing damage. So, people leaving the job now, who were aware of the problem several years ago, still have a claim under the old law, with old law judges.

If you or a family member or friend has questions about workers' compensation benefits, feel free to call Frasier Law Firm.

● CASE FILE

Boynton Official Wrongfully Terminated

Boynton has had a recent history of problems and scandals in its town government. Several town officials in this Muskogee County berg – population 274 – have resigned or been criminally indicted during the past decade due to a parade of incidents involving nepotism, embezzlement and violations of the Open Meetings Act and Open Records Act.

In 2009, Tiffany Mayo (then Tiffany Ledbetter) stepped up and was elected to the office of Town Clerk in a special election, after the former clerk was indicted for embezzlement. But Mayo immediately

found herself out of the loop, so to speak. Three seats were filled on the five-member town council, and those sitting councilors kept Mayo in the dark. Meetings were scheduled without her knowledge and, even though she served as the town's treasurer, she did not have access to financial records.

In 2010, Boynton's problems came to a head when neighboring Haskell threatened to shut off water service because Boynton had not paid its municipal water bill although it was billing and being paid for water service by the town's residents. There was a





“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**

“We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness ...”

The Declaration of Independence

These words are the bedrock on which the United States of America was founded. And over time, the “a more perfect union” became a work-in-progress as our nation’s Constitution has been amended three dozen times. But at the foundation always has been the unalienable rights – including “the Pursuit of Happiness.”

Nothing about the creation of wealth or position, just the unalienable opportunity to do so within the boundaries of our system of laws that protects the health, safety and property of all citizens.

A lynchpin to this American promise is the system of public education created during the 20th Century that guaranteed a seat to every youngster

who walked through the door of a publicly funded common school.

The United States’ public school system was the cornerstone of the world’s greatest economy – and the melting pot of equality that has made the United States the greatest country in the world.

Every child – no matter his or her race, religion, creed, political persuasion, sexual orientation or any limiting factor – has the same right to a free and appropriate public education. But the Republican governor and leadership of Oklahoma’s legislature would tear the fabric of our country apart.

Vouchers proposed in Oklahoma – euphemistically referred to “education savings accounts” – would divert tax dollars from the public schools to private schools that can legally discriminate. Parents and guardians seeking vouchers could use the money to pay tuition or just pocket the money and keep the kids at home, saying they are being “home schooled.” Either way, the system designed to serve the public

is bled down and the gulf is widened between “haves” and “have nots.”

Would we ever stand still for a “public safety voucher,” allowing the wealthy and cultists among us who live in gated enclaves or secluded compounds to divert tax dollars to pay for private security and fire protection, or none at all? Never.

Know this: so-called Education Reformers are really aiming to roll back the clock to the good old days of segregation based on race, religion and class. This is so un-American it’s hard to fathom that the suggestion is taken seriously at the statehouse.

A free and appropriate education for every child is one of the chief underpinnings for the “Pursuit of Happiness” and a pillar upon which America will continue to be a beacon of hope and prosperity in this world. Education vouchers and so-called education savings accounts are a smoke-screen for wrong thinking that would divide this country.

–Jim Frasier

change in town manager and the three councilors were criminally charged with conducting illegal meetings. Three new city councilors were elected.

Through it all, Mayo persevered and tried as town clerk to straighten out the community’s records. But she continued to run into problems.

In 2013, she received a termination letter from Boynton’s mayor and was denied access to her office and the town’s records. This was preposterous, as she had been elected by the citizens of Boynton, not hired or appointed by the mayor or council.

Mayo contacted the offices of Frasier, Frasier &



Hickman, LLP, and we initiated an investigation and ultimately filed a lawsuit in Muskogee County District Court alleging wrongful termination. The case was set for trial earlier this year when an out-of-court settlement was finally reached.

“Ironically, the Town Clerk that replaced Mayo after she was illegally discharged, was herself indicted for crimes against the town,” said Frank Frasier, who handled the case.

“Tiffany Mayo tried to take on a corrupt City Hall and wound up dealing with a lot of headaches and poor treatment,” Frasier said. “Fortunately, the legal system was there to protect her rights as a citizen.”

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● CONSUMER

Medical Error is Third Leading Cause of Death

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.

Recent published findings indicate medical error is the third leading cause of death in the United States, behind heart disease and cancer.

Also known as "death from medical care," medical error is defined as an unintended act (omitted or committed)

or one that does not achieve the intended outcome, or an error in treatment execution or planning. Because medical error is not included on death certificates, it has not in the past been included in rankings of cause of death.

But recent studies suggest a problem of huge proportions. "If medical error was a disease, it would be ranked as the third leading cause of death in our country," said

Jim Frasier. "Our death certificates should be amended to reflect medical error, so these fatalities do not get assigned to another cause."

So what can be done besides advocacy for better record-keeping?

"There is no immunization to protect anyone from medical error. It can happen to anyone," Frasier said. "But the best antidote is don't ever go to a hospital for care without a family member or other trusted person there at all times asking questions and taking notes.

"Medical errors go totally unrecognized in 99 percent of the cases. So the only ounce of prevention is to ask a lot of questions and demand a lot of answers."

