

CERTIORARI

Journal of Consumer Advocacy

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

Page 28

**Firefighter
Pensions Protected**

Page 38

**Products Liability
Case Settled**

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Recyclable

● **CASE FILE**

Fatal Crash by Inattentive Driver Finally Settled

Shelly Smith was moving a washer and dryer from her home and took her two young daughters along with her. Smith's husband had loaded the appliances into the back of their pickup truck and she was on her way down U.S. 75 towards Okmulgee.

Along the way, the appliances came loose and fell into the roadway. Smith pulled over and, leaving her daughters in the truck, got out to move the appliances out of the roadway. Another motorist following Smith saw what had happened and stopped in the roadway before striking them. Another motorist following Smith also saw what happened and pulled to the shoulder of the highway.

Then an SUV driven by Javier Ramirez slammed into the car that had stopped in the roadway and then struck Smith, who was still on the shoulder.

A nurse who happened upon the scene stopped and administered CPR to Smith, trying to keep her alive. Finally, the nurse summoned the two children from Smith's truck to say goodbye to their mother as she lay dying along the roadway.

The Highway Patrol investigated the scene and noticed an open iPad device on the dash on Ramirez's vehicle. Tests were conducted and determined that, at the highway speed he was traveling, Ramirez would have had seven seconds to respond to the

tail lights of the vehicle stopped in the road near the appliances being pushed out of the way by Smith. The "black box" in his vehicle indicated Ramirez was not only speeding, but did not apply his brakes until a little more than a second before he crashed into the car and then struck Smith.

Ramirez claimed he had not been distracted by using the iPad while driving.

On behalf of Smith's surviving children – the two in the truck and

two older boys – Frasier, Frasier & Hickman, LLP was hired and a lawsuit was filed in Okmulgee County District Court.

The defendant tried to put the blame on Smith's husband for improperly securing the load. But in pre-trial hearings, the court was not buying this.

Finally, Ramirez and his insurer agreed to settle the case out of court.

"Interestingly, Mr. Ramirez never faced any criminal charge in this case," noted Jim Frasier. "He had an open iPad on his dash but claimed he was not using it. Be that as it may, use of electronic devices is highly dangerous, more so even than drunk driving.

"This was a tragic case all the way around. Smith's children received justice in the civil courts and will be taken care of. But this case should stand as a loud warning: do not drive distracted."



● WORKER

Firefighter Pensions Protected by Preliminary Injunction

Oklahoma firefighters have the option of "Plan B" when they retire. This gives them, in addition to a monthly pension benefit, a lump sum amount in retirement from which they can draw down in their later years.

One of the advantages has been that the amount in the firefighters' accounts increase at a rate of not less than 7½% per year, which is compounded over the years, until the money is drawn down.

Recently, the Oklahoma Firefighters Pension Board attempted to change the rule: earnings on the account would be paid out annually and not allowed to compound.

Many firefighters retired with the understanding that the amount in this account, as it increased in value, would compound, and based their retirement planning on what

they would expect to have.

This attempted change by the Board tore in pieces all their retirement planning.

A group of firefighters, both active and retired, contacted Frasier, Frasier & Hickman, LLP, to contest the attempted changes. Historically, the Oklahoma Supreme Court has been very protective of vested retirement provisions – retirement plans can be changed only as to those who do not have a vested right, because vesting becomes a property right. Our governor has recognized that it is inappropriate to change vested pension benefits, but nevertheless approved the Firefighters Pension Board's attempt to change.

A lawsuit was brought before the end of the last fiscal year, as the at-



tempted change would go into effect on July 1. At a hearing for temporary injunctive relief, the judge ruled that the Board was acting beyond its authority to the extent that its rule change would undo the vested planning of firefighters. The Board was prohibited from implementing the rule change during the pendency of the lawsuit, until a final decision can be made.

"We are a long way from the end on this, but we anticipate positive results," said Steve Hickman, who represented the firefighters. "We were happy to be able to do our part to protect firefighter pensions from changes, when it was too late for the firefighters themselves to change how they elected to receive their money."

● VOTER

Important Races on November Ballot

The General Election is Tuesday, Nov. 6, and all registered voters can take part in this important election.

The last day to register and be eligible to vote in this election is Oct. 12. Registering to vote – or changing registration – is easy in Oklahoma. The necessary forms are available at election board office and tag agencies, or on-line at www.ok.gov/elections.

Also, Frasier, Frasier & Hickman, LLP can help. Our office has all the forms necessary to register or change registration at our offices at 1700 Southwest Boulevard.

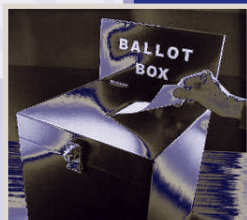
If you need assistance with voter registration matters, come by our office or call us at 918-584-4724.

The polls will be open from 7 a.m. to 7 p.m. on Election Day, November 6. However, registered voters may vote "in person absentee" at county Election Board offices on Thursday, Nov. 1, and Friday, Nov. 2. The Tulsa County Election Board, at 555 N. Denver Ave., will be open from 8 a.m. to 6 p.m.

Workers who properly notify their employer that they intend to vote must be given ample time to do so on Election Day without loss of pay or any other penalty for the absence.

Workers must notify the employer at least the day before the election that they intend to vote. After voting, they return to work with proof of having voted. If there is no form designated by the employer, have a poll official write a note that the employee voted, with the time, date, and official's signature.

Employers must either adjust work hours so they do not begin before 10 a.m. or end after 4 p.m. – giving workers a three-hour window to vote after the polls open at 7 a.m. and before they close at 7 p.m., or grant employees sufficient time – at least two hours – during which to leave work to vote. The employer may select the hours the worker can be absent from work to vote.





“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 2018 Oklahoma General Election is right around the corner on Nov. 6. No doubt you will hear plenty about it if you watch television, listen to the radio, or use social media. If the primary and run-off election cycles earlier this year were any indication, you will encounter plenty of bull as Election Day approaches.

The tone will be negative. And the politics may seem foul. But don't let unsavory advertising and crass political stunts sway you from the polls. Every vote counts today more than ever.

So the challenge each of us face is to do our homework and learn about the candidates – investigate their positions, find out who else supports them, question the hype, and question the candidates personally, if you can. Don't just rely on what you will

hear through the piles of advertising. There are a lot of candidates on the ballot. So you have some work cut out for you.

Appearing on the Nov. 6 ballot will be all state officers: governor, lieutenant governor, state auditor and inspector, attorney general, state treasurer, state school superintendent, labor commissioner, insurance commissioner and a corporation

commissioner. Many state House and Senate seats will be on the ballot, as well, along with congressional seats and several county seats. (In Tulsa County, the only county office on the ballot Nov. 6 will be district attorney and many City of Tulsa voters also will see one of four City Council races on the ballot.)

Oklahoma's judicial elections will be on the Nov. 6 general election ballot. Statewide, that means the retention of seven state Supreme

Court justices and several appeals court judges.

And don't forget the State Questions – on Nov. 6 there will be five on the ballot.

Whew! That's a lot. But all of these offices play a role in your way of life and the future being prepared for our children and grandchildren.

I would draw your attention to the race for governor. There could not be a more stark contrast in the vision expressed by the two major candidates for our state's future. Much has been said about state legislators this year, as current state leadership struggled to bring a budget that would make progress in teacher pay and other core services.

But make no mistake, the leadership of the governor and their team affects every Oklahoman. The governor is responsible for making more than 500 appointments to boards and commissions that set and administer regulations and rules that touch every facet of our lives.

Only one candidate for the crucial leadership role has the experience, character, concern for the people's needs and political skills necessary – Drew Edmondson.

Remember **Drew Edmondson** and look closely at the other races.

–Jim Frasier



● CASE FILE

Products Liability Case Settled

Jeremy Stockton was 20 years old when he was working as a mechanic at a quarry in Eufaula.

In June 2014, he was working on a 2007 New Holland Model L185 skid steer loader. The loader had run out of fuel, which required the fuel line to be cleared of air while the equipment was running again. Stockton was following the usual procedure, and while loosening a nut on the fuel line, his hand became tangled in the cooling fan which was not covered or guarded in any way.

The accident left Stockton with severe injuries and unable to go back to work.

Frasier, Frasier & Hickman, LLP was hired to investigate and discovered that the loader Stockton had worked on had a dangerous defect – it did not have a finger-guard safety cover over the cooling fan compartment. The investigation revealed that New Holland had

indeed included a finger guard in L185 loaders manufactured before 2007, had removed the finger guard from the design of the 2007 model, and replaced the finger guard on the fan in later models.

A lawsuit was filed against New Holland's parent company, CNH Industrial America LLC, alleging products liability.

The case finally was set for trial earlier this year when CNH Industrial America agreed to settle the case out of court.

“Mr. Stockton had substantial medical bills and will not be able to work again because of his severe injuries, including post traumatic distress. Through thorough investigation and a determination to stick with this case even though the defendant dragged things out, he received a settlement to cover his medical bills and some ongoing living expenses,” said Jim Frasier.

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● FALL 2018

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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.

● CASE FILE

Some Criminal Records Can Be Expunged

Many Oklahomans are unaware that our state laws provide for the expungement of certain felony and misdemeanor criminal records.

In some cases, all criminal records are restricted but may be able to be used for the purpose of future criminal prosecution or background checks through the Oklahoma State Bureau of Investigation. In other cases, criminal records can be completely removed.

Oklahoma law also allows a person who is the victim of identity theft and who was falsely prosecuted to have those records expunged.

The state legislature expanded to some extent the expungement and/or sealing of criminal records with the new statutes to go into effect on Nov. 1, 2018.

If you, a relative or friend desire to have criminal records expunged from the public record and possibly law enforcement and/or background checks, contact Frasier, Frasier, and Hickman, LLP.

