

# CERTIORARI

## Journal of Consumer Advocacy

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**Frasier, Frasier & Hickman, LLP**  
*Attorneys at Law*

1700 Southwest Boulevard  
Tulsa, Oklahoma 74107  
918-584-4724 or  
1-800-522-4049

Internet site:  
<http://www.frasierlaw.com>

E-mail Address:  
[frasier@tulsa.com](mailto:frasier@tulsa.com)

*Thomas Dee Frasier*  
1924-2001

*James E. Frasier*

*Steven R. Hickman*

*John W. Flippo*

*J.L. Franks*

*Frank W Frasier*

*George M. Miles*

*Kathryn H. Christopher*



● **CASE FILE**

## Complicated Truck Wreck Case Finally Settled

In the dark early morning hours of June 25, 2011, truck driver Frank Spencer was driving his FedEx route along U.S. 169 in Kansas. Suddenly, another truck traveling the opposite direction crossed the center median and slammed into the FedEx truck.

Spencer was seriously injured and air-lifted to a Kansas hospital where he underwent extensive surgery and remained for the next month.

At the scene of the crash, Delmar Bruton, the driver of the second truck, admitted to witnesses that he had fallen asleep at the wheel. A forensic examination by Kansas authorities later indicated he had methamphetamine in his system.

Spencer's serious injuries required extensive medical treatment and he hired Frasier, Frasier & Hickman, LLP to assist in navigating a Workers' Compensation claim as well as recovery of expenses and damages.

An investigation by the firm found that two different Sapulpa companies, owned separately by two family members, each showed ownership of the truck Bruton was operating. It appeared that phony paperwork had been used to shift responsibility.

The Frasier firm settled Spencer's Workers' Compensation claim and filed a lawsuit in Creek County District Court against Bruton, Joey Volner doing business as C&A Trucking,



and Tammy Cooper doing business as Mid-States Trucking. Several insurance companies representing the various parties also were brought into the case.

Eventually, mediation was successful and the case was settled out of court.

"Mr. Spencer was seriously injured through no fault of his own and through the negligence of others," said Jim Frasier who handled the case. "Although the responsible parties sought to confuse and even hide the facts, our investigation eventually got to the truth. Although his life has been seriously altered, Mr. Spencer finally has received fair compensation for his losses and medical treatment."

## ● CASE FILE

# Pipeline Leak Causes Serious Property Damage and Health Risks

A family operating a cow/calf operation in Pawnee County was exposed to property damage and serious health risks when a Magellan Midstream Partners pipeline carrying toxic anhydrous ammonia failed twice within six months.

Federal law requires the pipeline owner to have safety systems in place. That the pipeline leaked twice within six months shows how inadequate the Magellan Midstream safety procedures were.

One evening in July 2009, the mother was returning home near Pawnee when she drove through a fog. The woman immediately had a metallic taste in her mouth, her eyes started watering, and her throat and nose were burning. She began a cough and contacted her doctor the

next morning. He immediately sent her to the emergency room where she was treated for exposure to anhydrous ammonia.

Meanwhile, the Pawnee County Sheriff's office contacted Magellan Midstream. The pipeline company could not stop the leak remotely nor manually close a valve because of the dangerous nature of the site. Grass and trees on the family's property died along with fish in their ponds. The loss of grass and contamination of the ponds ended the family's cow/calf operation and rendered the land useless for livestock.

In January 2010, another leak occurred about one-and-a half miles from the first leak. Again, where was



Magellan Midstream's safety system?

During the second leak event, the family was forced to evacuate their home.

The family hired Frasier, Frasier & Hickman, LLP to investigate the episodes and a lawsuit was filed to recover medical expenses and loss of income through land leases and the sale of cattle.

Recently, a settlement was reached and the case resolved.

"Chemical exposure of this kind can cause a number of health issues and adversely affect property in some cases, as it did in this," said attorney George Miles, who handled the case. "This family was lucky that no one died or the injuries more severe."

## ● CASE FILE

# Woman Injured in Crippling Fall Settles Case

Tina Wagoner was working as a custodian for Union Public Schools in January 2010, when she was assigned to help put away expandable bleachers at the district's basketball court in south Tulsa. The 43-year-old woman and a coworker were following the procedures outlined by the manufacturer of the bleachers

which had Wagoner working in an area of the bleachers 14 feet above the floor with no railings.

During the procedure, Wagoner fell to the floor with a devastating result. The once healthy woman was now a paraplegic with tremendous medical expenses who would not ever be able to again be gainfully employed.

Frasier, Frasier & Hickman, LLC filed a lawsuit alleging that Hussey Seating Company, a prominent manufacturer of bleacher-type seating, had failed to meet numerous safety standards in the design of their product.

"The case was about the hazard identification and risk analysis required by federal law, and Hussey's failure to identify and eliminate any slip, trip or fall hazard," said



Jim Frasier, who handled the case. "This case was about eliminating a slip, trip or fall hazard, guarding against it, or warning about the hazard which arises from an unguarded workplace environment more than six feet above the ground, as defined by the federal Occupational Safety and Health Administration.

"The universal standard of good design is to design out the hazard, guard against the hazard, warn about the hazard," Frasier said.

Ultimately, the case was settled out of court. The settlement amount was required to remain confidential, but it was sufficient to cover Wagoner's considerable medical expenses and secure her future.

"OSHA's safety and design standards required by federal law exist for a reason," Frasier said. "Without them, manufacturers would not be required to have any regard for safety. Ms. Wagoner paid a high price for the negligence of Hussey, but the result of her case at least holds them accountable for their actions."



**“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**

Apparently, most folks in Oklahoma are happy with the state of the state. The recent general election in November featured races for governor and other top state officials, but the voter turnout was the lowest on record.

Just a little over 40 percent of Oklahoma’s registered voters bothered to go to the polls. Only 29 percent of Oklahomans who are either registered or eligible to vote cast a ballot.

These statistics are horrible. Never before have Oklahoma’s laws been so unfriendly to working people and their families.

The governor and Legislature that was re-elected ushered in a Workers’ Compensation system that claims to

be saving employers money while raising the cost for insurance. Meanwhile, its governing board systematically broke the law with a series of illegal meetings while throwing injured workers into a waiting list.

Under the new law, any injury that could be “reasonably foreseen” will not be eligible for compensation. Think about the firefighter who suffers smoke inhalation, or the police officer shot in a gunfight. The implications are horrendous.

Perhaps it is a sense of hopelessness that caused folks to give up and stay home on election day. In any case, if you did not vote, you do not have any room to complain!

– Jim Frasier

● **CASE FILE**

## Firefighter Testee Entitled to Benefits

Rusty Topping always wanted to be a firefighter. His father and father-in-law were both members of the Bartlesville Fire Department.

He signed up and took Firefighter I training through the Barnsdall Rural Fire Protection District. After completion of training, prospective firefighters go to the OSU fire facility to be tested and certified as a Firefighter I.

Topping’s testing came in May 2008. It was a particularly hot day. At that time, OSU did not have in place protections against heat exhaustion, even though it had long been known, for example, that August football workouts require constant monitoring against heat exhaustion dangers.

Not only was the May day hot, but the firefighting equipment he



was required to wear was hot and, of course, being around a burning fire greatly raises the heat levels.

After the training, Topping went into the bathroom and rested, but also died from heat exhaustion.

As a result, OSU has put new protections into place so that it will not happen again.

In the meantime, Topping’s child was born and his widow filed for Workers’ Compensation benefits for her and the child. The Barnsdall Fire District objected to benefits on the grounds that Topping was not a part of their system. This is despite the fact that their chief wrote several letters, both before and after Topping’s death, confirming to governmental authorities that he was a part of the fire district. Indeed, Topping was only allowed to partic-

ipate in the firefighter training and testing at OSU because he was certified by the Barnsdall Fire District.

After many delays and many witnesses were examined, the Workers’ Compensation trial court found that Topping was not a part of the fire district. The case was appealed to the Workers’ Compensation Court en banc. That court, as the final factfinder in the Workers’ Compensation system, determined that Topping was working for the Barnsdall Fire District, as the district had certified in numerous letters. The fire district appealed to the Court of Appeals in Oklahoma and then to the Oklahoma Supreme Court, both of which upheld the Workers’ Compensation Court’s final decision.

“It has been a long haul for the Topping family, but persistence is paying off for the widow and her child,” said attorney J.L. Franks.



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## ● WINTER 2014

Frasier, Frasier &  
Hickman, LLP

1700 Southwest Blvd.  
Tulsa, Oklahoma  
74107

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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 from  
Frasier, Frasier &  
Hickman, LLP*