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Journal of Consumer Advocacy

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● CASE FILE

Grocery Settles Tragic Slip and Fall Case

Lonnie Williams was a mechanic for Tulsa Public Schools and pastor at this church. In March 2012, Williams went to the Gateway Market in north Tulsa to deposit church funds at the Bank of Oklahoma branch inside the grocery store. He entered the first of two sets of automatic doors and was about to enter the store through the second set of doors when Williams suddenly slipped on wet flooring and fell.

Store personnel who witnessed the fall quickly rendered aid to Williams – and brought a “Caution – Wet Floors” sign to the area.

Williams’ injuries rendered him quadriplegic and he would spend the next few years in a wheelchair, cared for by a sister and in-home health care workers. Williams’ family was faced with considerable medical and care expenses. They contacted Frasier, Frasier & Hickman, LLP and an investigation of the accident was conducted and a lawsuit alleging negligence by the store was filed.

In October 2015, Williams died of complications from his injuries as the case waited for trial.

Gateway owners and managers claimed a caution sign was stationed in the area that Williams fell, and they had no responsibility for his injuries. However, witnesses contacted

by the law firm contradicted the claim. One witness recalled that store personnel were dispatched to bring a caution sign to the area as Williams was receiving aid.

The store continued to deny that a warning had not been posted and, conveniently, the store’s security cameras had not been turned on. However, the law firm’s investigation discovered that the BOK bank branch had its own security cameras. And while they did not show the fall, they appeared to show warning signs being carried into the area as medical aid was being rendered to Williams.

Also, the store claimed mats were down in the area. But the mat supplier’s records showed the mats were delivered the following week.

As the case was about to go to trial, the store and its insurance company agreed to an out-of-court, confidential settlement.

“This is a very sad case,” said Jim Frasier. “Lonnie Williams was severely injured because of the negligence of Gateway Market in failing to simply mark a wet floor – one of the most basic practices in a retail establishment. Then they got caught trying to create a fictional account of the accident.

“Fortunately, justice prevailed and Lonnie’s severe injury and medical and funeral expenses will be compensated.”



CASE FILE ●

Updates and Challenges to State Workers' Compensation System

By J.L. Franks

As we close the year, this is an update on challenges to the 2014 Workers' Compensation law. So far, the vast majority of the challenges that have been raised have been upheld and those portions of the new law struck down.

One of the biggest successes on appeal dealt with the deferral of Permanent Partial Disability payments if an employee returned to work. The Court has determined that this provision was unconstitutional. This aspect of the law discouraged injured workers from returning to work, and treated individuals differently whether they returned to work or were unable to do so. Now, they receive PPD as under the old law.

One of the pending appeals at this time deals with vocational rehabilitation, which relates to employees who are unable to return to work as a result of their injury. The current statute allows the employer to deduct the cost of vocational rehabilitation from a PPD award. This has yet to be ruled upon.

Two other cases that have been handed down from the appellate courts deal with whether or not there is a recovery available for an aggravation of a pre-existing condition. As the statute currently reads, it allows an employer to escape liability if an injury was not solely and exclusively a result of the work the employee is performing. The Court has struck this down and ruled that, if there is a specific incident that causes an injury, it shall be compensable regardless of whether or not there was a pre-existing condition.

With regard to cumulative injuries, the Legislature established a 180 day limitation for filing of that type of claim. This too has been stricken

down by the Supreme Court as unconstitutional.

The Legislature also tried to prescribe that the AMA Guides should govern in evaluating impairment. That has since been found unconstitutional as to scheduled members, i.e. knees, feet, hands, elbows, etc. The determination as to whether

the AMA Guides will be applied to whole person impairment is currently pending on appeal. This is important because the newest version of the Guides rates almost all injuries at no impairment.

One of the most recent determinations from our appellate courts deals with the coming and going exception in parking lot cases. That is, if there is a parking lot provided by the employer to the employees and if they are

injured on that property coming to or leaving work, the new law provided no coverage. The Court has now stricken that provision as unconstitutional and allows compensation in those instances.

It should be noted that the new statute of limitations for filing Workers' Compensation claims is one year from the injury (or one year from the date that last benefits were paid or authorized by the employer). There is also a provision requiring notice to the employer within 30 days or the law will presume that the injury occurred outside of employment.

Should you have any questions as to what your rights are under the new law, our Firm will provide consultation free of charge, even if no claim is filed. If a claim is filed, then a percentage of the recovery will be charged. If there is no recovery, there is no fee.



Terrible Injury Case Settled Out of Court

In July 2012, Robin Burger was operating a pump truck at an oil well site as part of her job with D&P Tank Trucks. While servicing the well site, a ball of flames engulfed her and she sustained burns over more than half of her body.

Burger hired Frasier, Frasier & Hickman, LLP, and an investigation revealed that the muffler on her truck was not safe and the truck was not manufactured in a manner which would have prevented the terrible accident.

A lawsuit was filed in Tulsa County District Court against the pump and truck manufacturers, Ameripump Manufacturing, LLC, and Chandler Equipment, Inc. The suit alleged that the muffler manufactured by Chandler was defective in its design and did not vent flammable fumes away from the hot surfaces of the truck assembled by Ameripump.

Recently, the case was settled out of court.

"This was a terrible accident, particularly since it could have been prevented. However, we were able to achieve a settlement that will cover Robin Burger's substantial medical expenses and other losses," said Frank Frasier, who handled the case.

Three years after passage of sweeping legislation that revamped Oklahoma's Workers' Compensation system, courts are scrapping significant parts of the law in decisions that say the law violates the state Constitution and does not provide adequate protection to workers.

The regulations were touted by the Republican-controlled Oklahoma Legislature as a way to reduce the cost of Workers' Compensation insurance for employers and improve health outcomes for injured workers by moving the system from an adversarial court-based system to an administrative one. New research reveals that while the cost of Workers' Compensation insurance in Oklahoma has declined, the cost is still high while benefits to injured workers have plummeted.

But what is even more astonishing? Since the new law went into



“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**

effect, 38 provisions have been found unconstitutional, invalid or inoperable, by state courts.

How? and Why? are two good questions. In recent years it has not been uncommon for Oklahoma lawmakers to pass legislation that addresses conservative positions on business and social matters without regard to the state Constitution. And the only thing standing in the way are the state's courts, who have had to overturn numerous recent unconstitutional laws.

In the reddest state in the nation, expect renewed attacks on the

Oklahoma judiciary in an effort to undermine its independence from politics. At present, Oklahoma's courts are the only thing standing in the way of a rush to unconstitutional assaults on individual rights and freedoms.

Expect renewed attempts to weaken our judiciary by politicizing our courts. That would be the greatest threat to individual freedom but the greatest boon the moneyed business interests who currently control what should be government of the people, by the people and for the people.

– Jim Frasier

State DUI Processes Overturned

Several recent Oklahoma appellate cases have overturned processes affecting potentially thousands of cases against persons arrested or charged with Driving Under the Influence. One invalidated breathalyzer exams being used in DUI cases in driver's license suspensions because the equipment was not approved. Another invalidated use of state agency records on calibration of breathalyzers; testimony of the person conducting the test is necessary. The third invalidated the lengthy administrative process of appealing driver's license suspensions.

In regards to the first two cases, the courts ruled that the proper equipment was not used, or, where proper equipment was used, the proper procedure to calibrate breathalyzer test equipment had not been followed, rendering the results of those tests invalid. The decision could mean that thousands of breath tests, and possibly blood tests, performed in Oklahoma are not valid and could impact license suspension and criminal cases. And the proper calibration testing may not be in place for some time.

However, this does not necessarily invalidate all DUI arrests or charges. A breath or blood test is not needed to make an arrest or convict a person of DUI if the arresting officer is relying on observation or experience to

make an accusation that a driver is intoxicated.

The other issue ruled on is the constitutional right to a speedy trial in regards to the administrative hearings at the DPS at which persons who have had their license suspended may appeal to get their license back.

Although a person may be convicted of or plead guilty to DUI in criminal court, an attempt to get their license back is handled through DPS where it takes months or years to receive a hearing.

Since the court ruling, the DPS has been working to address the situation but has said it may take some time to get the waiting period for a hearing reduced to a reasonable time frame because of staffing and funding shortages.

After arrest for DUI the person is notified by DPS that his driving privileges will be administratively suspended. The suspension occurs 30 days following the notice, unless a hearing before DPS is requested within 15 days of receiving the notice. If this is you, or a loved one, always request the hearing with the 15 days. If this procedure is followed, the suspension will be delayed pending the hearing.

Persons who may be affected by these rulings should contact the offices of Frasier, Frasier & Hickman, LLP for a review of their case.



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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*