

# CERTIORARI

## Journal of Consumer Advocacy

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

Page 3:

PERB Gone

Page 4:

Civil Rights Case  
Moves Forward

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● CASE FILE

## Man Loses Leg After Jailers Indifferent to Medical Issues

Greg Dubois, of Spavinaw, was jailed in Mayes County in 2011, pending a district court trial. But over the next three months, his physical condition deteriorated and he vomited frequently.

Because of a mental illness, Dubois had lived with his mother and was under medication. In jail, he was given his medications only sporadically.

Dubois complained of stomach pain and frequently vomited blood that had to be cleaned up by jail personnel. Other inmates even locked him out of their group cell several times because of the vomiting episodes.

Although he asked for medical attention over and over, Dubois was ignored for the most part. Jail personnel would offer Dubois pain relievers or antacids but denied him medical attention. Only twice was he seen by a nurse practitioner – once shortly after being jailed in April and again a month later.

Eventually, Dubois was placed in a medical isolation cell for 34 days due to his frequent vomiting. Finally, on the night of July 15, Dubois became ill again and jail personnel phoned the nurse practitioner, who advised that he should be taken to an emergency room. Jailers on duty did not call for an ambulance but instead transported him several hours later to Mayes County Medical Center where medical personnel immediately recog-

nized serious issues and had Dubois transported by helicopter to a hospital in Tulsa where he underwent surgery for a perforated colon.

Due to complications from blood loss and shock due to hemorrhaging, Dubois' right leg had to be amputated.

Frasier, Frasier & Hickman, LLP, was contacted by the family and conducted an investigation. A lawsuit was filed in federal court alleging Mayes County and its employees were "deliberately indifferent" to Dubois' medical condition. An expert witness determined that if the inmate's complaints of pain and frequent vomiting had been cared for properly, the eventual amputation would have been avoided.

Mayes County officials sought to have the case thrown out. But an appeals court ruled that a trial could move forward. However, before trial, county commissioners agreed to settle the lawsuit.

"This case is a gross example of complete, utter failure to follow jail standards and, basically, a lack of human decency," said George Miles, who handled the case. "It was no secret to anyone in the jail – staff or other inmates – that Greg Dubois was in serious pain and very, very sick. Yet, the only thing anyone did was to isolate him and clean up his messes.

"Fortunately, the civil justice system did its job and stood up for his rights, although this man will never get his leg back."



## Man Receives Just Compensation After Falling Through Floor Grate

Justin Schwartz was renting a midtown Tulsa, two-story duplex when he came down the stairs in April 2014, stepped on the covering of a heating and air conditioning outlet in the floor, and his foot and leg crashed through into the ductwork.

Schwartz thought he had suffered a minor injury but later his ankle became swollen and developed what looked like a boil.

The 28-year-old man sought treatment at a clinic which sent him straight to a hospital emergency room. At the hospital, Schwarz was immediately admitted and had surgery.

After suffering complications, Schwartz was hospitalized for three months.

Frasier, Frasier & Hickman, LLP was contacted and the firm's investigation revealed that there was a plastic grate to cover the HVAC outlet instead of the metal register covers that are required by building codes. Furthermore, the firm discovered that the company that manufactured the grate, Decor Grates Inc., had never tested the strength of its product and was unconcerned that they would break if stepped on.

A lawsuit was filed against both Decor Grates and the landlord. Because the company's grate product had never been tested and the landlord had allowed a substandard covering over the HVAC outlet, the lawsuit sought exemplary damages.

The claim against the landlord was for negligence. The claim against the manufacturer was for products liability.

Schwartz had significant medical bills, was off work for about six months, and missed several opportunities for promotions at his job with AT&T. The landlord and Decor Grates initially denied responsibility for his medical expenses and losses. But the case was settled out of court before trial.

"The defendants tried to throw the blame for Mr. Schwartz's injuries on Justin himself, that he should have known better than to step on the grate in the floor," said Jim Frasier.

"But they knew the law was on the plaintiff's side of this case and we were able to get them to own up to their misdeeds and responsibility for our client's injuries."



## Firefighter Grievance Goes to Arbitration

When the City of Tulsa did not make insurance contributions as required by the Collective Bargaining Agreement, the firefighters union, IAFF Local 176, filed a grievance.

The City denied the claim through the grievance process. The Union then demanded arbitration, something provided for in both the Collective Bargaining Agreement and the state law governing firefighter unions.

The City refused to go to arbitration and a lawsuit was filed in the District Court of Tulsa County to compel arbitration. The City moved to dismiss on the grounds that the grievance was not arbitrable and because it had not been timely pursued pursuant to the grievance process (because the City and Union were discussing resolution).

The district court ruled that whether the City paid contributions in accord with the Collective Bargaining Agreement was an issue under the Collective Bargaining Agreement and that arbitration was therefore required. However, the district court ruled that the Union had not timely pursued its grievance process and dismissed the case.



The Union appealed the decision to the Oklahoma Court of Civil Appeals. The issue of whether a grievance is timely or not is governed by a 1964 U.S.

Supreme Court case – only the arbitrator can decide whether the grievance is timely or not. Thus, the questions of whether the City excused any untimeliness or agreed to put the grievance on hold and then later changed its mind, are matters for the arbitrator, not the court. The Court of Civil Appeals sent the case back to the district court.

The district court has ordered the grievance to arbitration and the parties are proceeding forward.

The lesson here is that cities (or other employers) often take unreasonable and untenable positions. Rather than the union acquiescing, a lawsuit is often successful in forcing the employer to do what the law requires. This case is just one example of many cases in Tulsa, Muskogee, McAlester and Coweta, to name a few, where the City has refused to follow the law requiring arbitration. The courts, however, are pretty consistent in requiring disputes between the City and the Union to be resolved by the arbitrator.

I hear the drip, drip, drip of trickle down economics.

Some call it “supply side economics.” Others have called it “Reaganomics.” The theory is that tax breaks for big business and the wealthy will stimulate economic activity at the top that will work its way down to the bottom. This has never proved true but is being forced upon the state of Oklahoma by Republican ideologues who control the executive and legislative branches of government.

The reality is wealthy individuals and corporations, and oil and gas producers, get tax breaks while Oklahoma’s working people and families get the shaft – excuse me, bear the burden of higher fuel and tobacco taxes passed by Republican lawmakers in a rush to end the Legislative Session. But these so-called solutions to the state’s revenue crisis are so dubious that they may not survive the legal challenges



**“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**

to them.

There’s a good chance that the courts will throw out these revenue increases, putting the state budget back into a deficit.

The trickle in Oklahoma is not one that presents opportunity to working people and families. No, this trickle is the steady leak

that is draining Oklahoma’s ability to deliver critical services like education, roads, health care and veterans services.

Oklahoma’s current leadership, under Gov. Mary Fallin and a solidly Republican-controlled Legislature, has been willing to feed the rich

while roads and bridges crumble, health and mental health services are curtailed and schools are starved to the point of begging for handouts.

The worst part of this scenario is that this trickle down policy is robbing our young people – particularly those in challenging circumstances – of opportunities to learn, develop and make a better life. Educational attainment correlates with adult income and a better life. Lack of education correlates with unemployment and incarceration.

The failure to invest in children today will only cost us all more tomorrow. And the trickle may grow to a flood of businesses and jobs and people leaving Oklahoma.

*– Jim Frasier*



## ● WORKER

# Public Employees Relations Board Gone

Oklahoma law provides that boards and agencies “sunset”, or cease to exist, after a set period of time. The Public Employees Relations Board (PERB) has been a constant irritant to cities who do not want to follow the law in regard to their firefighters and policemen. The PERB permits a firefighter or policeman, or their union, to file an “Unfair Labor Practice” where the employer has not followed the law. PERB also certifies the union as the representative of the employees.

Whether PERB should be renewed has been a constant battle over the last several years. However, this year, with Republicans fully in control, although a renewing bill slipped through in the last days of the Legislature, Governor Fallin has vetoed it. This means that the PERB will sunset on June 30, 2017.

The thinking can only be that, without the PERB, new bargaining units cannot be certified and there is no remedy when the city commits an Unfair Labor Practice.

What this thinking ignores is that the district courts in Oklahoma are courts of general jurisdiction. That is, they can hear any dispute or matter that is not assigned

to someone else to decide.

A similar example is about to occur with regard to the Workers’ Compensation Court, the body that decides workers’ compensation injuries occurring prior to February 1, 2014. The terms of the last judges on that court are about to expire, leaving the court empty. By default, those cases will then all go to the district courts. The Tulsa County District Court has, in fact, prepared itself – it hired as a judge a former Workers’ Compensation Court judge, with the idea that this judge would receive the assignment of all the workers’ compensation cases once the Workers’ Compensation Court had no more judges. The thinking of the Republicans is further mystifying because they had total control over who sat on the PERB, but they do not totally control who the judges are.

The bottom line for firefighters and policemen is that they are more likely to get a sympathetic hearing under the new system without a PERB than what has previously been in place. Certainly, policemen and firefighters should not worry that they no longer have any place to go.



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## ● SUMMER 2017

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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

### Civil Rights Case Moves Forward

The Oklahoma Court of Appeals recently ordered the Tulsa County District Court to hear the civil rights claim against the City of Bixby filed on behalf of Geron Taylor, who was jailed in Bixby for 10 days for driving while black.

Taylor was arrested on his way to work early one morning in September 2011, for failing to have a driver's license. He was released on bond but when he returned for his court appearance, Bixby Judge Tamara Childers summarily sentenced him to 10 days in jail and immediately put Taylor in custody. During his confinement, Taylor was fired from his job for failing to show up to work.

Taylor was never given the opportunity to contact legal counsel, have a jury trial, or receive other rights – violations of the Oklahoma Constitution and U.S. Supreme Court rulings. While in jail, he was denied toilet paper and called by racial epithets.

Frasier, Frasier & Hickman, LLP, went to work fighting for Taylor. A tort claim was rejected by the City of Bixby. The case was sent to Tulsa District Court where it was dismissed. An appeal was filed and the case was ordered back to district court for a trial.

“Geron Taylor’s civil rights were violated and justice sometimes is a long, slow process,” said attorney George Miles. “But we will stay with him every step of the way, until justice is served.”

