

CERTIORARI

Journal of Consumer Advocacy

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● **CASE FILE**

ODOT Mishandles Employee Drug Testing

Tim was, by all accounts, a valued worker at the Oklahoma Department of Transportation (ODOT). Because he had a Commercial Driver's License, he was subject to drug testing. But there was a problem – he also had a shy bladder. In other words, when the specimen collector would go in to watch him, his bladder would often not cooperate.

In March 2015, he was sent for a drug test; his bladder was shy. Rather than offering encouragement, the specimen collector simply told him to hurry up because he did not have all day to wait.

Tim went back out into the lobby and, according to protocol, was given water to drink. Eventually, he was so full that the need to urinate was urgent. He told the receptionist several times, but got no response. Finally, he called his HR contact at ODOT. She told him that he did not need a bladder infection, to “go ahead and go”, and that they would reschedule the test. This is what he did.

On his next workday, Tim's boss took him to a different facility for the re-test. He went and gave the sample. However, the doctor who certifies compliance or not with drug testing

determined, from his cabin in Colorado, that the first attempt should be counted as a positive test. ODOT terminated Tim.

State law provides that a merit employee can only be terminated with just cause and is entitled to a hearing before a neutral agency – the Merit Protection Commission. At the

hearing, the state tried to back track on its story: the HR person, whose husband took Tim's job when he was terminated, denied that she told him to “go ahead and go.” However, how could ODOT get past the fact that they had scheduled the re-

test, which went smoothly and came back negative?

In the end, ODOT could not. The hearing officer ordered Tim reinstated to his job with full back pay.

“It was clear that ODOT management mishandled the situation from the get-go and violated its own rules multiple times. Then they tried to lay the blame at Tim's feet for following their direction,” said Steve Hickman, who handled the matter. “Although being a merit employee does not have as much protection as a union contract, it certainly offers some protection against our government's bureaucratic snafus.”



● WORKERS COMPENSATION

Workers' Comp Opt-Out Stricken

When the new Workers' Compensation law became effective in February 2014, one of the dangerous provisions allowed employers to "Opt-Out" from the law. The requirement was that such an employer could set up its own system, with "equivalent benefits", which it administered itself. In other words, the company itself would make the unfettered decisions whether an employee had been hurt on the job, the extent of the injury, and how much it was going to pay in medical care and benefits. The employee would merely be a beggar and grateful for whatever, if anything, the company decided to give.



After the new Workers' Compensation law was implemented, a consortium of worker representatives filed a case with the Supreme Court to have the law stricken down. The Court indicated that it would not strike down the law as a whole, but only on an issue-by-issue basis as particular cases were brought before it. Notwithstanding, a vocal minority of the Supreme Court said that when Opt-Out did come up, it would be stricken down.

Even with this clear warning, quite a few employers have implemented Opt-Out coverage. However, recently, the Workers' Compensation Commission (without even waiting on the Oklahoma Supreme Court to rule) itself struck down the Opt-Out provisions. It noted how unfair it was for the employer to be the sole determiner of the employee's fate and held that a neutral decision maker – the Workers' Comp Commission – was required.

Although this decision is still subject to review by the

Statute of Limitations Reduced From Two to One Year

The statute of limitations under the new Workers' Compensation system has been reduced to one year.

If you are injured on the job, you have one year from the date of your injury to file a Workers' Compensation claim. Prior to the enactment of the new law, the statute of limitations was two years.

Now, if you suffer a cumulative trauma injury, you have one year from the last day you work at the job which caused your injury to file your claim. If you are unsure about the timing of filing your claim, call our office and we can tell you precisely how much time you have.

Supreme Court

The Oklahoma Supreme Court has given workers their first victory in the war waged against them by our Republican elected officials. In a unanimous decision the Supreme Court struck down that portion of the new Workers' Compensation law which prohibited workers from collecting benefits for cumulative trauma injuries if they had been employed less than 180 days.

A concurring Justice stated, "The Legislature has violated the grand bargain and betrayed the fundamental principles of justice that gave rise to it in the first place."

The "grand bargain" refers to the trade-off giving employers immunity from civil liability, in exchange for guaranteeing workers some recovery. It is likely this "grand bargain" will play into other aspects of the new law.

Oklahoma Supreme Court, it is likely that the Supreme Court will uphold the decision, based on its earlier statements. This assumes that the Legislature does not do the same thing that the employers tried to do – change the Supreme Court members into lackeys for itself.

CONSUMER ● Watch What You Put on Social Media

Lance was in the business of fixing up homes and reselling them. He made arrangements for a waste company to put a dumpster in the driveway of a home he was working on. But, as it was being delivered, it started to fall off its carriage. Lance signaled for the driver to stop and approached the situation. But the driver moved anyway, the dumpster went over, and Lance was thrown, suffering an injury.

This resulted in both a back surgery and then a shoulder surgery and significant medical bills. The dumpster company's insurer, however, denied liability.

Frasier, Frasier & Hickman, LLP, was hired to pursue the claim. The insurer was convinced to concede

it was the dumpster driver's fault. However, before the case could be settled, and soon after his shoulder surgery, Lance posted on Facebook a picture of himself on a ladder working on a ceiling with the caption, "Don't tell my doctor about this." The insurer, of course, found this post.

Although Lance's case was ultimately settled for a substantial amount, it was made all the more difficult and less successful by the social media post.

In the olden days, the concern was that the van parked out in the street was an investigator hired to videotape the injured person. Now the insurer merely needs to look on the internet. The lesson: be careful what you post on social media.



“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**

Oklahoma legislators have launched an assault on Oklahoma’s independent judiciary that would return back to a time when political patronage ruled judicial appointments and led to a scandal in the state’s highest court.

Republican leaders in the House of Representatives have championed a bill that would curb the current system in how judicial vacancies are filled. Currently the 15-member Judicial Nominating Commission screens candidates and forwards three recommendations to the governor for appointment. One proposal would have all applicants sent directly to the governor.

Another proposal would put appellate judges on a contested ballot every four years. Any attorney could run for the office in a competitive

contest. This would cause appellate races to become political and candidates to raise large sums of money – and be beholden to the monied interests – in these elections. This is the system that Texas has had and there has been significant corruption in how court cases are handled.

The current system was put into place in the 1960s after a scandal rocked the Oklahoma Supreme Court. Since then, the system and Judicial Nominating Commission have served the state well.

Efforts to curb the power of the commission have accelerated, particularly after Supreme Court justices voted 7-2 that a Ten Commandments monument had to be removed from state Capitol grounds.

The state Supreme Court has also ruled that several proposed anti-

abortion measures were in conflict with the U.S. Constitution.

The recent Oklahoma Supreme Court decision on Workers’ Compensation highlights the issue. The court unanimously struck down a legislative provision of the law as “betraying the fundamental principles of justice.” Under the new proposals, the Governor and Legislature would have no checks or balances – they would control the courts to the detriment of justice to the people.

All three of these proposals should be opposed by working Oklahomans. The Judicial Nominating Commission has proven itself to be effective in creating an independent judiciary. These three proposals would return Oklahoma to the days of corrupt politics buying justice.

– Jim Frasier

● CONSUMER

When Legal Problems Arise, Don’t Bury Your Head in the Sand

The title says it all: it is better to take care of a problem properly at the time than try to solve it later.

Fifteen years ago a young child was bitten by a neighbor dog. The neighbor owned his house and was paying on his mortgage. He must have had homeowner’s insurance; the bank requires it.

Frasier, Frasier & Hickman, LLP, sued the homeowner on behalf of the boy. The homeowner agreed that he had insurance and he was encouraged to turn the lawsuit over to his insurance company.

The homeowner’s liability insurance policy would have covered the injury. The homeowner, however, never responded to the lawsuit and refused to turn it over to his insurer. A default judgment was granted by



the court for \$30,000.

Fast forward fifteen years. The Frasier firm continued to renew the judgment every five years so it was still good. It was a lien on the home, which was now paid off. The homeowner wanted to sell the home, but the judgment, which had now grown to more than \$60,000, made the home not marketable.

The solution was simple from the very beginning – the dog owner should have turned the case over to his insurer. Alternatively, he should have called a lawyer – any lawyer would have explained to him the consequences of the alternative of not turning it in to the insurance company, which consequences this poor homeowner suffered, by burying his head in the sand.

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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.

● EDUCATION

Scholarship Applications Available

The Julia Fredin Frasier Foundation is accepting scholarship applications from high school seniors preparing to continue their education. The Foundation also is accepting renewal applications for those students who have previously received renewable scholarships.



Applications for new scholarships may be obtained by calling, writing or coming into the office of Frasier, Frasier & Hickman, LLP. The application deadline is June 1, 2016.

Julia Fredin Frasier passed away in 1996. She was married for 50 years to the firm's founding partner, Tomy Dee Frasier. The Foundation was organized in recognition of her great interest in the education of young people. Annually, the Foundation gives around 30 and 40 scholarships, some of them renewable for four years, at \$1,000 per year.

During her life, Julia Frasier financially helped many students and encouraged many more to continue their education. She set an example that the Foundation aspires to continue.