

CERTIORARI

Journal of Consumer Advocacy

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

Page 2:

**Medical Malpractice
Case Settled**

Page 3:

**Workers' Comp
Update**

**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

*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. Black

Maureen M. Johnson



● **CASE FILE**

Significant Injuries, Damages Covered in Dram Shop Case

It was a summer evening in 2012, and Gina Ryan was a passenger on a motorcycle ride in south Tulsa just before dusk. Suddenly, a pickup truck struck the motorcycle, throwing Ryan to the pavement, and then ran over her in the street.

The truck driver fled the scene, but an off-duty police officer and his wife witnessed the accident and Conroy Nini, a 62-year-old petroleum engineer, was arrested about a mile away. The arresting officer observed Nini to

be intoxicated. Although he told officers he had consumed a “couple of beers”, Nini registered .221 – well over the legal limit – in a blood alcohol test.

Meanwhile, Ryan was transported to the hospital with multiple severe injuries. During a five-week hospitalization, she underwent seven operations. She also required significant dental treatment, pain management and had significant disfiguring injuries. The cost of her on-going treatment was enormous.

She contacted Frasier, Frasier & Hickman, LLP, for assistance. An investigation revealed that Nini and several business colleagues had

attended an “open bar” event after work at the Daily Grill in downtown Tulsa, sponsored by vendors of the company he worked for. Nini and his colleagues also brought with them two female interns at their work – both under the age of 21.



Bar receipts indicated the “open bar” event began at 4 p.m. and ended three hours later, before several of the oilmen took a table in the Daily Grill’s restaurant area and continued to drink alcoholic beverages.

Evidence indicated Nini made offensive comments to the underage women he and his colleagues had taken to the bar. Then he continued with the others when they went into the restaurant. One of his colleagues offered to call him a cab but Nini declined. Nini finally got up to go to the restroom and never returned to the restaurant. Parking records indicate Nini left downtown 30 minutes before the terrible crash that injured Ryan. Expert witnesses reconstructed his path and determined that after Nini left downtown, he did not make any other stops before the crash.

Continued on page 2 ...

● CASE FILE

Hospital and Surgeon Settle Medical Malpractice Case

Karen went to Hillcrest Medical Center in December 2013 for a robotic-assisted procedure to correct pelvic prolapse after surgeon Paul Hagood, M.D., told her he had performed hundreds of the procedures. When hers was over, Hagood told Karen, "Everything went fine in surgery," and that post-operative pain and discomfort was to be expected.

The 64-year-old woman continued to have prolapse and ultimately became infected and very ill.

Eight months after the Hillcrest operation, Karen was admitted to another hospital where a doctor there found that the mesh intended to hold her pelvic organs in place had been sewn to her colon instead of the wall of her vagina.

The gross surgical error that had caused Karen pain and suffering for months was immediately corrected. Then she and her husband sought help from Frasier, Frasier & Hickman, LLP.

An investigation revealed medical malpractice by Hagood and Hillcrest. First, it was learned that Hagood had only received one brief training by the robotic machinery manufacturer before Karen's surgery and had not



performed "hundreds" of these procedures as he had told her. Then it was discovered that the credentialing process required by Hillcrest – supposedly assigning new surgeons to be observed by a more experienced surgeon – was inaptly followed with Hagood when he came to work at the hospital.

Finally, it was revealed that a surgical assistance device needed to help guide the robotic equipment during the surgical procedure had fallen from Karen's vagina during the procedure and had been replaced – but in her rectum.

Karen survived the disastrous medical procedure but lost her employment, faced enormous medical complications and incurred huge bills.

A lawsuit was filed against Hillcrest and Hagood

which required a large amount of medical evidence. Finally, the defendants agreed to settle out of court.

"This case is such a tragedy. We trust doctors and the hospitals which credential them to be honest and follow their own established procedures. The system and people behind it at Hillcrest totally failed Karen," said Jim Frasier. "At least the legal system did not."



Dram Shop Case ... continued from page 1

The investigation showed that not only was Nini responsible for Ryan's injuries, but the Daily Grill was at fault because their employees had violated the company's own policies and Oklahoma's dram shop liability law that prohibit furnishing liquor to persons who appear to be drunk.

Daily Gill has internal policies for employees instructing them to refuse service to anyone who appears drunk, to document these instances, and to call police if drunk customers refuse to summon a cab or secure a ride. However, the Daily Grill employees claimed they did not notice Nini's drunken and offensive behavior that was reported by others and the company's procedures were not followed.

A civil case was filed against Nini and Daily Grill. The

court ordered mediation but the defendants refused to cover Ryan's significant medical expenses. Finally, as a trial neared, the defendants agreed to provide an equitable settlement.

"This tragic case is an example of the reason there are dram shop laws prohibiting establishments from serving alcoholic beverages to drunk persons and to minors. These are serious laws that have serious consequences," said Jim Frasier.

"We have plenty of clients who have worked in establishments which serve alcohol. We advise all to be aware of and follow these dram shop laws so they do not cause or contribute to a tragic event – and then have to face the consequences."



“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**

Since the last article updating about the challenges to the Oklahoma Workers' Compensation system, there has been some additional activity. There have been recent decisions under the new law. There have been additional challenges made to the constitutionality of this new system that are awaiting decision by the Oklahoma Supreme Court. And the Legislature is in session.

One of the first significant rulings was dealing with the coming and going exception. The Legislature tried unsuccessfully to limit claims for injuries that were incurred when coming to or going home from work. The rule now is that if the employer provides a company vehicle, or if the employee is on call (e.g., has a pager), then the travel injury is covered.

Another case involved an employee injured when a picnic table collapsed while she was on lunch break. The court held that if it was inside the employer's facility (that is, any place on the employer's premises to which access is available to either the public or employees), there was coverage.

Additionally, the Oklahoma Supreme Court found in a 50-page unanimous decision that cumulative trauma injuries can occur with any amount of time and the employer cannot require a minimum of 180 days of exposure.

The Legislature created another system which is referred to as the “opt out” system. In “opt out” the employer itself decides if the injury should be compensated, what medical is appropriate, and how much to pay in a settlement, all without any judicial input. The Workers' Compensation Commission ruled “opt out” unconstitutional, since the Oklahoma Supreme



We have a busy season ahead of us both in the Legislature and fighting new provisions designed to further restrict the injured worker's rights.

Court had previously indicated it would not be upheld—an employee is entitled to a neutral decision-maker. However, the Legislature is looking into reworking that provision and giving it another shot.

There was also a provision in place that, if an injured worker missed more than two medical appointments, all benefits could be cutoff, including medical treatment, compensation for time off, and any permanent compensation that might be due. A case challenging this has been sent back to the Commission to address whether or not the injured worker had a valid excuse for the missed appointments, which might include illness or lack of transportation.

Recently the court has stricken down an edict from the Workers' Compensation Commission Administrator advising that all scheduled members (hands, fingers, toes, feet, knees elbows) should be con-

verted to the body as a whole. The result of this decision is that the settlement can be based on the severity of the impairment, rather than on a schedule which limits compensation.

An issue that is currently pending to be ruled upon deals with whether retaliatory discharge claims should be heard in the Commission or in District Court. Another challenge currently pending is whether or not the injured worker must pay for his vocational re-training out of his permanent disability award. A challenge to the limitation for hernia benefits at 6 weeks is also pending.

What is this session of the Legislature looking at? It has a bill to shorten the time to give notice of injury from 30 days to 15 days and an automatic denial of an injury if no notice is given within 120 days. There are several sections attempting to revive “opt out”. And finally, there is a provision that a case can only be re-opened within six months of the last order; the current limitation period is one year. It is usually longer than a year before the injury deteriorates and the claim needs to be reopened.

We have a busy season ahead of us both in the Legislature and fighting new provisions designed to further restrict the injured worker's rights. Those issues will have to be dealt with on a case-by-case basis.

Should you have any questions as to what your rights are under the new law, our firm will provide a 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, then there is no fee.

– By J.L. Franks

CERTIORARI

Journal of Consumer Advocacy

PRSRT-STD
U.S. Postage
PAID
Tulsa, OK
Permit #2146

● SPRING 2017

Frasier, Frasier &
Hickman, LLP

1700 Southwest Blvd.
Tulsa, Oklahoma
74107

**RETURN SERVICE
REQUESTED**

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 scholarships.

Applications for new and renewal scholarships may be obtained by calling, writing or coming into the office of Frasier, Frasier & Hickman, LLP. The application deadline is June 1, 2017.

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 between 40 and 50 scholarships, some for one year and some renewable, 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.

