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Journal of Consumer Advocacy

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● **CASE FILE**

Fatal Rear-End Collision Settled Out of Court

In January 2015, Jack Cochrane and passenger Gladys Lord were driving along Oklahoma Highway 62 in Cherokee County when they experienced car trouble and pulled over to the shoulder. Lord called her son for assistance and he was on the way.

The families of Cochrane and Lord were left with medical and funeral expenses and contacted Frasier, Frasier & Hickman, LLP, for help.

An investigation discovered that Allen was being treated for cancer and in the months



Stay alert and be aware. You never know who is behind the wheel.

Suddenly a semi-trailer tanker truck slammed into the back on Cochrane's vehicle. Lord was killed instantly and Cochrane died later at the hospital.

Sidney Allen, driving the tanker for Arkansas Valley Metro Petroleum, was not seriously injured.

Allen told the investigating highway patrol trooper that he had become confused by a vehicle in front of him that changed lanes, although there was no evidence of that.

About 10 days after the wreck, Allen collapsed. He died two days later.

before the accident had missed much work. A lawsuit was filed alleging the trucking company knew of Allen's medical condition and treatment and should not have allowed him behind the wheel of the tanker truck.

The case was settled before trial.

"This case should have never been necessary; Mr. Allen should have never been allowed to drive that truck in his condition," said Jim Frasier who handled the case.

"Motorists should always stay alert and be aware of all situations along the road. You never know who is behind the wheel."

Road and Highway Improvements Often Shortchange Landowners

Roads, highways and bridges are crumbling in our cities and across all areas of Oklahoma. Finally, funds are being dedicated to patching the problems. But a sea of orange barrels not only inconveniences motorists, but often shortchanges the owners of land taken by the projects for right of way.

The process followed when public improvements require additional privately-owned land goes like this: The governmental entity or utility contacts the landowner involved and makes an offer for purchase. The landowner can accept the offer or reject it. If rejected, governmental entity “condemns” the property. A panel of appraisers is assigned to determine the fair value for the property taken. The landowner must accept the appraisal or appeal to a jury.

The Oklahoma Department of

Transportation recently approved an eight-year plan to upgrade state highways and bridges – many involving roadbed widening and intersection improvements that will require additional right of way. Utilities, school districts and cities also can condemn property for their improvements.

Some believe that the government entities and their agents involved in condemnations often slow down the process and cost property owners time and money to cause them to “settle for less.”

“If property owners resist these tactics, generally, they can get quite a bit more,” said Jim Frasier.

If the property owner rejects the



low-ball offer, they can demand a jury trial where they can establish the true value of the property being taken. Evidence can be introduced that establishes the true value of the land and any improvements affected and other issues such as drainage and flooding that may affect adjacent property.

When the property owner prevails at trial, the government must pay their attorney fees and other expenses, such as the cost of expert witnesses, along with fair compensation.

“We have been successful challenging these phony appraisals, making the results well worth the time and effort,” Frasier said.

● CASE FILE

Wrongful Death Claim Settled

One of the basic rules of practicing law is to review the applicable law before making a decision on a case. Tomy Frasier called it “blocking and tackling.”

The Woffords were traveling west on Oklahoma Highway 105, a 65-mile-per-hour, two-lane highway. They were slowing down to turn off onto a gravel road to go home. Tollerson was traveling in the same direction behind them at highway speeds. There was a dispute whether the Wofford vehicle had signaled a left turn.

In any event, Tollerson, apparently unaware of either the gravel road or the left turn, moved into the left, on-coming, lane to go around the Woffords. Just as the Woffords turned left onto the gravel road, Tollerson hit them, injuring the passengers and kill-

ing Mr. Wofford, the driver.

Tollerson’s insurance company denied the death claim, saying that the accident was his fault—turning left unsafely and without signaling. The highway trooper agreed.

The Woffords went to two different law firms, but received no resolution. Then they were referred to the Frasier Law Firm.

The first thing to do when a new case comes in, even if a lawyer has handled many similar cases, is to look up the applicable law. In this case, that would be the Oklahoma “Rules of the Road”. These rules provide that a car should be able to stop within the assured clear distance ahead, which, obviously, the Tollerson vehicle could not do – it was going too fast for conditions in passing the

very slow-moving Wofford vehicle. Additionally, the law makes it illegal to pass in an intersection. And the gravel road’s approach to the state highway created an intersection. Finally, the law provides that, on a two-lane road, unless the overtaking vehicle honks its horn, the overtaken vehicle has the right to move into the left lane. Tollerson did not honk.

A single letter was written to the insurance adjuster, who had twice denied the claim to two other law firms, and these laws were pointed out. The adjuster immediately agreed to pay his minimal policy limits and the case was settled.

Again, the lesson here is that the insurance adjuster and the investigating officer made their decisions without going back and looking at the applicable law. When the law was pointed out, the case was settled.



“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**

The Oklahoma Department of Transportation recognizes that hundreds of the state’s railroad crossings pose dangers to motorists and others. A plan to upgrade 300 of the most dangerous at-grade crossings was approved by ODOT, but the plan will take years to implement.

Meanwhile, Oklahomans must stay alert when approaching the state’s 3,700 at-grade crossings.

Oklahoma ranks 20th nationally in highway-rail grade crossing collisions, according to Operation Lifesaver Inc. In 2014, 12 people were killed and 21 were injured in accidents at Oklahoma rail crossings, according to the Federal Railroad Administration.

Many railroad crossings are among the most dangerous driving scenarios faced by motorists and their passengers.

In rural areas, train speeds are such that drivers can be caught unaware of the danger because of the lack of warning devices.

In October, ODOT announced it would spend \$100 million to improve up to 300 crossings. ODOT said the

improvements can include improved signage and active warning systems such as flashing lights, gates that will lower to help prevent traffic from entering the crossing, and also audible alert devices.



The improvement program is expected to take at least three years. The first 10 projects were announced in October. Projects are located in Lincoln, Oklahoma, Garfield, Tillman, Jackson, Custer, Blaine, Tulsa and Creek counties. In Tulsa County alone, there are 29 listed at-grade crossings on the dangerous list. One Tulsa County project was approved in October by ODOT – on Oklahoma Highway 20 in Collinsville.

ODOT’s program is urgently needed.

Unfortunately, it will be quite some time

before most of these dangerous railroad crossings are addressed with the necessary safety warning equipment.

Until the work is actually done, motorists should not assume they are suddenly safer. And, if there is an accident, call your lawyer.

- Jim Frasier

● CASE FILE

Jury Verdict for Failure to Pay Wages

CC’s Cosmetology School recruited ex-felons as students and obtained federal grants for their education. The owner said that this was a lucrative field because cosmetology is about the only professional license a felon can obtain.

Questions arose, however, by the federal Department of Education as to whether it was being dealt with honestly by the school. When it slowed down its payments to the school, the school expected its employees to continue working, even though they were not getting paid.

Ms. Bixter-Biggs was one such employee. She worked several months without pay.



The question was asked of her at trial, Why she would continue working when she was not getting paid? She indicated that it was because she was wearing a wire from the FBI, which was gathering evidence in its investigation.

Notwithstanding the school’s admission that it had gone months without paying Bixter-Biggs, it refused to concede defeat. After a two-day trial, the jury awarded \$9,600 in back wages. Under the federal statute, the judge doubled this amount to \$19,200. Additionally, the law provides that Bixter-Biggs will have her attorneys’ fees paid.



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● **WINTER 2015**

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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*