

# CERTIORARI

## Journal of Consumer Advocacy

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● **CASE FILE**

## Health Costs and Small Business Recovered After Serious Wreck

Nathan H. was riding his motorcycle to work in Bartlesville almost two years ago. At the last major intersection before arriving, an inattentive driver failed to yield and ran over him in the middle of the intersection. As was his practice, Nathan wore a helmet that day. Nevertheless, he suffered severe and extensive orthopedic injuries, requiring multiple surgeries.

Adding insult to injury, Nathan also developed severe infections in his wounds and broken bones from his hospital stay. Not only did the accident leave him physically incapacitated for months with multiple surgeries and hospitalizations, but the small business he worked hard for years to develop was devastated.

Nathan hired Frank Frasier and Frasier, Frasier & Hickman, LLP, because Nathan's local lawyer knew his serious injuries needed someone willing to fight the insurance company in court.

The Frasier firm collected all the information necessary for Nathan's claim. When the doctors were finally able to release Nathan from their care, a demand for settlement was made. In the meantime, investigation revealed that there were actually two separate insurance policies that should provide coverage for the accident. Predictably, the insurance company rejected the notion.



**When the doctors were finally able to release Nathan from their care, a demand for settlement was made.**

However, Frank Frasier proved them wrong and negotiated a million dollar settlement, convincing the insurance company that both policies provided coverage. This was the policy limit. If Nathan had uninsured motorist coverage, he could have obtained substantially more.

With the settlement, Nathan was able to pay his medical bills and have money to restart his small business. He also has added UM coverage to his policy.

## ● WORKER

# Part of Workers' Comp Law Struck Down

In 2014, the Legislature implemented a complete overhaul of Oklahoma's Workers' Compensation system. The stated purpose was to save money for businesses. Of course, the way to do that is to reduce benefits to the maimed and injured.

Historically (and even under the new law, in most cases), an injured worker can receive benefits from his employer, even if the injury was caused by the fault of a third-party. Under both the old and the new law, if the injured worker recovers from the third-party, the Workers' Compensation insurer is entitled to recoup a share of the benefits it has paid.



Under the new law, however, there was a provision that exempted owners and operators of oil and gas wells from any third-party liability where someone was hurt at the well.

The Oklahoma Supreme Court, in considering this provision, noted that the Oklahoma Constitution

provides that there shall be no special law where a general law can be applicable. It looked at the question of whether oil and gas owners and operators were somehow different from other kinds of employers and determined that they were not. Accordingly, the Supreme Court struck down this special provision, leaving oil and gas work to be treated the same as any other kind of employment.

As the new Workers' Compensation law has been implemented, several of its more draconian measures have been struck down by the Oklahoma Supreme Court. Little by little, some protection is being returned to workers.

## ● CONSUMER

# When Driving, Texting More Dangerous than Drinking

Texting while driving is more dangerous than drinking and driving. Technically, it is categorized as "distracted driving", along with other activities such as personal grooming, talking on the phone, and searching for loose items, the National Highway Traffic Safety Administration says.

According to NHTSA, in 2015 alone, 3,477 people were killed, and 391,000 were injured in motor vehicle crashes involving distracted drivers. During daylight hours, approximately 660,000 drivers are using cell phones while driving. That creates enormous potential for deaths and injuries on U.S. roads.

Teens were the largest age group reported as distracted at the time of fatal crashes, according to NHTSA, but all age categories are using smart phones and texting while driving.

For more information, click NHTSA's website on Distracted Driving at: <https://www.nhtsa.gov/risky-driving/distracted-driving>.



### How to set an auto-reply for phone calls on your smart phone

Various applications are available for use with smart phones that will send an automated response to an incoming text while your vehicle is operating. Use auto-responses to let people know "I don't text while driving."

#### For an iPhone

- **Step 1:** On your iPhone, go to Settings > Phone > Respond with Text.
- **Step 2:** You will see 3 pre-formatted quick responses. These are the default ones offered by Apple. Tap on one of the default messages.
- **Step 3:** Type in your own message. Repeat for all three.
- **Step 4:** Tap the "Phone" button at the top left of the screen to save the new messages.



**“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**

Gun rights, the Second Amendment, tighter firearms regulations all are part of the current national conversation fueled by a spate of mass-casualty shootings in the past few years, particularly those in which students and teachers have been wounded and killed in schools..

The issue is complex and there have been a lot of suggestions from all sides of the debate.

But one that has been thrown into the middle of the table more often than most others is the suggestion of arming school teachers and other personnel as a way to protect students and faculty.

Currently, the presence of firearms in public schools is tightly regulated. In Oklahoma, only law enforcement officers who have been qualified and certified by CLEET – the Council of Law Enforcement Education & Training – are allowed to bring firearms into a school. This is the training that all



armed police officers, sheriff's deputies, and school police must receive.

The reasoning is obvious. There are so many things that can go wrong when discharging or even brandishing a firearm in a crowded space, such as a school building. There is a danger that students would take a gun from insufficiently-trained personnel. Some schools and school districts have assigned CLEET certified officers to their sites. The fact

is, appropriately trained peace officers can be and are present in many school buildings already.

And as far as I know, there's not any suggestion that the use of certified law enforcement officers does not work to deter violence and protect schoolchildren and teachers.

How to afford properly trained officers is not a legitimate issue. How much is school safety worth? Inability to fund legitimate protection should not be confused with unwillingness.

If arming school personnel is authorized by the federal or state governments, will deep training such as that provided by CLEET, be required? And will local school boards be called upon to tailor decisions to the needs of the communities they serve?

The issue of arming the faculty needs to be carefully, thoughtfully, considered and should not be decided by knee-jerk reaction.

*– Jim Frasier*

## ● CASE FILE

# Arbitrator Rules for Firefighter Union

For many years the City of Claremore has had an employee handbook. Firefighters, however, were always covered by their negotiated collective bargaining agreement, in accord with Oklahoma law. That law provides that all policies and practices of the fire department as of the first day of the fiscal year are part of the collective bargaining agreement and can be changed only by negotiation.

Over the years, Claremore has had different city managers. Some of them have recognized that the employee handbook was not negotiated and therefore did not apply to firefighters. Others claimed that it applied to firefighters and all other city employees. However, whenever a city manager would attempt to enforce the city handbook on firefighters, the union would object and the city would back down.

That is, until last spring. The union and the city, as

was their custom, negotiated the contents of a test for the promotion to lieutenant position. Hardly before the ink was dry, the city changed the content of the test, including adding the city handbook to the test. The union filed grievances.

In our experience, contract grievances are hard to win before an arbitrator. This is distinguished from discipline grievances, where arbitrators tend to be much more sympathetic.

However, in this matter, Arbitrator Wolitz out of Texas followed the law and ruled that the city handbook did not apply to firefighters until it was negotiated and that the city could not change the content of the lieutenant test immediately after the parties agreed to what it should contain.

This was a big win for the firefighters at the City of Claremore and a setback for its overreaching city manager.

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## ● SPRING 2018

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## ● 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, 2018.

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 30 and 40 scholarships, 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.



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.