

# CERTIORARI

## Journal of Consumer Advocacy

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● **CASE FILE**

## Semi-Truck Case Settled

In the early morning darkness of December 8, 2012, Blake Hobbs was driving his semi-trailer truck along the Will Rogers Turnpike near Big Cabin.

Suddenly, he came upon another semi stopped in his lane of traffic and slammed into its trailer.

The driver of the other semi, Rui Zhao, had stopped his rig in the road to make a sandwich in the cab of his truck. He had been behind the wheel longer than permitted by federal law. And his tail lights did not work.

Hobbs was severely injured – both physically and emotionally – by the violent collision. His medical bills were astronomical.

But because Zhao was a contractor for a contractor for another contractor for Amazon.com, rushing a load across country, the determination of the responsible parties to compensate Hobbs for his injuries and his totally damaged truck was complicated.

Frasier, Frasier & Hickman, LLP pursued both a Workers' Compensation claim and a lawsuit against the various parties involved in hiring Zhao. The lawsuit was moved to federal court.

For starters, Zhao, who had been cited by the DOT because he could not speak English, claimed he was not stopped but was moving slowly and that oncoming traffic should have been able to see him.

However, the report of the investigating Highway Patrol trooper contradicted this and evidence inside the truck showed he had



**This was not an easy case to resolve because of the various issues and the multiple parties. Everyone wanted to dodge liability.**

been in the process of making a chicken sandwich. Also, he claimed his tail lights worked. But the trooper's investigation disproved that.

Then the chain of contractors engaged in shipping the Amazon.com load began to point fingers at each other.

Finally, Hobbs' lawyers were able to bring all the parties to the table and hammer out a settlement agreement.

"No one wanted to take responsibility for the bad acts of Rui Zhao, but the justice system finally prevailed," said Jim Frasier. "This was not an easy case to resolve because of the various issues and the multiple parties. Everyone wanted to dodge liability. But Mr. Hobbs finally was compensated."

## ● CASE FILE

# Protective Orders and Guns

Sometimes, people take lightly protective orders that are entered against them. If the person owns or carries a firearm, however, a protective order may be a serious concern.

Federal law makes it a felony to possess any firearm or ammunition if you are subject to a court order that was issued after hearing to which you received notice and which restrains you from harassing, stalking or threatening a current or former intimate partner or child of such partner or that restrains you from engaging in other conduct that would place them in reasonable fear of bodily injury, if the order includes a finding that there is a credible threat to their physical safety and prohibits the use, attempted use or threatened use of physical force against them.

Although the wording of the statute is very specific, it should be pointed out that the standard forms used by the courts in Oklahoma counties routinely and automati-



cally include this language: the boxes having this language are routinely checked on the forms.

Generally, the procedure is for the petitioner to file for a protective order and a temporary protective order is entered without the other side being present. Having a gun under such a protective order is not illegal. However, that temporary protective order sets a hearing date. After the hearing date, whether the following protective order is temporary or permanent, it is illegal to possess a firearm.

Oklahoma courts routinely and without thought at the hearing on the protective order continue the one-sided order for a period of six months, on the idea that if nothing happens in six months, the case would go away. However, it becomes illegal to possess a firearm or ammunition in the meantime.

If you are wanting to possess a firearm or ammunition, it is best to take care of these issues before the protective order is entered, rather than after.

## ● CASE FILE

# Wife Recovers Insurance Benefits

Larry Hall was the president of the Steelworkers Local at a plant in Okmulgee. He tragically and suddenly died recently.

His widow, who also worked at the plant, was told by the local HR office that she was the beneficiary of his group life insurance. She even made arrangements to pay for the funeral expenses out of the life insurance benefits.

However, after the funeral, she was told by the insurance carrier that Larry's daughter, not she, was the beneficiary of the life insurance. She thought this odd because they had filled out the insurance designations together earlier in the year.

The widow contacted Frasier, Frasier & Hickman, LLP, to see what could be done. The firm wrote to the employer and the insurance company, asking for a copy of the group insurance policy, the beneficiary designation, and other paperwork related to Hall's benefits. Although the insurance company declined

to furnish the information (saying that, because the spouse was not the beneficiary, she was not entitled to it), the company did produce the information.



There it was: a beneficiary designation for the benefit of the daughter, rather than the spouse. Upon closer review, however, it appeared that Larry's signature on the designation was an exact match to his signature on his 401(k) designation. Handwriting analysts confirmed that the one was a photocopy of the other – the original designation

had been deep-sixed and a forged designation had been substituted.

In the meantime, because the widow had made a claim, the daughter filed suit in Texas against the insurance company and the widow. Upon showing the proof to the daughter, a settlement was made to the substantial benefit of the widow. Now, a suit is being brought against the employer because of the HR employee's falsification of federal documentation.

Oklahoma now boasts the lowest workers' compensation benefits in the U.S. The Chamber of Commerce could not be happier! According to the Chamber, Oklahoma businesses saved roughly \$148 million over the last year. (According to Governor Fallin, this amount was \$260 million.) This savings has been credited to the effect of Workers' Compensation reform and, of course, Governor Fallin. Let us take a moment and thank Governor Fallin for this reform.



**“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**

- Thank you, Governor Fallin, for cutting workers' benefits by 30-90 percent and thereby leaving many of our fellow Oklahomans in financial ruin.
- Thank you, Governor Fallin, for putting employers and insurance adjusters in control of medical benefits for anyone injured on the job. This includes a worker's right to choose her doctor, to choose whether she'll receive treatment recommended by her doctor, and even to have her prescriptions authorized.
- Thank you, Governor Fallin, for reducing the amount of compensation an injured worker may receive for permanent disability to \$0.
- Thank you, Governor Fallin, for reducing the amount of temporary compensation an injured worker can receive by sometimes as much as 60%.
- Thank you, Governor Fallin, for allowing insurance companies to deduct the cost of retraining injured workers who cannot return to their previous employment positions from the incredibly paltry benefits allowed.

The list of thank you's for our governor is longer than there is space to print. Here are some examples of the impact of this new system:

- A man suffers a torn rotator cuff on the job and his employer sends him to their clinic for evaluation and treatment. Finding nothing wrong with him and telling him that it would be a waste of company money to send him for an MRI, the doctor sends him back to work with no restrictions. He continues to work in tremendous pain because he cannot afford otherwise. His injury occurs on September 5, 2014. But, because his employer is in control of his medical treatment,

he doesn't get an MRI until February 2015, which confirms the injury. Meanwhile, he is continually written up for missing work due to pain. He finally has surgery in April. When he attempted to get pain medication prescriptions filled following surgery, the pharmacy would not fill them because the insurance carrier said his case was closed. He received his first TTD check in May. After receiving \$561 per week (late) while off work, he is not going to receive any permanent disability benefits for this injury because he has returned to work.

- A man suffers a labral tear in his shoulder in December 2014 and is unable to continue working. His employer pays him sporadically over the next seven months. He receives 70% of his wages during three and a half months, then nothing for the next three and a half months. He finally has surgery at the end of July and is paid TTD benefits until the company decides not to pay anymore. Currently, he is five months away from being able to return to work, has one baby and another on the way, and is going to have to fight the company to get the benefits to which he is entitled and

will not receive any permanent disability benefits if he returns to work.

- A man suffers a torn rotator cuff at work and his employer pays for his treatment but does not submit the claim on his workers' comp insurance. Six months later, his other shoulder needs the same surgery. His employer tells him that he is on his own and fires him.

- A man is involved in an accident wherein he loses his leg above the knee and is required to have several

metal plates put in his head. Thanks to the new comp law, his employer was able to stop paying benefits (which already were causing him to live well below the poverty level) and dictate which doctors he'd see. He suffers from a host of problems as a result of his injury and is having to fight his employer every step of the way to get appropriate medical care. Since he will be unable to return to his previous position of employment, he will be entitled to some permanent disability benefits, but if he is to be retrained, the cost of that retraining will be paid by him out of whatever benefits he is able to squeeze out of the company.

The *Tulsa World* has said that even employees are happy with the new system. Based on calls to our office, we suggest that the World hasn't talked to anyone who was injured.

Praise for this new system abounds in business circles and insurance towers. Yes, the system is working, but it is working for Oklahoma employers, NOT Oklahoma employees. The employees of our state are bearing the brunt of the immense savings and "marvelous news" about our working environment.

–Kathryn H. Christopher

# CERTIORARI

Journal of Consumer Advocacy

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## ● FALL 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.

## ● WORKER

### Workers' Comp Timeline

The second anniversary of the new Workers' Compensation system is coming up on February 1, 2016. Since the statute of limitations under the old system is two years, this is a date to be aware of.

(An injury under the new law has a one-year limit.)

For any single-event injury, the two year statute of limitations is about to run.

For cumulative trauma injuries, such as hearing loss, wear and tear on backs and knees, etc., the statute of limitations does not run until two years after the last date of exposure, assuming that prior to February 1, 2014, the person was aware of the wear and tear and that it was job-related.

Do not be caught short by the statute of limitations. If you have questions, feel free to contact our office.

