

# CERTIORARI

## Journal of Consumer Advocacy

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**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](mailto: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

## State VA Kills Another Veteran

The State VA has been in the news lately for the outrageous care it has been giving its patients. This is the sad story of another incident.

Leonard Smith was a veteran having served his country in Vietnam. When he got old and needed nursing home care, he was admitted to the Oklahoma Veterans Center in Talihina. He came safely through war; it was his care that killed him.

The Oklahoma Veterans Centers is a nursing home for veterans that is operated by the State of Oklahoma and approved by the U.S. Department of Veterans Affairs. Oklahoma Veterans Centers are inspected and licensed by the Oklahoma State Department of Health. The Veterans Center is overseen by the Oklahoma Veterans Commission appointed by the Governor. According to their website, the Talihina home was 100% filled as of February 2016. Their records indicate that Talihina home had a 48% employee turnover rate at that time.

When Mr. Smith was admitted to the facility in January 2014, he had dementia and a multitude of other age-related conditions. He required extensive assistance with most activities of daily living.

Mr. Smith on at least two prior occasions had choked on foreign objects during a time when he should have been watched. In November 2016, for example, Mr. Smith had swallowed a glove. But the lack of supervision continued, resulting in an event on January 31, 2017, when Mr. Smith choked to death. It was determined that he had a plastic bag stuck in his airway.



This veteran was totally dependent upon others for his care. The family of Mr. Smith expected the Oklahoma Veterans Center to treat their loved one with respect and dignity and provide the care a veteran deserves.

A lawsuit was filed against the Oklahoma Veterans Center to bring these issues to light. The State of Oklahoma has elected to settle this matter.

"Frasier, Frasier & Hickman, LLP, has a long history of honoring veterans and proudly representing them," said Jim Frasier. "My brother Tomy Dee who started this firm was a decorated Marine veteran of World War II. Some years later, I followed him into the military and served in the Navy.

"No veteran should ever be treated like Mr. Smith – by anyone – but especially not the government that they served and sacrificed for," Frasier said. "We were deeply offended and saddened by Mr. Smith's case but were glad we were able to bring justice by helping to expose these horrible conditions."

## ● CASE FILE

# It Helps to Read the Law

This story is another example in the continuing series that, "It helps to read the law."

Patricia Avina, early one dark, rainy morning, was walking to the bus stop to go to work. She walked west down the south sidewalk on 81st Street from Lewis Avenue towards Riverside Drive and then crossed the five lanes of 81st Street at the bus stop near the driveway into Wal-Mart.

Meanwhile, Deborah Wrona was traveling at about the speed limit west on 81st Street to her job at the River Spirit Casino. Perhaps because of the rain and darkness of early morning, she did not see Avina until she heard a thump.

Avina hired a lawyer, but Wrona's insurance carrier denied the claim, saying it was Avina's fault for jay-walking, since she crossed other than at a light or in a marked crosswalk. The policeman who investigated the accident also blamed Avina for crossing where there was no crosswalk.

Avina's lawyer referred her case to the Frasier Law Firm. A review of the accident scene indicated that where Avina crossed from the south side of 81st Street towards the north side had the parking lot entrance to Wal-Mart on the north, but Yorktown Avenue going off to the south.



A review of the Oklahoma Statutes indicates that where two streets meet at approximately right angles, there is an intersection. And where there is an intersection, there is a crosswalk, whether marked or not. A driver has a duty to yield to a pedestrian in the crosswalk, even if it is an unmarked crosswalk.

Thus, it appeared that there was, in fact, a crosswalk (even if unmarked) and that Avina did have the right-of-way. A lawsuit was brought.

The insurance company held fast to its guns, claiming that since there was no marked crosswalk, it was Avina's fault. It even asked the judge to throw the case out on those grounds. However, the law was against the insurance company. Ultimately, the insurer settled for an amount that would help dispose of almost all of the bills and leave Avina some compensation.

Unfortunately, the injuries were serious and Wrona's insurance limits were low.

"Just assuming what the law says is dangerous; going back on each case and reviewing what the law actually says has, a number of times, changed the insurance adjusters' minds and resulted in favorable settlements," said Steve Hickman, who handled the case. "We were glad to be able to do some good after this horrible accident."

## ● WORKER

# PERB Functions Are Transferred

In Oklahoma, state agencies "sunset" or cease to exist unless renewed. One such agency, the Public Employees Relations Board, dealt with the relationship of police and firefighters to their city employers, calling for collective bargaining, outlawing unfair labor practices, and so forth.

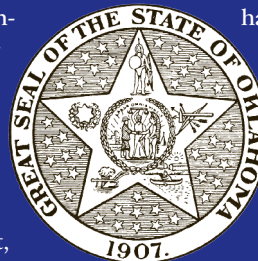
The Republicans in control of our government, even though they had total control over who sat on the PERB, decided to let it sunset. The idea was that there would be no place for firefighters and police to go for a remedy.

Accordingly, PERB sunsetted in mid-

2016. Statutorily, it could continue to process its work for a year. Thus, it ceased to exist as of July 1, 2017.

Statutorily, however, something not adequately considered by the Republicans-in-charge is that, when PERB sunsetted, its functions were transferred to the Office of Management Enterprise Services (OMES).

Thus, rather than have a Governor-controlled citizen board such as PERB making the decisions, the decisions



have been handed over to the merit-system bureaucracy, which is insulated from the control which the Governor previously had exercised.

Certainly, the glee with which PERB's demise was met by the cities is not long-lived: if a local firefighter union has an unfair labor practice charge, or local firefighters want to organize into a bargaining unit, then there is still a place – OMES – to which they can take their petitions and receive relief.

## 20 Years of Supporting Education: What's Our State Doing About It?

Recently, I received a very nice note from a young lady who had received a nursing industry award.

*"...I wanted to personally thank you for giving me a scholarship to help with my education. I will never forget the financial help. I strive every day to be a better person and help those who need a caring hand..."*

This individual had received financial assistance for her studies through the Julia Fredin Frasier Foundation scholarship administered by Frasier, Frasier & Hickman, LLP.

JFFF honors the late wife of our firm's founder – my late sister-in-law Julia – who passed away in 1996. Two years later, the Foundation was launched and the first scholarship awards made.

The Foundation was organized in recognition of the great interest of Julia Frasier in the education of our young people. During her life she financially helped many students and encouraged many more to seek an education, believing that education and expanding the minds of our youth are essential to the progress of civilization.

Over the next 20 years, literally hundreds of students seeking to better themselves received scholarships from the Foundation approaching \$1 million. And we have received count-



**"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**

less letters and notes that attest to the fact that the assistance played a small part in helping improve the lives of many persons.

But during those same two decades, the state of Oklahoma seems to have given up on its responsibility to these same students – and many more.

In 1990, the Oklahoma Legislature approved – and a Republican governor signed into law – House Bill 1017 that guaranteed direct funding for public education. The law also lowered classroom sizes, promoted early childhood education and enacted other reforms that would propel Oklahoma education for the next decade.

But then so-called "reform" – instead of proper funding – took center stage at the state Capitol. With the advent of No Child Left Behind, Gov. Mary Fallin and Oklahoma's legislators never looked back as they systematically cut funding for public schools and higher education.

Now, after a decade of declining funding for education in Oklahoma, our public schools, colleges and universities are reeling from crippling cuts.

And who does it affect most directly? Students. Mostly kids, but more and more adults, seeking to better themselves.

Oklahoma policymakers are cutting off their nose to spite their face, as the saying goes. Failing to properly fund public education is like denying food to a starving child – an intellectually starving child.

It is wrong. And you should not tolerate it. Take note of who you have elected to represent you at the State House. Have they supported raising recurring revenue sources that will stabilize the delivery of our state services? Have they actually voted to raise new revenue and support teacher pay?

Keep track and act.

– Jim Frasier

## Take Justice Back

CONSUMER ●

For too long, access to justice and accountability through our courts has been under attack by powerful corporate interests. Their goal is to evade accountability when they injure and kill Americans. The consequences for us can be deadly because when no one is accountable, no one is safe.

**Take Justice Back** is a grassroots campaign launched by the American Association for Justice to restore accountability, promote safety and ensure Americans have access to justice. The fact is, our environment is cleaner, our medicine is better and our cars are safer today, thanks to Americans who stood up to big corporations and held them accountable in court.



**Take Justice Back** uses straightforward facts to directly take on the myths and propaganda pushed by corporate front groups like the U.S. Chamber of Commerce. The campaign encourages Americans to join the fight to take back their rights.

When Americans' access to justice is denied, insurance companies, Wall Street banks, reckless drivers, dangerous hospitals and other wrongdoers can get away with the worst. We must act to make sure they play by the rules.

Please join our effort to Take Justice Back. Sign up – follow the campaign on Twitter and Facebook – and learn how you can make a difference!

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## ● FALL 2017

Frasier, Frasier &  
Hickman, LLP

1700 Southwest Blvd.  
Tulsa, Oklahoma  
74107

## RETURN SERVICE REQUESTED

### ● CASE FILE

## Case Involving Unsecured Load Settled

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.

John Fisher was driving his pickup truck northbound on Sheridan Road in Tulsa. A Pixley Lumber truck was pulling onto Sheridan Road from a side street. When the truck turned, its load of lumber shifted and caught the cab of Fisher's passing truck, causing severe head injuries to the 53-year-old man.

Fisher died from his injuries in the January 2016 incident, and Frasier, Frasier & Hickman, LLP, was hired to investigate. Because Oklahoma statutes impose liability on the operator of a vehicle if it loses its load, a lawsuit was filed on behalf of Fisher's estate against Pixley Lumber and the truck driver Harold Conn.

Pixley and its driver defended on the grounds that they had adequately secured the load. Obviously not. Recently, the case was settled out of court.

"This case is certainly a tragedy," said Jim Frasier. "Mr. Fisher's kin received a settlement from the defendants, but his life was not restored. But this case also should be a warning to anyone who operates a vehicle carrying a load.

"Oklahoma law places strict liability on the operator of a vehicle if a load comes loose and causes damage to another person or their property. All motorists should be aware of this and make doubly sure that any load they might be carrying is properly secured," Frasier said.

