

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

*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. Christopher



● **CASE FILE**

Suit on Cancer Insurance Policy Finally Settled

Almost 40 years ago, Gerald Hendricks bought a cancer insurance policy for himself and his family. Back in those days, the insurance agent not only came to the home to sell the policy, but came back every week to collect the \$1.05 premium.

Over the years the premium increased to about \$6 per month and was paid by mail to the district insurance agency. In the meantime, the policy issued by Liberty National was sold to Reliable Insurance Company.

But it was not until 2012, when Hendricks came down with metastatic lung cancer and endured several rounds of chemotherapy, that he learned how unreliable his insurance company was: it denied payment of all claims. Further, when he would call and talk to the insurer, he was put into a bureaucratic circle that had no outcome.

In frustration he wrote the Oklahoma Insurance Commissioner, who did nothing. He then hired Frasier, Frasier & Hickman, LLP, to pursue the case.

A lawsuit was filed. The insurance companies moved the case from state court to federal court, and well they might: our fed-

eral judges in Tulsa show at every turn their desire to protect the business and insurance interests. The insurers here were well-served by their choice, as the case unfolded.

Hendricks passed away in the Spring of 2013, a year after he was diagnosed. By that point, despite numerous visits to doctors and the hospital, and despite months of chemotherapy and also some radiation therapy, the insurance company had not paid *anything* in benefits under the cancer policy.

A survey of insurance companies shows that not only the ones involved in this case, but many others, profess to have fast and fair claims practices. Maybe that is just advertising hype; certainly, in this case it was just the opposite.

Before passing, Hendricks told his survivors to pursue the claim no matter what, because he was so frustrated that the insurance company had not paid anything to help cover his bills.

The family hired Frasier, Frasier & Hickman, LLP, to help and all information that was or could have been demanded by the insurance company was produced.

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● CONSUMER

Keeping Safe from Creditors

By Steve Hickman

Oklahoma and Federal laws limit the amount of earnings and the kinds of property creditors can take from those who owe them money. This is to protect families who are in the direst straits.

Generally, creditors cannot take the family home. There are two exceptions to this: if it is a rental home and the rent is not paid, then the landlord can take it back; or, if there is a mortgage on the home and the mortgage is not paid, it can be foreclosed on.

Creditors cannot take a person's automobile, so long as the person's equity is less than \$7,500. If a husband and wife are joint debtors, then they could each have a car with equity of up to \$7,500, or they could share a single car with equity in double that amount. Again, however, if the bank has a lien on the car, such as from when it was purchased, the bank can take the car if payments are not kept up.

Creditors cannot take guns worth up to a total of \$2,000 (\$4,000 for a joint-debtor couple), wearing apparel, \$3,000 worth of wedding and anniversary rings (double for joint debtors). Again, if there is a lien or a mortgage on any of this property, the creditor holding that interest can take the property if the debt is not paid.



Hickman

Additionally, a creditor can only take 25 percent of a person's earnings (assuming they were earned within the last 90 days), leaving 75 percent to the family. (This percentage may go to 50 percent or more, if the debt is for child support.)

In addition, a person's interest in a 401(k) plan or other retirement plan cannot be touched by creditors, regardless of the amount in the plan.

Social Security payments, whether retirement, disability, or otherwise, are free from the claims of creditors. Similarly, benefits from life insurance, long term disability, or most other insurance cannot be reached by creditors. The caution here, however, is to make sure that those benefits which are exempt from debt collection are kept separate from other assets (such as savings) that are not exempt; so long as they are kept separately or in a separate account, the family is protected.

We recently helped an elderly woman who lives in a rental house and whose only income is Social Security. Someone had sued her on a debt and gotten a judgment and was attempting to collect it. The judge, because the law protects the meager assets of poor people, ruled that, although the creditor was entitled to his money, the lady had no assets or income from which he could legally collect it.

If you or someone near to you is in the situation of being chased by a creditor, it often pays to consult a lawyer.

Beware the Sharp Practices of Creditors

Another article in this newsletter talks about property that is exempt from creditors. However, most working people do not have the luxury to be exempt – they have savings and earnings that can be attached by creditors. Our advice is to beware the bloodsuckers.

We recently represented a woman who owed \$1,500 on a credit card debt. Collecting small credit card debts is a business that some lawyers make a career out of and send their kids to college on. In this case, the creditor sued and got a judgment for the \$1,500. In addition, it was awarded about \$700 in attorneys' fees and costs.

Our client had gotten behind on the debt because she did not have money to pay it. The bloodsucker was, however, not fazed. He attempted garnishing the employer. However, the lady did not have a regular income. Undeterred, the bloodsucker garnished the bank. It got a little bit of money, but not enough to pay off the debt.

The bloodsucker then had the court order the

debtor in for an "asset hearing". At the asset hearing, the debtor is required to bring in their bank account records, paycheck stubs, etc., so the creditor can see how it might be able to collect the debt.

For each of these things, wage garnishment, bank garnishment, asset hearing, there are court costs incurred and attorneys' fees allowed. In addition, interest on the judgment was accruing.

Finally, the poor debtor had been harassed so much that she borrowed money to pay off the debt. By this point, between the bank garnishment and payments, etc., she had paid the creditor and its bloodsucking attorney \$3,500 on this \$1,500 debt. Then the attorney asked the court for another \$1,500 in attorneys' fees, to bring the total amount up to \$5,000 on the \$1,500 debt.

Its easy to say that there is something wrong with our system that pays a lawyer \$3,500 to collect a \$1,500 debt, but that is the system we have. The best advice is not to get into the mire in the first place.



“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**

Sometimes a newspaper or website headline says a lot. Like these snatched from national headlines of recent years.:

Oklahoma Court: Unconstitutional Law Effectively Bans All Drug-Induced Abortion

Oklahoma Ban on Sharia Law Unconstitutional, US Judge Rules

Judge Finds Oklahoma Execution Law Unconstitutional

Oklahoma's Ban on Gay Marriage Is Unconstitutional, Judge Rules

These headlines say a lot because of the questions they raise. Why are laws being passed in Oklahoma that cannot pass constitutional muster? Doesn't anyone check this out before

they are passed by the Legislature – and signed by the governor – to become law? And just how much does it cost Joe and Jane Taxpayer for the state Attorney General's Office to defend all of these cases?

It's enough to make your head spin.

An Oklahoma City television station reported recently that the Oklahoma Attorney General's Office spends hundreds of thousands of dollars to defend bad laws that have been overturned. And the state has even paid millions of dollars to private attorneys to help in these efforts.

But most shocking, according to the KFOR report, was the claim by Oklahoma lawmakers that their colleagues push bad legislation for political campaign purposes.

One lawmaker even went so far as to charge colleagues with the absurd

statement, “It's not our job to pass constitutional laws.” This, despite their oath of office to uphold the U.S. Constitution.

Another lawmaker said, “The public would probably be shocked to learn how much it costs to defend these laws that lawmakers know are unconstitutional.”

Well, I am. And you should be, too.

When the Oklahoma Legislature cannot properly fund education or bridges and highways, it surely should not spend a dime to defend laws that are no good and will not stand up in court. This in itself is a crime, in my book.

But it appears that unless the cast of characters at the State Capitol is changed, we should expect the same result. Over and over, it appears.

–Frank W Frasier

● CASE FILE

Penalties Increased for Aggravated DUI

In Oklahoma, consuming an alcoholic beverage and getting behind the wheel of a motor vehicle can be an expensive combination. The best advice: avoid this for not only safety's sake; but for saving yourself from major headaches, hassles and expense.

Oklahoma takes drinking and driving very seriously, and in some counties, a lot more seriously.

More and more, courts are imposing the use of installed interlock equipment on the autos of people who are convicted of, plead guilty to, or do not contest a charge of Driving Under the Influence. These circumstances can occur when a person is pulled over by the police for suspected DUI and refuses a blood-alcohol test – or takes the test and blows a “Blood

Alcohol Content” (BAC) of .08 or greater.

Individuals registering a BAC of .15 or greater can be charged with Aggravated DUI in Oklahoma which carries an extra layer of penalties, both criminal and civil, sometimes requiring inpatient alcoholism treatment and community service. And if a person has a commercial license, that also can be put in jeopardy and affect one's ability make a living.

These cases can get very expensive and cumbersome for people. If stopped and arrested on suspicion of DUI, be polite to the officers and call an attorney as soon as possible, to help navigate the best legal outcome.

But the best advice is, do not drink and drive.



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● **CASE FILE**

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Still, the insurance company would not pay. Later, it sent a check for a piddling sum, but it had not even considered all the documentation which had been delivered.

The court ruled that the insurance company had no obligation to pay anything until after the man was deceased, because why should it have to commit until it knew the full scope of its potential liability, especially given the low premium?

Despite having to fight both the insurance company and the courts, Hendricks' survivors held on and pursued the case until it was settled.

"This case is a textbook example of how insurance companies cheat and chisel and are protected by our federal courts," said Steve Hickman. "Often, only the most tenacious fighting for the little guy results in justice."

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.

● **CONSUMER**

Stop Forced Arbitration

Did you know that Wall Street has found a way to cheat, steal, and defraud Americans without ever being held accountable for their actions? It's called forced arbitration.

Buried in the fine print of many bank and credit terms of service are dangerous forced arbitration clauses that kick cheated consumers out of court and instead funnel them into a secretive dispute mill rigged in favor of Big Banks and predatory lenders. With forced arbitration, corporations have granted themselves a license to steal and evade the law. And they are getting away with it.

But with your help, this can be stopped. The Consumer Financial Protection Bureau (CFPB) can revoke corporations' license to steal by stopping the abusive practice of forced arbitration.

Frasier, Frasier & Hickman, LLP, endorses the Take Justice Back campaign by the American Association of Justice. You can find out more about Take Justice Back by clicking www.takejusticeback.com.