

CERTIORARI

Journal of Consumer Advocacy

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● CASE FILE

Settlement Achieved in Failure of Heart and Lung Machine

In October 2019, a 61-year-old man entered the hospital to undergo a scheduled coronary bypass procedure.

The procedure required the coordination of the heart surgeon and a certified clinical profusionist who is present to operate a cardiopulmonary bypass machine – often called a heart/lung machine – that provides blood and oxygen to the patient’s body when the heart is stopped during the surgical procedure.

During this particular operation, the heart/lung machine stopped working for a time and despite the efforts of the medical personnel there, the patient was deprived of oxygen for 41 minutes.

Following the procedure, the patient languished in the hospital eight days before dying.

The family of the patient contacted Frasier, Frasier & Hickman, LLP for help.

The economic loss his survivors faced was significant. And his medical bills were astronomical.

The law firm went to work investigating what had occurred, and why, and who was responsible. The heart/lung machine had failed and backup equipment did not work properly. Why? And who was responsible? The defendants quickly sought to reach a settlement.



Just as medical professionals are expected to be skilled in their work, medical equipment is expected to perform correctly.

The case was sent to mediation in late 2020, and a settlement was reached out of court.

“Our client’s surviving family suffered a terrible blow. Just as medical professionals are expected to be skilled in their work, medical equipment is expected to perform correctly.

“There was and is no room for mistakes or failure during heart surgery and the failure in this case was inexcusable,” said Jim Frasier. “Fortunately, the defendants took responsibility for this tragedy.”

● CASE FILE

Lemon Law Applies to Mobile Home

In September 2018, a man bought a new fifth-wheel mobile home to use as a temporary, mobile residence during long periods his work took him away from his home in another state.

The RV cost \$97,000, and the man made a down payment and entered into an installment note/security agreement. The man took possession of the RV and began making payments.

The RV came with warranties, both express and implied, and the owner's manual the man received provided that the manufacturer would cover "defects in materials and workmanship supplied by and attributable to the manufacturing and assembling of the RV..."

But it was not long before trouble began and numerous issues with the RV became apparent. The man contacted the dealership where he had purchased the RV in November and brought it in for repairs. The dealership had the RV for several weeks, during which time

the man was forced to stay in a motel.

When the man finally got the RV back, there still were unresolved issues. After a number of conversations between buyer and seller, the man had the RV picked up by the dealership in February 2019, for more work. After nearly two months, during which time the man had to stay in hotel rooms, the RV was returned in such poor condition that he immediately reported it to the dealership. He was told in June, the dealership was working on coordinating remaining repairs.

The man attempted further contact with the dealership without success. Then, less than a year after purchasing the RV, he demanded the return of his purchase price. The demand was refused and ignored.

The man contacted Frasier, Frasier & Hickman, LLP for help. He was instructed to impound the trailer as security and he did so. It was made available for

inspection by all parties. Meanwhile, the firm investigated the various warranties and the application of the state and federal laws that protect consumers.

Under the so-called "lemon law" provisions, a buyer may revoke his or her acceptance of merchandise in certain circumstances, and sellers are liable for return of the purchase price and any consequential damages to the buyer.

After the seller and mortgage holder refused to return the man's purchase costs, a lawsuit was filed against them. Along with the return of the purchase price, the lawsuit demanded the payment of substantial incidental damages, including lodging costs, storage costs, insurance costs, and the costs of pre-paid rental in an RV park.

The case was finally settled out of court.

"Our client went through a lot of hassle. Fortunately, the lemon laws protect buyers in these situations," said Jim Frasier.

● YOUR RIGHTS

Traffic Stops: The Briefer, the Better

The danger of traffic stops has recently been reemphasized. The question is what law enforcement may and may not do and what rights the motorist has.

A motorist may be stopped when he violates the traffic law. The officer has a right to see the person's driver's license and registration form, run a computer check, and to ask questions, so long as they do not extend the length of the stop.

After the officer has done his business – write a ticket or warning, or say he is not going to – he gives back the registration and the driver's license. Up to this point, the motorist is coerced – he has to stop for the officer and give him the documents.

However, once the paperwork is given back to the motorist, the motorist is, under the law, free to go.

This is often where the problem begins. After giving back the paperwork, the officer then engages the motorist in further conversation. Because the motorist

is free to go, the courts deem any further conversation as voluntary and anything the motorist says that raises suspicion (such as something contradictory to what he earlier said) gives the officer further rights.

And, since the motorist is free to go, the Miranda warning is not required.

The best practice when stopped is to say as little possible. Once the officer gives you your driver's license and registration (and ticket, sometimes), if the officer wants to engage in further conversation or questions, simply say, "Thank you, officer," and drive away.

In a recent case, the officer thought the motorist was suspicious. Then,

after giving the driver his paperwork, the officer asked more questions until they became more accusatory. The court later held that when the motorist began contradicting himself, the officer had the right to then hold the motorist, bring in a drug-sniffing dog, etc., and the motorist's goose was cooked.



Voting rights. The cornerstone of democracy.

I'm old enough to remember the enactment of the Voting Rights Act of 1965. Those memories have been refreshed by the images associated with that struggle – the march at Selma, future Congressman John Lewis being thrashed by a baton-wielding officer – that have been so widely republished and broadcast during the national attention to voting rights, once again, over the past few months.

The controversies over alleged voter irregularities during the 2016 and 2020 national elections have been used to create a huge cloud of smoke to hide attempts to hijack voter rights. I say “attempts” in the plural, because the attempts are occurring all across the country.

Voting rights are an issue for state legislatures. For the past 50 years, the United States has crafted legislation



“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

nationally to ensure that the various states enacted and enforced local laws to make participation in elections – voting – available to every American citizen, with few exceptions.

And although much attention recently has been directed to federal action on the issue, it still is an issue for the states.

So, even with support for voting rights from the White House, we must beware at the State Capitol. Watch out for terms like “election integrity” that suggest that reducing access to the ballot would somehow

be an improvement in democracy. The smokescreen also will include lots of talk about “conspiracy” and “fraud” and “security.”

The targeted result is voter suppression. More obstacles to voter registration. Less early voting. More voter identification hassles at the polls. And under suppression theory, you may as well forget on-line voting.

And these things will happen at the state level.

Stay vigilant and don't get smoke in your eyes.

–Jim Frasier

● CASE FILE

Worker's Patience Pays Off as State System Delays Just Compensation

In February 2016, Buddy Patterson was making a delivery for Easton Sod Farms. This day, his trip took him west on the Turner Turnpike (I-44). About midway, smoke along the highway became so heavy it restricted his vision of the road ahead and he was forced to stop.

Another trucker, William Deaton, driving for Asphalt Express Enterprises, also was heading west on the Turner Turnpike. Deaton also noticed smoke along the road. He also noticed numerous signs that warned against driving into smoke. He also noticed another truck in front of him. And he had his cruise control set at 70 miles per hour.

Suddenly, Deaton could not see the truck in front of him any more and he slammed on his brakes – and slammed into the back of Patterson's truck.

The violent crash severely injured Patterson, to the point he underwent three different surgeries.

Patterson had injuries that were subject to the Worker's Compensation coverage provided by his employer. But he also had a negligence claim against



Deaton and his employer, who insured him during the performance of his job.

Patterson needed help and contacted Frasier, Frasier and Hickman, LLP. In Oklahoma, the Worker's Compensation claim took precedence and had to be settled before a negligence claim against Deaton and Asphalt Ex-

press Enterprises could be pursued in civil court. The Worker's Compensation matter dragged on, as the employer claimed part of Patterson's injuries were due to a pre-existing condition.

Finally, the Worker's Compensation case was settled and the negligence case brought against Deaton and Asphalt Express went forward in district court. The case was sent to mediation – almost five years after the wreck – and a settlement was reached outside of court.

“This case is an example of the draconian effects of so-called tort reform – the interests and needs of the insurance providers are placed above the interests and needs of the worker,” said Jim Frasier. “In the end, however, Buddy Patterson's patience paid off.”

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● SPRING 2021

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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.

● EDUCATION

Scholarship Applications Available

The Julia Fredin Frasier Foundation is accepting scholarship applications from high school seniors preparing to continue their education.

The forms may be obtained by calling, writing, emailing or coming into the office of Frasier, Frasier & Hickman, LLP. The application deadline is June 1, 2021.

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 awards around 40 scholarships of \$1,000 each. The total given out over the years exceeds the original endowment amount and is approaching \$1,000,000.

