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Journal of Consumer Advocacy

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● **CASE FILE**

US Government Settles Case Involving Botched Treatment at Indian Hospital

In February 2018, our client was taken by her husband to W.W. Hastings Indian Hospital in Tahlequah for care.

In the emergency room, doctors decided she would need medication delivered directly into her main vein through a “central line.”

After the procedure, the client suffered a stroke and was immediately transferred to St. John Medical Center in Tulsa. There it was determined that the central line had been erroneously placed into an artery instead of a vein. The stroke resulted when the infusion of medicine into the misplaced central line went directly to the patient’s brain.

The client survived the stroke and, although recovering, suffered permanent impairment. She and her husband reached out to Frasier, Frasier & Hickman LLP for help. An investigation by the firm showed that, although the emergency room doctor claimed he had used ultrasound to place the central line into the

correct blood vessel – the standard of care in such circumstances – there were no hospital records showing that such a procedure was ever performed. And, indeed, a later x-ray showed the line was indisputably in the wrong vessel.

Since the injury occurred at an Indian hospital, a claim was filed under the Federal Tort Claims Act. When the claim was denied, a lawsuit was filed in federal court against the United States of America. Before trial, the case was settled.

“This good lady was severely injured by the negligence, or incompetence, of personnel at the W.W. Hastings Indian Hospital who did not follow the accepted standards of care for the procedure they subjected her to. This never should

have happened in the first place, and she is lucky to be alive,” said Jim Frasier.

“At least we were able to help effect an adequate settlement that will provide for her future.”



The client survived the stroke and, although recovering, suffered permanent impairment. This never should have happened in the first place.

● WORKER

Oklahoma's Drug-Free Workplaces

Oklahoma employers have the right – and often a legal duty – to maintain a drug-free workplace.

Except for a few limited exceptions, Oklahoma law and the Americans with Disabilities Act (ADA) permit employers to ban the use, or being under the influence, of illegal drugs in the workplace. This includes medical marijuana.

Additionally, federal contractors and businesses in the transportation sector are required by federal law to maintain drug-free workplaces.

All this said, employers themselves must follow the laws that set the parameters for maintaining a drug-free workplace.

Oklahoma private-sector employers may search the vehicles of their employees if conducted on the property of the employer (otherwise a search warrant is required). And just last year, the National Labor Relations Board ruled that an employee vehicle search policy did not violate federal labor law.

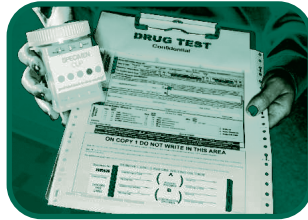
Oklahoma law also sets out the criteria under which

an employer may subject a worker to drug testing and how the matter is handled. State law requires a company to have a written drug-testing policy in place before an employee can lawfully be subjected to testing and many Oklahoma employers have taken that step.

State law permits employers to engage in drug testing, including random testing, if they comply with the Oklahoma Standards for Workplace Alcohol and Drug Testing Act. It exempts drug testing that is required by or conducted pursuant to federal law. This most commonly affects workers at companies with federal contracts, or in commercial or public transportation.

Some of the circumstances that can trigger unscheduled workplace drug testing, according to the Act, are:

- Job applicants and workers seeking a transfer or new assignment.
- “For cause” testing if there is reason to believe an employee is under the influence.
- Following an accident.
- Random testing.



● CONSUMER

The Benefits of Uninsured/Underinsured Motorist Coverage

According to the Oklahoma Insurance Department, Oklahoma's percentage of uninsured motorists is among the highest in the nation. Presently, Oklahoma is tied for third – with Florida and Tennessee – at 24 percent.

Oklahoma law requires Oklahomans to purchase mandatory liability insurance coverage with the minimum limit of \$25,000 for the injury or death of one person, \$50,000 for injury or death of two or more persons, and \$25,000 in coverage for property damage. This minimal amount of insurance rarely covers all medical expenses and property damage claims, in today's environment.

Fortunately, Oklahoma law allows for insured persons to purchase uninsured/underinsured motorist coverage to an automobile policy they already carry

at a relatively inexpensive rate. This allows them as the insured to protect against an uninsured or underinsured motorist situation and provide protection for medical expenses, injuries or loss of life as a result of an uninsured or underinsured motorist.

A prime example of this is the recent case of a Frasier, Frasier & Hickman, LLP client.

This elderly gentleman, residing in a nursing facility, was being transported to a doctor's visit by nursing home staff. The client was not ambulatory and required to be transported in a wheelchair accessible van. The unlicensed nursing home driver drove the van containing the client into the back of a stopped vehicle while the client was unrestrained. Our client suffered severe injuries which ultimately resulted in his death.

Frasier, Frasier & Hickman, LLP assisted the surviving family in the investigation of the incident. Fortunately, there was uninsured motorist coverage available to the client, which assisted his family in paying hundreds of thousands of dollars of medical expenses incurred and compensating the family for his wrongful death.

Uninsured/underinsured motorist coverage is required to be offered to all liability insurance policy holders within the state of Oklahoma. It is relatively cheap coverage to protect you and your loved ones from catastrophic losses.

If you have been injured in a vehicle accident, you should immediately determine whether or not there is any uninsured/underinsured motorist coverage available to help cover potential losses.



“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

As a state legislator, Bob Cullison had a way of persuading his colleagues. With his easy-going style he could get close to you ... and then put the proverbial arm on you, applying pressure as necessary.

It was no surprise to people who knew the Turley native well, that he would rise to lead the State Senate, being elected Pro Tempore by his colleagues three times.

As a leader, Bob Cullison got things done for the people of Oklahoma. His crowning legislative achievement was leading the Senate to pass House Bill 1017, the landmark legislation in 1990 that dramatically raised the quality of education for Oklahoma's children.

That law, signed by Gov. Henry

Bellmon, made all the difference in the world. But it did not come without a price and there was bitter opposition among legislators and key interests across the state. It took Bob Cullison – his leadership and phenomenal strength – to get it through the Senate and onto the governor's desk.

Following his legislative career, Bob served on the Oklahoma Tax Commission, and then led the Oklahoma Bankers' Association before retiring.

Oklahoma lost Bob Cullison when he passed away May 18. He will be missed by many, but especially me and my colleagues at Frasier, Frasier & Hickman, LLP.

Rest in peace, Bob.

–Jim Frasier

● IN MEMORIAM

The people lost a staunch advocate of workers' rights when J. L. Franks passed away March 9 from a COVID-related illness.

Franks was associated with the Frasier law firm for more than 25 years, specializing in Workers' Compensation cases. With his knowledge of the law, he fought to get injured workers their due and against attempts to weaken worker protections by pro-business forces at the Legislature.

The lawyers and staff at Frasier, Frasier & Hickman, LLP, will miss J.L. Franks. Our condolences go out to his family and many friends.



● WORKER

Who Benefits Under New System?

New Workers' Comp System Saving Lots of Money! Great news, right? Yes, if you are an employer! Yes, if you are an insurance company!

However, if you are an injured worker, well, the news is not great, and the savings are not yours.

Since former governor Mary Fallin's "reform" plan was signed into law, employers' Workers' Compensation premiums have dropped by as much as three-fourths. Those premiums have dropped because it does not cost the insurance carriers nearly as much to "take care" of injured workers.

This is not because medical costs have changed, nor is it because fewer people are getting injured at work.

It is because the "reform" law has shortened the time within which a claim may be filed, taken away the injured worker's right to choose her doctor, shortened the amount of time an injured worker can remain off work and draw benefits (no matter how severe the injury and no matter whether the worker is able to perform the essential functions of his job), and dimin-

ished the value of impairment a worker endures.

But wait, there's more! Perhaps worst of all, the law is now crafted in such a way that claims can be dismissed and benefits can be stopped without notice.

Not to mention, insurance companies and employers suffer no consequences when their actions turn a problem that could have easily been resolved into a debilitating surgical injury, perhaps a future of nerve pain, severe impairment, and even an inability to work in any capacity.

The law contains plenty of provisions that will punish the injured worker for not doing everything correctly, but there are no such punishing provisions for employers/insurance companies. Every mention of bad faith in Fallin's law concerns bad faith of the worker and never of the insurance company/employer.

Yes, Fallin's law is saving plenty of money – but not for workers. The remedy is elected officials that believe that good business is protecting workers to the fullest extent.





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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.

● LEGAL SERVICES

Union Advantage Offers Free and Reduced Fee Services

Frasier, Frasier & Hickman, LLP offers its exclusive Union Advantage program to local unions affiliated with the Firm. With this program, union members and their families can be assured they will receive quality treatment and the possibility of resolving legal questions at a reduced cost.



Union Advantage includes the meat of the former Union Privilege Legal Services program discontinued by the AFL-CIO.

The FF&H Union Advantage program continues to offer an array of consumer benefits including free initial consultations and document review, follow-up services and 30 percent discount on non-contingent fee matters.

We also will continue to offer representation in Workers' Compensation, personal injury, Social Security, and other contingent fee matters. All as we have done in the past.

Our firm has been honored to represent union workers and their unions for almost 70 years and plan to continue that tradition unchanged.