

# CERTIORARI

## Journal of Consumer Advocacy

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● **CASE FILE**

## Client Compensated in Complicated Condo Case

A woman from Paradise, California has grandchildren in Tulsa. She bought a condo in midtown so she would have a place for extended stays to visit them. The condo next to hers was rented and the moving company stacked boxes in the renter's garage. The garage had in its perimeter an automatic heater to keep it warm in cold weather.

When the weather turned cold, the heater turned on, the boxes caught fire, and the woman's condo and its contents were damaged.

Unfortunately, the woman's insurance agent had sold her a "renter's policy" – it only covered the contents inside the condo. Typical condo rules provide that the homeowners association purchases insurance for the exterior of the condo, but the condo owner must insure the inside structure. After the insurance policy limits were exhausted, the woman was still out tens of thousands of dollars in repairs.

The woman came to Frasier, Frasier &



**A successful settlement was made, which compensated the woman for the full loss.**

Hickman, LLP, and a lawsuit was brought against the next door renter and her moving company. The renter also sued the moving company, as did the homeowners association and others whose property was damaged by the fire.

A successful settlement was made, which compensated the woman for the full loss.

"Normally, in a case like this the person is fully insured. The insurance company pays for all the damages and then may or may not, on its own behalf, seek to recover from the negligent party," said Steve Hickman, who handled the matter. "It is important to make sure that whether you are a homeowner, a renter, or a condo owner, the right insurance is in place and adequate to cover any loss."

On a side note, the woman was in Tulsa when the entire town of Paradise later burned down. Fortunately, her insurance there covered all losses.

## ● CASE FILE

# Supreme Court Sends Claremore Negligence Back to Trial Court

On May 23, 2015, flash flooding in Claremore threatened a duplex and the woman and six children who were celebrating a birthday party there. Fire Captain Jason Farley and a team of Claremore firefighters were dispatched to the scene to rescue the stranded woman and children. During the water rescue, Farley and another firefighter were sucked into a storm drain by the swift current.

The other firefighter was ejected from the pipe but Farley became stuck and drowned.

Farley's widow received death benefits through the Workers' Compensation system. After the death benefits were awarded, she sought to make the city of Claremore accountable for

its role in the drowning. On her behalf, Frasier, Frasier & Hickman, LLP, filed a lawsuit against the city of Claremore. The lawsuit alleged the city

had acted intentionally because it had identified the area around the duplex as prone to flooding, yet protective grates had been removed from the nearby storm sewers. Also, the city had never provided any training in water rescue to any Claremore firefighters until after Farley's death.

The city of Claremore sought to have the lawsuit thrown out and it was dismissed by the trial



court in Rogers County. The case was appealed to the Oklahoma Supreme Court.

Recently, the Supreme Court ruled that the case should be

sent back to the district court for further proceedings.

"A case holding a municipality accountable can be a long, complicated process. It is hard to sue governmental entities; but it can be done and we have done it at every level. Captain Farley's survivors could have given up long ago, but with their persistence, in the end justice will prevail," said Jim Frasier.

## ● LEGAL SERVICES

# Union Advantage Offers Meat of UPLS Program

The AFL-CIO has announced the end of its Union Privilege Legal Services program, a program in which Frasier, Frasier & Hickman, LLP, has proudly been a leading participant for several decades.

This appears to be a financial decision by the AFL-CIO and their proposed replacement is a plan, paid for by individual participating union workers and full of exclusions. We consider this a step backwards.

Accordingly, Frasier, Frasier & Hickman, LLP, is continuing to offer the meat of the UPLS program



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to the local unions affiliated with the Firm and their union workers.

This continues to include free initial consultations and document review and 30 percent discount on non-contingent fee matters. We also will continue to offer representation in Workers' Compensation, injury, Social Security, and other contingent fee matters.

All as we have done in the past.

We have been honored to represent union workers and their unions for almost 70 years and plan to continue that tradition unchanged.



*“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*

Blame the Lawyers. That tired technique was employed by Big Business and their former spokesman, Mary Fallin, when Oklahoma’s workers’ compensation system was gutted several years ago and replaced with an administrative system.

“I want injured workers to have a system that processes their claims quickly, gets them fair compensation and help and back to work. Moving to an administrative system of mediation run by administrative law judges as opposed to a litigious system dominated by lawsuits and trial attorneys is better for injured workers and employers,” Fallin claimed.

But the reality is oh, so different.

A recent client, a 15-year baggage handler for an airline, injured her low back and hip area in the course of her employment. She reported the injury to her supervisor and was sent to a clinic that the employer chose. She received physical therapy at that clinic for eight weeks, but was not better. Her employer then sent her to an orthopedic surgeon, who sent her for additional physical therapy. After that, the therapist recommended that she receive even more.

The doctor, however, did not agree and returned her to full duty. She did return to work, but realized after one day that her injury had not healed and that she could not do her job.

The employer sent her back to the

clinic, which gave her restricted duty and referred her to another specialist. The company, however, refused to approve this.

By this time, the worker had exhausted all TTD allowed under the system. Her employer required a full release with no restrictions, but would not approve further care.

And so it goes. The young woman in this story did everything she was supposed to do. She followed every one of the rules. After 13 months – nine without pay – she was able to return to work.

The only reason she received the needed medical treatment is because – guess what – she called for the help of trial lawyers. The woman engaged Frasier, Frasier & Hickman, LLP, to represent her. Without the help of trial lawyers, the employer could have the administrative system basically do whatever serves its own interests – without providing adequate treatment or paying benefits.

But blame the trial lawyers?

*–Kathryn Black*

## ● CASE FILE

# Suit Won Over Blasting Damages

Between Vinita and Chelsea, in the rolling hills of Craig County, lies a quaint, well-kept unincorporated community known as Bowlin Springs where Charles Bowlin operates a small general goods store and is well-known for his barbecue.

But the hilly pastures in the area also contain valuable coal seams and there is active coal excavation. Near the end of 2011 and continuing through 2013, Phoenix Mining Company conducted blasting operations on coal deposits near Bowlin Springs. During that time, homeowners in the area began to express concern for the large explosions and their effect on homes and other buildings. Damages included cracked foundations, cracked walls and ceilings, and broken windows.

Phoenix Mining Company promised to make repairs, but nothing was ever done. Eventually, seven homeowners – including Charles Bowlin and several members of his family – hired Frasier, Frasier & Hick-

man, LLP to assist them and a lawsuit was pursued in Craig County District Court.

When the plaintiffs requested blasting records from Phoenix Mining Company, they were told there had been a fire at office and records no longer existed. The company offered to pay a minimal sum to each plaintiff to settle the matter, but they declined.

The case finally went to trial and the Oklahoma Department of Mines was able to confirm the blasting activity. Frasier, Frasier & Hickman, LLP produced appraisals of the damaged property and the needed repairs and the jury found in the plaintiffs’ favor and ordered a substantial judgement.

“The defendant in this case tried to stall and get the property owners to accept an inadequate settlement. Because these plaintiffs had faith in our justice system and let the case proceed to trial, they got a fair outcome,” said Jim Frasier.

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## ● WINTER 2019

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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.

