



# FOR *the* DEFENSE

August 2019

"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 3:27

## Greetings from Paul Bennett

With the arrival of August we know that summer is finally coming to an end. Just one last month of summer activities like swimming, summer camps, and vacations, and cool weather on the horizon. While children may fret about the return to school, many of us who are parents secretly look forward to a return to normalcy! And did you know that August is National Golf Month, National Peach Month, National Wellness Month and National Goat Cheese Month? From a professional standpoint, it's been a busy summer at Fletcher Farley with many successes for our clients, including a number of summary judgment wins. As summer draws to a close, we wish to extend thanks to our valued clients and to wish everyone a safe and joyous month.



## Preparing Better Incident Reports

### Alex Bell

You know the old familiar pattern: a new lawsuit comes in just before the two-year statute of limitations for a personal injury accident. Most or all of the employees who worked for you at the time it happened have moved on or have no recollection of the event. All you can find is a one or two page sheet of paper-your standard incident reporting form. When you read it, the report has any number of problems: it doesn't fairly describe what happened, it exaggerates, it omits critical information, or it contains some really damning information that you will now have to disclose in a lawsuit.



### In This Issue

[Featured Article](#)

[Conflicts Resolved](#)

[Save the Date for Chicago](#)

[Our 27th Anniversary](#)

[Around the Firm](#)

[August is Peach Month](#)

Welcome to the latest edition of Fletcher Farley's Newsletter, which we hope you find interesting and helpful.

If you have any comments, questions or would like more information from us, please contact Doug or Joanna.

Contact:

Doug Fletcher  
Firm Managing Partner  
214-987-9600  
[doug.fletcher@fletcherfarley.com](mailto:doug.fletcher@fletcherfarley.com)

Joanna Salinas  
Austin Office Managing Partner  
512-476-5300  
[joanna.salinas@fletcherfarley.com](mailto:joanna.salinas@fletcherfarley.com)

Join Our Mailing List!

Incident reports should be there to protect you and your company, not handicap you during litigation. With just a little bit of training in advance, you can help your employees make better incident reports that serve this important role. If you can emphasize these key points, you'll be well on your way to better reports.

**"All we want are the facts." Sgt. Joe Friday, Dragnet**

Like any good detective, all you want to know and record in a good incident report are the facts-and JUST the facts. The person who reads the incident report later needs enough information to know what happened, and nothing more. Who, what, where, and when are good starting points. For example, "Customer claims he slipped and fell on a liquid while walking down aisle 5. I went to aisle 5 and could not locate any liquid on the floor." This contains just the facts, location, and the description of how the accident happened. Note that it is also phrased in terms of a claim or allegation instead of a conclusion about what happened. It also contains the employee's observation of the critical aspect of the claim: there was no water on the floor.

Adjectives and adverbs usually have no place in an incident report. "Customer had a gaping wound over her eye that was gushing blood! Blood was EVERYWHERE!" This quote will end up on a Plaintiff's trial exhibit at about 50 times its original size. Compare that with "Customer had a cut over her eye." Again, both accurately describe the same thing, but one does it in a factual way without the graphic visual description.

**Leave the conclusions for the experts**

An incident report is not supposed to represent a conclusive investigation or report. Typically, employees should leave the how and the why to other people (unless they can quickly debunk a simple claim, like the slip and fall example above). An incident report should never speculate as to the cause of an incident, people's motivations, or offer criticisms of ongoing operations. Consider these two examples:

"Customer claims he slipped and fell on a spill at table 5." Now, compare it with this:

"Customer slipped and fell on employee Dan's soda which he spilled like an idiot. We keep telling him to put a lid on his soda, but he just doesn't seem to listen. But it's not Dan's fault because any idiot should have seen it on the floor." Woah. Houston, we have a problem. Both of these descriptions could accurately describe the same event. But, you can imagine the difference between how these two documents would be received during a deposition.

**Document any aid rendered or corrective action taken**

Make sure that your employees' good deeds are recorded. Whether it is calling 911 to get emergency medical attention for someone or offering first aid, you will want to make sure the incident records your prompt response to the incident.

If any potential cause of the accident needs to be fixed, remedied, or corrected, document that it was done. Worry about the admissibility of subsequent remedial measures later. Often times an incident will be the first indication or notice of a

**Registration is open for the Annual Texas Law Update in Chicago!**



Don't miss our Annual Texas Law Update on Friday, October 25th, 2019 at the Swissôtel Chicago.

For more information and to register, [click here](#).

**27th Anniversary**

Fletcher Farley celebrates 27 years this month! We are thankful to all our clients and friends for this achievement!

**Celebrating 27 Years Together**



"To all of you who have helped make this such a great law firm and a great place to work, my sincere thanks," Doug Fletcher, Founding Partner.

**Around the Firm**

It's August and children are preparing to go back to school and our attorneys are already back to school, at least continuing to learn more at our monthly attorney meetings where we have professional development

problem and the incident report can help you show that corrective action was initiated promptly. If there was liquid on the floor near the fall, make sure the report documents that signs were placed and that it was mopped up. If an incident happens because something is broken and in need of repair, document the call for service.

### Witnesses

This can be a tough one. You certainly want your employees to speak with anyone who saw what happened, but many people do not want to be involved in an incident report because they do not want to be bothered with interviews, depositions, or court. If they are willing to tell you what happened, the employee should write a brief description or have the witness do a short written statement (emphasize that you just want to know what they saw-JUST THE FACTS!). Try to collect their name, address, cell phone number, and email address. An email address and cell phone number tend to be the best way to find people, especially if a lot of time has passed since the incident happened because most people do not change those frequently and will often keep the same personal contact information if they move.

If you spend just a little time with your employees about filling out incident reports it can go a long way towards helping you with your claims and litigation down the road.

## Conflicts Resolved

### **Fletcher Farley Obtains Summary Judgment in Premises Liability Case**

[Paul Bennett](#), [Alex J. Bell](#), and [Lorin Subar](#) recently obtained a summary judgment for a national restaurant group on a premises liability case in Dallas County. The Plaintiff alleged she had slipped and fell when an ordinary dining chair was left in her way while an employee was rearranging tables for her large group. Alex Bell secured very favorable deposition testimony from the plaintiff, who admitted that she simply misstepped and caught her foot on the chair leg and that there was nothing dangerous about the chair or the floor. Lorin Subar briefed the motion.

### Attorney Meeting



[Lorin Subar](#) speaks to the group on negligent hiring before we headed out to continue the discussion over dinner.

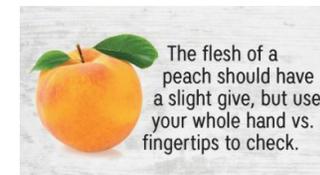
## August National Peach Month

Texans Love Peaches!



Observe National Peach Month by enjoying your favorite peach recipes!

How to pick the perfect peach:



Dwanna Gassaway  
Fletcher Farley Shipman & Salinas LLP  
214-987-9600