



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

Proverbs 3:27

## Greetings from Doug Fletcher

Well, the month of February certainly started off with a bang! The first week alone contained a very exciting Super Bowl in Miami between the Chiefs and the 49ers, a raucous State of the Union Address by President Trump, and an end to the impeachment proceedings. I hope the rest of the month is not nearly as exciting. As a full-service law firm, we feel it is our duty to remind each of you of Valentine's Day on February 14<sup>th</sup>. Don't forget! However, please note that our Rapid Response program does not include delivery of flowers or chocolates. As always, we value our relationship with each of you and look forward to assisting you with your legal needs. You have our wishes for a great February!



## Retaining On-Premises Video in a Premises-Liability Claim

### Julia Sinor

Preserving on-premises video is not only important to avoid potential spoliation sanctions, but to preserve highly effective evidence for the defense. Here, we discuss preserving on-premises surveillance video for use in a premises-liability case. If relevant video exists, securing it should be high priority when you receive notice of a claim. The video that could make-or-



## Congratulations to New Partner, Derreck Brown

We are pleased to announce that [Derreck Brown](#) was elected to the partnership of the firm effective January 1, 2020.

We congratulate him on this important and well-deserved professional achievement.

Watch the video announcement by clicking on the image below or [click here](#) to learn more about Derreck.



## Congratulations Joanna Salinas

[Joanna Salinas](#), Managing Partner of the Austin office,

break a case could be overwritten in 30 days or less.

Claimants often assume video footage exists if they see a surveillance camera located anywhere near their accident, and cry spoliation if it is not produced. Gather facts early to explain why footage of an accident may not exist. Cameras may be temporarily or permanently pointed in another direction, or the accident may be in an area without cameras due to privacy concerns, such as bathrooms. If a camera was non-functioning, find out why. Explanations may be simple, but learn them before memories fade and conditions change.

Have someone with knowledge of the premises and access to the on-premises video conduct a thorough review of available footage to discover facts to disprove the elements of claimant's premises-liability case and support an insured's defenses.

There is no single answer to how many hours of on-premises video to preserve. Relevant pre-incident video footage may show who created the condition and how, changes to the condition, attempts to remedy the condition, any recurrence of the condition, placement or movement of barriers or warnings, or changes that affect visibility.

Extended pre-incident video could also show a condition was open-and-obvious, identify claimant's opportunities to see and avoid the hazard, or show the conspicuousness of the condition or a warning. Video may help show that the insured was conducting inspections, following proper procedures in the use of tools, equipment or materials, or taking other actions to keep the premises safe. Preserve on-premises video of employees in the area, or alternatively, the absence of employees in the area to discover the condition. Footage showing the creation of the condition or others in the area may also help identify vendors, independent contractors, or others who may have owe your insured indemnity, a defense, and/or contribution.

Post-incident video may contain key information about a claimant's injuries, pain, suffering, and impairment. Capture activities of emergency services or anyone rendering first aid. Did a claimant need help getting up from a fall? After the incident, did they walk around, shop, drive, eat, or conduct other activities someone in significant pain would not ordinarily do? Does the claimant appear to make a miraculous recovery in the parking lot when away from the insured's employees' view?

Prioritizing preservation of on-premises video is

has appeared in the Texas Super Lawyers list 5 times and was named to the Top Women Attorneys in Texas 2020 list for Civil Litigation: Defense; Personal Injury - General: Defense; Civil Rights; Employment Litigation: Defense. She was included in the Super Lawyers Women's edition in the January 2020 issue of *Texas Monthly*.



## Save the Date

THE  
**TEXAS  
LAW★UPDATE**  
2020

The Texas Law Update 2020 will be held on Friday, April 24th at the DoubleTree by Hilton at Campbell Centre in Dallas.

Registration and information coming soon!

## Continuing Education Classes Offered

We are an approved provider of continuing

important and necessary to ensure the best defense and avoid the risk of spoliation sanctions. It may reveal facts that prevent litigation altogether.

## Conflicts Resolved

### Fletcher Farley Obtains Voluntary Dismissal

[Fred Arias](#) and [Lorin Subar](#) obtained a voluntary dismissal in response to a motion for summary judgment in a case involving allegations of an unreasonably dangerous condition in an apartment complex. The plaintiff had claimed that he was injured as the result of an unsafe condition involving the apartment complex trash compactor. He asserted that he was not provided adequate tools to load trash into the compactor and that the compactor lacked sufficient warnings regarding potential climbing/falling hazards. Our firm represented the owner of the apartment complex property. After briefing the issues to the Court, the plaintiff unilaterally non-suited his claims against our client. Fred Arias was trial counsel in the matter and Lorin Subar drafted the motion for summary judgment.

### Summary Judgment Win: How Times Have Changed

#### Doug Fletcher

Last year I was brought in to defend a property owner who was being sued for a fuel tank explosion and resulting catastrophic injuries to the two plaintiffs. The underlying facts were that the two plaintiffs had become intoxicated and drove to a very remote oil field tank storage facility, trespassed onto the property, climbed over a fence, which warned against trespassing, and then proceeded to climb on top of the fuel tanks. Allegedly while admiring the view, they began to smoke cigarettes which resulted, expectedly, in a large explosion. Both plaintiffs were blown approximately 30 to 35 yards and received fairly significant burns. Interestingly, a portion of their 18 beer pack case landed on the ground near them, along with a Bic cigarette lighter. Both plaintiffs were care-flighted to the Parkland Burn Unit where they incurred medical expenses in excess of \$3 million dollars.

Not long ago there wouldn't have been any lawsuit for such obvious negligent activity by the plaintiffs. Not only did they find an East Texas plaintiff's lawyer to take the case, but they were intent on prosecuting the

education and are able to offer courses at your location free of charge! To read more about the educational classes we offer, please [click here](#) or on the image below.



## Congratulations

Congratulations to Miguel and Sara Bustilloz on the birth of their baby girl! We wish the happy couple all the joy that she will bring to the their lives.



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If you want more information or have questions, please contact:

Doug Fletcher  
Firm Managing Partner  
214-987-9600  
[Doug's email](#)

Joanna Salinas

claim. Even after vigorous cross-examination during the depositions in which both plaintiffs admitted they trespassed on our client's property and they had caused the explosion, the plaintiffs' attorney refused to dismiss this case. As he indicated, with the medical specials in excess of \$3 million dollars, even if he got a 50/50 verdict, he would still have a significant recovery. I have to admit in these days of social inflation and more plaintiff-friendly juries, I indicated to the company that this case had some limited exposure even in light of the absolutely incredible facts. We moved forward with preparation of a Motion for Summary Judgment seeking dismissal of the case and it was only after being faced with responding to our Motion for Summary Judgment did the plaintiffs' attorney contact me and advise he had gotten permission from his clients to non-suit the case. Thus, while the case had a happy ending, there were moments during this case that I felt a bit like Alice in Wonderland.

Austin Office Managing  
Partner  
512-476-5300  
[Joanna's email](#)

**Fletcher Farley Shipman & Salinas LLP**

[fletcherfarley.com](http://fletcherfarley.com)

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