



June 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 Fred Arias

Heat waves. Crane-toppling winds. Floods. It is hard to tell if this is the beginning of the apocalypse or, perhaps, just climate change [no political point intended]. Regardless, it is during these times that we are reminded of all the compassion and empathy that humanity has to offer. We also are hopeful that this is really just the storm before the calm. With children out of school and vacations beginning to start, it is our hope that this summer brings you peace and relaxation. And, in the unfortunate event that a storm does strike, you have our prayers and legal counseling at your disposal.



What You Need to Know About 18.001 Affidavits

Meredith Livermore

The Texas legislature has wrapped up its 2019 session, and Governor Abbott is signing and vetoing legislation. One of the bills we're most interested in at Fletcher Farley is a bill regarding Section 18.001 affidavits.



These affidavits are a thorn in every adjuster and defense attorney's side—once a plaintiff serves them, we have only 30 days to determine the need for counteraffidavits, hire an expert, and serve the counteraffidavits. With the new law, though, we will have until the earlier of 120 days after filing an answer, or the date we must designate expert witnesses, to controvert Plaintiff's affidavits.

Also with the new law, a party must file written notice with the court when serving an affidavit or counteraffidavit. Plaintiffs may supplement their affidavits up to the 60th day before trial, while defendants may supplement their counteraffidavits up to the 30th day before trial.

The new law also specifically states that an affidavit is not evidence of, and does not support, a finding of causation. However, the counteraffidavit cannot be used to controvert causation. The law will become effective on September 1, 2019.

Conflicts Resolved

Fletcher Farley Obtains a Complete Defense Verdict

[Alex Bell](#) and [Lauren Lopez](#) recently obtained a complete defense verdict for a national restaurant franchise and its owner after a one day jury trial. Plaintiff claimed the Defendant was responsible for a two car collision in its parking lot because an employee was directing traffic. Defendant argued that Plaintiff had cut into another driver's lane, causing the accident. After 30 minutes of deliberation, the jury put 90% of the fault on Plaintiff and 10% on the other driver. The jury found no negligence as to Fletcher Farley's clients.

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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.

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Speaking Engagements

16th Annual Advanced Insurance Law Course



[Craig Reese](#) presented "8 Corners Rule: How to Read a Liability Policy," along with Erika Bright with Wick Phillips, at the TexasBarCLE's 16th Annual Advanced Insurance Law

Fletcher Farley Successfully Defends Premises Liability Claims Against a Large Retailer

On May 31, 2019, a Tarrant County court dismissed by summary judgment the claims of a plaintiff who claimed that Fletcher Farley's client, a large national retail store, had been negligent in creating an unreasonably dangerous condition and allowing the condition to remain. Specifically, the plaintiff claimed the dangerous condition was caused by the store placing a sandwich-board type advertisement in front of the store on a windy day, then, after the wind blew the sign down, leaving the sign there for an extended period. The motion for summary judgment was based, in large part, on a security video capturing the outside sidewalk which showed that the sign had been down for as long as 10 minutes before the incident, capturing as many as 20 people walking past the sign without incident, including many who clearly saw the sign and walked around it. Most importantly, this included the plaintiff herself who walked past the sign multiple times as she made several trips to her vehicle to drop off her purchases. The store defended itself under three avenues of defense: (1) the Plaintiff was aware of the alleged unreasonably dangerous condition; (2) the store had no knowledge of the sign being down; and (3) the condition complained of was open and obvious. The Court's order did not provide a reason for granting the summary judgment; however, the video evidence, especially that of the plaintiff walking around the sign several times before attempting to step over the sign, was compelling. The Motion for Summary Judgment was briefed by [Lorin Subar](#) and argued by [Meredith Livermore](#), who was making her first appearance before a court, which made the win particularly satisfying for the firm.

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Course in San Antonio on
June, 5, 2019.

If you missed him live, you
can see him via video on July
11-12, 2019 at City Place
events in Dallas.

Community and Other Events

Blue Goose Texas Pond's 13th Annual Golf Tournament

We were proud to be a
sponsor at the Blue Goose
Texas Pond's 13th Annual
Golf Tournament that was
held on Friday, June 7th, at
the Bear Creek Golf Club in
Dallas. Proceeds benefit the
North Texas Food Bank and
the Texas Pond Scholarship
fund. To learn more about the
organization, please [click
here](#).

