



FOR *the* DEFENSE

October 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 Mike Shipman

Football season is now upon us and I'm writing this following the Cowboys' loss to Green Bay. If you are a Cowboys fan it was not a good day! If you're not, then perhaps it was a good day. Texas Tech, my law school alma mater, beat the Oklahoma State Cowboys this weekend!!! Now that was a good day!!! These past few weeks have also been extremely hot for this time of year. However, this morning when I got up and went outside it was quite refreshing and cool. Halloween is around the corner and I thought I would give you a few weird facts about Halloween I found on the internet: (1) originally, you had to dance for your "treat"; (2) Halloween is more Irish than St. Patrick's Day; (3) if you'd been around for the earliest Halloween celebrations, you might have worn animal skins and heads; (4) jack-o'-lanterns were once made out of turnips, beets and potatoes - not pumpkins; (5) Halloween used to be a great day to find your soulmate (I'll let your imagination go on that one!!); and (6) in a few American towns, Halloween was originally referred to as "Cabbage Night." Just a few fun facts about Halloween. Seriously, in our line of work we see the terrible ramifications of driver inattention on a daily basis. This Halloween, if you are out and about driving, I would encourage all of you to pay particular attention to the road and your surroundings knowing that there are little ones out there trick or treating. As we now move full steam ahead into Autumn and look forward to Thanksgiving, all of us here at Fletcher Farley want you to know how thankful we are for the friendships we have developed over the years with each of you.



Rethinking Carpool Incentives

Matthew Skidmore

In recent years, there has been an increase in the popularity of employer-enacted carpooling incentives for employees to encourage ridesharing, due to the positive effect that the reduced vehicle emissions can have on the environment. A 2018 Texas Supreme Court decision, *Painter v. Amerimex Drilling I, Ltd.*, may cause employers to rethink the implementation of these incentive programs.



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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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Register Now for the Annual Texas Law Update in Chicago!

Under Texas law, in order to prove an employer's vicarious liability

for a worker's negligence, the Plaintiff must show that at the time of the negligent conduct, the worker was (1) an employee, and (2) was acting in the course and scope of his employment. Vicarious liability only arises if the tortious act falls within the scope of the employee's general authority in furtherance of the employer's business, and for the accomplishment of the object for which the employee was hired. Thus, an employee running a personal errand would not be in the course in scope of their employment, and the employer would not be liable for any of the employee's negligent acts that occurred during that errand. Additionally, under the "coming and going" rule, an employer is generally not liable for the acts of its employees while traveling to and from work.

In *Painter*, the Plaintiffs sued Amerimex following a motor vehicle accident that occurred while an Amerimex employee was driving three of his coworkers from the drilling site to employer-provided housing following a work shift. The employee driving the vehicle was paid a bonus by the company to drive his fellow employees to and from the job site and company provided housing. Typically, this accident would fall within the coming and going rule, and the company would not be vicariously liable for the employee's negligence. However, in *Painter*, the Court held that the drilling company employee driving fellow employees to and from work was a specifically assigned duty for the benefit of the employer, and thus he was in the course and scope of his employment with the drilling company. It did not matter that the company chose not to exercise specific control over the route that the employee took-it was enough that they had the right of that control.

Following this decision, companies that offer carpooling incentives to employees in Texas may wish to reconsider or revamp any incentive programs they offer. Instead, companies may seek to implement other environmentally positive policies that do not expose their company to unnecessary additional potential liability.

Conflicts Resolved

Fletcher Farley Successfully Defends Claim of Personal Injury Due to PTSD

Lane Farley, Keith Robb and Lorin Subar obtained summary judgment for a company providing equipment to an industrial facility where the Plaintiff was seeking damages in excess of \$1,000,000. The Plaintiff was working in an office near the scene of a large explosion that cost the lives of two individuals and injured others. He claims that when he arrived at the scene of the accident, he began trying to assist the victims of the explosion and, as a result, suffered severe post-traumatic stress disorder which not only caused psychological injuries, but which also manifested in physical injuries. The Plaintiff conceded that negligent infliction of emotional distress is not a cause of action in Texas, but claimed that since he had physical injuries as a result of the trauma, he was not barred from pursuing his damages claim. The firm moved for summary judgment on the basis that even if Plaintiff did have some physical manifestations from his emotional injuries, the basis for the injuries were an emotional trauma only. If a claimant could recover for damages based solely on what they observed after an accident, it could open up an entirely new avenue for claims, including for first responders and others who were merely after-the-fact observers and not otherwise connected to any party to the incident. The Court agreed that the Plaintiff was overreaching in his attempt to get past the bar to negligent infliction of emotional distress claims and granted the summary judgment.

Fletcher Farley Obtains a Writ of Mandamus Ordering a Trial Court to Dismiss Their Client

Lane Farley and Lorin Subar filed a successful Petition for Writ of Mandamus to the Tenth Court of Appeals in Waco. The trial court



Our Annual Texas Law Update is a little more than 2 weeks away. Don't miss this seminar on Friday, October 25th, 2019 at the Swissôtel Chicago.

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

**Congrats
Mike Shipman**

**Elected Legislative
Vice-President of the
TADC**



We are proud to announce that [Mike Shipman](#) has been elected to serve as Legislative Vice-President of the Texas Association of Defense Counsel (TADC).

For more on the TADC, [click here](#).

**Speaking
Engagements**

**North Texas
Paralegal Association**



[Kristi Kautz](#) is presenting "Depositions on Written

had denied our client's motion to dismiss for want of jurisdiction based on the exclusive jurisdiction of a Texas administrative body. In reversing the order of the trial court, and in ordering the trial court to dismiss the Defendant, the Court of Appeals ruled that the trial court could not maintain jurisdiction over the Defendant to the exclusion of a statute expressing the Texas Legislature's intent that the administrative body maintained exclusive jurisdiction over the Plaintiffs' claims.



Happy 23rd Workiversary to Janet Smith, our Records Manager!

Questions - Rules, Requirements & Tips," at the North Texas Paralegal Association (NTPA) CLE Event on Thursday, October 10, 2019 at the Belo Mansion in Dallas.

D/FW RIMS Conference

We had a great time supporting Dallas/Fort Worth RIMS at their Annual Fall Conference on September 26th at the Gaylord Texan in Grapevine. It was great education, networking and a great way to support the community! We hope you had a chance to stop by and visit our table.

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