FLETCHER | FARLEY
CONFLICT RESOLVED

Fletcher Farley Newsletter

August 2020

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

Proverbs 3:27

Greetings from Craig Reese

Well, it is August of 2020 and I don't know where this greeting finds you, but if you are anywhere in the south, you are probably complaining about the heat. I know we are in Texas. And, unfortunately, we can't even be at the lake, or the pool, or on vacation someplace cooler.

I don't know about many of you, but personally I am ready for a new year already. Between politics, COVID-19, and everything else that is going on in our country, this year is already a wash.

One thing I do know, however, is that nothing that is going on this year seems to have had any impact on the number of cases that are being filed. In fact, if you do any first party work, you are probably seeing even more cases for claims related to COVID-19. Our firm stands ready to assist you with any of those claims.

We continue to be blessed by your faith in our work and we are glad to have you as our clients. We will continue to work hard and handle your cases efficiently, even if everything is being done by Zoom. That is something else I would like to see fade into the past. Be safe, wash your hands, and practice social distancing. This too shall pass.

Stipulating to Vicarious Liability to Avoid Corporate Responsibility

Handling Claims in the Energy Industry

Look for Doug Fletcher's webinar on handling cliams in the energy industry to be announced soon!

Behind the Scenes

Its Our Anniversary!

Fletcher Farley celebrates 28 years this month! We are thankful to all our clients and friends for the achievement!

"It has always been a great honor and source of satisfaction that such great groups of people would be part of the firm over the years. God's blessings have been evident throughout all these years and the greatest blessings are all of you. Happy Anniversary and on to the

Lorin Subar

While it feels inherently wrong to give a plaintiff even an inch in the defense of a client, is seems even more incongruous to forgo the defense of one-half of a case. But defendants are increasingly stipulating to liability; especially where liability facts are especially troublesome not only to the liability issue, but also to the overall tenor of the case. This is especially true when the defendant is a company.

Most cases turn on only two issues; is the defendant responsible for the plaintiff's injuries, and, if so, how much should they be compensated for those injuries. Company liability generally comes in two forms; vicarious liability (sometimes referred to as *respondeat superior*) and direct liability. With regard to vicarious liability the law recognizes that where an employee, while with the course and scope of their employment, injures another, the company becomes liable for the tortious conduct of the employee. In fact, when addressing a claim strictly based on vicarious liability, it is not generally necessary for the employee to even be a party. On the other hand, direct liability is not dependent on a finding of course and scope. Rather, the employer can be liable for negligent hiring, supervision, training, or retention of the employee as well as, regarding a vehicular accident, negligent entrustment. Under either approach, if the company's employee is not negligent, the company cannot be liable for vicarious liability or any direct cause of action.

A company can insulate itself from any direct liability considerations, including any discovery based on the company's own liability, by stipulating that their employee was in the course and scope of employment at the time of the accident. As recently stated in *Eyer v. Rivera*, 2019 WL 5539609 (W.D. Tex. 2019), "in cases when a plaintiff pleads only ordinary negligence and an employer stipulates to vicarious liability, the employee's competence and the employer's own negligence in hiring, failing to properly train, or negligently supervising become irrelevant." *Id.* at *3. "Therefore, Plaintiffs may not advance ordinary negligence claims against an employer under both vicarious liability and direct liability where the derivative liability of the owner has already been established by an admission or stipulation of agency or course and scope of employment." *Id.* Simply stated, the company itself will not be on the jury charge; only the employee. Just as importantly, where the company stipulates to vicarious liability, "evidence

30th!! Thanks Doug"

What better way to celebrate an anniversary than with a cookie bouquet!

The firm provided lunch for their employees in a safe, socially distanced manner!

We have a theme to lighten up our spirits and get us through this trying time, USS Fletcher Farley. Our Captain, Doug Fletcher, gives his crew (employees) regular updates about how our ship (the firm) is sailing through new waters.

Texas Law Update 2020 Cancelled

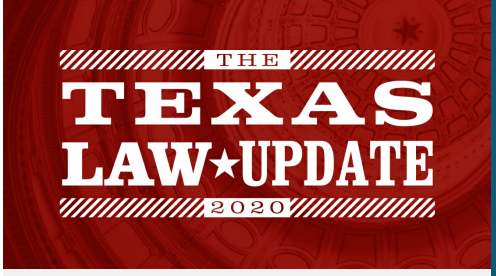
supporting alternative liability theories such as negligent hiring or negligent entrustment is inadmissible." *Simmons v. Bisland*, 2009 WL 961522, at *4 (Tex. App. —Austin 2009, pet. denied). This potentially insulates a jury from not only ever considering the company's negligence, but also tempers a jury's natural inclination to award a higher recovery against a company than against an individual for the same damages.

There is an exception to stipulating to vicarious liability; a loophole plaintiffs have used to get a jury to consider the tortious conduct of the employer. Texas courts have ruled that where a plaintiff has alleged that a company was grossly negligent, the company's stipulating to vicarious liability will not insulate the jury from considering the company's grossly negligent acts. Therefore, a plaintiff may allege gross negligence, even where the evidence is clearly against the claim, for the purpose of enticing a company to settle rather than go through the expense of discovery, including the deposition of company representatives and the release of confidential documents. Because of this, our firm finds itself filing early motions for summary judgment to combat these meritless claims and to stop unnecessary and abusive discovery.

Conflicts Resolved

Fletcher Farley Obtains Complete Victory in Arbitration

Kristi Kautz obtained a complete victory on behalf of our clients, a car dealership and vehicle financing company, in a claim filed by a customer who alleged the vehicle she leased did not have the features represented to her by the dealership. The claimant sought the return of her down payment and complete release from her lease on the basis that she only entered into the lease because of misrepresentations by the dealership's salesperson. Kristi argued that our client's salesperson provided the claimant with the list of vehicle features provided by the manufacturer and that the claimant failed to notify the salesperson that she was requesting a specific feature, failed to test drive the vehicle before signing the lease when offered, and actually communicated to the salesperson prior to signing the lease that the vehicle's list of features looked like exactly what she wanted. An arbitration hearing was held and the arbitrator agreed with Kristi that there were no misrepresentations by either the dealership or financing company and issued a binding arbitration award in favor of our clients.



Our Annual Texas Law Update has been cancelled as a result of issues around the pandemic. With so many working from home and social distancing to flatten the curve, we want to keep health and safety first. This is the first time in 20 years we are cancelling. We are appreciative of you, your patience and standing with us as we navigate through this time. We hope to see you soon!

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