

"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

2020 is here! This is an exciting time! With the hectic Christmas season and the end-of-the-year rush having passed (and with no Big 12 teams in the NCAA championship game or Dallas Cowboys in the playoffs), we pause to reflect on what went well (or poorly) for us in 2019. I am proud that our firm continues to provide excellent legal work at competitive rates. I am also very pleased with how aggressively we move cases or claims to resolution. However, we are mindful that many of you are under constant pressure to keep legal costs down. From the inception of this firm in 1992, we have emphasized the importance of constant communication with clients during the litigation process. We believe that good communication is one of the keys to keeping costs down. And, this teamwork has led to great results for our clients. During the last part of 2019, we made a significant investment in our firm's technology systems that will assist us in being more efficient in our practices and, more important, in ensuring that our communication with you only gets better. So, as we proceed into 2020, we look forward to continuing to serve your legal needs in the manner in which you expect from us.



Recorded Statements in Premises Liability

DJ Hardy

Collecting the proper information shortly after an incident is critical in any claim, but it is especially critical in premises liability claims. Retailers often experience high employee turnover and documentation is typically sparse. It is important to gather the proper information early in the claim process. This article will focus on strategies for the recorded statement of the claimant. In order to prevail in a premises liability



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Welcome to the latest edition of Fletcher Farley's Newsletter.

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

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claim, an invitee plaintiff must show: 1) an unreasonably dangerous condition existed; 2) defendant (typically the owner or occupier of a premises) knew or should have known of the unreasonably dangerous condition; 3) the defendant failed to warn plaintiff of the dangerous condition or make the dangerous condition safe; and 4) the unreasonably dangerous condition caused plaintiff's injuries.

With regards to the first element, whether an unreasonably dangerous condition existed, the courts have held that a condition possess an unreasonable risk of harm for premises defect purposes when there is "sufficient probability for a harmful event occurring that a reasonably prudent person would have foreseen or some similar event as likely to happen." While foreseeability does not require that the exact injury producing sequence of events be foreseeable, there must still be a foreseeability for some general danger.

With respect to element two, if you have spoken with the store employees and know the employees were unaware of the substance on the floor, confirm with the claimant that no employees admitted knowledge of the substance either before or after the incident.

A claimant can establish the defendant *should* have known (constructive knowledge) of the dangerous condition by showing that the condition existed long enough that the defendant should have known of the alleged dangerous condition. The amount of time for the dangerous condition to have existed prior to the accident varies based on the business, premises, and location of the dangerous condition. It is important to remember that in order to prove that the condition had been on the premises long enough for defendant, or premises owner, to have found it, the claimant must be able to establish how long the dangerous condition had existed. This is very difficult for many claimants to establish. A simple "do you know how long the water had been on the floor?" asked during the recorded statement can be used with great success. We have also had success with asking "had you been looking down, would you have seen the water?" It is difficult for a claimant to establish that a premises owner should have known about the dangerous condition when the claimant himself could not have seen it if he or she was looking for it. Questioning a claimant on how many times a claimant had been to the premises and how many times they had been in that specific area often leads to favorable testimony. If a claimant states that he or she had been in the aisle five minutes before and did not see anything on the floor, it can assist in establishing the condition had not existed long enough to establish constructive knowledge.

A claimant must also prove the defendant failed to warn claimant of the condition and failed to make the condition safe. Establishing the claimant saw warning signs or wet floor signs in the area can be beneficial. Additionally, any conversations the claimant may have had with store employees may be helpful. For example, a store employee may have warned the claimant that the floor was being cleaned in a certain section or warned of some defect on the premises.

It is important to remember that a defendant generally has no duty to warn claimant of a condition that is open and obvious, or one that the claimant had actual knowledge of. Claimants tend to exaggerate the amount of the substance on the floor to show that the premises owner should have known about the condition and fixed it. Finally (and the question seems to have an obvious answer, but sometimes responses can be surprising), simply asking the claimant if he or she saw the substance before slipping/tripping on it can lead to a favorable result.

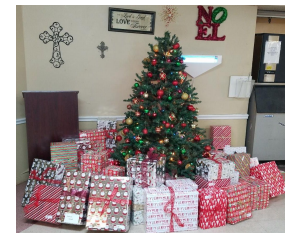
We were excited to visit our friends at a local nursing & rehab facility in Dallas County who we met through the Senior Source again this year.



Ashley Chambers helping Fred Arias get on the same page for caroling.



L-R: Victoria Morgan, Meredith Livermore and Ashley Chambers getting ready to spread cheer ... and snacks.



Santa left the residents plenty of gifts! They must have been very good this year.



Ryan Curry and Ed "Santa" Velez make the season brighter!



These are just a few of our folks who had the pleasure of sharing Christmas with the home residents and staff. We look forward to seeing everyone in 2020.

Conflicts Resolved

Fletcher Farley Obtains Summary Judgment

[Fred Arias](#) and [Lorin Subar](#) obtained a summary judgment and dismissal of a construction defect action filed in Denton County. The Plaintiff, a general contractor, claimed its sub-contractors were negligent in the construction of a multifamily complex. This included defects to multiple concrete structures, including drainage areas, which ultimately lead to flooding of the townhouse community. Representing a Third Party Defendant brought into suit by one of the defendant sub-contractors, Fred Arias argued that the defendant contractor lacked the sufficient evidence to support the allegations that the firm's client had provided defective materials for the housing project. The Court agreed with arguments presented by Mr. Arias and Mr. Subar and granted summary judgment in favor of the Third Party Defendant.

Fletcher Farley Obtains Voluntary Dismissal

[Lane Farley](#) and [Lorin Subar](#) obtained a voluntary dismissal in response to a motion for summary judgment in a case involving allegations of electric shock to two children. The plaintiff had claimed that her daughters were injured while playing in a local park. She asserted that one daughter suffered an electrical shock after coming in contact with an in-ground junction box, only to then have her second daughter suffer a similar shock in a subsequent contact. Our firm represented the electrical service provider that supplied electricity to the park. After briefing the issues to the Court, the plaintiff unilaterally non-suited her claims against our client. Lane Farley was trial counsel in the matter and Lorin Subar drafted the motion for summary judgment.

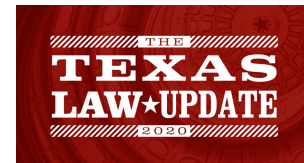
Continuing Education Classes Offered

We are an approved provider of continuing 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.



SAVE THE DATE



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!



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