



FOR *the* DEFENSE

July 2018

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

Proverbs 2:27

Greetings from Joanna Salinas



Welcome to the dog days of summer. While in the throes of the miserable heat that is generally Texas in July/August, it is now when all legal and life contemplation happens indoors under the blast of refrigerated air or on/in a body of water, and with a tall, iced glass of something that makes you feel better. At Fletcher Farley, we are taking advantage of the summer slower pace to catch up on pending matters and to spend time with family and friends, and we hope that you are doing the same. As the Fourth of July passes us by, it is a good time to appreciate the freedoms and opportunities that we have, and that are not universal. While our civil court system is far from perfect, it is purely an American construct and it aims to find a balance between a number of competing interests - including financial, social, and civil. We appreciate the faith you have shown in entrusting Fletcher Farley to represent your interests in navigating these complicated matters. Happy summer.

New Texas Supreme Court Case Makes Pre-Suit Investigation Even More Important



Robin Miserlian

One way to reduce a defendant's exposure is to designate responsible third parties. Designating a responsible third party allows a jury to allocate a proportion of fault to an otherwise unnamed party. The court will allow a Defendant to designate a responsible third party even after the statute of limitations has run, but only if the responsible third party was timely and properly identified in discovery.

In *In re Dawson*, the Court punished a Defendant for not fully identifying a potential responsible third party. Plaintiff was at a bar and restaurant when a television fell from the wall and injured her. Defendant's response to Plaintiff's request to disclose indicated that "persons beyond its control or employ were the sole cause and/or proximate cause of Plaintiff's injuries." This broad statement, according to the Texas Supreme Court, was not sufficient to put the Plaintiff on notice of a potentially responsible third party. Even though Defendant named a potential responsible third party by name and phone number in an interrogatory answer that was not enough.

This recent Texas Supreme Court reminds us how vital it is to develop and investigate potential claims early on and firmly identify all the key players and facts. The hours and days

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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.

Contact:

Doug Fletcher
Firm Managing Partner
214-987-9600
doug.fletcher@fletcherfarley.com

Joanna Salinas
Austin Office Managing Partner
512-476-5300
joanna.salinas@fletcherfarley.com

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SAVE THE DATE



Save the date for the
Texas Law Update 2018
in Chicago!

More information coming soon!

**Supporting our
Community**

immediately following an incident are often the best time to collect key facts that we will rely upon as litigation advances. This is a foundational rationale for our firm's Rapid Response Program.

For example, consider a hypothetical multi-car accident. Our client is a commercial carrier that entered an intersection without yielding the right of way. Our client does not see the stop sign and proceeds through the intersection at 35 mph. As our client enters the intersection, a school bus full of elementary aged children t-bones our client, causing our client's vehicle to spin 180 degrees. Neither our client nor the school bus sees each other prior to impact due to a dumpster being placed on the side of the road, obstructing both our driver's and the bus driver's view of the intersection. After the initial impact, a Volvo following too closely to the school bus rear-ends the school bus, ultimately killing both driver and passenger. Scenarios like this frequently wind up in litigation. Our client represents an obvious target in a lawsuit with no shortage of sympathetic plaintiffs and substantial damages model. Yet it is clear on these facts that our driver is not the only party who belongs on a jury submission.

Crash reports often leave out key facts to the case. Often times environmental characteristics are not included in reports. Appearing on scene may allow us to interview eye witnesses who would have otherwise remained silent in the report. Not obtaining this information early can initiate a ripple effect of lost opportunities ultimately causing defendants to go to trial with holes in the facts and un-named responsible third parties.

Early and through accident response, like what Fletcher Farley offer through its Rapid Response Program, can minimize missed opportunities. Let's imagine that the crash report did not mention the dumpster obstruction on the report. In retrospect, these facts seem obvious, but all too often are they overlooked. Now that the obstruction is identified, the expert can initiate a laser survey of the entire scene, whereby deciphering what type of view our client had and what view the school bus had prior to impact before scene conditions change.

Not allowing a Defendant to designate a responsible third party provides a windfall to a Plaintiff against a deep pocketed Defendant. Therefore, it is imperative that we work as a team with client and carrier to develop the facts and information that will allow for a full and complete defense.

Conflicts Resolved

Fletcher Farley Gets a Unanimous Favorable Jury Verdict

Attorney [Miguel E. Bustilloz](#) in the Austin office recently obtained a unanimous jury verdict finding no negligence on our client, a dentist. The plaintiff alleged that she suffered injuries to her head and neck after hitting a light above the dentist chair she was sitting in. It was alleged that the dentist failed to remove the light from the plaintiff's path of exiting the chair. The plaintiff alleged the theory of negligence against our client. At the conclusion of the trial, the jury returned a unanimous verdict finding no negligence on the part of our client.

Dallas and Austin Police Departments "Stock the Closet"

The Dallas and Austin offices had a 4th of July celebration and donation drive! We got together to help our respective city's Child Sex Trafficking units with items related to recovering children out of trafficking. We had a great time and loved helping such a worthy cause.



Items stacking up for donation.