



FOR *the* DEFENSE

July 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 Doug Fletcher

Well, it is hard to believe that 2019 is already half over. That does bring us to one of my favorite months of the year, the month of July, when summer is at full speed ahead. We just experienced another one of my favorite holidays, the Fourth of July. One of my Fourth of July habits is to watch the musical, 1776, which is a delightful recounting of the Philadelphia Continental Congress and the drafting of the Declaration of Independence. This, by the way, is the sole reason for the Fourth of July holiday. For the past 200 years, the Fourth of July has always been a day on which to celebrate patriotism and the freedoms that we enjoy as Americans. However, in the last few years it has begun to take on aspects of a military parade, another holiday which we celebrate our armed forces. This is not correct. The incredible rights that we enjoy as citizens of the United States of America are founded not by military force, or by first responders, but by sets of laws in the most creative legal system in the history of the world. Life, liberty and the pursuit of happiness is only possible in a society where the citizenry maintains and follows the law. The common values that make all of us Americans are rooted in the American legal system. The rights and freedoms that we enjoy in this nation are guaranteed and preserved by the legal system. That is why the Statue of Liberty not only holds aloft the torch of freedom, but in her other arms she cradles a law book. That is why I am proud to be a lawyer. Happy July! Have a safe summer and be sure to wear plenty of sunscreen!



A Revisit of the Texas Wrongful Death Statute

Jerry Alcantara

Did you know Texas is home to three of the top ten fastest growing cities in 2019? According to the U.S. Census Bureau, San Antonio leads the way as the nation's fastest growing city. As we enter the second half of 2019, we continue to see the trend of major companies that are now calling Texas home. Whether it is companies like Jamba Juice, McKesson, Core-Mark Holding Co., or the PGA of America, that are relocating to Dallas, or major tech-

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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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SAVE THE DATE
for our Annual
Texas Law Update
in Chicago!

industry companies like Apple and Amazon doubling their workforce in Austin, the trend means more influx of people into the major Texan cities. While the tremendous growth potentially means more wealth and opportunity, it unfortunately also creates more risks of injury from construction sites, job sites, city streets and highways, and more products placed into the stream of commerce, among others. For insurance companies, this potentially means more policies being issued and the potential for more claims coming in. Some of those claims will unfortunately involve a cause of action for wrongful death or a survival action, and so this is a good time to revisit the Texas Wrongful Death Statute.



Wrongful death and survival actions are governed by the Texas Wrongful Death Statute, codified under Chapter 71 of the Texas Civil Practice and Remedies Code. Under the statute, only certain members of the decedent's family are able to bring a wrongful death claim. This includes the surviving spouse, children, and parents of the decedent, but not siblings. Also not included under the statute are grandparents, aunts and uncles, cousins, nieces and nephews. Under some circumstances, an adoptive child or the parent of an adoptive child may also be permitted to bring a claim if there was a legally and fully completed adoption.

So what exactly is recoverable as damages in a wrongful death claim? These can vary depending on who is bringing the claim. Typically, some of the most common damages sought in wrongful death claims include those for lost earning capacity, lost inheritance, loss of care, support, guidance, counsel, lost love, comfort and companionship, lost household services, and mental anguish. These are generally more difficult to evaluate and place an objective numerical value on, and should therefore be explored in detail through investigations, discovery and depositions. Other factors that may influence the amount of recovery are the age of the decedent, his or her earning potential and profession, and whether any fault can be attributed to the decedent. From a defense standpoint, it is important to be sure the individual bringing the wrongful death claim provides testimony for each of these categories. It is also important to note that punitive damages are available against defendants, but these are limited to cases where plaintiff can prove that the death is caused by a willful act or omission or gross negligence. A further limitation to watch out for on a claim where exemplary (punitive) damages are being sought, is that only children and spouses are permitted to request these and parents are not allowed to recover punitive damages.

A survival action is another cause of action brought on behalf of the estate of the deceased person by personal representative, which a majority of the time is the immediate family member that also brought the wrongful death claim. The damages for this cause of action however, are limited to two categories; first, is whatever debts are incurred by the estate of the deceased, such as medical expenses in trying to save the decedent's life and burial expenses; second, is damages for whatever mental anguish and physical pain and suffering occurred between the accident and the time of death. Remember that the burden is on Plaintiff to prove both of these categories of damages, through medical and burial bills as well as through expert testimony.



Mark your calendars for our Annual Texas Law Update on Friday, October 25th, 2019 at the Swissôtel Chicago.

More information coming soon!

Around the Firm

June may be the beginning of the summer vacations and the end of the school year, however, we have been busy here at the firm!

Attorney Meeting



[Ashley MacNamara](#) explains why we should care about bankruptcy.

Staff Meeting



[Kristi Kautz](#) gives rules, requirements and tips to staff on the topic of depositions on written questions.

July National Ice Cream Month



Fun Facts

Conflicts Resolved

Fletcher Farley Obtains Summary Judgment

[Julia Sinor](#) and [Lorin Subar](#) recently won a significant victory. The plaintiff sued our clients, a Fortune 500 company and their subcontractor, claiming that the subcontractor's employee had assaulted the plaintiff when the employee was dispatched by the subcontractor to do some work inside the plaintiff's residence seeking a significant amount of damages. The Motion for Summary Judgment was briefed by Lorin Subar and argued by Julia Sinor.

- Vanilla is the most popular flavor of ice cream!
- The ice cream soda was invented in 1874.
- Things that make you go hmm...it takes roughly 50 licks to finish an ice cream cone.
- California produces the most ice cream in the United States.
- 1 in 5 people share with their pet!

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Try it FREE today.

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