

"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

We are now in the summer after COVID! Some things never change...the Texas heat, although it appears it is cooler here (so far) this summer than the Pacific Northwest or Upper Midwest. With schools out for summer recess and restrictions slowly being lifted, we are now more free to roam the country, visit restaurants, and stay in hotels. Hopefully, employees in these service industries will return soon. After a year of uncertainty, anxiety, and transformations, most of us have been eager to see loved ones, take a vacation, *etc.* It also has given us time to reflect on what the COVID season meant to the claims and legal community and what we do going forward. We learned that some tasks can be done effectively via Zoom and Teams. We also learned that people file lawsuits regardless of a pandemic—great for job security. On the other side, we learned that working remotely is not for everyone. Moving forward, trials are picking up, and we all will be very busy, especially as the Courts get past the backlog of cases. With its developed technological infrastructure, Fletcher Farley will be ready for these trials, and aggressively conduct the discovery necessary for you to appropriately consider your plan of action, whether settlement or trial.



TADC Summer Seminar

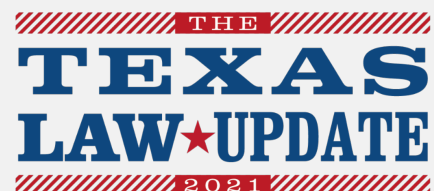
[Mike Shipman](#), Legislative Vice President of the Texas Association of Defense Counsel (TADC), presented "TADC Legislative Update" at the 2021 Summer Seminar in Jackson Hole, WY on Friday, July 9th.

This meeting included CLE presented over a 2-day period on legal topics by attorneys from across the state of Texas.

SAVE THE DATE
for Dallas and Chicago
Texas Law Update

House Bil` 19: Update on Trucking Litigation

by DJ Hardy



House Bill 19, which changes several sections of Chapter 72 of the Texas Civil Practice and Remedies Code, has been the center of a lot of attention during the last legislative session. Initially, the Bill was designed to prevent “unjust and excessive lawsuits” against commercial motor carriers. This was a way to stop or reduce runaway verdicts against trucking companies. As anticipated, the original version of House Bill 19 received much criticism from various organizations who believed the Bill would prevent injured individuals and families from being fairly compensated in lawsuits against trucking companies. In its initial form, the Bill limited the admissibility of certain evidence (including the motor carrier’s failure to comply with regulations and standards), provided an avenue of dismissal for direct actions against a motor carrier, and significantly limited future damages in motor vehicle accidents.



After *many* revisions, the version of the Bill that ultimately passed had fewer “teeth”. However, it still impacts the way in which we handle lawsuits against commercial motor carriers. These changes apply to lawsuits filed on or after September 1, 2021.

First, the Bill allows for bifurcated trials in commercial vehicle cases. The *first* trial would only determine liability (and compensatory damages) of the truck driver. It would not include any direct negligence claims against the motor carrier. *i.e.*, supervision, retention, hiring, *etc.* The *second* trial would determine the motor carrier’s direct liability and the amount of exemplary damages. This bifurcated trial shall occur if the defendant moves for a bifurcated trial within 120 days of filing its answer. Within the motion, the defendant motor carrier must stipulate that (1) the driver was defendant’s employee and (2) the driver was acting in the scope of his or her employment at the time of the accident.

The Bill also limits evidence of regulatory violations in the first phase of trial. In order for evidence of regulatory violations by the motor carrier to be admissible during the first trial, the Plaintiff must show that the failure to comply with the standard was the proximate cause of the injury and the specific regulation is an element of an applicable duty of care issue. In the first trial, the plaintiff cannot attempt to show the motor carrier was a bad actor by providing evidence of past unrelated violations. However, the plaintiff may show that the

We are excited to announce that our Annual Texas Law Update is back and in-person.

Save the date for the 2021 Texas Law Update **in Dallas on Friday, October 29th,** and **in Chicago on Thursday, November 18th.**

More information coming soon!

AROUND THE FIRM

4th of July Celebration

We celebrated the 4th of July in our Dallas office with decorations, hot dogs and games.



Anne Meadows, our receptionist, was ready to greet everyone patriotically.



You can't celebrate the 4th properly without hot dogs!

defendant driver was licensed, impaired, disqualified, disqualified from driving the vehicle under 49 C.F.R Section 383.51 (disqualifications due to major offenses, traffic violations, and out-of-service order violations), 383.52 (disqualification of drivers determined to be an imminent hazard), or 391.15 (disqualification based on revocation of driving privileges for various criminal offenses, driving under the influence, or violations of texting and driving and hand-held mobile phone usage restrictions), or subject to an out-of-service order.

Further, House Bill 19 provides that visual depictions a/k/a photographs of the accident are presumed admissible if the proper predicate is laid *without expert testimony*. The Bill specifically states that the photograph or video is presumed admissible, “even if the photograph or video tends to support or refute an assertion regarding the severity of damages or injury to an object or person involved in the accident.” In some cases, specifically low impact collisions with little visible damage, plaintiffs have been able to successfully exclude photographs under the basis that they are not relevant to establish whether an accident caused Plaintiff’s injuries. (Ironically, plaintiff’s lawyers have no problem with the admissibility of photographs when the images are catastrophic.) This new provision will serve as another tool in disputing causation of injuries in minor accidents.

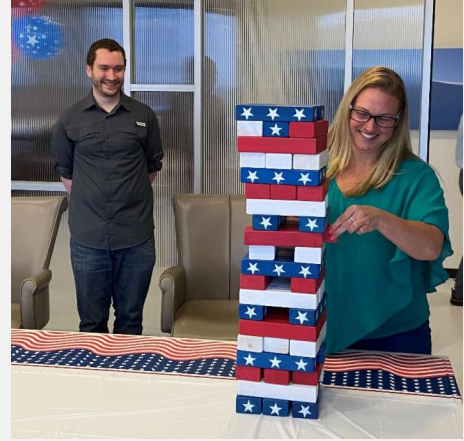
Finally, the Bill directed the Texas Department of Insurance to conduct studies for commercial motor vehicle insurance premiums, deductibles, coverage, and availability of coverage.

While the final bill does little to limit the amount of expensive discovery that is conducted in trucking cases, which was one of the original intentions of the bill, it should (1) expedite trials, (2) limit the negative propaganda about trucking companies presented to juries, and, very likely, (3) limit overall trial verdict. With this new law, plaintiff’s lawyers should be significantly limited—during the first phase-in negatively arguing to the jury about the “big bad trucking companies.” Hopefully, this will result in lower settlements and a cost savings to you.

Conflicts Resolved

Fletcher Farley Convinces Plaintiff to Voluntarily Dismiss His Case

[Julia Sinor](#) and [Joe Harrison](#) recently convinced a Plaintiff to non-suit his case against a recycling facility



Seasyn Ruvalcaba and Walker Agathon go head to head in Jenga.



And, what we were all waiting for, the winner of the hot dog eating contest ... Ernesto Villegas!!!

Subscribe to our
Newsletter!

If you want more information or have questions, please contact:

Doug Fletcher
Firm Managing Partner
214-987-9600
[Doug's email](#)

Joanna Salinas
Austin Office Managing Partner
512-476-5300
[Joanna's email](#)

where the plaintiff claimed he was injured by a falling object. While investigating the Plaintiff's background, Julia Sinor discovered he had an outstanding lien against him in an amount more than twice the damages sought from Fletcher Farley's client. By Texas law, any damages Plaintiff recovered in his lawsuit would first go towards Plaintiff's lien before Plaintiff got a penny in his own pocket. Joe Harrison took Plaintiff's deposition and opened up with discussions of the lien. Less than ten minutes into the deposition both Plaintiff and Plaintiff's attorney agreed they had nothing to gain from the lawsuit and agreed to non-suit the case against our client.



Fletcher Farley Shipman & Salinas LLP

fletcherfarley.com

Contact Us

