

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

Proverbs 3:27

Greetings from Mike Shipman

I'm sitting here at my desk writing this looking out my window seeing a bleak, cold, overcast day, and wondering where Spring is!! Then I Google it and find out Spring doesn't start until March 20th!!! In other words, IT'S STILL WINTER FOLKS!!!! I also realized while driving to work this morning, in unusually light traffic, that it's SPRING BREAK. Ok, we now have Spring Break in Winter. What's going on??? I've also been contemplating what else we have going on in March. Well, we've had Mardi Gras, and both St. Patrick's Day and March Madness are coming up. Do you have your brackets ready?? And then finally, Daylight Saving time just started and we all lost an hour. Or did we really??? I've been through so many of these I'm not sure anymore. Well, what I do know is that Spring is almost here and we have a lot to look forward to. The cold, bleak days will end and we'll have sunshine and warmth (hopefully not too many storm days). We'll have more time to spend outside after work with family and friends because of Daylight Saving time!! We also have our annual Texas Law Update coming up on Friday, April 26th. By the way, if you haven't done so, register soon.



Whatever you have going on this Spring I hope you find time to enjoy time off and getting away from the everyday stresses of work. If you have younger kids, enjoy being on Spring Break with them!!! 😊 If they are older, enjoy them being on Spring Break without you!! We at Fletcher Farley believe representing our clients is important and we truly thank each of you for trusting us in doing your work. We also believe time off is important as well and that's the reason you will see a lot less people around here this week. They are all on Spring Break with their kids which is exactly where they should be!!!

Why You Should Care About Bankruptcy

Ashley MacNamara

In This Issue

[Featured Article](#)

[Conflicts Resolved](#)

[Save the Date](#)

[Welcome Julia Sinor](#)

[Welcome Jerry Alcantara](#)

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



Why does it matter if a plaintiff files or has filed for bankruptcy? Under the federal bankruptcy rules, a personal injury claim is considered an asset. This is true even if the plaintiff has not filed suit or reached a settlement of their claim. A plaintiff's failure to properly disclose their claim as an asset can have a significant impact on their ability to maintain that claim.



There are two main types of personal bankruptcy: Chapter 7 and Chapter 13. For our purposes, the only important thing is how these Chapters affect a plaintiff's duty to report their claim as an asset on their schedule of assets. Under both Chapter 7 and 13, if the accident occurred prior to the plaintiff filing bankruptcy, it should be reported as an asset. If the accident happened after a Chapter 13 was filed, but before the bankruptcy was discharged, the plaintiff has a duty to supplement their schedule of assets to include it.

What happens if a plaintiff did not disclose their claim as an asset and the bankruptcy has been discharged? The courts will look at whether the plaintiff has taken an inconsistent position by failing to list the claim as an asset. Generally speaking, if they failed to list the claim as an asset in the bankruptcy while simultaneously seeking to recover money for their claim, the court will find these positions to be inconsistent. It is important to remember that under these circumstances, the court will assume the plaintiff benefited from not having the claim as an asset in the bankruptcy suit.

When this occurs, a defendant can move for summary judgment based on judicial estoppel. Judicial estoppel is a common law doctrine where a party who has assumed one position in its pleadings may be estopped from assuming an inconsistent position. "The primary purpose of the doctrine is not to protect litigants, but rather the integrity of the judiciary. Because the doctrine of judicial estoppel is intended to protect the judicial system, rather than the litigants, detrimental reliance by the opponent of the party against whom the doctrine is applied is not necessary." *Love v. Tyson Foods, Inc.*, 677 F.3d 258, 261 (2012). In short, by failing to disclose their personal injury claim, the plaintiff can lose their ability to pursue their claim.

[Click here](#) for a handout on plaintiff's bankruptcy and personal injury claims.

Practice Pointer: Specifically ask about prior bankruptcies in written discovery and depositions. Also, remember that PACER (the federal e-filing system used by bankruptcy courts) is free to search. There is a fee for obtaining documents, but a basic search will let you know whether the person has filed for bankruptcy before or not.

Conflicts Resolved

Fletcher Farley Obtains Favorable Verdict in Brain Injury Case

In a case where our client stipulated to liability for the accident in question, [Steve Springer](#) and [Kristi Kautz](#) still successfully challenged the Plaintiff's claim of a traumatic brain injury and Plaintiff's husband's claim of loss of consortium. Although effective pre-trial motions had already reduced the primary plaintiff's past medical expenses by approximately \$100,000, the Tarrant County jury was still asked by Plaintiffs to award over \$500,000 in

Register for the
Texas Law Update 2019
in Dallas on
Friday, April 26th, 2019
at the DoubleTree near
Campbell Centre!

If you came to the seminar last year, please make note **this is a different location.**

[REGISTER HERE!](#)

More information coming soon!

Congrats Alex Bell and Jeff Smith on their selection to the 2019 Texas Rising Stars list!



We're proud to announce the selection of [Alex Bell](#) and [Jeff Smith](#) to the 2019 Texas Rising Stars list! Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. To read more, please [click here](#).

**Welcome
Julia Sinor**



We welcome [Julia Sinor](#) to the firm's Dallas office. She focuses her practice on commercial litigation including personal injury claims, product liability claims, and construction defect claims.

combined past medical expenses and lost wages as well as additional sums for pain and suffering and mental anguish in the past and future, and loss of consortium and household services. At trial, Steve and Kristi successfully refuted the causation of the primary plaintiffs alleged mental health problems and the necessity of her past medical treatment. The final verdict awarded the primary plaintiff less than \$160,000 for all of her past damages and awarded her husband \$0 on his loss of consortium claim. Steve and Kristi also convinced the jury to award plaintiff \$0 for all future claims. This verdict was over \$800,000 less than Plaintiffs' final demand at mediation.

Welcome Jerry Alcantara



We welcome [Jerry Alcantara](#) to the firm's Dallas office. He focuses his practice on personal injury and general liability litigation.

Dwanna Gassaway
Fletcher Farley Shipman & Salinas LLP
214-987-9600