



"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

So how does everyone like 2021 so far? We are now in March and we've already seen the power grid in Texas almost collapse because of temperatures in the single digits. Didn't see that one coming!! We spent 3 days in our home mostly without electricity with the temperature hovering around 40 degrees. Might I say we were miserable. I haven't found 2021 to be so great yet. Hopefully, your 2021 has been better!!! Enough about the past, let's move on to the future. It is March and some of you have Spring Break to look forward to (the rest of us have less rush-hour traffic to look forward to) and we all can look forward to St. Patrick's Day. Don't forget to wear green! With the restrictions easing up, I'm hopeful you will be able to get out of the house and do some traveling. The Texas Supreme Court has issued its 36th emergency order removing the ban on in-person jury trials. However, there are a bunch of hoops to jump through in order to conduct one. We will see how that works. We are continuing to attend hearings, depositions, and mediations by Zoom and I believe this practice will continue for the foreseeable future. We do miss spending time with you at mediations. It's just not the same seeing your face on a computer monitor. Spring officially starts Saturday, March 20th (I'm so ready!) and **DON'T FORGET** that Daylight Savings Time starts this



## Celebrating Women's History Month

To celebrate Women's History Month, we would like to highlight several of our employees and their accomplishments.

### Joanna Salinas, Partner



[Joanna Salinas](#) is the Austin office managing partner where she leads their business and legal affairs.

### Kristi Kautz, Partner

weekend!! Remember to spring forward and move your clock up an hour. Finally, I do hope that as we move into Spring 2021 we are able to put 2020 in the rearview mirror and enjoy much better times ahead. We truly do appreciate the relationships we have with each of you and hope to see you in person very soon.

## Coverage in a Storm

### Kristi Kautz

We are now almost a month past the winter storm that froze most of Texas for several days. As many of you know, major storm events such as hurricanes lead to litigation for years to come. The recent winter storm is expected to do the same on a potentially larger scale given the sheer size of the geographic impact across Texas.



There are two insurance coverages which are likely to be implicated on a widespread basis as a result of this event:

1) Property Damage Coverage - this coverage is found in common Texas homeowners policies and general commercial property insurance policies. This coverage will extend to defined “insured property” under the policy and will require the damage to have occurred as a result of a defined “insured peril.” Under typical policies, damage from burst pipes or snow accumulation resulting in collapsed roofs would be covered under this provision. Careful review of the exact policy language involved in your claim is important to determine any coverage exclusions which may apply.

2) Business Interruption Coverage - this coverage is also generally found in commercial property insurance policies. The key questions for this coverage are causation of the policyholder’s loss of earnings or revenue and the covered amount. We expect many disputes to arise as to covered amounts. Again, the exact policy language is key for determining how the damages are calculated.

In terms of property damage claims, it is important to understand the appraisal provision found in most insurance policies - whether homeowners or



[Kristi Kautz](#) is a new partner who is paving the way for others by supporting and mentoring.

### Ashley MacNamara, Senior Associate



[Ashley MacNamara](#) is licensed in two states and is celebrating her seventh year in insurance defense.

### Alexis Fuller, Paralegal

commercial. An appraisal clause in an insurance policy is typically mutual and usually provides, in essence, that if the insured and insurer fail to agree on the amount of loss, either can make a written demand for appraisal. Each side, insurer and insured, retains their own appraiser who evaluates the loss and prepares their opinion on the amount of damage. A neutral umpire is then selected, or appointed by a Court, who evaluates the loss, reviews the appraisers' opinions, and enters an appraisal award. Opinions by the Texas Supreme Court in recent years have emphasized the importance for insurers to recognize the need for appraisal and invoke appraisal in a timely fashion. Specifically, the Texas Supreme Court has emphasized that while an insurer can invoke appraisal after litigation is instituted by the insured, the payment of the appraisal award by the insurer does not automatically foreclose claims against the insurer for violations of Chapter 542 of the Texas Insurance Code, known as the Prompt Payment of Claims Act. Additionally, if the invocation of the appraisal clause causes an independent injury to the insured, the Texas Supreme Court has held that the insured may still bring claims of breach of contract and violations of Chapter 541 of the Texas Insurance Code, known as statutory bad faith.

If you are adjusting claims from the recent winter storm, we are here to assist in coverage issues which may arise. We are also here to assist in the appraisal process if needed, including evaluating whether the appraisal clause should be invoked, assistance in locating qualified appraisal experts, and obtaining appointed umpires through court filings.

## Conflicts Resolved

### Kristi Kautz Wins Complete Dismissal for Auto Dealership

[Kristi Kautz](#) obtained a complete dismissal of all claims against our client, a local car dealership. The Plaintiff filed suit in federal court alleging that our client's employees had discriminated against her when they refused to service her vehicle without charge under a warranty which was not applicable to the needed repairs. Plaintiff alleged that our client had violated multiple federal statutes prohibiting racial discrimination and further alleged discrimination against her on the basis of an alleged disability. Kristi filed a Motion to Dismiss as the statutes cited by Plaintiff did not apply to



Alexis Fuller began working at the firm while completing her undergrad degree. She has been promoted twice since she graduated.

## Behind the Scenes

### Happy Anniversary

Ed Velez celebrates 15 years with us. He does so much more around here than his job requires that we hope he is here 15 more.



## Congrats! It's a Girl!

Congratulations to Rachel and [DJ Hardy](#) on the birth of their baby girl.

our client and there was no evidence that the refusal to make the repairs without charge to the Plaintiff was motivated by any discrimination. The Court granted the motion and dismissed Plaintiff's suit against our client.

## Fletcher Farley Obtains Summary Judgment in Premises Liability Case

[Julia Sinor](#) recently obtained a summary judgment for an apartment complex owner and its property manager. The Plaintiff fell when he attempted to cross mud and rainwater on a sidewalk. Julia argued that the accumulation was a naturally occurring condition, and therefore not unreasonably dangerous as a matter of law. Plaintiff's attorney argued it was not naturally occurring, because sidewalk defects and the drainage pattern caused the accumulation. The Court sided with our client, finding that Texas law requires the Court to consider whether the actual condition which caused the Plaintiff to fall, the mud, was unreasonably dangerous, and not the underlying sidewalk which made the accumulation of the mud possible.

## Fletcher Farley Obtains Summary Judgment in Automotive Liability Case

[Ashley MacNamara](#) and [Paul Bennett](#) obtained summary judgment for our clients regarding claims arising out of a motor vehicle accident in Dallas County. The case involved issues with the statute of limitations, including the calculation of tolling periods. We argued that the Plaintiffs had failed to timely sue our client. Plaintiffs tried to argue that they were entitled to more time under the statute of limitations, arguing that multiple tolling provisions applied to this matter. We showed the court that even if the Plaintiffs were correct, they still failed to timely sue and serve our clients. The judge agreed and granted our motion for summary judgment.

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