



FOR the DEFENSE

May 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 Craig Reese

Well, we are now one month closer to summer. School will be over soon for the kids and that means it will be time for summer vacations and other activities. We hope you have some great plans in mind or are at least thinking of things to enjoy with your kids.



We hope that none of you have experienced any damage from all these storms that typically blow through at the end of April and first of May. All this rain is good for our yards and plants, but not so good when it comes with hail and the potential for tornadoes. One of the joys of living in north Texas I guess. We want to thank our clients that attended our recent Texas Law Update. It was great to see all of you. Nice to put a face to a name and to get to talk to you about things other than the cases we are handling for your company. Hope you all enjoyed the seminar and learned something you can use in adjusting your claims. And we hope you had an opportunity to meet some of our recent additions to the firm.

We continue to count our blessings for all the work you entrust to the firm. We never take that work or your companies for granted. Thanks you so much for the opportunity to represent your insureds or your companies as the case may be. Please do not hesitate to reach out if we can answer any questions or provide assistance to you or your insureds.

Supreme Court Extends Chapter 95 to Negligent Hiring

Kristi L. Kautz

Texas law encourages the hiring of independent contractors to perform certain construction, repairs, renovations or modifications to property. One of the ways in which the law does this is by limiting liability for the acts of independent contractors on the property. The primary statute for limiting this liability is Chapter 95 of the Texas Civil Practice and Remedies Code. Under Chapter 95, a property owner is generally not liable for personal injury, death, or property



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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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Thank you for making the Texas Law Update a success!

damage to a contractor, subcontractor, or an employee of a contractor or subcontractor who constructs, repairs, renovates, or modifies an improvement to real property. The only exception is if the property owner retains some control over the manner in which the work is performed, has actual knowledge of the danger or condition which resulted in the personal injury, death or property damages, and fails to adequately warn.

When a claim is subject to the requirements of Chapter 95, the burden of proving control of the work and actual knowledge of the condition by the property owner is difficult for many plaintiffs to meet. Therefore, plaintiffs frequently look to assert pre-accident negligence on the part of the property owner, specifically in claims that the owner negligently hired the contractor, based on the argument that these claims are not subject to Chapter 95. On May 6th, the Texas Supreme Court issued its opinion in *Endeavor Energy Resources, LP. v. Cuevas, et. al* which addresses whether Chapter 95 applies to such negligent hiring claims. In this case, Endeavor was the owner of a mineral lease in the Permian Basin. Endeavor hired Big Dog Drilling to drill a well on the lease. Tragically, Angel Cuevas, Jr., an employee of Big Dog Drilling, was killed in an accident while the well was being drilled. Cuevas' survivors sued Endeavor for his death. Along with their claims for negligence and premises defect, the plaintiffs also sued Endeavor for negligently hiring Big Dog Drilling. Endeavor moved for summary judgment asserting that plaintiffs could not recover from Endeavor under Chapter 95. The trial court granted the summary judgment, including on the negligent hiring claim, and the plaintiffs appealed, arguing that summary judgment could not be granted on the negligent hiring claim because such claim was not subject to Chapter 95 since it arose from negligence that occurred before the injury, rather than negligence that occurred contemporaneously with the injury on a property owner's premises. The Eastland Court of Appeals agreed with the plaintiffs and Endeavor appealed to the Texas Supreme Court.

The Supreme Court reversed the Eastland Court of Appeals and held that a claim of negligent hiring requires negligence by two separate parties: the employer's negligence in hiring the employee; *and* the employee's subsequent negligent act or omission. The Court therefore held that since the negligent act of the employee (Big Dog Drilling) underlying the negligent hiring claim in this case involved the contemporaneous use of an improvement to real property, Chapter 95 applied to the negligent hiring claim. The Texas Supreme Court's holding in this case is clear: When Chapter 95 applies to a negligent-hiring claim [because the underlying negligent act involves the contemporaneous use of an improvement to real property], the employee can recover only if the employee can satisfy the exception to chapter 95: the property owner exercised or retained some control over the manner in which the work was performed on the "improvement to real property" and had actual knowledge of the danger or condition that ultimately results in the injury, and fails to warn.

If you have a claim involving an injury or death arising from construction, repairs, modifications, etc. to your insured's real property, Chapter 95 may now be an even more important tool in your claim resolution.

Conflicts Resolved

Fletcher Farley Obtains Full Dismissal in Premises Liability Case

[Paul Bennett](#) and [Alex Bell](#) recently obtained a full dismissal of the claims against their client in a premises liability case. The

Below are a few pictures from our seminar.



We packed the house! Fred Arias is keeping the audience involved.



Matthew Skidmore speaking at his first TLU. Good job!



Ed Velez models this year's TLU t-shirt!

Community and Other Events

46th Annual Young Life Golf Tournament

We were proud to be a sponsor at the 46th Annual Young Life Northeast Texas Golf Tournament that was held on Monday, April 22nd, at the Bent Tree Country Club in Dallas, TX. To learn more about the organization, please [click here](#).

WCCA Golf Tournament

We were proud to once again be a sponsor at the Annual West Coast Claims Association (WCCA) Golf Tournament that was held on April 26th in Odessa, FL. To learn more, please [click here](#).

elderly Plaintiff tripped and fell while descending the steps in a movie theater, sustaining significant injuries. She sued the theater owner for a premises defect, along with Paul and Alex's client - who simply owned and leased the film projector! After Paul and Alex filed a Motion for Summary Judgment which educated Plaintiff's counsel on the finer points of Texas premises liability law, Plaintiff agreed to dismiss all of her claims against the projector owner with prejudice.

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