

FOR THE DEFENSE

April 2017

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

Proverbs 2:27

Greetings from Paul Bennett



It's hard to believe but April is already here and springtime has arrived. In Texas, that means baseball's opening day, beautiful Texas wildflowers, and lots of sneezes! We've been off to a busy start this year, with some new faces in the firm, many summary judgments and settlements, and a jury trial or two already under our belts. We are thankful to our many clients and for the opportunity to vigorously defend them, resolving their disputes promptly and cost-effectively. Spring also means that it's time for our annual Texas Law Update which will take place in Dallas on April 28th. We have another great lineup of topics this year and you won't want to miss it. If you have not already done so, please click below and pre-register. Thank you for your continued support and trust in our firm, and we look forward to serving you.

Spring Break and Summer Vacation: The Recreational Use Statute Comes to the Rescue

Lindsay Ayres Todd



Warmer weather is upon us and summer vacation is soon to arrive. Texans love to enjoy the great outdoors with a variety of activities from boating to camping. Unfortunately, not all vacationers return home injury free. Vacationers and outdoor enthusiasts sustain the occasional fractured ankle or broken arm while hiking, using playground equipment, or other outdoor activities. As the weather starts warming up, claims for these injuries may start rolling in.

If the property qualifies, the Recreational Use Statute ("RUS") may help to resolve the case in your insured's favor. The RUS was created to encourage landowners and occupiers of real property to allow the public to enjoy outdoor recreation on their property by limiting the liability of the landowner or occupier by classifying the recreational user as a trespasser. The insured would only be liable for willful or wanton acts or gross negligence.

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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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REGISTER NOW!
Dallas, April 28th, 2017

For a party to qualify under the RUS, it: 1) must be an owner, lessee, or occupant of agricultural land or other real property; 2) did not charge the claimant a fee for entry to the premises, or the fee charged is less than 20 times the amount of ad valorem taxes paid the previous year; and 3) in the case of agricultural land, has liability insurance covering acts or omissions resulting in injuries on the property. The statute even applies to government entities, allowing application of the higher trespasser standard for liability, instead of the higher standard that might be dictated by the Texas Tort Claims Act.

For qualifying property, the RUS applies if the claimant was a recreational user of the property. The RUS defines recreation with a non-exclusive list of included activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, and a catch-all provision, "any other activity associated with enjoying nature or the outdoors." The statute contemplates "recreation" as occurring not only when a person is actively engaged in recreation, but also when the person is on the premises and traveling to and from the recreational area.

Once the RUS applies, the owner is not warranting to visitors that the premises are safe for recreational purposes. In addition, there is no duty to warn or protect recreational users from defects or conditions that are open and obvious.

We recently had a premises case thrown out on summary judgment because of application of this high trespass standard. Our client owned property used as a nature preserve. A visitor to the property, who was on her way to the boat dock for holiday photos, fell while descending stairs, fracturing her arm. She complained that unreasonably dangerous loose rocks and uneven dirt steps was the cause of her fall. We argued that the RUS controls and she could not establish the elements of liability required under the statute. The Court agreed granting summary judgment as a matter of law for the property owner.

If you have a situation involving a claimant injured while engaging in recreation on the premises, don't worry, law could be on your side. If you need help with any of your claims, please give us a call.

Conflicts Resolved

Fletcher Farley Granted a Summary Judgment

A Federal Judge in the Eastern District Court of Texas recently granted a motion for summary judgment in a lawsuit arising from a slip-and-fall incident that occurred in a national retail store. Attorneys Fred Arias and David Colley secured effective testimony and evidence from key witnesses that were used to support their motion for summary judgment. The Plaintiff alleged that on a very rainy day (preceded by three days of considerable rain), she slipped as she entered the store. She alleged that employees working in the front of the store, because of their proximity, had notice of the water being tracked into the store by other customers; thus, making the store liable. She contended that the store failed to place the appropriate mats at the entrances, which would have minimized any hazards. Additionally, the store, as contended by the plaintiff, failed to put up any warning signs. While the Plaintiff did not seek any immediate medical treatment, she subsequently underwent surgery to her ankle and shoulder, resulting in over \$250,000.00 of medical expenses. In the motion, Fred Arias and David Colley

Please join us for our annual Texas Law Update at the George W. Bush Presidential Center.

For more information and to register for this event, please click [here](#).

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Welcome Stacey L. Byrd



We welcome Stacey L. Byrd to the firm's Austin office. Stacey focuses her practice on transportation, personal injury, premises liability, and insurance law. She also handles business, construction and employment discrimination litigation.

Stacey practiced insurance and transportation defense for a private law firm in Houston, Texas, as well as in-house for a national insurance carrier. She has represented a wide array of clients, including some of the nation's largest motor carriers, insurance carriers and individuals.

Welcome Joshua Abrams



We welcome Joshua Abrams to the firm's Dallas office. As a former Assistant District Attorney and felony prosecutor for the Dallas County District Attorney's Office, Joshua Abrams has experience in complex litigation. He successfully prosecuted 38 jury trials and brings to the firm the same abilities to defend clients in civil litigation throughout state and federal courts.

argued that plaintiff could not establish how long the water had been on the floor, thus, failing to satisfy the temporal requirements for a premises liability case in Texas. This motion formally disposed of all claims against the firm's client.

Fletcher Farley Granted a Summary Judgment

Attorneys Scott Mayo and David Colley recently obtained a summary judgment for our clients, a restaurant, against a plaintiff alleging that she contracted food poisoning and became "violently ill" from eating a chicken sandwich. The plaintiff alleged several theories of recovery against our client, including negligence and breach of an implied warranty of merchantability.

The court granted summary judgment in favor of our clients on all claims based on the Plaintiff's inability to prove causation. Specifically, the defense obtain credible, medical testimony from a retained doctor proving that the Plaintiff's consumption of the subject chicken sandwich could not be shown to have caused the Plaintiff's illness.

Honoring 25 Years with 25 Acts of Kindness

This year marks 25 years of delivering legal services for Fletcher Farley. We know how important community is and we couldn't have come this far without it. With this thought in mind, we are celebrating our firm's anniversary with 25 acts of kindness.



Operation Easter Basket

We kicked off the celebration in our Austin office with Operation Easter Basket where our folks put together 25 Easter baskets for the Austin Children's Shelter campus of SAFE!.

Congrats Kristi L. Kautz and Jeffrey D. Smith 2017 Texas Rising Stars



Fletcher Farley is honored to have Kristi Kautz and Jeff Smith selected to the 2017 Texas Rising Stars list.

Kristi was recognized in the practice areas of Insurance Coverage and Civil Litigation: Defense.

Jeff was recognized in the practice area of Civil Litigation: Defense.

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