



FOR *the* DEFENSE

November 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 Lane Farley

At Fletcher Farley, we have been blessed with great clients all over the world. In my many years at Fletcher Farley, I have noticed three reasons that reliably motivate you to reach out to us. First, you call us when you need help in litigation and other entanglements. For that, we are quite thankful. Second, you like to call us to gloat when your football teams beat ours. We understand that, and try to reciprocate when possible. And finally, you are always kind to check on us when you hear about one of our big Texas floods, tornadoes, or other apocalyptic weather phenomena. We appreciate those concerns, and this past month, they were quite warranted. We had a series of tornadoes (yes, plural) touch down within miles of our Dallas office, and within the same blocks as some of our houses. [Click here.](#)



Thankfully, we are all largely OK. Miraculously, no one in our firm was injured. Our office was spared, while buildings within a mile or two were destroyed. A number of our employees saw tornadoes cut through their neighborhoods, and are dealing with the property damage that comes with that. All things considered, we are very blessed that it was not much worse.

So, as we round the corner to Thanksgiving, let's do just that -- let's be people that give thanks for good stuff even amidst other hard stuff. In that spirit, we are thankful for each of you ... even the ones that call us to gloat about beating our football teams.

So here is to a great end to 2019, with hope for lots of calls from you motivated by the first reason, and less by the second and third.

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Welcome to the latest edition of Fletcher Farley's Newsletter.

If you have any comments, questions or would like more information from us, please contact Doug or Joanna.

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Keith Robb

The ability to designate potentially responsible third parties can be an important tool in defending a case. It gives us an opportunity to let a jury assign responsibility to non-parties who might still have been responsible for the incident that led to a plaintiff's injury. We can seek designations for non-parties who cannot become actual parties, such as employers who provide workers compensation insurance or the parents of child plaintiffs. It also allows us to designate parties who a plaintiff can sue, but the plaintiff either did not know about or knew about and decided to not sue them.



Under our current rules, there is a built-in time limit to designate potentially responsible third parties:

A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

The idea is to force defendants to name potentially responsible third parties swiftly enough to allow a plaintiff to have time to name them as actual parties. Sometimes, things go wrong, and a defendant identifies potential parties too late for them to be added as parties. The current rule reads as if that is a complete bar if a defendant acts too slowly.

Fortunately, appellate courts are developing a preference to resolve questions about responsible third parties as a pre-trial matter rather than as a subject for appeal, and they are granting petitions for mandamus review. Appellate courts are providing some relief even if a defendant is late with its designation. The current rule encourages defendants to not play a game where they wait to designate parties until after a plaintiff can make them parties, and appellate courts expand this idea to work against the party that they believe is playing games. Therefore, if a plaintiff waits until just before limitations expire to file suit, that plaintiff will be in a poor position to complain about late designations. If a defendant can show, however, that a plaintiff always knew about the potential party but made a strategic decision to leave that party out of the lawsuit, then a defendant might still be able to obtain a designation. Courts are interpreting the rule to discourage game playing, and if they can be convinced that the plaintiff was playing a game by deciding to leave parties out of the case, a defendant can still salvage a problem caused by a late designation.

Thank You!



Thank you for helping to make our Annual Texas Law Update in Chicago this past October a success! We hope to see you all again next year!



L-R: Paul Bennett, Kristi Kautz, Doug Fletcher and Jeff Smith.



Doug Fletcher giving Kristi Kautz an introduction.

Welcome Jonathan Heron



We welcome Jonathan Heron to the firm's Dallas office. He has experience handling personal injury and insurance claims and has tried over 25 jury cases to verdict. To get to

Fletcher Farley Obtains Summary Judgment in DTPA Case

[Kristi Kautz](#) obtained a summary judgment and dismissal of a DTPA action filed against our car dealership client. The Plaintiffs claimed that our dealership misrepresented a vehicle lease agreement to them resulting in the Plaintiffs facing a collections suit from the financing company for penalties due to the early termination of their lease. Kristi's Motion for Summary Judgment emphasized that the plaintiffs had no evidence that any misrepresentation occurred but even if it had, plaintiffs' reliance was not reasonable since the evidence demonstrated that the financing company had already informed Plaintiffs that they intended to seek collections if the lease was terminated early. The Court agreed and granted summary judgment for our client.

Fletcher Farley Obtains Bench Verdict

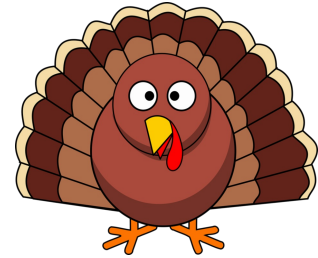
[Robin Miserlian](#) in the Austin office recently obtained a bench verdict in favor of our new client, an online marketplace. Plaintiff claimed that the company was responsible for her being defrauded by the seller, resulting in her losing the money she had deposited. The Court rejected her claim, finding that our client was not responsible for the seller's fraud. After meeting the seller on our client's website, she took her booking offline in order to get a discount, and then had her money stolen. She claimed that Defendant should have realized that the seller was a fraud. The Court found that our client owed her no duty under the circumstances at issue and ruled that Plaintiff take nothing from Defendant.

know more about Jonathan, [click here](#).

Congratulations

Congratulations to Molly and Brandon Higgins on the birth of their baby girl. Also, congratulations to Ashley and James MacNamara on the birth of their baby girl. Molly and Ashley are associates in Mike Shipman's group!

Happy Thanksgiving!



Our thoughts turn gratefully to you with warm appreciation at this time of Thanksgiving celebration. Our best wishes for a Happy Thanksgiving.