



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

Proverbs 3:27

Greetings from Paul Bennett

October in Texas means the arrival of some crisper weather, high school and college football, the State Fair of Texas, and of course, Halloween. As the father of two ten year olds, I can attest that Halloween is a big deal in my household, especially after the subdued Halloween of 2020. My kids are counting the days to their expected in-person haul of sugar! I'm personally more interested in the State Fair and having a famous Fletcher's corny dog. With extra mustard.



On the professional side, we are also starting to see a return to something approaching normal, with more in person depositions, hearings, and a few jury trials. Another sign is our annual Texas Legal Update seminar which will be in Dallas on October 29, 2021. This will be a live event, although with social distancing and other safety measures. If you have not yet signed up, please go to our website and register as we would love to see familiar faces that have been absent over the past year.

Wishing you all a happy and safe October.

Preventing Nuclear Verdicts

by Jason Jacob

A nuclear verdict is one where the jury awards a plaintiff more than \$10 million in damages. Unfortunately, from our perspective, we are seeing a rise in this type of verdict. The increase in nuclear verdicts lead to

Congrats Mike Shipman



[Mike Shipman](#) received special recognition by the president of the Texas Association of Defense Counsel (TADC) for his work as Chair of the legislative committee this past year and was also re-elected to the Board of Directors and appointed to serve as Vice Chair on the Publications Committee.

He has also been accepted for membership in the International Association of Defense Counsel (IADC).

IADC is a legal organization of approximately 2,500 attorneys and insurance executives representing corporate and insurance interests throughout the world.

higher insurance costs which ultimately increases the cost of doing business for our clients. At the end of the day, the increased costs are passed on to consumers.



However, juries do not consider the long-term negative effects of these type of verdicts. Plaintiffs' attorneys are effectively leveraging the public mistrust and disdain for corporations to drive juries into granting nuclear verdicts based on emotional factors rather than a rational evaluation of the facts that pertain to an individual matter.

The strategy employed by Plaintiffs' attorneys to prompt juries to make an emotional decision rather than a rational one, is referred to the *Reptile Strategy*. This strategy is based on the evolutionary theory of human brain development which theorizes that the human brain consists of three levels of functioning. The first and most basis level of brain function, the reptilian complex, is the portion of the brain that controls basic functions such as hunger, breathing and primitive survival instincts, often referred to as fight or flight. When using this portion of the brain, humans make decisions based on fear and instinct rather than logic and reasoning.

Typically, Plaintiffs' lawyers employ the reptile strategy by framing their case as an issue that involves a danger to the community and that the jury has a sacred obligation to protect the community from this danger. Rather than focusing on the facts of specific matter or the actions of an employee, they concentrate on supposed industry-wide issues and assigns responsibility for those issues on the defendant/client. And how can the jury protect the community? By handing out a huge award to their clients and punishing the defendant.

Last month, HB19 went to effect in Texas to help curtail nuclear verdicts in trucking cases. The new law requires the jury to first find a trucking company or truck driver liable for a crash before exemplary damages can be sought in a civil case. HB19 allows a defendant trucking company to request a two-phase trial in which the first phase would be used to determine liability of the truck driver for the crash itself. The second phase would be used to determine any negligence from the motor carrier/trucking company regarding driver training, equipment problems or other ancillary factors. By dividing the matter into two phases, we can now focus the jury on the actions of the driver/employee to determine liability.

The best deterrence to the reptile strategy is to focus the jury on the details and facts of a specific case. By doing so, we can avoid a catastrophic nuclear verdict.

Conflicts Resolved

Events

The Texas Law Update Seminar is Back!



Register for the Texas Law Update 2021 in **Dallas** on Friday, **October 29th**, 2021 at the DoubleTree by Hilton - Campbell Centre.

REGISTER HERE FOR DALLAS TLU

Register for the Texas Law Update 2021 in **Chicago** on Thursday, **November 18th**, at the Swissôtel Chicago.

REGISTER HERE FOR CHICAGO TLU

DFW RIMS Annual Conference

We were proud to participate at the DFW RIMS Annual Conference at the Gaylord Texan in Grapevine, TX on Wednesday, September 22nd. We hope you came by our table to say hi to [DJ Hardy](#) and [Fred Arias](#) (pictured) below.

Fletcher Farley Obtains Appellate Victory

Unlike other firms who outsource any post-trial litigation, Fletcher Farley believes that our clients are best served by having a team of appellate attorneys working with our trial attorneys every step of the way to ensure not only that our clients are well represented at trial but also that our clients' victories are upheld when appealed.

The value of this approach was recently demonstrated when the Plaintiffs appealed a Dismissal with Prejudice of all claims against our client which was granted by the trial court in response to our Motion for Sanctions. The sanctions motion was prompted by the Plaintiffs attempting to dismiss the case without prejudice and re-file in order to start discovery over and avoid summary judgment which was likely to be granted in favor of our client. Upon considering the request for sanctions, the trial court agreed with us that Plaintiffs' attempt to re-litigate the case was in bad faith and sanctionable and issued an order dismissing all claims with prejudice, ending the litigation. Recently the Texarkana Court of Appeals issued a unanimous opinion affirming the trial court's decision. In their Opinion, the Texarkana Court of Appeals cited the strong evidentiary support in our Motion for Sanctions in the trial court and adopted the arguments set forth in our brief, confirming that Plaintiffs' actions were taken in bad faith and affirming the dismissal with prejudice of all claims asserted against our client. The brief on appeal was prepared by one of our appellate attorneys, [Richard Harwell](#), working collaboratively with trial counsel [Kristi Kautz](#) and [Mike Shipman](#).



Happy 25th Workiversary Janet Smith

Thanks to Janet Smith, our records manager, for all her hard work and dedication for 25 years! Wow, that is a great achievement!



Subscribe to our
Newsletter!

If you want more information or
have questions, please contact:

Doug Fletcher
Firm Managing Partner
214-987-9600
[Doug's email](#)

Joanna Salinas
Austin Office Managing Partner
512-476-5300
[Joanna's email](#)

Fletcher Farley Shipman & Salinas LLP

fletcherfarley.com

Contact Us

