



FOR *the* DEFENSE

September 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 Joanna Salinas

"Autumn shows us how beautiful it is to let things go." - Unknown.

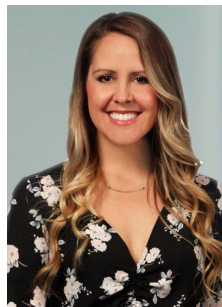


September represents back-to-school, football season, and according to the calendar, the start of autumn. Of course, in Texas, September doesn't mean leaves changing and falling or even a break from the summer's heat, regardless of what the calendar says. Still, change is in the air, and with change is the perfect opportunity to take stock of what is really important, and what should be let go. Whether it is discord at work or home, long-held grudges or envy, take a moment to appreciate what a relief it can be to let some of these things fall by the wayside. In this industry, where we often spend our days embroiled in conflict, it is extra important to embrace every opportunity to let go of anything that doesn't make you a stronger and better person, and to support each other on the journey to doing so. So as we eagerly await some much needed relief from the heat, we also look forward learning from nature: letting some things go in order to grow, and we hope you will do the same. Happy September!

House Bill 1693 and Why it May Result in Receiving More Medical Records and Bills Prior to Litigation

Robin Amy Miserlian

House Bill 1693 became effective on September 1, 2019, and relates to affidavits concerning cost and necessity of services under Texas Civil Practice and Remedies Code Section 18.001. Any suit filed before September 1, 2019, is still subject to the old rules, but any suit filed on or after September 1, 2019, is subject to the new rules. Note, the wording of the statute is a bit confusing and this article touches on the high points that we anticipate will affect our



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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.

Contact:

Doug Fletcher
Firm Managing Partner
214-987-9600
doug.fletcher@fletcherfarley.com

Joanna Salinas
Austin Office Managing Partner
512-476-5300
joanna.salinas@fletcherfarley.com

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clients more directly.

Section 18.001 allows proving-up the reasonable and necessary costs of past medical expenses by affidavit, instead of calling a live witness to trial. In theory, this saves time, money and the hassle of coordinating witnesses for trial. However, in practice, the effect of the statute is to place tight time restraints on Defendants that wish to contest the reasonableness and necessity of the Plaintiffs expenses.

One of the reasons that countering affidavits is so important is due to the ever increasing attorney-referred treatment, Plaintiffs attorneys advising their clients not to use their insurance, and the acts of the physicians who perform unnecessary procedures and operations in order to increase Plaintiffs damages model.

First, the new rules add language clarifying that 18.001 affidavits cannot be used as causation evidence and only relate to the reasonable and necessary treatment of the injury. This means that 18.001 affidavits cannot be used as evidence to prove the injury was caused by the incident brought in litigation.

Second, a Plaintiff must serve 18.001 affidavits on a Defendant within 90 days of filing their answer. The 90 day deadline can be even shorter if the court issues a scheduling order setting Plaintiffs expert designations earlier than the 90 days post Defendant's answer. Under the old rule, a Plaintiff was able to file 18.001 affidavits up to thirty days before trial.

Third, a Defendant must serve their 18.001 counteraffidavits within 120 days after filing their answer. A Defendant will also be subject to the court's scheduling order rule as listed above.

Fourth, if Plaintiff received medical treatment for the first time after Defendant has filed their answer, then Plaintiff must file their 18.001 affidavits by Plaintiffs expert designation deadline (either by the court order or by the rules). Defendant then has thirty days or until their expert designation deadline to controvert, which ever is later, thus, potentially allowing a Defendant more time to controvert.

Fifth, if Plaintiff submits supplemental affidavits on or before 60 days prior to commencement of trial, unfortunately the old thirty-day window still applies to supplemental affidavits.

Sixth, the new rule adds that the party offering the affidavit (or counteraffidavit) must file notice with the court when serving the affidavit. The affidavit is not required to be filed with the notice.

Overall, the new rules will have more timing limitations placed on a Plaintiff, and they will need to be more diligent in securing records pre-suit. On the front end, we expect more complete records and damage models from Plaintiffs earlier on, which may provide the opportunity to better assess the claim and the injures, and a better chance at resolving the claim pre-suit. What this also means for clients is that if we are forced to determine whether or not to engage a billing expert early in discovery and well before designations are due, it is more likely that we will have a better and complete set of records surrounding all facilities Plaintiff has treated at since the accident. This may lead to a decrease in the amount of times billing experts prepare controverting affidavits-as preparing one set with all affidavits is less expensive than preparing 5 different controverting affidavits with one or two facilities, ultimately saving the expense.

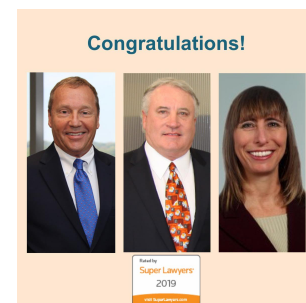
On the back end, we anticipate engaging in more agreements between counsel and an addition of a line item reflective in scheduling orders regarding 18.001 affidavits. Lastly, although the



Don't miss our Annual Texas Law Update on Friday, October 25th, 2019 at the Swissôtel Chicago.

For more information and to register, [click here](#).

Congrats to Doug Fletcher, Joanna Salinas and Steven Springer on their selection to the 2019 Texas Super Lawyers list!



We're proud to announce the selection of [Doug Fletcher](#), [Joanna Salinas](#) and [Steven Springer](#) to the 2019 Texas Super Lawyers list! This is an exclusive list, recognizing no more than five percent of attorneys in Texas. To read more, please [click here](#).



Happy 20th Workiversary to [Richard Miller!](#)

new filing notice does not prevent a Plaintiff from strategically placing affidavits within thousands of pages of medical and billing records, it does however provide an associate a heads-up that a needle is somewhere in the hay stack.

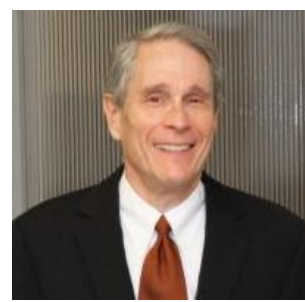
Conflicts Resolved

Fletcher Farley Obtains a Voluntary Dismissal of all Product Liability Claims

[Paul Bennett](#) and [Alex Bell](#) recently obtained a voluntary dismissal of all product liability claims against their client, a leading maker of home appliances. Plaintiff filed suit contending that she was seriously injured after inhaling natural gas that leaked from a clothes dryer installed in her home. Among other things, she contended that the leak was due to a manufacturing or other defect in the dryer. After being pressed for more details and a clear description of her product liability allegations through written discovery, and on the eve of her oral deposition, she voluntarily dismissed all claims against the manufacturer while continuing to prosecute her claims against the installers.

Fletcher Farley Obtains a Summary Judgment

[Ashley MacNamara](#) recently obtained a summary judgment for a restaurant on a premises liability case in Angelina County. The Plaintiff alleged he slipped and fell on a wet floor in the kitchen while delivering produce.



Monthly Attorney Meeting

Our monthly attorney meeting is a good place to provide pointers, discuss experiences and receive feedback. This month, [Derreck Brown](#) gives guidance to the attorneys on preparing witnesses for deposition.



Afterwards, it's nice to share a meal and hear what everyone is working on.



Dwanna Gassaway
Fletcher Farley Shipman & Salinas LLP
214-987-9600