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IN THIS ISSUE

In Texas, insurers and trucking company defendants alike have been grappling with an explosion of large jury verdicts in commercial trucking accident cases – verdicts based upon "try the company, not the accident" arguments supported by character evidence that should have been inadmissible. Under pressure from many interest groups, the Texas Legislature attempted to fix the problem with the enactment of statutory provisions intended to codify the long-abandoned common law of respondeat superior. The result, however, was far from the stated goal. This article addresses the potential ripple effects nationally for insurance carriers and commercial trucking companies.

What the Texas Legislature Did (Not Do) to Fix the Trucking Litigation Crisis in Texas – and Possible Insurance Ramifications for Nationwide Litigation

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I. SUMMARY

As one of the largest states in land mass and population, with a vast interstate and intrastate highway network that supports its role as an international gateway along its border with Mexico, what happens in Texas trucking litigation does not stay necessarily in Texas – to paraphrase an advertising campaign. In 2021, the Texas Legislature (which meets for only 140 days every other year, fortunately) attempted to address insurance and trucking industry concerns and fix "try the company and not the accident" trucking litigation – litigation that has been labeled as abusive and out of control. While early drafts of the legislation would have made strong inroads into curbing the abuse and leveling the playing field, the final language passed contains so many loopholes it has, arguably, made the problem worse. This article addresses what happened, what passed, and the current status of things in Texas. The lessons learned are being studied by the industry nationwide, and practioners across the country should be aware of the statutory shortcomings.

II. INTRODUCTION

Though heralded as if from Gabriel, the commercial trucking litigation reforms presented originally in Texas House Bill 19 failed to affect substantive change. The provisions that did pass, now codified in Chapter 72.051 *et. seq.*, Texas Civil Practice and Remedies Code, did little, in the author's opinion, to correct the problems and abuses associated with commercial trucking litigation in Texas. It was hoped the Supreme Court of Texas would correct the error and return the common law to the solid foundation upon which it stood in 1961 after *Patterson I*,[1] but as will be discussed at the end of this article, the conservative court passed on its chance to fix the problem.

The theoretical driver of the proposed changes was understood to be a need to protect "mom and pop" commercial trucking company employers from end-arounds of the respondeat superior doctrine – that is, "let the master pay" or "all roads lead to Rome." In most jurisdictions, once an employer stipulated to course and scope of driver employment, the employer paid the bill for any liability finding and judgment for the driver's culpable conduct. This was the stated common law justification from the Beaumont Court of Appeals' approval of the Jefferson County District Court's gatekeeper function in *Patterson I*. The problems began when certain trial courts stopped enforcing the evidentiary rules and allowed plaintiffs to circumvent the protections the doctrine of respondeat superior was designed to provide.

Under the common-law doctrine of respondeat superior, or vicarious liability, "liability for one person's fault may be imputed to another who is himself entirely without fault solely because of the relationship between them." *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 130 (Tex. 2018), quoting and citing *St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 540 (Tex. 2002) (plurality op.) (citation omitted). The doctrine has been explained as "a deliberate allocation of risk" in line with "the general common law notion that one who is in a position to exercise some general control over the situation must exercise it or bear the loss." *Id.* at 131 (quoting *Keeton, et al*, Prosser and Keeton on the Law of Torts § 69, at 499-501

[1] *Patterson v. East Texas Motor Freight Lines*, 349 S.W.2d 634 (Tex. Civ. App.—Beaumont 1961, writ ref'd n.r.e.).

(5th ed. 1984)) (emphasis removed). Respondeat superior thus constitutes an exception to the general rule that a person has no duty to control another's conduct. *Painter*, at 131, citing *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 757 (Tex. 2007) (citing *Otis Eng'g Corp. v. Clark*, 668 S.W.2d 307, 309 (Tex. 1983)).[2]

From a defense perspective, when trial courts failed to follow the common law regarding respondeat superior and allowed what are called "direct" negligence claims against employers who stipulated to course and scope of their employee drivers, the problems escalated. Arguably, the practice allowed duplicitous claims, manipulated the cooperative fault/proportionate liability statutes, and permitted what should have been inadmissible character evidence (against the employer) to inflame the juries, thereby resulting in runaway or "nuclear" verdicts.

No longer were juries assessing driver for fault for the accident at issue, they were now trying the company employers for other alleged wrongs – negligent hiring, negligent entrustment, failure to comply with Federal regulations – as a means for hanging liability upon an employer. Certain trial courts and a minority of appellate courts were thus allowing plaintiffs to do indirectly to an employer what they could not do directly. The result was what was known as Texas House Bill (HB) 19.

Filed originally on February 24, 2021, by Texas State Representative Jeff Leach (R), Chairman of the House Committee on Judiciary & Civil Jurisprudence, HB 19 contained provisions that should have fixed the problems illuminated above. The original provisions that heartened insurance carriers, defense lawyers, and trucking company owners alike included:

1. non-discretionary bifurcation right for the defendant employer;
2. failure to comply with a regulation or standard not admissible into evidence;
3. substantial limitations on pretrial discovery as to the employer with a mandatory and limited "look back" window;
4. mandatory right to mandamus (without inadequate remedy by appeal requirement) if the discovery limitations not followed by a trial court;
5. upon stipulation of an employer defendant that employee was indeed the employer's employee and acted within course and scope, the direct action against the defendant employer was to be dismissed (mandatory); and,
6. defendant employer could be directly liable for exemplary damages in the second phase only if the defendant's employee caused the bodily injury or death at issue and the defendant employer was grossly negligent.[3]

With the exception of a provision for bifurcated trials, the provisions that could have really assisted trucking company owners and employers did not make it to the finish.

III. THE NEW STATUTE: Chapter 72.051 *et. seq.*, Texas Civil Practice and Remedies Code

Actions Regarding Commercial Motor Vehicles (Subchapter B)

[2] A brief survey of the law in other jurisdictions reveals this legal theory is consistent throughout the country.

[3] See Texas House Bill 19, capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB19

Effective September 1, 2021

1. § 72.051. Definitions[4]
   - "Accident" means an event in which the operation of a commercial motor vehicle causes bodily injury or death (1).
   - "Defendant" is a person or entity that operated a commercial motor vehicle involved in the accident; or owned, leased, or exercised legal control over a commercial motor vehicle or operator of a commercial motor vehicle involved in the accident (2B).
   - "Claimant" includes a decedent's estate; it does not include a passenger in a commercial motor vehicle (e.g. a taxi) unless the person is an employee of the owner, lessor, lessee, or operator of that vehicle (taxi) (3).
   - "Commercial Motor Vehicle" means one used for commercial purposes in interstate or intrastate commerce to transport property or people ("or provide services") (4).
     - excludes motor vehicle being used for personal, family, or household purposes
   - "Employee" means a person who works for another for compensation (6).
     - includes statutory definitions and agents for whom an employer may be liable under respondeat superior
   - "Motor Vehicle" means a self-propelled device in which a person or property can be transported on a public highway (not defined – see Texas Transportation Code) (8).
     - includes "in-use" trailer
     - excludes device used exclusively upon rails or tracks (railroads)
   - "Operated" means causing the CMW to move or function in any respect.
     - includes a CMV that is disabled (9).
   - "Video" means an electronic representation of a series of images depicting stationary or moving scenes regardless of manner or sequence of recording or capture (10).
     - accompanying audio not required

2. § 72.052. Bifurcated Trial in Certain Commercial Motor Vehicle Accident Actions[5]
   - Requires a court to provide for a bifurcated trial on motion of a defendant in an action involving a commercial vehicle;
   - Requires the defendant to move for bifurcation on or before the later of the 120th day after the movant's original answer or the 30th day after the claimant files a pleading adding a claim or cause of action against the movant;
   - Directs the trier of fact to determine liability and compensatory damages in the first phase of the trial and liability for an amount of exemplary damages in the second phase;
   - Provides that a finding in the first phase that the defendant driver was negligent in operating the CMV may serve as the basis in the second phase on a claim against the employer defendant, such as negligent entrustment, that requires a predicate finding of the driver's negligence (does not apply to a claimant who has pursued said negligent entrustment claim in the first phase);

[4] This list of definitions is non-exclusive – selective terms addressed for this paper.

[5] Christian, George S., "TADC's 87th Session Legislative Wrap-Up," TADC Magazine, Summer 2021; selected summaries re-printed with permission.

3. § 72.053. Failure to Comply with Regulations or Standards
   - Provides that a defendant's failure to comply with a regulation or standard *is admissible in the first phase* only if: (1) the evidence tends to prove that the failure to comply was a proximate cause of the claimant's injuries; (2) the regulation or standard *is specific and* governs, or is an element of a duty of care applicable to, the defendant, the defendant's employee, or the defendant's property or equipment when any of those is an issue in the action;
   - *Nothing* prevents pursuing claim for exemplary damages due to defendant's failure to comply with other *applicable* regulations or standards or presenting evidence of same (in second phase).

4. § 72.054. Liability for Employee Negligence in Operating Commercial Motor Vehicle
   - Provides that if the employer defendant stipulates course and scope, the claimant may not in the first phase of a bifurcated trial present evidence on an ordinary negligence claim against the employer defendant, such as negligent entrustment, that requires a finding that the employee was negligent as a predicate to finding the employer negligent in relation to the employee's operation of the CMV (except for evidence of specific regulatory violations listed below);
   - Allows a claimant to introduce evidence in the first phase of a bifurcated trial in regard to an employer defendant who is regulated by the Motor Vehicle Safety Improvement Act of 1999 or Chapter 644, Transportation Code, limited to whether the employee driver at the time of the accident:
     - (1) was licensed to drive the vehicle at the time of the accident;
     - (2) was disqualified from driving the vehicle under 49 CFR §§383.51, 383.52, or 391.15;
     - (3) was subject to an out-of-service order, as defined by 49 CFR §390.5;
     - (4) was driving the vehicle in violation of a license restriction imposed under 49 CFR §383.95 or §522.043, Transportation Code;
     - (5) had received a certificate of driver's road test from the employer defendant as required by 49 CFR §391.31 or had an equivalent certificate or license as provided by 49 CFR §391.33;
     - (6) was medically certified as physically qualified to operate the vehicle under 49 CFR §391.41 (deleted "or corresponding state law");
     - (7) was operating the vehicle when prohibited to do so under 49 CFR §§382.201 (alcohol), 382.205 (on duty use), 382.207 (pre-duty use), or 382.215 (controlled substances), 395.3 (maximum driving time – property), or 395.5 (maximum driving time – passengers) or 37 TAC §4.12 (exemptions and exceptions to Texas Public Safety and corrections)[6], as applicable, on the day of the accident;

[6] Vehicle used in oil or water well servicing or drilling constructed as a machine consisting of general mast, an engine for power, a draw works, and a chassis permanently constructed for such purpose; a mobile crane unladen, self-propelled constructed to raise, shift or lower weights, vehicle transporting seed cotton, concrete pumps; provision of Title 49 CFR shall not apply to intrastate commerce; many, many other exemptions and exceptions to the federal rules for intrastate commerce.

- (8) was texting or using a handheld mobile telephone while driving the vehicle in violation of 49 CFR §392.80 or §392.82;
- (9) provided the employer defendant with an application for employment as required by 49 CFR §391.21(a) if the accident occurred on or before the first anniversary date after the date the employee began employment with the employer defendant; and
- (10) refused to submit to a controlled substance test as required by 49 CFR 382.303, 382.305, 382.307, 382.309, or 383.311 during the two years preceding the date of the accident; and whether the employer defendant:
  - (1) allowed the employee to operate the employer's commercial vehicle on the day of the accident in violation of 49 CFR §§382.201, 382.205, 382.207, 382.215, 382.701(d), 359.3, or 359.5 or 37 TAC §4.12;
  - (2) had complied with 49 CFR §382.301 in regard to controlled-substance testing of the employee driver if the employee driver was impaired because of the use of a controlled substance at the time of the accident, and the accident occurred on or before the 180th day after the date the employee driver began employment with the employer defendant;
  - (3) had made the investigations and inquiries as provided by 49 CFR §391.23(a) in regard to the employee driver if the accident occurred on or before the first anniversary date after the date the employee driver began employment with the employer defendant; and
  - (4) was subject to an out-of-service order, as defined by 49 CFR §390.5.
- Limits the admissibility of evidence of the above regulatory violations in the first phase to prove *only* ordinary negligent entrustment by the employer defendant to the employee defendant who was operating the vehicle and specifies that it is the *only* evidence that may be presented on negligent entrustment claim in the first phase;
- Clarifies that the bill does not preclude the claimant from bringing a negligence claim against the employer, such as negligent maintenance, that does not require a predicate finding of the employee's negligence, or from presenting evidence supporting that claim in the first phase; *or* a claim for punitive damages arising from the employer's conduct in relation to the accident, or from presenting evidence on that claim in the second phase;
- Course and scope stipulation must be made within the time to move for bifurcation.

5. <u>§ 72.055. Admissibility of Visual Depictions of Accident</u>
   - Bars the court from requiring expert testimony to support the introduction into evidence of a photograph or video of the vehicle or an object involved in the accident;
   - Provides that if a photo or video is properly authenticated, it is presumed admissible, even if it supports or refutes an assertion about the severity of the damages or injury to an object or person involved in the accident.

6. What Got Left on The House Floor
   - Automatic dismissal of direct action against employer defendant
     - Upon motion
     - Stipulation that culpable person employee of defendant
     - Employee defendant acting within course and scope
     - Dismissal mandatory
   - Limitations on discovery
     - Court order allowing discovery on a defendant's failure to comply with a regulation or standard
     - 2 or 4 year "look back" window only
     - Mandamus proceeding allowed
       - Inadequacy of a remedy by appeal presumed
   - Periodic payment of future damages
     - Applicable in which award of future damages is at least $100,000
     - At request of party, mandatory for court to order future damages be paid periodically instead of lump-sum
     - Court to make specific finding of dollar amount of periodic payments for future damages and specify recipient, amount of each payment, and date
     - Court to order funding by four means:
       - annuity
       - U.S. obligation
       - liability insurance
       - other satisfactory form requested by defendant
     - Payment for future damages (except loss of future earnings) terminate on death of recipient

IV. HOW DID WE GET AWAY FROM THIS?

A. Prohibition of direct negligence claims against the company employer

When the company employer concedes vicarious liability for injuries proximately caused by its employee, the plaintiff should be disallowed from recovering damages on account of "direct" negligence claims against said company. Period. End of story. This statement comports with fifty years of Texas jurisprudence. Its application allowed for plaintiffs to recover fully for injuries proven at trial, and it protects companies from unwarranted and unfair "double dipping." Also, the rule protected litigants from the prejudicial effect of what should be/should have been inadmissible character evidence.

B. Patterson I

In *Patterson v. East Texas Motor Freight Lines*, 349 S.W.2d 634 (Tex. Civ. App.—Beaumont 1961, writ ref'd n.r.e.), Emile Patterson (on behalf of his wife Elmer Patterson) and Willie Mae Ryals brought suit for personal injuries to recover damages from East Texas Motor Freight Lines and its driver Albert Olen Foster, arising out of a collision which occurred March 3, 1955, at an intersection in the City of Beaumont. Mrs. Patterson was the driver of her automobile and Ryals was the passenger in a collision with a truck driven by Foster who was driving for East Texas Motor Freight. *Id.* at 635-36.

The jury found Patterson guilty of acts of negligence which proximately caused the accident, and the jury found driver Foster guilty of no act of negligence. *Id.* at 636. The Jefferson County district court rendered judgment in favor of the trucking company and driver Foster. *Id.*

On appeal, Patterson and Ryals complained of the trial court's refusal to permit them to offer evidence to show the driver of the truck had been involved in other accidents and had been charged with reckless driving and speeding on other occasions. *Id.* No evidence was offered by the Defendants to show the truck driver was a safe and careful driver, or that he had no other accidents. *Id.* Instead, the driver testified as to his experience only, that he had been driving a truck for 20 years, and that he had been employed by East Texas Motor Freight for 11 years. *Id.*

The Beaumont Court of Appeals determined the trial court properly refused to permit the evidence Patterson and Ryals wanted concerning driver Foster's prior "bad acts." The appellate court held, "the Supreme Court settled this question many years ago in *Missouri, K. & T. Ry. Co. v. Johnson*, 92 Tex. 380, 48 S.W. 568, 569:

> . . . We think the rule is well settled that when the question is whether or not a person has been negligent in doing, or failing to do, a particular act, evidence is not admissible to show that he has been guilty of a similar act of negligence, or even habitually negligent upon a similar occasion (citing cases) . . . The principle as applicable to this class of cases generally, is that when the habit of care or of negligence, as the case may be, has no connection with the specific facts in evidence bearing upon the question of care, evidence of such care or habit is without sufficient probative force to effect the determination of the question . . .

Id.

In their petition, Plaintiffs Patterson and Ryal pleaded several grounds of primary negligence against the driver of the truck, and in addition pleaded the truck company was guilty of negligence on the theory of "negligent entrustment" under the allegation driver Foster was an employee of East Texas Motor Freight and acting within the scope and course of his employment with the truck company at the time of the collision. *Id.*

East Texas Motor Freight stipulated and agreed to course and scope, and it agreed the doctrine of respondeat superior applied. *Id.* East Texas Motor Freight then moved the trial court to strike the allegation of negligent entrustment which motion was granted. *Id.* On appeal, Patterson and Ryals argued it was error for the trial court to grant Defendants' motion.

The Beaumont Court of Appeals disagreed. *Id.* In setting forth what should be still a concise and unbefouled trial standard, the appellate court espoused, "Evidence as to prior accidents, or prior acts of negligence on the part of the driver, would be admissible only to prove the driver was unsafe or incompetent, and not to prove he was negligent on the occasion in question." *Id.* Another way of stating this is that inadmissible character evidence should not be allowed because it was not offered to establish the driver was negligent in causing the wreck that is the subject matter of the lawsuit. The evidence excluded by the courts in *Patterson I* was designed only to inflame the jury against the company for employing an allegedly bad driver. That might be a fun way to try a case, but it is not an "apples to apples" comparison for the jury to consider properly under the law.

The appellate court in *Patterson I* continued, "The theory of negligent entrustment in order to bind the truck company became immaterial as soon as the stipulation as to course of employment was

made. There was no issue left to submit to the jury upon which this testimony as to negligent entrustment would be admissible." *Id.* (emphasis added). Again, to allow otherwise permits plaintiffs to try a case on overly prejudicial, irrelevant, and improper facts which mislead the jury (intentionally) and deny Defendants the right to a fair trial.

C. The TRE Firewall

The present situation begs the question, "what happened to Tex. Rules of Evidence 403 and 404(c)?". These rules are supposed to serve as a firewall preventing cases from being tried upon improper evidence. The TRE Firewall has been left unprotected with Vikings at the gate! These rules have fallen by the wayside because some trial courts, for multiple reasons, perhaps political, do not enforce the rules—resulting in too many runaway verdicts.

Tex. R. Evid. 403 provides:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

According to the Texas Supreme Court, "testimony is not inadmissible on the sole ground that it is 'prejudicial' because in our adversarial system, much of a proponent's evidence is legitimately intended to wound the opponent." *Diamond Offshore Servs. Ltd. v. Williams*, 542 S.W.3d 539, 549 (Tex. 2018). Rather, "*unfair*" prejudice is the proper inquiry," and "'*[u]nfair* prejudice' within its context means an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one." *Id. See also JBS Carriers, Inc. v. Washington*, 564 S.W.3d 830, 836 (Tex. 2018). Further, Tex. R. Evid. 404 provides:

(a) Character Evidence.
(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

And, according to the Texas Supreme Court, "Evidence of other wrongs or acts is not admissible to prove character in order to show 'action in conformity therewith'." *Service Corp. International v. Guerra*, 348 S.W.3d 221, 235 (Tex. 2011). But it is admissible to show a party's intent, if material, provided the prior acts are "so connected with the transaction at issue that they may all be parts of a system, scheme or plan." *Id.* (quoting *Oakwood Mobile Homes, Inc. v. Cables*, 73 S.W.3d 363, 375 (Tex. App.—El Paso 2002, pet. denied)). This can be shown through evidence of similar acts temporarily relevant and of the same substantive basis. *Id.*, citing *Durbin v. Dal-Briar Corp.*, 871 S.W.2d 263, 268-69 (Tex. App.—El Paso 1994, writ denied), overruled, in part, on other grounds by *Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362 (Tex. 2000).

The failure of many trial courts to adhere to the common law set forth in *Patterson I* and enforce the firewall protections of Tex. Rules. Evid. 403 and 404 led to many erroneous and runaway verdicts. This abuse led to *Patterson II* and House Bill 19.

V. THE TIPPING POINT

A. *FTS International Services, LLC v. Patterson*, No. 20-0795, Supreme Court of Texas (*Patterson II*)

The underlying case was tried in the 115th Judicial District Court of Upshur County, Texas, the Honorable Lauren Parish, judge presiding.[7] It involved a low-impact automobile accident that resulted in a $101 million verdict against FTS Int.[8] This verdict has been described as "nuclear" and "historic," potentially the "biggest ever" for an accident of its kind.[9]

In its petition, FTS argued the court of appeals "failed to remedy the root cause of the record-setting verdict: the 'try the company, not the driver' tactic used by the Plaintiff."[10] FTS questioned how the so-called direct negligence claims asserted against it (which went to the jury) could proceed when it conceded respondeat superior liability attached for its employee driver's fault in causing the accident.[11] Additionally, FTS argued that over a six-month period, Judge Parish presided over trials yielding $413 million in trucking verdicts for the same plaintiff's lawyer – all obtained while employing the same "try the company, not the driver" strategy.[12]

Patterson II arose from a low-impact motor vehicle accident that occurred on September 15, 2013, in rural Upshur County, Texas. Respondent/Plaintiff Joshua Patterson was traveling southbound on Highway 259 at roughly the same speed as Bill Acker, an employee of FTS, when Acker's truck drifted out of its lane and impacted Patterson's truck. At the scene, Patterson stated he was uninjured before driving away. Patterson later sued FTS, asserting respondeat superior liability and various "direct" negligence claims.[13]

At trial, the jury found Acker 70% responsible and FTS 30% responsible, and it awarded Patterson over $26 million in compensatory damages. The jury also found FTS grossly negligent and awarded Patterson $75 million in punitive damages. The trial court rendered judgment on the verdict, after reducing the punitive damage award per the statutory cap.[14]

The issues presented by FTS in *Patterson II* to the Texas Supreme Court should have had a direct impact on how Subchapter B of Chapter 72 is applied. The court had an opportunity to set forth a hard common law rule that the statutory provision avoided, or set a standard that could be statutorily codified during the next legislative session (January 2023). The issues presented by FTS included:

1. The jury was asked to consider various "direct" negligence claims against FTS, including claims for negligent hiring, retention, training, and supervision which this Court has consistently refused to recognize. Is FTS entitled to

[7] See Petition for Review filed by FTS International Services, LLC in No. 20-0795 in The Supreme Court of Texas on January 27, 2021. All citations shall reference "FTS Petition for Review."
[8] FTS Petition for Review, pg. 1.
[9] *Id.*; *citing*, e.g., John Kingston, *The biggest ever? Truck accident in Texas leads to a $100+ million award,* FREIGHT WAVES *(July 23, 2018),* https://www.freightwaves.com/news/verdict-trucking-company-big-award.
[10] FTS Petition for Review, pg. 1.
[11] *Id.*
[12] *Id.* at pg. 2.
[13] *Id.* at ix.
[14] *Id.*

judgment as a matter of law on these claims when—

a. fifty years of Texas law, the law of most states, and common sense dictate that a plaintiff cannot recover damages on account of "direct" negligence claims against a corporate employer, where the employer concedes vicarious liability for injuries proximately caused by its employee?

b. the evidence is legally insufficient to support the jury's findings, including any findings that FTS's conduct in the weeks, months, and even years before this accident was its proximate cause?

2. The jury found FTS grossly negligent and awarded $75 million in punitive damages. Did the court of appeals err in refusing to render judgment on the plaintiff's gross negligence claim when the evidence is legally insufficient to support the jury's finding, including any finding that FTS's remote conduct proximately caused this otherwise straightforward motor-vehicle accident?[15]

The Supreme Court of Texas requested the parties submit briefs on the merits by letter request dated September 3, 2021. Petitioner FTS and Respondent Patterson submitted full briefing to the court, completing the briefing submission on April 25, 2022. An amicus brief on behalf of Texans for Lawsuit Reform was received on May 3, 2022. Surprisingly, the conservative court denied the petition without explanation on May 27, 2022. After FTS filed a motion for rehearing, the parties settled subsequently, and now the statute's shortcomings remain unaddressed and plaintiffs' lawyers are off to the races. Insurance carriers are watching shockingly high settlements continue to rise.

VI. SUMMATION

While the new rules regarding admissibility requirements for visual depictions of an accident affect beneficial change to Texas commercial trucking litigation, the remainder of the statutory enactments emanating from HB 19 disappoint. Plaintiffs continue to "try the company" and not the at fault drivers, and the manipulation of the comparative fault system remains unabated. Direct negligence claims are argued indirectly against the company employers, company employers remain on the jury charge, and, arguably, company employers will have been found "liable" before the second, bifurcated phase is even reached. With the failure of *Patterson II*, it will take the pressure of a reawakened industry lobby to convince the Texas Legislature to make the changes necessary for Texas' commercial trucking companies to defend themselves on a playing field that is truly level.

[15] *Id.* at x.

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