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TOP 100 ♦ 2020

LITIGATION

Dana A. Fox

Fox was inducted as a Fellow of the American College of Trial Lawyers last year.

“What an honor,” he said of the induction. “You can’t put your hat in the ring for that one. They vet you for two years, and it’s considered the top one percent of trial lawyers. The ceremony was in Phoenix back when you could assemble in large groups. I kept going, ‘Wow, how did I get in here?’”

Fox cited the pandemic for troubling disruptions affecting upcoming trials. In late September he’s set to defend Tesla Motors Inc. in a personal injury suit filed by an electrical contractor’s apprentice over flash burns suffered in an accident at Tesla’s Fremont plant. *Nguyen v. Tesla Inc.*, RG18905617 (Alameda Co. Super. Ct., filed May 21, 2018).

His defense involves the contention that the plaintiff’s claims are barred by case law prohibiting liability findings against the hirer of an independent contractor for injuries sustained by the contractor’s employee. Fox has moved for summary judgment, but if the trial goes forward it will be under unusual constraints announced by the court. Jurors and the judge will be present in the courtroom; lawyers, witnesses and parties will attend remotely.

Fox foresees serious due process problems. “Remote voir dire? How can you fairly evaluate someone you can only partly see,”

he said. “And with witnesses testifying remotely, it will be very difficult for the jurors to evaluate what they’re looking at when they’re only looking at someone’s head.”

In one case, Fox is confronting a situation where the judge has twice postponed matters, asserting he was “slammed” by work and had not read the papers describing a serious discovery dispute in a wrongful death case. “It’s not malice or spite, I like this judge,” Fox said. “But the wheels of justice are not moving. Cases are backlogging and courts are struggling.”

Fox and Lewis Brisbois have been retained alongside two other firms to defend Walmart Inc. in an array of wrongful death and injury suits following the August 2019 mass shooting at its El Paso, Texas, store. An anti-immigrant white nationalist gunman shot and killed 23 and injured 23 others; the FBI investigated the massacre as an act of domestic terrorism. One account called it the deadliest attack on Latinos in modern American history.

“We went there and walked the store right after the FBI released the scene to Walmart,” Fox said. “It was blood and bullet holes and smashed up stuff, a first for me, very disturbing. Flying back, I realized I couldn’t use the shoes I was wearing anymore. I threw them away before I went home.”

—John Roemer



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