

PROVING MENTAL ANGUISH

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PROVING MENTAL ANGUISH

By Elizabeth von Kreisler & Mark L. Kincaid

The standard for evidence of mental anguish damages was articulated by the Texas Supreme Court in *Parkway Co. v. Woodruff*, 901 S.W.2d 434 (Tex. 1995). Under that standard, mental anguish damages can be proved by: “direct evidence of the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiffs’ daily routine.” A recent supreme court case has held that the *Parkway* standard must now be met in all cases in which mental anguish damages are sought, even though *Parkway* itself did not require this type of evidence in all cases seeking mental anguish damages. *Service Corp. Internat’l v. Guerra*, 348 S.W.3d 221, 231 (Tex. 2011). This is a departure from traditional common law under which the very natures of certain types of cases could serve as some evidence of mental anguish. See *Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788, 797 (Tex. 2006) (“[S]ome types of disturbing or shocking injuries have been found sufficient to support an inference that the injury was accompanied by mental anguish.”).

Although the *Parkway* standard must be met in all cases, mental anguish damages are somewhat simpler to establish in personal injury cases, due to understandable trauma and fear of death attending the events in such cases. Yet for cases involving financial injury such as DTPA or insurance cases, where the emotional impact of the events is less obvious, mental anguish damages can be trickier to prove.

The *Parkway* standard has been cited in hundreds of cases. This paper summarizes a handful of non-personal injury cases applying *Parkway* – including DTPA, insurance, employment, and defamation cases – and itemizes the evidence that courts found either met or did not meet the *Parkway* standard. Part I describes the *Parkway* standard for mental anguish. Part II summarizes cases in which the evidence met the mental anguish standard. Part III summarizes cases in which the evidence failed to meet the mental anguish standard. The cases are organized in reverse chronological order, with Texas Supreme Court cases listed first, followed by cases from the courts of appeals. Part IV presents some practice points and conclusions to assist in proving a mental anguish claim. The appendix attached is a sample outline of interview questions to ask witnesses or parties to prove mental anguish damages under the *Parkway* standard.

I. *PARKWAY CO. V. WOODRUFF* STANDARD FOR MENTAL ANGUISH

In *Parkway Co. v. Woodruff*, 901 S.W.2d 434 (Tex. 1995), the Texas Supreme Court developed the standard for mental anguish damages used today.

The court held that a party’s mental anguish damages can be proved by: “direct evidence of the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiffs’ daily routine.” This evidence can be in the form of the plaintiffs’ own testimony, that of third parties, or that of experts. 901 S.W.2d at 444.

The court “stop[ped] short of requiring this type of evidence in all cases in which mental anguish damages are sought,” but noted that, “the absence of this type of evidence, particularly when it can be readily supplied or procured by the plaintiff, justifies close judicial scrutiny of other evidence offered on this element of damages.” *Id.*

When a party fails to present direct evidence of the nature, duration, or severity of his anguish, the court will “determine whether the record reveals any evidence of ‘a high degree of mental pain and distress’ that is ‘more than mere worry, anxiety, vexation, embarrassment, or anger.’” *Id.* (quoting *J.B. Custom Design & Bldg. v. Clawson*, 794 S.W.2d 38, 43 (Tex. App.–Houston [1st Dist.] 1990, no writ)).

The court then applied the standard to the facts of the case. In *Parkway*, homeowners sued a developer for damages after their home flooded. *Id.* at 437. The flooding was caused by the developer’s negligent activities, which resulted in a diversion of surface water across their property. *Id.* The court concluded that evidence did not demonstrate that the homeowners suffered compensable mental anguish. *Id.* at 444.

The homeowners offered limited testimony regarding their mental anguish. The husband testified:

I was hot. I was very disturbed about that, and called him and said, “I would like to sell you a house. I think you have just flooded my property, I think you have messed up my house.” I begged the guy not to.

Id. at 445. The wife testified:

[I]t’s just not pleasant walking around on cement floors.

...

Well, [our life] changed. It just – I don’t know, it’s a hard feeling to describe, unless you go through it. It was just upsetting, Ray would come home and he would become very

quiet. He was – I guess we both were. It caused some friction between us because I wanted to just get it done and get over with and things couldn't move as quickly as I wanted them to.

...

“Afraid? I wasn't afraid. I guess I was – I was just upset that it changed our life style. We were all very happy, and since I lived at home quite – well, most of the time, it meant a lot to me. I'm a very private person, and I really maybe depended upon my house a little more than other people.”

Id.

The court found that this testimony was not sufficient evidence of mental anguish. “These statements show that the Woodruffs felt anger, frustration, or vexation, but they do not support the conclusions that these emotions rose to a compensable level.” The court found that the testimony offered simply noted the existence of “mere emotions.” *Id.*

Further, in addition to the record lacking “direct evidence of the nature, duration, or severity” of mental anguish, there was also no circumstantial evidence to support mental anguish, “other than the fact of the flooding itself.” While the flooding disrupted their lives, it did not support an inference of compensable mental anguish because it did not demonstrate a threat to physical safety or reputation or involve the death or serious injury of a family member. *Id.*

In sum, *Parkway* requires evidence of the nature, duration, or severity of mental anguish, suggesting a substantial disruption in the plaintiff's daily life. If such evidence is not present, the evidence must show a high degree of mental pain and distress that rises above mere emotions, such as worry, anxiety, vexation, embarrassment, and anger.

II. CASES FINDING EVIDENCE SUFFICIENT TO SUPPORT MENTAL ANGUISH

*Service Corp. Internat'l v. Guerra, 348 S.W.3d 221 (Tex. 2011)*¹

Decedent's widow and daughters sued a cemetery operator and its parent corporation for fraud, negligence, trespass, and intentional infliction of emotional distress after the defendants sold the family a plot that already belonged to someone else, buried the decedent in it, wrongfully disinterred him against

the family's will and without their permission, and then lied to cover up those facts.

The Supreme Court found that the following evidence was sufficient under *Parkway* to support the widow's mental anguish:

- The widow testified that when she found out her husband's grave had been tampered with she could not sleep at night and went through a lot of stress.
- She suffered burning in her stomach due to the stress and sought medical treatment for the symptoms.
- She continued to have headaches and take medication for anxiety and depression.
- During the six years since the incident, she had been worrying and having fear and anxiety about what might be done to her at the cemetery.

The court rejected the defendants' argument that the widow's daily routine was not substantially disrupted because she volunteered at a nursing home, participated in church activities and traveled occasionally. “[E]ven assuming there was no evidence her routine was disrupted, that lack of evidence did not negate the evidence that she *did* suffer compensable mental anguish.”

However, the evidence regarding the daughters' mental anguish was insufficient:

- Julie:
 - She testified that “this has been the hardest thing that I have had to go through with my family and myself. I have had lots of nights that I don't sleep just thinking.”
 - The experience has been “very difficult.”
 - In her complaint letter to the Texas Funeral Commission, she wrote, “I cannot begin to express the frustration and agony we have all gone through.”
 - The court noted that she continued to work, travel, and participate in volunteer and other activities.
- Mary Ester:
 - She testified, “It's not part of my life. I didn't have to accept that and I do not accept it and I won't accept it.”
- Gracie:

¹ The authors of this paper represented the Guerra family in the court of appeals and the Texas Supreme Court.

- She testified, “We’re not at peace. We’re always wondering. You know, we were always wondering where our father was. It was hard to hear how this company stole our father from his grave and moved him. That was hard. And I pray that none of you have to go through this.”
- Other witnesses, including employees of the defendants, testified that:
 - The family was still bothered by the situation, and having to move a body buried in the wrong place is devastating to any family that has just gone through the mourning process.
 - The family was “really hurt by this” and there “certainly is a level of devastation within their family for this.”
 - A family that had gone through this would suffer “devastation.”
- He continued to have headaches and nightmares.
- His daily activities and his relationships with his wife and daughter continued to be detrimentally affected almost two years after the incident.
- Plaintiff also presented evidence of:
 - The severity of the intentional beating by [security personnel], including significant injuries to his head and body, his loss of unconsciousness, and his visits to the hospital.

The evidence showed the nature, lasting duration, and severity of the plaintiff’s injuries.

The supreme court contrasted this case with *Parkway* in that it involved a claim for personal injuries:

We believe the severe beating received by Ramirez provided an adequate basis for the jury to reasonably conclude that he would continue to suffer substantial disruptions in his daily routine of the kind described in his and his wife’s testimony that he had already suffered in the past. The evidence in this case amounts to far more than worry that medical bills might not get paid, as in *Saenz*, or that someone is disturbed and upset, as in *Parkway*.

In subsequent cases, the supreme court has similarly concluded that the severity of a particular personal injury gives the jury a reasonable basis for finding future mental anguish damages. *See, e.g., Adams v. YMCA of San Antonio*, 265 S.W.3d 915 (Tex. 2008) (per curiam) (evidence was sufficient to establish future mental anguish of minor child sexually assaulted by camp counselor; evidence that child had emotional outbursts and phobic anxiety, coupled with expert testimony regarding repression of distress, supported inference that child would suffer an enormous reaction in the future when repression ceased).

The court held that none of the witnesses, including the daughters, identified a specific high degree of mental pain and distress experienced by particular family members, or a substantial disruption of any particular family member’s daily routine. Statements that the family suffered “devastation” were considered conclusory descriptions and were held to be insufficient evidence.

Notably, the court extended the *Parkway* standard to all types of cases, disallowing the nature of the case to stand as a proxy for such evidence. “Even when an occurrence is of the type for which mental anguish damages are recoverable, evidence of the nature, duration, and severity of the mental anguish is *required*.” (Emphasis added).

***Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788 (Tex. 2006)²**

A night club patron was severely injured (skull fractured by having head slammed into concrete wall) in an altercation with nightclub security personnel. The jury awarded \$20,000 in future mental anguish damages. The supreme court found sufficient evidence to support the award:

- Plaintiff and wife testified:
 - He continued to be depressed, humiliated, non-communicative, unable to sleep, and angry.

***Latham v. Castillo*, 972 S.W.2d 66 (Tex. 1998)**

Clients sued attorney who failed to timely file medical malpractice action against doctors relating to death of their child, despite his assurances to the contrary.

Supreme court found some evidence of mental anguish:

² Although this case involves personal injury, rather than financial injury, it is included here because the Texas Supreme Court directly contrasted this case with *Parkway* on the basis of the type of injury involved.

- Father testified:
 - Because the lawyer told them he had filed the suit when he had not, “Well, it made me throw up.”
 - It made him “Sick, nervous, mad,”
 - “It just – it just hurt me a lot because I trusted in him and I – and if I had known, I would have looked for more lawyers.
 - And he promised me he was going [to] do it, and I trusted him to do it.
 - Because of what they had done to my daughters, I would have never stopped; what the doctors done, I would have never stopped.”
- Mother testified simply, “I – my heart was broken. I was devastated, I felt physically ill.”

This testimony was held to be more than “mere emotions.”

City of Houston v. Rhule, --S.W.3d--, No. 01-09-01079-CV, 2011 WL 2936351 (Tex. App.–Houston [1st Dist.] July 21, 2011, no pet.)

A firefighter sued the city, alleging breach of a settlement agreement that had settled the firefighter’s workers’ compensation claim. The city was to pay for the firefighter’s medical expenses for the injuries made the basis of the workers’ compensation claim for the duration of the firefighter’s life. Years later, the city refused to pay for pain treatments the firefighter sought. Although mental anguish damages are generally not available for breach of settlement agreements, the city failed to object to the jury charge question, which asked for the amount of “mental anguish that you find would have been within the contemplation of the City at the time the contract was made.” In response, the jury awarded the firefighter \$75,000 for past mental anguish.

On appeal, the court held that the following evidence was sufficient to support the jury’s mental anguish award:

- The firefighter testified:
 - It was important to him that he receive lifetime medical treatment for his injury because he had an ongoing problem requiring treatment for the rest of his life.
 - He relied on the city’s payment of his medical expenses to manage his pain.
 - When the city denied replacement of the battery in his pain pump and other treatments, he experienced significant pain, fear he would never be able to

adequately treat his pain without payment by the city, difficulty sleeping, eating and digestion problems, and other stress-related and psychological problems.

- He was seeking \$108,000 for mental anguish, which was three times what the city paid him years ago for his mental anguish.

The court held that the mental anguish would have been within the city’s contemplation at the time the settlement agreement was entered into, given the nature and severity of the firefighter’s injury, that he was unwilling to accept the city’s offer of ten years’ medical expenses, and his testimony that it was important for him to receive lifetime medical treatment.

Capps v. Nexion Health at Southwood, Inc., 349 S.W.3d 849 (Tex. App.–Tyler 2011, no pet.)

A former nursing home employee brought a retaliatory discharge suit against the nursing home.

The following evidence was determined to be legally sufficient to support a mental anguish award.

- The employee testified:
 - After being terminated, she had no income and no health insurance;
 - The situation was very, very humiliating.
 - Although she had many years of experience, she was unable to obtain a job because of rumors, including rumors that she was accused of stealing.
 - She was paranoid due to the rumors and did not want to go anywhere.
 - She did not leave the house much and stopped engaging in social activities.
 - To obtain permanent employment, she had to move out of state, away from her family, when her father suffered from a terminal illness.
 - She and her husband almost lost their house and then had to make double house payments when she found a job in another state.
 - Her husband moved out of state with her, but had to return to Texas when his business began to fail in his absence.
 - There was strain between her and her husband, and they filed for divorce.
 - She experienced a lot of anger.
 - She was very depressed and did not sleep much.
 - She gained forty pounds.

- She was not able to obtain employment in Texas until shortly before trial began.
 - She cried a lot and was not her normal self.
 - The situation remained frustrating because she was never told why she was fired, and the defendant did not respect her enough to talk to her about it.
 - Nearly two years after termination, she had difficulty talking about it.
- Another witness testified:
 - The employee was a total wreck after she was terminated.
 - It was as if the employee’s whole world had come to an end.

In concluding that the evidence was legally sufficient to support mental anguish, the court also noted that “wrongdoing that threatens a person’s reputation is sufficient to support an inference that the resulting injury was accompanied by mental anguish.”

Hancock v. Variyam, 345 S.W.3d 157 (Tex. App.–Amarillo 2011, rule 53.7(f) motion granted)

A supervising physician brought a defamation action against another physician. The jury awarded the plaintiff \$15,000 for past mental anguish and \$15,000 for future mental anguish.

The court of appeals found evidence factually and legally sufficient to support this award:

- Plaintiff testified that he was devastated, very distraught, and disappointed.
- The defamation disrupted his family and distracted him at work.
- He acted differently at home and was more introspective – spending time looking at the information.
- He considered moving his family from Lubbock.
- Work was also disrupted and stressful.
- He was distracted, uncomfortable returning to work, embarrassed when he saw his colleagues, and paranoid that people might be talking behind his back.
- He still thinks about the defamatory statements – the accusations “are still stuck in his mind.”
- He fears that others who saw the letter will communicate the statements further, worries how the letter will affect his future ability to practice medicine, fears how the communication to ACGME will affect him in the future practice of his profession, and continues to suffer from sleeplessness.

- Because of defendant’s statements, he testified he has suffered emotional difficulties and has seen “an institutional person who has supported [him].”

Norris v. Jackson, No. 2-09-265-CV, 2010 WL 4261541 (Tex. App.–Fort Worth Oct. 28, 2010, no pet.)

In a phone call, the general manager of an air conditioner installation company called the customer a thief, told her he would cancel her lifetime warranty, threatened to put a lien on her property, and repeated his accusations to the customer’s ex-husband. The customer sued for DTPA violations.

The evidence was sufficient to show that the customer suffered mental anguish as a result of deceptive trade practices:

- The customer was seventy years old, had noticeably higher blood pressure after the phone call, felt very frightened that her home would be subject to a lien, and had trouble sleeping after the phone call because of her fear about a lien.
- She also testified that:
 - the managers “bully talking” made her feel intimidated, nervous and “very scared”;
 - she is no longer the content and happy person she was before the call;
 - she is tired from stress, is worried, is not as energetic, and is irritable with her grandchildren.
- The customer’s ex-husband testified that:
 - he personally observed that the customer constantly worried about the situation, was “really, really upset” and frightened, and was irritable with her grandchildren to the point where he thought other arrangements for their care should be made for her sake;
 - she called him late at night when she was usually asleep to talk about the situation with the company;
 - her health had gone downhill since the phone call;
 - she was no longer the very organized person she had been.

Furthermore, the amount of \$2,500 was appropriate: Although the trial court awarded all of the \$2,500 in mental anguish damages that Jackson requested, the trial court did not award a majority of the other

damages that Jackson sought. Thus it appears from the record that the trial court did more than “simply pick a number and put it in the blank.”

S. Tex. Freightliner, Inc. v. Muniz, 288 S.W.3d 123 (Tex. App.–Corpus Christi 2009, pet. denied)

A truck driver sued a semi-truck dealer for malicious prosecution after the dealership made a false criminal complaint that led to the driver’s prosecution for theft. The jury awarded the driver \$25,000 for past physical pain and mental anguish.

The court of appeals found the evidence sufficient:

- The driver testified that:
 - “During the [criminal] trial, I was very tense. My stomach wanted to kind of betray me, but I contained myself.”
 - His life at home during the trial was “sad, sometimes, with anger. I don’t desire this for anybody when you know that you’re innocent.”
 - He was embarrassed when he was arrested in front of his friends and colleagues, further embarrassed when he spent the weekend in jail, where he was strip-searched and forced to shower with other inmates.

Although not specifically discussed by the court in its mental anguish analysis, the record contained other evidence supporting mental anguish:

- The driver’s wife testified:
 - Her husband would be deported to Mexico if he was found guilty of a criminal charge and that the family would be left homeless.
 - The family was hurt financially because the driver missed work and the family had to mortgage their home to pay attorney fees.
 - They lacked money to support their child in college or celebrate their daughter’s quinceanera.
- The driver also testified about having trouble putting food on the table and that he had to borrow from friends, which was embarrassing to him.
- The driver’s son testified that his father was vibrant and “the life of the party” before the criminal proceedings but now just wants to hide from the world since being incarcerated.

Tex. Mut. Ins. Co. v. Morris, 287 S.W.3d 401 (Tex. App.–Houston [14th Dist.] 2009, no pet.)

A worker’s compensation claimant sued a carrier for breach of the duty of good faith and fair dealing, DTPA violations, and violations of the Insurance Code arising from the carrier’s unfair settlement practices. The court of appeals found that there was legally sufficient evidence to support the trial court’s \$50,000 award for past mental anguish damages.

- The claimant testified:
 - The day after his surgery he learned that the carrier was disputing his claim and would not pay his bills.
 - He was extremely scared and worried because he knew he could not pay the bills.
 - A few days later he learned that he had a potentially life-threatening infection and returned to the hospital but was told to “get out” because he had no insurance coverage.
 - A doctor donated his time to treat the claimant.
 - While being treated, the claimant worried constantly about both whether he would get better and how he would pay for the treatment.
 - When he was discharged following the infection, he received no follow-up care. When asked how this made him feel, he said, “It makes you sick. Makes you sick to your stomach.”
 - He felt as though the world was “crashing down” on him.
 - He then received past-due notices from providers and his credit rating dropped, which was significant to him because he was a newlywed and wanted to provide for his family but was instead faced with a stack of bills he could not pay.
 - It was demeaning to go to a hardware store and be turned down for credit for an appliance. “It’s pretty embarrassing. Anyone can go get a washing machine except me.”
 - He could not be listed on the mortgage for his family home, which made him feel like “a nothing.”
 - When asked what he thought about the carrier’s actions, he said it “feels like somebody rips your heart out a lot of times and jumps up and down on it.”

- He woke up in the middle of the night and thought about the carrier's actions.
- At the time of trial, he had not gotten over what the carrier did.
- The claimant's wife testified:
 - The claimant was a “basket case” when the hospital told him he had no coverage.
 - When the claimant learned that his medical bills would not be paid, it hurt his pride, but the long-term effect was that he felt “useless,” “worthless,” and “degraded” because he couldn't care for his family.
 - The claimant was “a miserable human being” at the time of trial.
- A friend of the claimant testified:
 - Since his claim was denied, the claimant was “keyed up, tense, not happy” and “not the same person.”
 - “He used to be more fun-loving and easygoing and happy all the time and always felt good.”
 - Now “he's not happy” and “something has just totally broke him down.”

In concluding that the claimant presented sufficient evidence of his mental anguish, the court separated the claimant's fears regarding the medical condition itself from his fears regarding how to pay for treatment of the medical condition. The court did not consider the claimant's fear that he might not recover from the medical conditions that formed the basis of his claim. The court considered only that “he was afraid it might not get treated” and his worry “as to how he would be able to pay for the medication.”

The court further noted that the claimant did not need to present evidence that he sought medical treatment for any mental or emotional problem. The evidence showed that the claimant suffered an emotional and mental toll and did not require supporting testimony from a doctor. Additionally, *Bunton v. Bentley*, 153 S.W.3d 50 (Tex. 2004), which sustained a mental anguish award, did not include this type of evidence.

CA Partners v. Spears, 274 S.W.3d 51 (Tex. App.–Houston [14th Dist.] 2008, pet. denied)

A homeowner sued a holder of a deed of trust on the home for violations of the DTPA, among other things, in connection with the deed holder's attempts to foreclose on the home. The trial court awarded \$25,000 to the homeowner for mental anguish.

Noting that “evidence of a claimant's physical and emotional state, coupled with his/her inability to eat and sleep, constitutes legally and factually sufficient evidence to support the award of mental anguish damages,” the court of appeals affirmed the trial court's judgment.

The court of appeals found sufficient the following testimony by the homeowner:

- He is a 64-year-old retired longshoreman, with a high school education.
- He had worked as a longshoreman from 1968 until he retired in 2004.
- He was devastated when the justice of the peace court granted the forcible entry and detainer suit.
- He was devastated because he was faced with the realization that he didn't have anyplace to go, that he and his son were “going to be put out,” and that he only had seven days to figure out how to fight the eviction.
- He was unable to sleep and was “not hardly” able to eat.
- He was unable to sleep and eat because he was thinking about where he was going to live, that he had grown up wishing he had a home of his own, that he had worked for “all these years” to have a home of his own, and suddenly his home was taken by someone he didn't know and from whom he had never borrowed money.
- Thinking these thoughts was devastating to him.
- His thoughts continued – at a minimum – until the forcible entry and detainer was reversed on appeal.
- He was forced to hire a lawyer to appeal the forcible entry and detainer suit to county court, and paid \$2,500 in attorney fees in connection with that appeal.
- He was seeking mental anguish damages “for harassment and the grief and everything [he was] going through.”

The deed holder did not present evidence to contradict the homeowner's testimony.

State Farm Lloyd v. Hamilton, 265 S.W.3d 725 (Tex. App.–Dallas 2008, pet. dismissed)

Insured homeowners sued their insurer for its bad faith failure to pay for foundation damage caused by a plumbing leak.

- The husband testified concerning how he felt when the insurer denied the claim.

- He stressed that the home was he and his wife's main asset.
- He felt violated by the refusal.
- He was diagnosed with depression and has taken medication for that condition.
- He was undergoing a number of other health problems at the time, including a heart transplant.
- He worries about his health because he has a very suppressed immune system as a result of the transplant and does not know how safe the house is.
- He does not sleep well.
- He attributed ninety percent of his emotional problems to this situation, citing financial worries and constant and severe feelings of violation.
- He and his wife had other problems, but these plumbing issues had caused "a lot of emotional problems in [their] marriage."
- The wife also testified about her emotional response to the insurer's denial of the claim:
 - "I went through a variety of emotions. I felt violated. I felt hurt. I felt betrayed. I felt let down. It was just like a flood of emotions came in. Not all at one time, but like one emotion would come and then another emotion."
 - The "roller coaster" of emotions had not let up.
 - She still had nights when she cried herself to sleep over her home, which she thought she had done everything possible to protect.
 - These emotions sometimes make her feel physically ill and often make her cry.
 - Along with feeling the loss of her home, she worried about the safety issues involved with her husband being there.
 - She has a constant fear that he will become ill and die because of his suppressed immune system.
 - She described her home-related problems as severe, constant, frustrating, helpless, and depressing.

Service Corp. Int'l v. Aragon, 268 S.W.3d 112 (Tex. App.—Eastland 2008, pet. denied)

A cemetery improperly buried and transferred decedent to another plot without family's consent.

The court of appeals held that the evidence was sufficient to support past and future mental anguish awards for the decedent's wife, Estela, and one child, Christian. The evidence was sufficient to support past

mental anguish for another child, Rebecca. However, the evidence was insufficient to support mental anguish for the other two children, Erica and Stephen.

Sufficient evidence:

- Estela
 - She panicked when she saw another woman's marker on her husband's grave site and saw that his headstone had been placed on a different plot.
 - She subsequently felt devastated, terrified and nauseated and had trouble sleeping and functioning at work.
 - She started losing clients.
 - She got migraines.
 - She began taking prescription sleep medication.
 - Her doctor referred her to a counselor who diagnosed her with depression, was still treating her at the time of trial, and had recommended that she see a psychiatrist to have antidepressant medication prescribed.
 - Friends and family members testified that she cried frequently and was distraught, depressed, and withdrawn.
- Christian
 - He was not doing well at school or on the cross-country team
 - He had lost sleep, felt sad, and was unable to interact with his friends the same now.
 - He thinks about this incident every day.
 - Estela testified that
 - Christian was terrified and had difficulty sleeping.
 - Even though he was 16, he did not want to leave her side because of fear and anxiety.
 - His grades had suffered.
 - He had become introverted.
- Rebecca
 - She was perplexed and wondered what had happened to her father.
 - She felt lost and panicked.
 - She thought about this every day during her commute.
 - She cried in the morning and afternoon.
 - It has interfered with her work, home life, and health.
 - She has lost sleep.
 - She was depressed.
 - She would wake up panicked.

- But she had not seen a therapist, etc., had remained gainfully employed, and that she did not take any of the sleeping pills or antidepressants offered to her by her doctor.

Insufficient evidence:

- Stephen
 - He testified that this incident had been hard on him and that he did not like coming to Odessa.
 - His school work had been affected because he did not feel comfortable and could not focus.
 - He had not sought counseling or medical help.
- Erica
 - She was scared and confused.
 - She quit working at Barnes & Noble shortly after the funeral because she didn't want to talk to customers.
 - Her grades had suffered.
 - She went to work at Starbucks but was subsequently fired and blamed it on the emotional impact of this incident.
 - She had not seen a therapist or healthcare provider because of this incident.

The court explained that the difference between Estela, Christian, and Rebecca on the one hand, and Stephen and Erica on the other hand, was the degree of pain and impact. Stephen and Erica's testimony failed to establish injury beyond mere emotions or the necessary substantial disruption in daily affairs to constitute mental anguish. Conversely, the others established that this incident had caused more than an emotional reaction and had resulted in substantial disruptions in their daily affairs.

Gilmore v. SCI Texas Funeral Services, Inc., 234 S.W.3d 251 (Tex. App.–Waco 2007, pet. denied)

Relatives of deceased sued the funeral home and cemetery vault company responsible for handling the deceased's remains after a lowering device at the graveside service failed, causing the casket to tip and fall into the bottom of the vault. The jury was charged on breach of contract and negligence claims. It concluded that the cemetery company did not breach its contract and that no negligence on its part caused the occurrence. The jury found that the vault company's negligence was a proximate cause, but awarded no mental anguish damages to the plaintiffs.

The court of appeals held that the jury's failure to award mental anguish damages to the mother of the deceased was so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and reversed. The evidence supporting the mother's mental anguish consisted of the following:

- After the casket fell, the mother was dazed and noncommunicative.
- Although she had handled all of the funeral arrangements up to that point, she was so distraught from the events at the graveside service that she couldn't make arrangements for the reinterment.
- Because of her condition, her husband adjusted his work schedule to avoid leaving her "too long by herself."

The court noted that some evidence supported the jury's refusal to award mental anguish damages: the mother had no memory of the events following the casket's fall until later that evening; she did not seek counseling; and she was already grieving from her child's death. However, on balance, the court concluded that the record contained "substantial evidence that the emotional trauma caused by the incident made it difficult for [the mother] to 'socially interact, or carry on any other activity which, until the time of the alleged injury, [she] could accomplish on a day-to-day basis without difficulty.'"

By contrast, regarding the mental anguish of the deceased's children, the court found that the evidence in the record was slight, and affirmed the jury's refusal to award them damages. Each of the children expressed some shock and testified that he or she turned away or left and did not have much memory after the event.

Beaumont v. Basham, 205 S.W.3d 608 (Tex. App.–Waco 2006, pet. denied)

A ranch's former bookkeeper sued the ranch owner and her daughter for defamation, theft, and invasion of privacy, among other things. After the bookkeeper left her position, the daughter and a ranch employee broke into the bookkeeper's house to look for items the owner claimed the bookkeeper had stolen. The ranch owner and daughter also made defamatory statements, accusing the bookkeeper of embezzlement and sexual relations with a minor. The jury awarded \$100,000 for past mental anguish and \$25,000 for future mental anguish in connection with the defamation claim. The jury additionally awarded \$85,000 in mental anguish damages in connection with the theft and invasion of privacy claims.

The ranch owner and daughter argued on appeal that there was no evidence or factually insufficient

evidence to support the awards and that the bookkeeper failed to differentiate between the mental anguish caused by defamation, theft, and invasion of privacy.

The court found the following evidence supported the jury's mental anguish award:

- The bookkeeper was “very humiliated and embarrassed” at her son’s basketball game after her friend walked away from her and “everybody’s neck was breaking to look at me,” which caused her to leave and wait in the car.
- She experienced similar situations at other sports events.
- There was “a lot of whispering.”
- She was “totally devastated” when she learned that one of the defendants instructed a ranch employee to spread rumors about her in town.
- Because of her embarrassment and humiliation, the bookkeeper stopped going to town as much as possible; she avoided her children’s school functions; and she shopped for groceries in another town.
- When she did go to town, she had anxiety attacks, which included shortness of breath and an accelerated heart rate.
- She had many sleepless nights, which continued through the date of trial.
- She thinks about it “every minute of my life.”
- Her “heart drops” whenever she hears a knock at the door because she is “thinking what else Ms. Beaumont is going to do to me.” This testimony referred to an occasion when the sheriff’s deputies came to search her home in response to defendants’ false report of embezzlement.
- She moved to another town because “couldn’t take living there anymore,” which caused separation from her sons because they chose to stay with their father in their hometown.
- She is no longer able to trust people, feels “very uncomfortable” in social settings, has “basically become isolated,” and does not participate in social events held at her new employer’s location.
- Her dating life has been significantly affected. She is afraid to get close to people because she is afraid they will hurt her.
- She sought counseling for a period of time but couldn’t afford to continue it.
- With regard to the break-ins, the bookkeeper testified that:
 - Her dating life had been adversely affected because it is difficult to start a new

relationship “with as much emotions as I’m having to deal with.”

- “This experience just consumes me. It’s like this is just all that is on my mind all the time.
- Her feelings and anxieties have not improved in the four years since the ranch owner and her daughter committed the wrongful acts.

The court concluded that there was no doubt the bookkeeper suffered mental anguish as a result of the defamation, and held that the testimony constituted some evidence and/or factually sufficient evidence to support the award of past mental anguish.

Additionally, the amount of \$100,000 for past mental anguish on the defamation claim was fair and reasonable, comparing the award to ones in other cases.

The evidence was factually sufficient to support the \$25,000 award for future mental anguish because the bookkeeper’s anxieties had not improved in the four years since the incidents. The amount was fair and reasonable.

Regarding the claims for theft and invasion of privacy, the bookkeeper specifically testified that the break-ins directly affected her dating life, that she is “consumed” by the intrusions, and they are constantly on her mind. And while she “did not testify that she was afraid to live in her home after the break-ins or that the loss of her family photos shocked or devastated her, the jury could consider her testimony about the emotional impact of the break-ins together with her testimony about the emotional impact of the defamatory statements and conclude that the break-ins caused additional injury.” The record thus supported the awards and amounts of awards for theft and invasion of privacy.

Houston Livestock Show & Rodeo, Inc. v. Hamrick, 125 S.W.3d 555 (Tex. App.—Austin 2003, no pet.)

Three students who participated in a livestock show and their parents sued the livestock show for violations of the DTPA and defamation after they were disqualified and denied prizes when their animals were improperly found to test positive for prohibited drugs. A jury awarded each family \$100,000 for mental anguish damages (\$25,000 for each parent, and \$50,000 for each student, except for the third student who received \$100,000 and his parents none).

The court of appeals found the evidence sufficient to support these awards:

- The first student:

- She was on many occasions confused and sick to her stomach over the incident and from explaining the events at school.
- She would sometimes cry at school.
- She experienced additional embarrassment and nausea when she explained the events surrounding the disqualification to her employer.
- First student's mother:
 - Her migraine headaches increased in frequency from stress and worry about the incident.
 - She was sick to her stomach.
 - She lost sleep.
 - She worried herself until physically ill.
- First student's father:
 - He was humiliated and had knots in his stomach when he offered to resign from the school board.
 - He also quit attending chamber of commerce meetings because he didn't feel he could face them.
- The second student:
 - After the disqualification he "had a few sleepless nights, some loss of appetite," and knots in his stomach.
 - The second student's mother testified that his grades suffered because of the incident and that she had to consult with his teachers about it.
- The second student's mother:
 - She cried often.
 - She stopped going to shows.
 - She lost interest in starting planned businesses.
 - She did not eat or sleep when she thought of the disqualification.
- The second student's father:
 - He and his wife were consumed with the disqualification.
 - He was overlooking everything else in his life.
 - He was not sleeping well.
 - His daily routine was all but stopped.
 - The family's self-esteem was completely taken away.
- Negative effects remained in his business dealings.
- The third student:
 - He was scared when questioned by the FDA investigators.
 - At the annual FFA banquet, where he was expecting awards, he received none, unlike past years, which caused him to leave the banquet before its conclusion.
 - The disqualification affected his stomach, made him want to stay away from people, and that the news was in his head at all times.
 - The 3rd student's father testified that
 - after the disqualification, the student was irritable,
 - did not want to go to school,
 - no longer rose early to take care of his animals.

Valley Nissan, Inc. v. Davila, 133 S.W.3d 702 (Tex. App.–Corpus Christi 2003, no pet.)

The purchaser of a vehicle sued the car dealership for DTPA violations after a salesman misrepresented that the purchaser had been approved for financing. The purchaser was awarded \$2,500 for mental anguish damages.

The court of appeals found the following evidence sufficient:

- The purchaser testified,
 - "They humiliated me in front of their employees and threatened to call the cops if we left with the truck and kind of rushed us to hurry up and get our stuff out and watched us do it... They used vulgar language towards Mr. Rodriguez and I."
 - Purchaser had no way to get home and had to call someone to pick them up.

The court reasoned that the evidence showing the public humiliation of having one's truck repossessed provides some evidence to support the jury's finding on mental anguish.

The amount was also not unreasonable in light of the facts.

Texas Farmers Ins. Co. v. Cameron, 24 S.W.3d 386 (Tex. App.–Dallas 2000, pet. denied)

An insured husband and wife sued their homeowners insurer for breach of the duty of good faith and fair dealing after the insurer wrongfully denied their fire damage claim on the basis of arson.

The jury awarded \$252,000 to the husband for his mental anguish, and \$336,000 to the wife for her mental anguish. The court of appeals affirmed the award to the wife, but reversed the award to the husband.

Regarding the wife's mental anguish, the court of appeals found the following evidence legally and factually sufficient:

- She testified that she was “terrified” at the accusation of arson.
- She felt devastated going to work and took time off.
- She suffered insomnia to such an extent that she went to a doctor to obtain prescription medication for it.
- She dramatically reduced her participation in church activities.
- She lost her appetite.
- She had crying spells.

In concluding that the evidence was factually sufficient to support the wife's mental anguish award, the court compared the case to *Tidelands Auto. Club v. Walters*, 699 S.W.2d 939, 940 (Tex. App.–Beaumont 1985, writ ref'd n.r.e.). In that case, a life insurer denied coverage, alleging that the insured had been intoxicated at the time of death. The Beaumont court held that the evidence was legally and factually sufficient to support mental anguish where the plaintiff, upon being informed of the allegations, was “upset,” suffered insomnia, withdrew from society, consulted a doctor, and could not comprehend what had happened. The *Cameron* court found the facts supporting mental anguish in *Tidelands* to be nearly identical to those supporting the wife's mental anguish.

However, regarding the husband's mental anguish, the court found that the following evidence was legally insufficient and reversed the jury's award:

- He “felt bad” that the insurer accused him of being an arsonist.
- He was upset at the accusation because the insurer was saying he was “some type of criminal.”
- He was mad that the insurer persisted in accusing him of arson even during trial.
- He noticed his wife lose interest in her church activities.
- His wife became irritable and their relationship became strained.

The court found that direct evidence concerning the husband's mental state was scant and showed “no more than that he suffered vexation, anger, and resentment. Indeed, his statements on his mental state are entirely

conclusory, without detailing any specific effects or symptoms.”

Wyler Indus. Works, Inc. v. Garcia, 999 S.W.2d 494 (Tex. App.–El Paso 1999, no pet.)

A former employee sued his employer for wrongfully firing him after he filed a workers' compensation claim. The jury awarded him \$60,000, which included damages for mental anguish, although the damage elements were not segregated.

The court of appeals found the following evidence sufficient:

- Plaintiff testified:
 - I felt humiliated.
 - I felt like – you know, I always wanted to be an employee of Wyler because that was my object to be there a long time and be with the company that I so much desired to work for. And, you know, all my dreams went down, you know, that they would lay me off just like that when I knew there was work. ...
 - But I felt, like, humiliated and, I mean, it's like I was crying inside.
 - Well, like I said, I just felt I had been lied to and I felt like I had lost something that I had so much worked for, to be a member of Wyler, Incorporated, you know.
 - And I just felt like I had been humiliated. I mean, it's a feeling that, you know, I can't really describe, you know. You know, it was sad for me. It was sad.
 - Physically I felt – like I say, I felt humiliated and I just, you know, I lost my self-esteem, you know.
 - I didn't sleep that good and I was having marital problems with my wife, and I was grouchy with my kids.
 - And I just feel like, you know, feeling that I was empty. I felt empty. I really felt empty, you know.
 - We, me and my wife, had little problems, you know, and I was getting grouchy.
 - And, you know, I pay child support and my ex-wife was, you know, coming down pretty hard.
 - Couldn't pay the rent.
 - And I couldn't give my kids what they wanted. I couldn't pay no child support.
 - I felt, you know, like doing nothing, just sleeping all day.
 - But other than that, I couldn't help my wife with the bills, you know, stuff like

that. Stuff that, you know, a man usually does to help out the family.

- He had not visited with a psychiatrist, counselor, etc., and his mental anguish lasted only a few months until he secured new employment.

But the court found that the employee's testimony regarding his loss of self-esteem, humiliation, sleeping disorders, his inability to pay child support and bills, and his additional testimony that he continued to get a knot in his stomach whenever he saw his employer's truck, sufficient to support the mental anguish award.

There was also some testimony designed to quantify the amount of damages, but the jury returned a verdict in a far lesser amount.

Stevens v. Nat'l Educ. Ctrs., Inc., 990 S.W.2d 374 (Tex. App.—Houston [14th Dist.] 1999), pet. denied, 11 S.W.3d 185 (2000)

A former employee sued her employer for wrongfully terminating her in retaliation for filing a worker's compensation claim. The jury awarded the employee \$125,000 in mental anguish damages.

The appellate court found the evidence was legally and factually sufficient:

- The employee testified:
 - She felt devastated and depressed as a result of her termination.
 - She did not leave the house much.
 - She lost weight.
- The employee's sister testified:
 - She witnessed the employee's devastation and depression.
 - The employee did not eat for a long time.
 - The employee lost weight.
 - The employee became very moody.

El-Helbawi v. Johnson, No. 09-97-031-CV, 1998 WL 336658 (Tex. App.—Beaumont June 25, 1998, no writ) (not designated for publication)

Plaintiff sued defendant for negligence and DTPA violations in connection with repair work the defendant performed on plaintiff's van. The van caught fire and burned as plaintiff's husband drove it away from defendant's service station. The jury awarded \$10,000 to plaintiff for mental anguish damages.

The court of appeals found the evidence legal sufficient:

- The plaintiff testified:

- She was frustrated by constant unsuccessful trips to the service station.
- The defendant's wife called her with the news that her van was burning up.
- Until she arrived on the scene she did not know if her husband was in the van and had perished in the fire.
- Plaintiff's husband was smudged and burned, and the hair on his arms and face had burned.
- Watching the van burn caused a lot of anxiety for which she went to the doctor.

Furthermore, the Plaintiff also brought a claim for IIED because, which also supported mental anguish damages:

- After she initially sued defendant, plaintiff received two threatening phone calls, which caused her to fear for her life
- She became so upset she went to her doctor for pills because she couldn't sleep for fear of what might happen to them at night while they were in bed.

Tony Houseman Assocs. v. Couch, No. 09-94-384CV, 1996 WL 125529 (Tex. App.—Beaumont Mar. 21, 1996, no writ)

Plaintiffs owned a mobile home and hired defendant to manage and lease it after they moved to another state. The mobile home was severely and structurally damaged by tenants, and the plaintiffs sued the defendant under the DTPA for failing to properly manage and inspect the mobile home and for failing to evict the tenants earlier to minimize the damage. The plaintiffs were awarded \$4,000 each for past mental anguish.

The court found that the evidence was legally and factually sufficient to meet the *Parkway* standard of showing the nature, duration, and severity of the mental anguish.

- Plaintiffs testified about trusting their most valuable asset to defendant and to the extensive damage resulting from defendant's failure to inspect and make repairs.
- The plaintiffs had no money to hire a contractor and so had to travel and work on the repairs themselves over two years.
- Upon first seeing the damage, the husband plaintiff testified that
 - he was shocked, depressed, and angry;
 - he went home and cried about it.

- His sister-in-law testified that
 - the husband was devastated,
 - the wife wouldn't let her help clean because she was ashamed of having her look at it.

The defendant argued that the evidence was insufficient because it did not show “sleepless nights, upset stomachs, resort to medical care or counseling, interference with normal life activities due to their emotional anguish, or even an impact on their relationships.” However, the court rejected this argument, in light of the facts and circumstantial evidence, because “the overall facts create such an intensity of commonly shared emotions to which the fact-finder can relate without benefit of prompting,” and so there was no requirement for detailing descriptive adjectives.

III. CASES FINDING EVIDENCE INSUFFICIENT TO SUPPORT MENTAL ANGUISH

Gunn Infiniti, Inc. v. O'Byrne, 996 S.W.2d 854 (Tex. 1999)

A customer sued a car dealer for DTPA violations and fraud for selling a damaged and repaired vehicle as new. The jury awarded the customer \$11,000 in mental anguish damages.

The supreme court reversed, finding the evidence legally insufficient.

- The customer testified:
 - ...I have a constant, a constant mental sensation of pain or a rude awakening.
 - It's like a nightmare every time I see the car.
 - It's parked underneath my garage at home. I have stopped driving the car. I probably have put maybe 5,000 miles on it within the last year.
 - I get to the point to where I can't stand to be in the car.
 - I noticed imperfections and I'm detail oriented, but this is obvious.
 - You can see the discoloration of the hood doesn't match the fenders of the car. Imperfections on the air dam. You can see a chalky appearance.
 - The unreliability again takes into consideration for a lot of anguish, a lot of grief.
 - I have some severe disappointment both in myself and the dealership, my faith to ever do business again.

- I felt like I'm publicly humiliated.
- Yes, my friends do give me a lot of grief. ... My friends pick on me a lot. I had bragged about getting a new car.
- It was a major purchase for me. I had not purchased a home. This was my biggest purchase ever in my life. You know, they all told me, “You shouldn't buy the Infiniti. You shouldn't do that.” ...
- Again, after putting up with ridicule from my friends, I feel embarrassed. I told my family, I told my friends what I was doing. I thought I was making a proper decision.

The court found that this testimony was not legally sufficient of mental anguish because it did not “rise to the level of a ‘high degree of mental pain and distress’ that is ‘more than mere worry, anxiety, vexation, embarrassment, or anger. Nor is there any evidence that there was a substantial disruption in [the customer's] daily routine.’”

Further, many of his feelings were unrelated to the dealer's DTPA violations – he received grief from his friends because he bought an Infiniti, not because of the dealer's misrepresentations about this Infiniti. The testimony about the car's reliability related to the fact that the car had to be repaired for unrelated defects, and the remainder of the testimony was conclusory and did not present evidence of the nature, duration, or severity of his mental anguish.

Saenz v. Fidelity & Guaranty Ins. Underwriters, 925 S.W.2d 607 (Tex. 1996)

An employee sued her employer's worker's compensation carrier and adjuster for wrongfully inducing her to settle her claim. The jury awarded the employee \$50,000 for past mental anguish and \$200,000 for future mental anguish damages.

The supreme court found the evidence insufficient. The only evidence to support mental anguish was the following testimony:

Q. Can you tell the jury what it is that you were concerned about this lifetime medical benefits and who was going to wind up paying for the lifetime medical benefits that you were told you were going to incur?

A. I worried about that a lot. My husband was already working two jobs, and I was worried also that we were going to lose our house because when we bought it we had two incomes, and I knew that we couldn't afford the medical bills that we were going to have.

The court explained that this testimony was insufficient:

“In [*Parkway*], we held that mental anguish damages could not be awarded without either ‘direct evidence of the nature, duration, or severity of [plaintiffs’] anguish, thus establishing a substantial disruption in the plaintiffs’ daily routine’, or other evidence of ‘a high degree of mental pain and distress’ that is ‘more than mere worry, anxiety, vexation, embarrassment, or anger.’ The two sentences of Saenz’ testimony quoted above do not fall into either category.”

The court further found that there was no evidence to justify the amount of \$250,000 that the jury awarded.

***Netco, Inc. v. Montemayor*, No. 01-09-00705-CV, 2011 WL 1233382 (Tex. App.–Houston [1st Dist.] Mar. 31, 2011, no pet.)**

Home buyers sued their escrow agent, alleging that it breached its fiduciary duties by failing to pay money it held in escrow to a valid lien holder upon closing of a real estate transaction.

The court of appeals reversed the home buyers’ mental anguish award, finding that it was not supported as a matter of law under *Parkway*.

- Only one of the home buyers testified.
- She stated that the agent’s error made her feel:
 - “basically pretty furious,”
 - “pretty devastated and furious to say the least,” and
 - “extremely furious.”

***Barnett v. Home of Tex. and Warranty Underwriters Ins. Co.*, Nos. 14-09-01005-CV & 14-10-00197-CV, 2011 WL 665309 (Tex. App.–Houston [14th Dist.] Feb. 24, 2011, no pet.)**

After experiencing problems with their home’s foundation, home buyers sued home warranty providers alleging, *inter alia*, fraud and DTPA violations. The jury awarded \$50,000 for mental anguish damages.

The court of appeals found the evidence insufficient.

- The only evidence cited by the home buyers in support of their mental anguish finding was the husband’s testimony.
- He testified:

- He was angry.
- Living in the house was difficult.
- He felt that he had not protected his wife.
- The past three years had been a nightmare.
- The couple does not entertain family in the home because their family only wanted to discuss the problems with the house.
- He was embarrassed and that there was no joy between the couple when they were in the home.
- The issue had not affected his sleep and acknowledged that he had not seen a doctor regarding any issues relating to the home.

***Finger v. Ray*, 326 S.W.3d 285 (Tex. App.–Houston [1st Dist.] 2010, no pet.)**

A former client sued her former attorney, alleging that the attorney committed breach of fiduciary duty and DTPA violations while representing the client in bankruptcy litigation to recover a judgment she had previously obtained from the debtor. The trial court granted summary judgment for the attorney, which the court of appeals affirmed, finding the evidence insufficient.

In support of her mental anguish claim, the client offered her deposition testimony:

Q. Have you ever seen – and by “see,” I mean been treated by or evaluated by any psychiatrist, psychologist or mental healthcare provider for mental anguish that you say was caused by M. Ray or Weycer Kaplan?

A. Not from the dates that you’re requesting.

Q. Ms. Finger, have there been any physical manifestations of this mental anguish you say you suffered as a result of the conduct of Mr. Ray and Weycer Kaplan?

A. Yes, sir.

Q. What are those?

A. I had anxiety, heart palpitations and loss of hair, stress, just went in for a stress test and had to get-- couldn’t sleep.

Q. All as a result of Weycer Kaplan and Mr. Ray?

A. Well, I don't really have a lot of other stress in my life. I'm not a person that doesn't handle stress. I've lived through 9/11 in my industry. I live it every day. I've never been to any kind of therapists, doctors, help or anything else with any stress-related problems.

Q. Did Mr. Reitman maybe cause some of that stress?

A. Oh, I'm sure he did but not something that I can't handle because I think that I'm the type of person that if something ends and is okay by me, then it's okay. But if something ends to where I feel like it can't be peaceful or without closure that has been totally mishandled, that's where the stress comes in.

The court found that, like the plaintiff in *Parkway*, the client's testimony established emotions – worry, anxiety, and stress – due to the lawyer's conduct, but did not present evidence of a “high degree of mental pain and distress” that was “more than mere worry, anxiety, vexation, embarrassment, or anger” and that caused a “substantial disruption” in her daily routine.

Safeshred, Inc. v. Martinez, 310 S.W.3d 649 (Tex. App.–Austin 2010, no pet.)

A former employee sued his employer for terminating him after he refused to commit an illegal act. The trial court awarded the employee \$10,000 in non-economic damages, including mental anguish damages.

The appellate court reversed the mental anguish award, finding the evidence legally insufficient.

- The employee testified:
 - The ordeal was “very stressful” and caused him to lose “a lot” of sleep.
 - He experienced sleeplessness, stress, and anxiety due to hauling illegal loads, being fired, and being forced to search for another job.

Hernandez v. Maxwell GII, Ltd., No. 04-07-00744, 2008 WL 4595025 (Tex. App.–San Antonio Oct. 15, 2008, no pet.)

Car buyers sued their dealer, seeking mental anguish arising from their reliance on the dealer's

misrepresentation that they were purchasing a new car, when in fact it was a used car.

The court held that the evidence, an affidavit from one of the plaintiffs, was insufficient:

- “When my wife and I learned that Mr. Riojas had made intentional misrepresentations to us, both my wife and I suffered extreme mental anguish that resulted in, among other things, loss of sleep.”
- “The loss of sleep that I observed in both my wife and myself occurred immediately after we learned we had been cheated by Smith.”

EMC Mortgage Corp. v. Jones, 252 S.W.3d 857 (Tex. App.–Dallas 2008, no pet.)

Husband and wife homeowners sued their mortgage company for DTPA and Debt Collections Practices Act violations, among other things, in connection with the mortgage company's mishandling of the homeowners' mortgage and the consequential foreclosure on their home. The jury awarded each of the homeowners \$5,000 for past mental anguish and \$2,000 for future mental anguish.

The court of appeals reversed the mental anguish awards,³ finding that the following evidence was legally insufficient under the *Parkway* standard.

Regarding the husband's future mental anguish,

- The husband testified:
 - He felt emasculated, embarrassed, depressed and afraid because of the situation with the mortgage company.
 - He did not feel as though he could perform his “masculine responsibilities.”
 - A doctor prescribed medication for depression.
 - He was unable to sleep.
- The wife testified:
 - She observed her husband suffering the difficulties he attested to.

The court determined that there was no evidence of the husband's future mental anguish: “There was no indication of any of the difficulties about which Jones testified will continue in the future. There is no testimony about whether he will be required to continue taking medication for depression. Indeed,

³ The mortgage company did not challenge the husband's award of past mental anguish, so it was not reviewed. Only his award for future mental anguish was reviewed and reversed. The wife's awards for both past and future mental anguish were reviewed and reversed.

there is nothing to establish the duration or the severity of the mental anguish anticipated in the future.”

There was little evidence presented regarding the wife’s mental anguish.

- The wife did not testify about her own mental anguish. Instead, her testimony was limited to observations about her husband.
- The husband testified that his wife had been affected “in much the same way ... I know it’s taking a toll on her too.”

The court found that the husband’s testimony about his wife was insufficient because it failed to “provide details of the nature, duration, or severity of Patricia Jones’ mental anguish” and, furthermore, was conclusory.

Tranum v. Broadway, 283 S.W.3d 403 (Tex. App.–Waco 2008, no pet.)

The former general manager of a car dealership brought malicious prosecution action against the dealership’s controlling shareholder, who had accused the manager of embezzlement. The trial court awarded \$500,000 in mental anguish for malicious prosecution.

The court of appeals found the evidence insufficient.

- The dealer testified:
 - He had suffered “mental strain” and worried “about it every day.”
 - He was subjected to a grand jury investigation.
 - He received harassing calls from creditors.
 - He was “scared to death” to testify before the grand jury.
 - He blamed the conflict with the dealership for his two divorces.
 - He “became withdrawn and distant,” trying to cope and “sustain a life to support a family and pay bills, just the day-to-day pressures.”
 - He did not see a psychiatrist or psychologist, but spoke to his family doctor, with which he did not feel comfortable.
 - He was offered antidepressants but refused them.
 - He had difficulty finding a comparable position at another dealership during the subsequent 5 years, due to rumors.
 - He had to remortgage his home, sell his other real estate, and no longer owned a car.

- He wonders “how people still think about it,” “how they still think about me,” “what they still think about me,” and “whether I should stay here or just pack up and move off.”

Comparing the evidence to that in *Parkway* and *Saenz*, the court concluded that the evidence didn’t “rise to the level of establishing a substantial disruption in his daily routine or a ‘high degree of mental pain and distress’ necessary for compensable mental anguish.”

However, the general manager also brought a slander claim, and the court found that the jury’s mental anguish award of \$250,000 was proper because the shareholder’s statements were slanderous per se, which therefore gave rise to a presumption of mental anguish damages.

Meduna v. Holder, No. 03-06-00484-CV, 2008 WL 1911184 (Tex. App.–Austin Apr. 30, 2008, pet. denied)

In a probate dispute, a sister sued her brothers for tortiously interfering with her inheritance.

The court of appeals reversed the sister’s mental anguish damage award, finding that the evidence was insufficient and comparing it to that offered in the *Saenz* case.

- Sister felt “betrayed” by her brothers,
- She was “very unhappy with them,” and
- She was “very sad that they would do something like this.”

El-Khoury v. Kheir, 241 S.W.3d 82 (Tex. App.–Houston [1st Dist.] 2007, no pet.)

Plaintiff sued defendant for defamation, alleging that defendant falsely accused him of not paying a debt.

The court of appeals reversed the judgment favoring plaintiff, finding the evidence was legally insufficient to support the jury’s \$25,000 award for mental anguish.

- The plaintiff testified:
 - He experienced stress and anxiety.
 - He lost weight.
 - He experienced headaches.
 - He had difficulty sleeping that sometimes required him to take a sleeping pill.
- His wife testified:
 - The plaintiff was “half the man he was.”
 - He was “very stressed.”
 - He had difficulty sleeping.

Furthermore, the court found “the record lacks any evidence from which the jury might have derived the \$25,000 amount awarded.”

Medical Protective Co. v. Herrin, 235 S.W.3d 866 (Tex. App.–Texarkana 2007, pet. denied)

A doctor sued his malpractice insurer for violating the DTPA. The doctor argued that the insurer’s decision not to renew his policy “forced” him into early retirement. The only DTPA damages awarded by the jury were for the doctor’s mental anguish.

The following evidence was determined to be legally insufficient:

- The doctor felt “terrible” when he received the nonrenewal notice from the insurer.
 - He was “tremendously” upset that the insurer’s letter said his claims were frequent and severe.
 - He felt like he could no longer get his work done as easily as he once could, and that his work was no longer as pleasant.
 - His work became more difficult instead of being enjoyable.
 - He engaged in uncharacteristically risky behavior, which at one point he attributed to becoming somewhat suicidal, although he later admitted he was never truly suicidal.
- In its analysis, the court identified several things missing from the evidence:
- The doctor did not elaborate on what he meant by feeling “tremendously” upset.
 - He provided no testimony or evidence that his mental anguish had any detriment to his physical health.
 - He presented no evidence that he sought professional psychiatric assistance or medication to help him cope with his mental anguish
 - There was no testimony from the doctor or other witnesses regarding the severity of any anguish that demonstrated a substantial disruption to the doctor’s daily routine.

Burditt v. Whataburger, Inc., No. 01-05-00531-CV, 2006 WL 3628885 (Tex. App.–Houston [1st Dist.] Dec. 14, 2006, no pet.)

Plaintiff, a Whataburger customer, was incorrectly accused by Whataburger employees of passing a counterfeit bill, asked to wait on premises while they called the police, and was questioned in front of his family. He sued Whataburger for negligence, among other things.

The court of appeals affirmed Whataburger’s no-evidence summary judgment, finding that there was no evidence of damages.

- Plaintiff’s affidavit stated that he was humiliated and embarrassed in front of his family as a result of Whataburger’s incorrectly validating his payment.

Froemming v. Perez, No. 04-05-00514, 2006 WL 704479 (Tex. App.–San Antonio Mar. 22, 2006, no pet.)

A parent of an orthodontics patient sued the orthodontist for DTPA violations. The jury awarded \$21,000 for mental anguish

The court of appeals found the evidence of mental anguish insufficient:

- Parent testified:
 - Well, it was, I was very angry because they didn’t come up with what they said they were going to do. ...
 - I was angry because brackets were supposed to come off before graduation pictures, graduation dance, and all of that that she was looking forward [to] and that didn’t happen.
 - Because of that, Melinda [had a] very low self-esteem.
 - She was very angry at me because I couldn’t do anything more for her, and, you know, fearful of infections because the doctor waited for so long with no treatment.

Anderson v. Long, 118 S.W.3d 806 (Tex. App.–Fort Worth 2003, no pet.)

A buyer of a customized horse trailer sued the sellers for DTPA violations. The court found the evidence insufficient:

- The buyer testified:
 - The trailer had been the source of extreme fright, constant worry, extreme apprehension, and nervousness on a daily

- basis for nearly the entire time she had owned it.
- She was frightened that her trailer was going to burn down because she knew at least three customers of the sellers whose modified trailers had “burned to the ground” or suffered severe fire damage.
 - The experience had caused her to lose sleep and had been “extremely nerve racking” and “extremely embarrassing on a daily basis” during the time in which she owned the trailer.

Bellogs v. San Miguel, No. 14-00-00071-CV, 2002 WL 835667 (Tex. App.–Houston [14th Dist.] May 2, 2002, pet. denied)

A client sued her attorney for DTPA violations for forcing her to accept less than half of a settlement offer relating to the death of her child. The client was awarded \$12,500 in mental anguish damages.

The court of appeals found the evidence did not warrant an award of mental anguish damages.

The client offered only the following testimony regarding her mental anguish:

“Q. Well, I don’t understand why you have a – some trouble understanding now that it’s 2 million or 3 million when the agreement says 3 million. Were you upset?”

A. Yes, sir.

Q. Were you feeling threatened?

A. Yes, sir.

Q. Were you feeling coerced?

A. Yes, sir.”

The court found that this testimony failed to show that the attorney’s actions “caused any disruption to her daily routine. In other words, she has presented evidence of nothing more than mere emotions.”

IV. CONCLUSION

Plaintiffs seeking mental anguish damages need to satisfy the *Parkway* test. To do so, drawing from the cases summarized above, some good practices for plaintiffs to employ are the following:

1. Even if the case is a type in which mental anguish can be inferred (such as slander per se), the plaintiff should still present evidence to satisfy *Parkway*.

2. Present evidence on each component of the *Parkway* standard: the nature, duration, and severity of the mental anguish. Plaintiff’s lawyers should ask questions geared towards each component.
3. Simply describing emotions, no matter how eloquently, is conclusory and will not be considered sufficient. The evidence must show *how* the emotions affected the plaintiff’s life.
4. Evidence of mental anguish can come from sources other than the plaintiff. Have other witnesses or documents corroborate the plaintiff’s testimony, if possible.
5. Expert testimony is not required to prove mental anguish, but it may be helpful, especially if the plaintiff has received professional treatment.
6. Separate mental anguish due to the defendant’s conduct from mental anguish due to other exigencies, such as grieving for a decedent.

Appendix A: Sample Outline of Interview Questions to Show Mental Anguish**1) Background: Relationship of JG and MG**

- a) How would you describe your parents' relationship?
- b) How long were they married?
- c) Was it happy? Were they close? Please tell us about that?

2) Background: MG's illness and death

- a) When did MG become ill.
- b) Please describe that.
- c) Was his death sudden?
- d) Was it unexpected?
- e) What was JG's emotional state?

3) Need to describe the nature, duration, and severity of m/a.

- a) How would you describe JG's emotional reaction to what happened?
- b) How long has this continued?
- c) How severe has it been?
- d) Did it disrupt her life and daily routine?
- e) How?
- f) Could you distinguish between her grief over the loss of MG, and her emotional reaction to his grave being desecrated?
- g) Specifics:
 - i) has she been depressed?
 - ii) unable to sleep?
 - iii) angry?
 - iv) tense?
 - v) headaches?
 - vi) nightmares?

- vii) nausea?
- viii) physically ill?
- ix) stomach problems?
 - (1) e.g., knots in her stomach
- x) affect her appetite?
- xi) nervous?
- xii) anxious?
- xiii) upset?
- xiv) hurt?
- xv) has it affected her ability to trust?
- xvi) has she felt betrayed?
- xvii) devastated?
- xviii) affected her relationship with others?
- xix) has she acted differently?
- xx) has she become withdrawn?
- xxi) has she cried?
 - (1) how often?
 - (2) what causes her to cry?
- xxii) has it affected her happiness?
 - (1) how would you describe before and after?
- xxiii) affected her ability to engage in other activities?

- xxiv) has she been afraid?
 - (1) what is she afraid of?
- xxv) feelings of helplessness?
- xxvi) physical reaction?
- xxvii) high blood pressure?
- xxviii) shakes?

- xxix) stress?
- xxx) worried?
- xxxi) heart racing?
- xxxii) how often does she recall the event?
- xxxiii) what does she say?
- xxxiv) what impact on her?

4) How did she learn that MG's grave had been desecrated and his body had been moved?

- a) What emotional impact did that have?
- b) How do you know?
- c) What did she say about her feelings?
- d) What did you see about her feelings?
- e) How long did this go on?
- f) How severe was this?
- g) Did it cause physical symptoms?
- h) How do you know?
- i) How long have those lasted?
- j) Did it disrupt her life and daily routine?
- k) How?

5) How did she learn that SCI had lied to them about MG's body being moved?

- a) What emotional impact did that have?
- b) How do you know?
- c) What did she say about her feelings?
- d) What did you see about her feelings?
- e) How long did this go on?
- f) How severe was this?
- g) Did it cause physical symptoms?
- h) How do you know?

- i) How long have those lasted?
- j) Did it disrupt her life and daily routine?
- k) How?

6) Why did the family decide to exhume MG's casket?

- a) What emotional impact did this have on JG?
- b) How do you know?
- c) What did she say?
- d) What did you see?
- e) What physical reaction?
- f) How severe was this?
- g) How long have the lasted?
- h) Did it disrupt her life and daily routine?
- i) How?

7) Has this lawsuit caused her to continue to suffer m/a?

- a) This lawsuit has continued now for 10 years after MG's death.
- b) What emotional impact did the lawsuit have on JG?
- c) How do you know?
- d) What did she say?
- e) What did you see?
- f) What physical reaction?
- g) How severe was this?
- h) How long have the lasted?
- i) Does she continue to grieve for MG?
- j) Is this suffering beyond her grief for MG?
- k) Did it disrupt her life and daily routine?

l) How?

8) Today

- a) Does the desecration of MG's grave continue to have an emotional impact on JG today?
- b) What emotional impact does this continue to have on JG?
- c) How do you know?
- d) What did she say?
- e) What did you see?
- f) What physical reaction?
- g) How severe was this?
- h) How long have the lasted?
- i) Does she continue to grieve for MG?
- j) Is this suffering beyond her grief for MG?
- k) Did it disrupt her life and daily routine?
- l) How?

9) Future

- a) Will the desecration of MG's grave continue to have an emotional impact on JG into the future?
- b) What emotional impact does this continue to have on JG?
- c) How do you know?
- d) What did she say?
- e) What did you see?
- f) What physical reaction?
- g) How severe was this?
- h) How long have the lasted?
- i) Does she continue to grieve for MG?
- j) Is this suffering beyond her grief for MG?
- k) Does it still disrupt her life and daily routine?

- i) How?
- l) How often does she think about the desecration of MG's grave?
- m) Will it ever go away?
 - i) Why not?

10) Has JG sought professional help?

- a) What help has she sought?
- b) What treatment?
- c) What medications?
- d) How does this relate to her emotional state because of the desecration of MG's grave?