

RECENT TEXAS CASES INVOLVING COMPENSATORY DAMAGES

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INTRODUCTION

As we all know, a key part of any case involves maximizing (or minimizing) the potential damage award. This paper is intended to help you track recent cases involving the amount of damages awarded by the fact-finder, with various rules and levels of scrutiny. This paper attempts to track recent developments on appeal involving “soft”—that is, compensatory—damages. The process of awarding damages for amorphous, discretionary injuries such as mental anguish is inherently difficult because the alleged injury is a subjective, unliquidated, non-pecuniary loss. *Dawson v. Briggs*, 107 S.W.3d 739, 750 (Tex. App.—Fort Worth 2003).

A commonly-challenged subset of compensatory damages includes damages for mental anguish or emotional distress. To recover for mental anguish, a party must establish either a substantial interruption in her daily routine or a high degree of mental pain and distress that is greater in degree than mere worry, anxiety, vexation, embarrassment, or anger. *Hancock v. Variyam*, 400 S.W.3d 59, 68 (Tex. 2013) (citing *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995)); *Katy Springs & Mfg. v. Favalora*, 476 S.W.3d 579, 594 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). Specific evidence of the nature, duration, and severity of the mental anguish must be presented. *Hancock*, 400 S.W.3d at 68.

Injury to reputation, another common type of compensatory damages, often arises in the defamation context. The Supreme Court has recently held that a corporation can recover for injury to reputation. *Waste Mgmt. of Tex., Inc. v. Tex. Disposal Sys. Landfill, Inc.*, 434 S.W.3d 142, 151 (Tex. 2014). But a corporation must provide sufficient evidence to quantify its injury before recovering under this theory. *See id.* at 161 (exhibits “do not reveal any quantity of damages” to plaintiff corporation’s reputation); *Burbage v. Burbage*, 447 S.W.3d 249, 262 (Tex. 2014) (“The evidence does not show actual loss of reputation . . . or even the [corporation’s] actual value”).

In *Mel Acres*, the Supreme Court recently discussed the availability of “stigma damages,” defined as “damage to the reputation of the realty.” *Houston Unlimited, Inc. v. Mel Acres Ranch*, 443 S.W.3d 820, 824 (Tex. 2014). The Court did not decide whether stigma damages could be recovered in Texas, finding only that, in the instant case, the plaintiff’s evidence would be insufficient *even if* stigma damages were available. *Id.* at 827.

¹ Lenzi Scheible, David James, Elliott Becker, and Elaine Edwards worked on previous drafts of this paper. Any errors are purely theirs.

**MOST RECENT DAMAGES CASES (2017-2019):
TEXAS SUPREME COURT**

***Anderson v. Durant*, 550 S.W.3d 605 (Tex. 2018):**

In this case involving claims of fraudulent inducement and defamation, the plaintiff sought mental anguish damages after he was “falsely accused [by his employer] of taking illegal kickbacks on used-car acquisitions and lost his job. Rumors of Anderson's alleged misdeeds quickly spread in the closely connected auto industry, and Anderson, who was unemployed for months, was unable to obtain comparable employment.” *Id. at 605*. The jury awarded defamation damages totaling \$2.2 million: \$400,000 for injury to reputation in the past, \$400,000 for future injury to reputation, \$400,000 for past mental anguish, \$400,000 for future mental anguish, and \$629,000 for past and future lost income. The trial court entered judgment on the jury's verdict, but the Fort Worth Court of Appeals reversed and rendered a take-nothing judgment, finding no evidence to support an award of any mental anguish damages. *Id. at 618*. The Supreme Court reviewed and reversed in favor of the plaintiff:

Here is part of the plaintiff's evidence:

The accusations that were made have affected me. They basically destroyed me. You get up every morning—I've never understood depression. My wife and daughter always called me Mr. Happy, Mr. Sunshine, and I was—they wouldn't berate me. They all thought that it was a joke. But since these accusations have come about, I'm paranoid about going outside. Have trouble focusing. Anxiety, anxious. It's been a two-year nightmare trying to get my life back and my reputation back and it's—it's been a two-year nightmare, like I say.

* * *

I had trouble sleeping. I had trouble eating. I had trouble focusing on things. I worried about my family's future. Worried about my 30-year career that had been slandered all over town. [*Id. at 620*].

Anderson also testified that he sought medical help from a psychiatrist and was prescribed anti-anxiety medication. *Id.* The Court found that “Anderson's testimony is some evidence he suffered compensable mental anguish” and thus the Court of Appeals improperly granted the defendant's no evidence challenge. *Id.*

But, the Supreme Court commented that because the Court of Appeals granted the defendant's no evidence challenge it did not reach the defendant's factual-sufficiency challenge. The Court then added:

The jury's \$400,000 award appears to be excessive compared to awards in cases involving similar or more egregious behavior, but excessiveness of a damages award is a factual-sufficiency inquiry committed to the court of appeals' exclusive jurisdiction. The court of appeals did not rule on the Respondents' factual-sufficiency complaints, having concluded no evidence supported any award of defamation damages. The court may do so on remand and, depending on the outcome of that review, may suggest a remittitur or remand for a new trial. [*Id. at 620*].

The Court also determined that there was no evidence to support an award of future impairment of his reputation and upheld the Court of Appeals decision to take away those damages. *Id. at 621-22*.

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