

# Proving Mental Anguish Damages In Personal Injury Cases

Glenn W. Cunningham

Law Offices of Glenn W. Cunningham

14100 San Pedro Ave., Suite 550

San Antonio, Texas 78232

t. 210.228.0600

f. 210.228.0602

[glenn@cunninghamfirm.com](mailto:glenn@cunninghamfirm.com)

[www.cunninghamfirm.com](http://www.cunninghamfirm.com)

The University of Texas School of Law

**2021 CAR CRASH SEMINAR**

August 26-27, 2021

*The author gratefully acknowledges the use of an excellent paper, which was initially authored by Wayne Fisher of Fisher, Johnson & Huguenard, L.L.P., and subsequently updated by Paula Sweeney of Slack & Davis, L.L.P. These materials contributed significantly to my thought processes and organization of this work.*

## TABLE OF CONTENTS

I.	Introduction .....	4
II.	Non-Physical Injury Cases .....	4
A.	The standard is set – <i>Parkway</i> .....	4
	1. <i>Parkway Company v. Woodruff</i> .....	4
B.	The standard is applied – <i>Stoker, Saenz, and Latham</i> .....	5
	1. <i>Republic Ins. Co. v. Stoker</i> .....	5
	2. <i>Saenz v. Fidelity &amp; Guaranty Ins.</i> .....	6
	3. <i>Latham v. Castillo</i> .....	7
C.	The requirement for close judicial and appellate scrutiny is Emphasized.....	8
	1. <i>Universe Life Ins. v. Giles</i> .....	9
D.	Appellate scrutiny is applied.....	9
	1. Insufficient evidence – <i>Gunn Infinity v. O’Byrne</i> .....	9
	2. “Minor bodily symptoms” not enough – <i>City of Tyler v. Likes</i> .....	11
III.	Personal Injury Cases .....	12
A.	<i>Bentley v. Bunton</i> .....	12
B.	<i>Fifth Club, Inc. v. Ramirez</i> .....	12
C.	<i>Adams v. YMCA of San Antonio</i> .....	14
D.	<i>Service Corp. Int’l v. Guerra</i> .....	16

E.	<i>Hancock v. Variyam</i> .....	18
F.	<i>Brady v. Klentzman</i> .....	19
G.	<i>Bennett v. Grant</i> .....	21
H.	<i>SCI Texas Funeral Services, Inc. v. Nelson</i> .....	22
I.	<i>Anderson v. Durant</i> .....	24
IV.	Conclusion .....	25

## Proving Mental Anguish Damages in Personal Injury Cases

### I. Introduction

Over the past 25 years, the law on mental anguish damages has gone through a remarkable evolution. There has been a concerted and steady effort by the Texas Supreme Court to limit the recovery of mental anguish damages. This effort is multifaceted. It encompasses an increase in the level of proof required to sustain an award in cases in which mental anguish damages are permitted, a mandate to appellate courts to closely scrutinize such awards, and restrictions on the types of cases in which such damages are even available. In this paper, we will trace the evolution of the law on mental anguish through significant Texas Supreme Court cases.

In order to withstand appellate scrutiny, plaintiff's lawyers must now present direct evidence of the nature, duration and severity of their clients' mental anguish, which either establishes (1) a substantial disruption in the plaintiffs' daily routine, or (2) a high degree of mental pain and distress, which is more than mere worry, anxiety, vexation, embarrassment, or anger.

### II. Non-Physical Injury Cases

#### A. The standard is set – *Parkway*

##### 1. *Parkway Company v. Woodruff*, 901 S.W.2d 434 (Tex. 1995)

The Court chose to “fire the first shot” at mental anguish damages in *Parkway Company v. Woodruff*, 901 S.W.2d 434 (Tex. 1995), opinion by Justice Cornyn, joined by Phillip, Gonzalez, Hightower, Hecht, Enoch, Spector, and Owen, dissent on other grounds by Gammage. This was not a personal injury case; rather, it was a suit brought by a homeowner against a contractor for flood damage. At the time, the Plaintiff's trial bar largely assumed the holding was confined to mental anguish damages in non-personal injury cases – until the Court used *Parkway* and its progeny as precedent to deny mental anguish damages in personal injury cases, as well.

The Woodruff's home flooded and was badly damaged due to negligence by the defendant contractor in building it in a floodplain. The Woodruffs sued and recovered, *inter alia*, for their mental anguish resulting from the flooding.

The Court, after a historical review of mental anguish damages, set the standard for recovery of mental anguish damages in cases not involving physical injury. Plaintiffs may recover when they “have introduced **direct evidence** of the **nature, duration and severity** of their mental anguish, thus establishing a **substantial disruption in the plaintiffs' daily routine.**” *Parkway*, 901 S.W.2d at 444 (emphasis added).

This significant language provided the theme for a series of later cases which restrict the recovery of mental anguish damages – even cases involving physical injury.

The *Parkway* Court noted that, historically:

“some types of *disturbing or shocking injuries* have been found sufficient to support an inference that the injury was accompanied by mental anguish. As a general matter, though, *qualifying events have demonstrated a threat to one’s physical safety or reputation or involved the death of, or serious injury to, a family member.*”

*Id.* at 445 (emphasis added).

In setting this new, heightened standard for establishing mental anguish in non-physical injury cases, the Court called for close judicial scrutiny of the plaintiffs’ evidence:

“Although we stop short of requiring this type of evidence [i.e., direct evidence of the nature, duration and severity of the mental anguish, thus establishing a substantial disruption in the plaintiffs’ daily routine] in **all** cases in which mental anguish damages are sought, *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.* at 444 (emphasis added).

In *Parkway*, the Court pointed to two passages of testimony relevant to the issue of mental anguish damages. First, Mr. Woodruff testified that he was “*hot*” and that he was “*very disturbed.*” Mrs. Woodruff testified that “it’s just *not pleasant* walking around on cement floors,” that their whole life “*changed,*” and that it was “*just upsetting.*” In addition, she testified that both she and Mr. Woodruff had become “*very quiet,*” and that it had caused “*some friction*” in their marriage. *Id.* at 445 (emphasis added).

The Court ruled that, although the Woodruffs’ “felt anger, frustration, or vexation,” these feelings were nothing more than “mere emotions,” which did not rise to the level of compensable mental anguish. *Id.*

It didn’t take long for *Parkway* to become “well-established law.”

## **B. The standard is applied – *Stoker, Saenz and Latham***

### **1. *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338 (Tex. 1995)**

In 1995, the Texas Supreme Court followed the *Parkway* opinion with *Republic Ins. Co. v. Stoker*, 903 S.W.2d 338 (Tex. 1995). *Stoker*, however, was not a case in which mental anguish damages were truly considered by the majority. Rather, the only issue that the majority considered was whether Republic Insurance Company was liable to the

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Proving Mental Anguish Damages in Personal Injury Cases

Also available as part of the eCourse

[2021 The Car Crash eConference](#)

First appeared as part of the conference materials for the  
2021 The Car Crash Seminar session

"Assessing and Proving Mental Anguish Damages in Personal Injury Cases"