

PROVING CAUSATION & SUFFICIENCY OF EVIDENCE

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Paper and powerpoint

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VOTE ON THE OUTCOME:

Dr. Expert testifies: I examined the patient, I am double board certified as both an orthopedic surgeon and a pain management doctor. I testify, to a reasonable degree of medical probability – actually, to a medical CERTAINTY – the Plaintiff's herniated discs in neck and back were caused by the motor vehicle collision. He needed the multiple diskectomies and fusions, which I performed, because of the wreck. [And proves up reasonable and necessary bills.]

Defendant **does not object** to this evidence at trial.

Defendant **does not object** to this evidence at the Court of Appeals.

Defendant **objects for the first time on appeal** to the Texas Supreme Court that the evidence is legally insufficient to support your \$3.8M judgment.

Who thinks the Plaintiff keeps his judgment?

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Conclusory
Testimony
From an
Expert is
No evidence.

**Reverse and
Render.**



"conclusory statements cannot support a judgment even when no objection was made to the statements at trial." *Coastal Trans. Co.* (Tex. 2004)

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Legal Sufficiency vs **Factual Sufficiency**

Legal Sufficiency: Supreme Court evaluates and is to view the evidence in the light most favorable to the judgment. **Reverse and render** if evidence is not legally sufficient = no evidence:

- a. No evidence, or merely a scintilla of evidence
- b. A reasonable and fair-minded person cannot reach the verdict
- c. If an expert is required, but no expert testifies, then there is no evidence (even if there are supportive lay witnesses)
- d. If an expert does not explain how and why their opinion is valid, then their opinion is mere *ipse dixit* and is **no evidence**
- e. Expert must rule out alternative plausible theories (as plaintiff's burden, not the defendant's)
- f. If the expert's methodology is unreliable, then their opinion is **no evidence**

Remand back to Court of Appeals to determine **factual sufficiency** if > scintilla of evidence

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Legal Sufficiency vs **Factual Sufficiency**

Factual Sufficiency: evaluated by Court of Appeals

Examines the evidence that both supports and contradicts the jury's verdict in a neutral light.

Verdict is against the greater weight of the credible evidence; or

The evidence that supports the finding is so weak as to make the verdict clearly wrong and manifestly unjust.

Actions by Tex. Court of Appeals: TRAP 43.2 and 43.3: affirm, modify, reverse and render, reverse and remand, dismiss case, dismiss appeal.

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Relevant evidence is admissible unless any of the following provides otherwise:

- * the United States or Texas Constitution;
- * a statute;
- * these rules; or
- other rules prescribed under statutory authority.

Irrelevant evidence is not admissible.

Tex. R. Evid. 402

"[A] party may assert **on appeal** that unreliable scientific evidence or expert testimony is not only inadmissible, but also that its unreliability makes it **legally insufficient** to support a verdict. *Whirlpool Corp. v. Camacho*

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