

# You're Going to Need An Expert For That: Texas Appeals Court Holds No Legal Malpractice For Lost Opportunity to Settle

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After over a \$1 million jury verdict was rendered against it in the trial court, a Texas law firm appealed arguing the evidence was legally and factually insufficient to support the jury's award for lost opportunity to settle the underlying personal injury claim involving a trucking accident. The law firm argued its client, a trucking company defendant in the underlying personal injury suit, failed to offer any expert testimony as to the causation and damages in the legal malpractice lawsuit. Instead, the client relied solely on the lay testimony of the personal injury suit plaintiff's attorney, the plaintiff in the personal injury suit, and its own president's testimony about whether the underlying suit should have settled if given an opportunity and the amount of settlement.

In reversing the trial court, the appellate court distinguished the case at hand from the typical legal malpractice case where a plaintiff must also prove the merits of the underlying action and prove up the "case within a case" in order to prevail on its malpractice claim. However, when the alleged malpractice occurs in the context of a settlement, evidence of settlements made under comparable circumstances may take the place of the "case within a case" methodology. Moreover, the appeals court indicated in lost opportunity to settle cases expert testimony is required to prove both causation and damages. Because the trucking company client had alleged legal malpractice for defendant law firm's failure to communicate settlement demands which if agreed to would have decreased the amount eventually paid by the trucking company after being found liable for the trucking accident, it could not rely solely on fact witness testimony.

The appellate court indicated that forecasting the amount of settlement funds which would be in the client's best interest to settle a particular case is a complicated assessment that requires a tremendous amount of training, skill and experience. However, the evaluation of how and why a law firm fell short in obtaining the settlement opportunity even if the law firm was negligent necessarily requires an expert to assess the facts and settlement values of similar cases to establish the underlying malpractice damages and provide a demonstrable and reasoned basis to support those damages. This type of evaluation lies far beyond the knowledge of most lay jurors and conclusory statements by the interested parties as to the amount of which this case would have settled with the benefit of hindsight is insufficient evidence in opportunity to settle malpractice cases. Therefore, the appeals court held that expert testimony is required to establish the amount of damages the client suffered which demonstrates a basis for comparing settlements in similar cases. Finding that an essential element of the claim, namely the client's damages, had not been proven at the trial court, the appellate court reversed the trial court and rendered a "take nothing judgment" against the plaintiff client.

Interestingly, it appears the plaintiff client had proffered an expert to testify in regard to causation and damages; however, the trial court excluded that part of the expert's testimony because the expert did not provide a sufficiently detailed analysis of settlement in similar cases. The trucking company did not cross-appeal the trial court's decision on excluding its expert's testimony; therefore, it was not before the appeals court to decide if the exclusion of expert testimony was in error or how much detail is needed.

In sum, when defending against legal malpractice claims involving either failure to obtain settlement or lost opportunity to settle be sure your opponent has the requisite expert testimony in your jurisdiction to support causation and damages. Even if the law firm's actions are negligent, expert testimony still must show that the suit would have settled for the amount claimed by the legal malpractice plaintiff and self-serving testimony based on hindsight may not be enough.

*Chamblee Ryan, P.C. v. JBS Carriers, Inc.*, 2024 Tex. App. LEXIS 4096 (Tex.App. June 12, 2024)