



## Alerts

### Lack of Expert Testimony Results in \$1.4 Million Legal Malpractice Verdict Being Overturned

June 24, 2024

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#### Brief Summary

Plaintiff, JBS Carriers, Inc. (“JBS”), sued Chamblee Ryan, P.C. (the “defendant”) for legal malpractice related to JBS’ alleged lost opportunity to settle the underlying personal injury case in which the defendant had been representing JBS.

The lower court held for JBS and entered a judgment against defendant of approximately \$1.4 million. On appeal, defendant argued that since JBS did not offer sufficient expert testimony for the legal malpractice claim, the judgment should be overturned. The appeals court reversed the lower court’s judgment and entered a “take-nothing” judgment.

#### Complete Summary

JBS sued defendant for malpractice in failing to settle the underlying lawsuit. The underlying case involved a car crash between George Oliver (“Oliver”) and JBS, the plaintiff in the malpractice lawsuit. Oliver was hit by a JBS semi-truck when stopped at a red light. Oliver filed suit against JBS in 2014.

The jury in the case found for Oliver and awarded approximately \$1.6 million to Oliver. JBS requested that their counsel, the defendant, file an appeal, but due to confusion between the attorneys working on the case, defendant failed to file a notice of appeal.

JBS then subsequently filed a legal malpractice lawsuit against defendant, alleging that but for defendant’s alleged negligence, JBS would have had the opportunity to settle the lawsuit either at mediation or before trial, at trial, or post-verdict for a lesser amount than the verdict awarded against JBS in the underlying lawsuit.

In the legal malpractice action, the trial court found for JBS and entered a judgment against the defendant for approximately \$1.4 million. Defendant then filed a motion for judgment notwithstanding the verdict and argued that expert testimony was required to prove the malpractice claim. The trial court denied the motion and defendant’s motion for a new trial, and defendant then appealed.

#### Attorneys

Sabrina N. Geisler

Terrence P. McAvoy

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Defendant's primary argument was that the evidence, without expert testimony, was insufficient to support the theory that JBS would have been able to settle either prior to trial, during trial, or during the appeal. Chamblee Ryan specifically alleged that there was no expert testimony offered for the causation and damages elements of the legal malpractice claim.

The appellate court noted that since this was a case involving malpractice in the context of a settlement, "evidence of settlements made under comparable circumstances may take the place" of the usual case-within-a-case analysis. The court also stated that in malpractice cases and settlement contexts such as this one, the damages analysis is an analysis based on comparable circumstances and requires expert testimony.

The court emphasized that the "testimony of the claimants" alone is not sufficient for proving such a malpractice claim. The court relied on the case of *Elizondo v. Krist*, 415 S.W.3d 259, 263 (Tex. 2013), and stated that this case "plainly requires expert testimony to establish damages in inadequate settlement cases."

The court noted how if it accepted JBS' argument that expert testimony was not needed to establish damages in this type of case, it could open the door to a defendant having "a clear incentive to take its chances in litigation and shift liability to its lawyers in the event of an unfavorable result." The court found that allowing an interested witness, or even the defendant itself, to testify as to damages and the settlement amount in a settlement malpractice lawsuit to sufficiently prove the claim is not in accordance with Texas law.

The court further noted that determining the best settlement amount for a defendant is a risk assessment and requires an in-depth analysis. The court found that in this case, there should have been an expert analysis done of JBS' previous negotiation practices and settlements in other similar cases. Without this analysis, the causal connection to the damages was not established.

The court ultimately held that in cases like this, where the malpractice is alleged in a settlement context, expert testimony is required to establish the amount of damages based on the lost settlement opportunity. The court held that without proper expert testimony and only the opinions of lay witnesses, there was not sufficient evidence to support a finding for JBS. The court reversed the lower court's judgment against defendant and entered a "take nothing" judgment.

## Significance of Decision

In most legal malpractice actions, expert testimony is necessary to sustain a plaintiff's burden of proof, particularly when the alleged malpractice occurred in a settlement context. Testimony by lay witnesses is not sufficient.