

ORAL ARGUMENT - 4/23/97  
96-0986  
LATHAM, ET AL. V. CASTILLO, ET AL.

LAWYER: If left undisturbed, the CA's opinion in this case gives us two anomalous results. One is that an attorney can be sued for failing to file a frivolous lawsuit. Second is that a client can recover from mental anguish damages even if acknowledging that those damages are suffered because of the loss of an asset that that client concedes is valueless. That is why Latham is calling upon this court today to answer the question expressly left open by this court in the opinions of the Debakey v. \_\_\_\_\_, and Willis v. Maverick.

CORNYN: You're saying the client agrees that the lawsuit was frivolous?

LAWYER: The client has to concede that it had no value because they failed to prove that up.

CORNYN: Unless it's failure of proof it's not establishing as frivolous as a matter of law is it?

LAWYER: No it's not establishing it's frivolous as a matter of law, but the only evidence in this record is that there was no medical malpractice for them to file a lawsuit on. And so I believe that for purposes of our argument here we have to concede that there is no value. And so the question is what theory of liability is going to apply to an attorney who does not do his job? And the answer we believe is conclusively and exclusively a legal malpractice \_\_\_\_\_ of negligence in tort. And there are three main categories that compel this conclusion. One is our general jurisprudence.

CORNYN: You said there is no DTPA cause of action against the lawyer?

LAWYER: For this type of cause of action, no.

CORNYN: Would there be for any?

LAWYER: There could be, yes. Just the fact that you are a lawyer does not exempt you from the DTPA. But it's our position that you have to look to the substance of the cause of action, the \_\_\_\_\_ of the complaint, and see if there is any professional judgment or opinions being exercised.

CORNYN: And if there are then you can't be sued under the DTPA?

LAWYER: No, I think your remedy is under negligence.

CORNYN: So you can't sue under the DTPA?

LAWYER: Right. I think this is along the lines of the Crawford v. Asign(?) case where you said: If you've got a contract cause of action it's a contract cause of action. You can't dress it up in DTPA clothing. And that's what's happening here. Factually, which is the second point if you look at the allegations and the testimony in this case factually what you have is a garden variety negligence case. You have allegations that a lawyer took the case and didn't file it. This is not a situation where there are allegations that the defendant in addition to a defaultation(?) of a duty beat, or rape, or swindle the client.

BAKER: Is it correct that the record does say that \_\_\_\_\_ from your client that "I filed both cases"; and then secondly, "that I have filed both cases?"

LAWYER: That's what they testified to.

BAKER: So that's in the record?

LAWYER: Right. I think if you look at the actual language, it's a little bit equivocal. But I don't know that I can really argue or dispute that.

CORNYN: So why isn't that some evidence that Mr. Latham promised to do something that he did not in fact do?

LAWYER: We're not arguing here that there is no evidence that he took on the case. Because of our directed verdict procedural posterior we have not put on the rest of the evidence. But we have to concede that there is a scintilla of evidence that according to them they believe that he had taken on the case.

CORNYN: Can you recover a mental anguish damages for an intentional in violation of the DTPA?

LAWYER: I believe that the cases that have held that you do recover mental anguish damages because of a representation all involve situations where the representation was made in an effort to gain an economic advantage. Like this asset has more value than it really does. Something of that nature when you are trying to sell it. Here none of the representations he made were designed, and anyway if we accept them as true as gaining an economic advantage.

CORNYN: There's a certain difficulty in the rules you're arguing for when it comes to a lawyer who said he would file a lawsuit and did file a lawsuit and then has not filed a lawsuit who later on says: well it was a frivolous lawsuit when he gets sued for malpractice. Is that just the way it works?

LAWYER: I think it sounds squirrely for a lack of a better word when we are in this directed verdict posture and we have not been able to put on our defense because he did have a defense that he never agreed to take on this case.

CORNYN: I understand your procedural posture limits.

LAWYER: But the point that I think the fundamental analysis here is that we have these different theories, different causes of action because we have to evaluate conduct under a standard appropriate to that conduct. And so if there is a chance that an attorney is going to have to exercise professional judgment, in this case on whether or not a case has enough merit to file, we have to look at a standard that allows that to be evaluated. And to say that it falls under the DTPA rather than under a negligence standard effectively makes that whole consideration irrelevant. And so we have a situation where if indeed it was frivolous, and we believe it was and the only evidence is that it was, if it's a DTPA cause of action we don't have any way to show that because it's not relevant. If they object to it or if they do a motion in limine about any evidence having to do with the merit of that cause of action, because we no longer have to prove a suit within a suit, we are stuck, we have no defense. And so keeping it a negligence cause of action assures that that defense is there.

BAKER: Are you arguing then that there is usually no connection under the DTPA with legal malpractice whatsoever?

LAWYER: I think if it is garden variety legal malpractice dealing with something that has to do with a lawyer's judgment, yes. I think if a lawyer goes beyond that...

BAKER: Well it already says that. And didn't it say that at the time these claims arose?

LAWYER: No. This happened before those amendments. So this lawsuit is predicated on the ability to recover actual damages for an unconscionable action, unconscionable being defined as taking undo advantage or unfair consideration.

BAKER: Well do you see a difference between the fact that a DTPA is a statutory claim that exist in addition to whatever common law remedies might \_\_\_\_\_ available to \_\_\_\_\_?

LAWYER: Well I think it has the same sort of status as a contract action verses a DTPA. And if you already have a common law remedy that can...

BAKER: But don't you answer that with that the DTPA is in addition to without in lieu of common law remedy?

LAWYER: If there are situations where it is in addition to.

BAKER: Well it doesn't limit it does it?

LAWYER: I don't think it limits it on its face. But I think that the jurisprudence of the state has to recognize that certain types of conduct can't be evaluated under the DTPA because to do so is to shift burdens and to make it as if a lawyer's conduct he's got strict liability that if he messes up in any way we are no longer looking at whether or not he had appropriate exercise of judgment. We are looking at whether or not the job got done. And if it didn't get done...

BAKER: So your viewpoint is it doesn't make any difference that if and we have to look at what they said as true because of the directed verdict situation, if they said he said I will file and then said I have filed them, and neither of those facts are true, that that's not something different than what you're arguing about his judgment on whether the case is good, bad or indifferent?

LAWYER: I think if you take out the question of the exercise of judgment, then we abandon what has historically been the requirement of these types of causes of action which is the suit...

BAKER: Well doesn't what he said if true have nothing to do with the merits of the case or common law claim for legal malpractice, but a claim for fraud, which is what they are claiming?

LAWYER: I think that there can be...if their testimony rises to the level of showing a fraud, which it does not because there was no evidence of a present intention not to do things...

BAKER: Well doesn't have to zero in on: I have filed it, when he hadn't. That's not true is it?

LAWYER: No that would not be true. And the question is what did they lose? And if we're looking at the DTPA as the remedy, then we have to say okay there's been this deceptive trade practice and he said that he filed something and he lost it because he didn't, then you need to find the economic damages that they lost. Because otherwise you are insuring every representation anytime anyone might say something that's not true. Then you are going to have a DTPA claim for the mental anguish that might result.

CORNYN: Isn't the client entitled at least to perhaps a second opinion if Mr. Latham decided not to file the case because he didn't think it was meritorious, didn't he deprive the Castillos of the opportunity to go to another lawyer who might have say be more creative or perhaps investigated and found some nonfrivolous basis to pursue?

LAWYER: Under the record in this case I don't think that we can evaluate it that way because if you are going to say that they were deprived of this right to get another opinion, then shouldn't they at least bring in some testimony under their burden of proof to say someone else would have looked at it and would have taken it?

CORNYN: Well the rule you're arguing for I think would apply...you're saying this would apply in every case not just under the facts in this case aren't you? Are you saying you would never have a DTPA cause of action unless you can prove that you would have recovered and collected a judgment in the underlying lawsuit?

LAWYER: Yeah you have to...

CORNYN: So the rule you're asking us to adopt is not just limited to the facts of this case?

LAWYER: Well I think that the facts of this case make it very easy to adopt the rule that we're arguing because it is such a garden variety negligence case. And I'm not prepared to rule out the possibility that there may be some time when a representation might result in an economic detriment that would bring the case under the DTPA.

SPECTOR: There was no fee paid here?

LAWYER: No record of any fee.

SPECTOR: So it was taken on...there were two causes of action is that correct?

LAWYER: Right. He took the legal malpractice case I think to a prior lawyer and got them a \$400,000 settlement. And then the Castillo's claimed that he also took this medical malpractice case that did not get filed. And as far as what is in the record there is no contract in the record to show that he ever got a fee or that it was even contingency. I presume that it was contingency.

BAKER: Did they testify that they signed 4 blank employment contracts?

LAWYER: That was their testimony, that they had 4 pieces of paper that had blanks in them, that they signed.

CORNYN: How did they recover a \$400,000 settlement from the lawyer for failing to sue the doctors if there wasn't any suit against the doctors?

LAWYER: There were 2 children. And the lawsuit for the first child was filed and resulted in a default for \$6 million, the hospital apparently lost the papers or whatever.

CORNYN: And that was settled for \$70,000?

LAWYER: Right. On the representation of the hospital medical providers that they would file bankruptcy before they would pay the judgment. And the Castillos thought that that settlement was too low and so we have the legal malpractice case against that lawyer that nets them close to

\$400,000.

ENOCH: You're arguing that this professional judgment is really what's at issue here. But even under the DTPA does there not have to be damages produced by the conduct: I will file; I have filed? Isn't one of the elements even under the DTPA prove that there were damages?

LAWYER: Yes I believe so.

ENOCH: Without a knowing violation wouldn't there have to be some evidence that had the case been filed there would have been a different result than there was with it not being filed?

LAWYER: Yes. We've argued in our brief that no matter what cause of action is applied to this conduct, that there is a causing fact requirement of proving up damages. And under that cause and fact you have to show that but for his conduct there would have been a different outcome.

I have about 4 reasons compelling against the application of the DTPA in this case that may have been covered to extent by questions. If this case is a DTPA case, every case can be a DTPA case because all you have to do is say someone told me something that wasn't true, and it upset me. And if you can qualify under Parkway v. Woodruff with respect to your mental anguish damages, then suddenly you've got a DTPA claim. And it may have nothing to do with trade practices. It may not have nothing to do with commerce.

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RESPONDENT

LAWYER: The Castillos offered legal and factual evidence to the jury in this cause that Mr. Latham had engaged in deceptive trade practices. The uniqueness of this case is that Mr. Latham not only lied at a deposition that he had never been hired to do anything for Kay Castillo, child No. 2, that he also lied at trial that he had never been hired to represent Kay by the Castillos. Before the jury is when trial counsel for the Castillos, Mr. Gano, introduced the evidence against Mr. Latham that he in fact had sued attorney 1 for Kay Castillo. If he didn't have authority from the Castillos and hadn't been hired by the Castillos to sue attorney 1 for Kay Castillo, he was knowingly misrepresenting those facts at all times: to the Castillos before any litigation; at deposition; and even to the jury it went that far. Nothing stopped him.

Counsel's contention that he exercised his judgment in not doing anything for Kay Castillo, and the malpractice issue for which he was hired, I believe misses the point. If he's been denying all along that he was never hired to do it, then how can he now claim that: I exercised professional judgment and thought it was a frivolous lawsuit? Again all along he has denied: They didn't hire me for Kay Castillo. And the argument can be made that perhaps that's why he took the malpractice action against attorney 1 to induce the Castillos to come in with this malpractice action

that he didn't intend to do anything with.

GONZALEZ: What separates this case from a negligence cause of action, legal malpractice? What is different? Why is this not just a legal negligence malpractice action?

LAWYER: I wish I could answer that. I wish I could have the opportunity to talk to John Gano He has had a stroke. I do not know sir what his strategy was in abandoning the legal malpractice claim. I understand that on appeal to the 13<sup>th</sup> CA he admitted that he had not met that burden. But I do not know why at trial he undertook just to proceed on the DTPA action instead of the legal malpractice action. I do not know that.

ENOCH: When you employ an attorney to represent you on the case, you essentially have a contract and the attorney implicit with the contract says: I will take whatever steps necessary to prosecute your case. It seems to me all the evidence shows here is that Mr. Rodriguez agreed to take on the case. Whether you've got a statement that says I filed your lawsuit; or a statement that says I will file your lawsuit, or a statement that says I will represent you, or I will prosecute you, all of those are consistent with the duty to take on contractually to represent the party. What is different about what gets said that would make DTPA apply to this context that would not apply in virtually any contractual arrangement among any parties where if I agree to do something for you and I don't do it, that makes it a DTPA because that's a misrepresentation. What is unique about what was said here that seems to say there is some sort of misrepresentation independent of just what would ordinarily be applied by my duty work for you?

LAWYER: The testimony adduced by the Castillos at trial was that had Mr. Latham advised them that he wouldn't do the medical malpractice they would have kept looking. Counsel for Mr. Latham during the trial asked about 4 different attorneys that had rejected the medical malpractice claim and in fact introduced into evidence a letter from a law firm indicating we will not take on the medical malpractice; and we can't.

ENOCH: Wouldn't that be the case in any...if I try to prove damages for a breach of contract in any case, wouldn't my argument be: had they not agreed to take on this case, had they not agreed to the contract, I would have gone some place else for that contract. Isn't that just a normal damages issue?

LAWYER: I think it goes to bargaining power, and unconscionable conduct. In this particular situation we refer to the DTPA definition of unconscionable conduct. There was a difference and Mr. Latham's expertise being the lawyer, knowing what the law is, knowing what the rules of apply to attorneys and all, in not telling the Castillos exactly what was entailed in any contract. Yeah there's an uneven bargaining power there. And the DTPA intends to codify that. And it isn't an issue that's applicable I think to the public in general. You can't deceive a client; you can't misrepresent the client; you can't tell a client I am going to do this, and I'm going to hand you a contract, sign it

and it's blank. That alone indicates that there is a lot of room for deception. And a client that comes to you heartbroken are looking for an attorney that will proceed with a case, will sign anything. And that's the danger I think where attorneys are involved. If an attorney believes that he can do that to a client, then there's a real problem there. We've got the disciplinary rules that we've got to abide by, and first and foremost, you don't produce a letter to a client for them to sign a contract with blanks on it. He never controverted what the Castillos said at trial, that the contract was blank. He had the opportunity to do that, and he didn't.

GONZALEZ: What were the allegations of fraudulent conduct against Mr. Latham?

LAWYER: That he misrepresented that ...

GONZALEZ: Well I'm looking at the pleading. There's nothing about misrepresentation alleged in the pleadings that I can find. I find fraudulent concealment and is that the only time the word fraudulent is mentioned?

LAWYER: Yes sir, that's the only time.

GONZALEZ: How do you get fraudulent misrepresentation from fraudulent concealment?

LAWYER: Really I don't think that there's a difference in my opinion. If you conceal a fact...

GONZALEZ: Not a difference from misrepresentation from concealment?

LAWYER: It's an act verses an omission. The end result is fraud. You either conceal something or misrepresent it. In this case he concealed that he had filed a lawsuit against Rodriguez for Kay Castillo. He concealed that he...

GONZALEZ: He got \$400,000 for your client on that action?

LAWYER: No sir he got \$400,000 for child No. 1, who contracted meningitis at Driscoll Hospital...

GONZALEZ: But he got that not against the hospital, but against the lawyer?

LAWYER: Yes because Mr. Rodriguez ...

GONZALEZ: It was an allegation that that first lawyer committed legal malpractice and the basis of the \$400,000 was a legal malpractice against lawyer No. 1, not against the hospital?

LAWYER: That's right.



GONZALEZ: Under your pleading what is Mr. Latham accused of concealing?

LAWYER: He concealed that he had sued for Kay Castillo. He never told the Castillos that he had sued for Kay Castillo as well against Rodriguez And I know the contention is well he got \$400,000 anyway. The Castillos were induced into signing a settlement agreement for Sara Castillo, child No. 1; then everybody had relinquished all claim to child No. 2. Latham had asked them give me a letter from Rodriguez saying that he has no claim to Kay Castillo. And so he then turns around and sues Rodriguez for Kay Castillo and that was a frivolous lawsuit.

GONZALEZ: Well he got \$400,000. How could that be frivolous lawsuit?

LAWYER: No sir. The part of the lawsuit for Kay Castillo against \_\_\_\_ Rodriguez was frivolous because that part of the lawsuit was frivolous.

GONZALEZ: You're not complaining about that? You're not going to give that \$400,000 back because it was frivolous?

LAWYER: That's where you go to the inducement where the Castillos were induced to believe that they settled only for Sarah.

GONZALEZ: I don't follow the concealment that is metamorphosised to misrepresentation.

LAWYER: There were two children, the first one died within a week, the day she was supposed to leave from the hospital. She contracted spinal meningitis at the hospital. Rene Rodriguez was ultimately hired and he brought lawsuit default judgment \$6 million. The Castillos settled for \$70,000 based upon his representation that Driscoll was going to file for bankruptcy. On the urging of Mr. Latham, the Castillos retrieved their file regarding the case while Kay was still living, while Rodriguez had been contacted by the Castillos. The reason that they contacted Rodriguez was because a doctor had snipped Kay Castillos brain tissue when he removed a sac at the back of her head and said we just went ahead and snipped it. That was a malpractice including brain tissue by the way that that's a malpractice that the Castillos were urging and asked \_\_\_\_\_ to sue; and the child was still alive. But when they found out about the incidences with Rene Rodriguez and the actions against him, Latham said go ahead and give me the Kay Castillo file. Then Latham turns around and sue Gonzalez for not suing for Kay while Kay is still alive. And that wasn't what the Castillos hired him for. They hired him to sue the hospital, not Rene Rodriguez for Kay.

SPECTOR: If this is a DTPA claim, then what under your reading of the law is the measure of damages? It is not what they lost by his failing to file the suit?

LAWYER: That is a very interesting question that I, Mr. Gano's notes again because he's not able to communicate with me, he contends that there is mental anguish damages caused by the

Castillos finding out that Driscoll Hospital was never sued because of Kay and the snipping of her brain tissues, making her epileptic, making her have epileptic seizures, making her blind. I left that out. She was not blind and didn't have seizures before the surgery. That's the mental anguishes they pursued.

Mr. Latham had represented in a letter to Rodriguez without the Castillos knowing, and they find this out after that Kay's case was worth \$250,000. Mr. Gano's notes indicate he was going to argue to the jury to cover any legal issue or concern about "economic damages" that the act didn't...

SPECTOR: Was that introduced at trial?

LAWYER: This is what his argument was going to be - an inference that the Castillos were traveling to Corpus Christi to visit. They lived in Sinton - 30 miles away - and the jury awarded them \$1 for a long distance call or for a gallon of gasoline to travel to Corpus Christi. If the jury awarded \$1, then the issue of mental anguishes would just come in.

SPECTOR: I'm confused. You say there is a letter that values Kay's case against the medical providers at \$250,000?

LAWYER: Yes. Mr. Latham in plaintiff's ex. 4 after filing the lawsuit against Mr. Rodriguez as for a settlement for child 1 in the amount of \$500,000; and for Kay Castillo for \$250,000. And that was plaintiff's exhibit 4 before the jury.

SPECTOR: So that's in the record?

LAWYER: Yes. And this was introduced after he denied having been hired to represent Kay at all.

OWEN: But was there any medical testimony that the hospital was negligent in treating Kay?

LAWYER: Well there was lay testimony. The Castillos testified basically that they wanted a malpractice action because the doctors had cut off her brain tissue and that she became blind after that, whereas she wasn't blind before and she didn't have seizures before. She suffered for 2 years.

OWEN; On the question of law about the DTPA, I'm not sure I understand what your position is. Are you conceding there has to be at least \$1 of actual damages before you award mental anguish, or are you saying you can recover mental anguish damages even though there are no other actual damages under the DTPA?

LAWYER: We're not conceding that economic damages need to be proven. We are not conceding that. And I'm just saying what Mr. Gano was going to argue to the jury but for the directed verdict.

OWEN: But you do agree that there are no actual damages proved up in the record?

LAWYER: I can't agree with that because of his argument. I think that in asking the Castillos: Did you call; did you travel to Corpus Christi, he fully intended to prove at least \$1 worth of actual damages.

OWEN: He didn't do that before the directed verdict was granted?

LAWYER: He introduced that evidence. He did.

OWEN: Some calls and trips?

LAWYER: Yes. That is part of the record, the fact that they called him and how many calls. And that was developed that the Castillos made at least 3 trips to Mr. Latham's office from Sinton to Corpus as well as called him. And the inference was I think that Mr. Gano was going to protect that issue. However, he argued to the TC that mental anguish damages alone were sufficient under the DTPA, and that no economic damages needed to be proven.

I think we don't have a definition of what actual damages is. It's now been changed but at the time it was actual, and it's consistent with compensatory damages and any other statute like then 52.21K, the human rights act, that allows compensatory damages. And we think at that time the DTPA when it said actual damages, that it can be construed consistent with case law that the mental anguish were actual damages to the Castillos.

HECHT: Assuming that the lawsuit that was not filed had no value at all, settlement verdict any way, assuming that it had no value (I know that's not your position), but assuming that that's true, how can you recover damages for not filing?

LAWYER: I think it's because of the reliance on a professional, and that's Mr. Castillos' answer. We relied on he's a professional.

HECHT: But even if had filed a lawsuit, you would have gotten nothing?

LAWYER: They also know that in any lawsuit when you go in, the chances are you get zero.

HECHT: Now I am asking you to assume, that this one had no value. Even if he had filed the suit you still would have had zero. How can you get damages for not filing?

LAWYER: I think that's what the DTPA intended to protect where unconscionable conduct is involved. Exactly that type of conduct and especially because Mr. Latham is an attorney and as a matter of fact a person who is a specialist like Mr. Gano was who tried the case, that the burden is on him to do everything right and not take advantage of persons with 10 years worth of education; and that are looking to the professional for legal relief and legal recourse. It's like making a decision: are we going to go have surgery with a doctor's assistant or the doctor? You're going to go with the doctor. I mean the law requires that nobody can practice medicine. You go to the person that you believe will take care of your case and take care of you, take care of your injuries.

I think a lot of the problem is that mental anguish is such a vague term a lot of the times. I personally prefer to gage it in terms of the statute itself, that if it were intended to be excluded that we wouldn't have had just the term "actual damages." Nowhere in the DTPA does it say well you can't recover for mental anguish. And the law is consistent with that, the law that has been handed down.

ENOCH: Again assume the lawsuit had no value, you say well the DTPA was designed to protect you where this type situation occurs. Then is it your position that like Mr. Gano's argument what the damages are is the \$1 for gallon of gasoline for traveling 30 miles and for making a couple of phone calls because those phone calls would not have otherwise been made but for their understanding that a lawsuit had been filed?

LAWYER: No, sir. I think it's just an example...again that's just an example. If there's a legal loop hole and I don't think that there is, because mental anguish damages were compensable. I don't think there has to be an out-of-pocket economic expense. I think that the law allows the mental anguish to be recovered absent any out-of-pocket...

ENOCH: Is the mental anguish measured against a \$250,000 claim they should have had; or is the mental anguish measured against driving 30 miles to his office is my question?

LAWYER: Measured against the claim they should have had but for Mr. Latham's preventing them from going further looking for others. If he wasn't going to do it, he should have allowed them that opportunity. He excluded them from that opportunity. He omitted telling them and then when it was brought to his attention he misrepresented that he had ever represented Kay. He did both.

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#### REBUTTAL

LAWYER: If I believe that it were procedurally proper I would have been standing up objecting. A lot of what you've just heard has nothing to do with what's in the record. There was no medical testimony whatsoever. There is no proof whatsoever of any snipping or contracting meningitis. There are some basic medical records that were proven up as business records, but there

was no expert testimony saying what happened to these children in the case below. Furthermore, there was no evidence that there was anything paid out of pocket in the way of gas or telephone calls or anything else.

CORNYN: Under your theory, you could not sue under the DTPA unless you had two types of expert testimony in this case: 1) medical expert testimony establishing the underlying culpability of the medical practitioner; and 2) legal expert testimony establishing Mr. Latham's deviation from minimum standards of care? Is that correct?

LAWYER: I believe that would be the best way to do it. And I want to make sure that I am answering this correctly.

CORNYN: I just want to make sure that that would be required is my question?

LAWYER: I believe the very minimum would be proof that the underlying lawsuit was valuable.

CORNYN: Wouldn't you still have to prove if in fact a DTPA does not protect anything more than what a negligence suit would protect in terms of the legal malpractice action; wouldn't you also have to provide an expert to testify that Mr. Latham's conduct fell beneath the minimum standard of care? Or are you saying that the DTPA leap frogs that normal evidence requirement in a DTPA case?

LAWYER: I don't know. And the reason that I am having a problem with that is because this is a missed deadline case, that it seems so much easier to say that if there was value it was lost. But I think we would have had to have some kind of testimony showing that it was something that could have been filed within the deadline. So I think you're correct, that you would have to have expert testimony on both of those aspects of this case even under the DTPA.

SPECTOR; Do you agree with opposing counsel that there is a letter to Mr. Rodriguez that values the case at \$250,000?

LAWYER: Let me explain that. What Mr. Latham explained to the court below in his testimony was he was hired to collect on behalf of the Castillos. Because of that the settlement of a default. The default judgment was obtained in the name of Sara only. And what he was doing was he was just for make weight purposes telling the insurance company that there's another child out here to that may have a claim. And he was putting a number on that in order to jack up the settlement on the legal malpractice against the first lawyer. It had nothing to do with an opinion as far as a medical malpractice case because we're still talking about that default judgment for \$6 million, and the only question being whether or not it was going to be collectable.

CORNYN: But isn't the value of the legal malpractice case directly related to the value of the underlying medical malpractice case?

LAWYER: No, because the value of the default judgment was \$6 million that they just went in and got. And that is the benchmark that they were using. And it had nothing to do with whether or not the underlying lawsuit could have gotten \$6 million.

CORNYN: So you're saying that Mr. Rodriguez's legal malpractice insurance company paid \$400,000 without any proof that the underlying medical malpractice lawsuit was any good?

LAWYER: That's correct because they were looking at legal malpractice with respect to the \$6 million judgment, whether or not it was collectable, and what kind of work was done between the lawyer and his clients in arriving at a \$70,000 settlement for that.