AFFIRM; and Opinion Filed August 5, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00202-CV

JACOB SWEARINGER AND UNITED VAN LINES, LLC D/B/A ONE UNITED DRIVE, Appellants

V.

ABRAHAM EDILBERTO GUAJARDO, Appellee

On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-12-03165

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Brown
Opinion by Justice Lang-Miers

Appellants Jacob Swearinger and United Van Lines, LLC d/b/a One United Drive appeal a jury's award of damages to appellee Abraham Edilberto Guajardo. In four issues, appellants argue that the evidence is not legally or factually sufficient to support the jury's award of damages for past or future physical pain and mental anguish or for past or future physical impairment. We affirm.

BACKGROUND

Appellee was injured when the car he was driving was struck by a truck driven by Swearinger that appellee alleged was owned by United Van Lines. He sued claiming negligence against both appellants and respondeat superior and negligent entrustment against United Van

Lines and sought damages for his injuries. After a jury trial, the jury found Swearinger negligent[1] and awarded appellee $250,000 in damages for past physical pain and mental anguish, $50,000 in damages for future physical pain and mental anguish, $150,000 for past physical impairment, and $50,000 for future physical impairment.[2] The trial court entered judgment on the jury's verdict.[3] Appellants filed a motion for new trial or, in the alternative, a motion for remittitur, which the trial court denied. This appeal followed.

STANDARD OF REVIEW AND APPLICABLE LAW

Appellants argue that the evidence is not legally or factually sufficient to support the damages awarded by the jury. They ask us to reverse and render a take-nothing judgment on damages for which there is no evidence and either reverse and order a new trial or grant a remittitur as to damages that are excessive or not supported by sufficient evidence.

When a party challenges the legal sufficiency of an adverse finding on an issue on which he did not have the burden of proof, he must demonstrate on appeal that no evidence supports the adverse finding. *See Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 215 (Tex. 2011). We will sustain a no-evidence challenge on appeal if the record shows (1) a complete absence of evidence of a vital fact, (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence conclusively establishes the opposite of the vital fact. *Serv. Corp. Int'l v. Guerra*, 348 S.W.3d 221, 228 (Tex. 2011). "Evidence is more than a scintilla if it 'rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.'" *Id.* (quoting *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004)).

[1] The jury found that 90% of the negligence that caused the accident was attributable to Swearinger and 10% was attributable to appellee.

[2] The jury also awarded damages for medical care expenses. That award is not at issue on appeal.

[3] The trial court reduced the amount awarded to appellee by ten percent as a result of the jury's finding that ten percent of the negligence was attributable to appellee.

In reviewing a jury's finding, we consider whether the evidence would enable reasonable and fair-minded people to reach the verdict under review, crediting favorable evidence if reasonable jurors could and disregarding contrary evidence unless reasonable jurors could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We consider all of the evidence in the light most favorable to the verdict and indulge every reasonable inference that would support it. *Id.* at 822.

When a party without the burden of proof challenges on appeal the factual sufficiency of the evidence to support an adverse jury finding, the party must demonstrate that there is insufficient evidence to support the adverse finding. *Long v. Long*, 196 S.W.3d 460, 464 (Tex. App.—Dallas 2006, no pet.). We consider and weigh all the evidence and set aside the verdict only if the evidence is so weak that the finding is clearly wrong and manifestly unjust. *Id.*; *see also Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986). In applying the factual sufficiency standard, we cannot substitute our judgment for that of the jury. *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003). The jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Id.* "The standard of review for an excessive damages complaint is factual sufficiency of the evidence." *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406 (Tex. 1998).

Matters of past and future physical pain, mental anguish, and physical impairment are necessarily speculative and it is particularly within the jury's province to resolve these matters and determine those amounts. *Day v. Domin*, No. 05-14-00467-CV, 2015 WL 1743153, at *2, 4 (Tex. App.—Dallas Apr. 16, 2015, no pet.) (mem. op). As a result, as long as sufficient probative evidence exists to support the jury's verdict, neither the trial court nor the reviewing court is entitled to substitute its judgment for that of the jury. *Id.* at *2.

When a court of appeals reviews a challenge that an award for a category of damages is excessive because there is factually insufficient evidence to support it, the court should consider all of the evidence that bears on that category of damages, even if the evidence also relates to another category of damages. *Golden Eagle*, 116 S.W.3d at 773. If a party challenges as excessive more than one award in overlapping categories of damages, the court of appeals should consider all the evidence that relates to the total amount awarded in all overlapping categories to determine if the total amount awarded was excessive. *Id.* at 773–74.

DAMAGES FOR PAST PHYSICAL PAIN AND MENTAL ANGUISH

In their first issue, appellants argue that there is some evidence to support an award for past physical pain and mental anguish but that the evidence does not support the amount of the $250,000 award. The process of awarding damages for discretionary, amorphous injuries such as pain and suffering or mental anguish is inherently difficult because the alleged injury is a subjective, unliquidated, nonpecuniary loss. *Dawson v. Briggs*, 107 S.W.3d 739, 750 (Tex. App.—Fort Worth 2003, no pet.). "A great deal of discretion is given to the jury in awarding an amount of damages it deems appropriate for pain and suffering." *Christian Care Ctrs., Inc. v. O'Banion*, No. 05-12-01407-CV, 2015 WL 5013615, at *4 (Tex. App.—Dallas Aug. 25, 2015, no pet.) (mem. op.). Evidence of past pain and mental anguish may be proven through a plaintiff's testimony or other evidence, including circumstantial evidence. *Id.* If there is no direct evidence of pain, the jury is permitted to infer the occurrence of pain from the nature of the injury. *Id.*

"Generally, an award of mental anguish damages must be supported by direct evidence that the nature, duration, and severity of mental anguish was sufficient to cause, and caused, either a substantial disruption in the plaintiff's daily routine or a high degree of mental pain and distress." *Serv. Corp. Int'l*, 348 S.W.3d at 231 (legal sufficiency); *see also Bentley v. Bunton*, 94

S.W.3d 561, 606 (Tex. 2002); *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995); *Manning v. Golden*, No. 12-12-00232-CV, 2014 WL 806326, at *5 (Tex. App.—Tyler Feb. 28, 2014, no pet.) (factual sufficiency). The evidence of a high degree of mental pain and distress must be more than mere worry, anxiety, vexation, embarrassment, or anger. *Parkway*, 901 S.W.2d at 444. There must be both evidence of the existence of compensable mental anguish and some evidence to justify the amount awarded. *Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996). In addition, there must be evidence that the amount awarded is fair and reasonable compensation, just as there must be evidence to support any other jury finding. *Id.*

Appellants argue that, although there was some testimony as to appellee's pain, the evidence "clearly demonstrated" that it was "over a finite and limited time period." They argue that, "*[a]t best*, the evidence indicates a period of pain" between the date of the accident in May 2010 until a chiropractor released appellee from treatment in October 2010. And appellants note that appellee never received any injections for the back pain. Appellants also argue that appellee "sought no further medical treatment after October of 2010[,]" his neck pain was gone about a month after the accident, and he returned to work with no restrictions by July 2010. Appellants also state that, although appellee testified that he limped at times, his doctors' evaluations did not indicate that he was limping. In addition, appellants argue that there "was minimal testimony, *at best*, which would support an award of mental anguish damages in the past[.]" They contend that "there was no direct evidence of the nature, duration, and severity of any mental anguish." Appellee argues that that there was legally and factually sufficient evidence to support the jury's finding that $250,000 would adequately compensate appellee for his past physical pain and mental anguish.

Appellee testified that he was twenty-eight years old and healthy at the time of the accident. He had not had any problems with his back or neck or any limitations on his physical activity. Right after impact, he "was in shock" and afraid. He testified that, after the accident, he "started feeling pain" in his wrist. He did not receive medical treatment on the day of the accident. But that night, he woke up "in pain" and, during the following day, he experienced pain "pretty much" everywhere. He testified, "It was just shock and pain." He went to a medical clinic and was prescribed pain medication and spent the weekend "at home medicated" with ice packs on his back, shoulders, and arm. After that weekend, the "pain didn't go away" and the "medication wouldn't work." Appellee testified to "toughening up and going to work with pain[.]" Appellee initially returned to work on "light duty" but, after a couple of weeks, he returned to his full work duty. He stated that, while working, he could not take some types of pain medication because they made him drowsy. After repeated visits to a clinic to try to get relief from the pain, he went to another doctor to address the pain. He received treatment from Dr. Darren Hagarty, a chiropractor. Appellee testified that Dr. Hagarty had x-rays taken of appellee and treated appellee by placing him on a roller bed, giving him electrical stimulation, and "adjust[ing]" him. Although appellee felt better after his sessions with Dr. Hagarty, "again pain would come." Appellee also received prescriptions for "different muscle relaxers" to help him "minimize the pain[.]" Eventually Dr. Hagarty referred appellee for an MRI. Appellee testified that the MRI showed a protrusion of one disk and a herniated protrusion of another disk in his back. Appellee showed the jury where the pain was on his back, and described that the pain was in his lower back, the buttocks, and his left leg.

Appellee testified that, although Dr. Hagarty and his staff lessened his pain while he was at their offices, once he left to go back home and to work, "it was just back again to square one." He testified that the "[p]ain would just go up and down" and "some days would be better than

others." He described the pain as "excruciating at some points" but "for the most part it was just bad." He testified:

> Having to depend on your wife to be able to dress you up, to be able to help you tie your shoes, not being able to unload the car after you go get groceries, it was—the pain was just unbearable sometimes. Like I said, I had to lay down on the but [sic] floor. I wasn't able to sleep on my own mattress because it was uncomfortable. I had to lay down on the floor because that was the only thing was—it would make it feel better, bearable, not the uncomfortable that you would have in the mattress.

In addition, appellee stated that "it was painful getting on and off [sic] the car." His "whole body hurt" and his "back hurt especially." He also could not carry his two-year-old child because "it was painful" and he "couldn't even bend." He testified that he suffered pain while at work and was limited in his mobility.

Appellee testified that there were times "that the pain was just bad" when he could not "sit down" or "stand up" and he was "just trying to bear the pain" and—"many, many times"—he "would lay down on the floor" and his wife would "feed" him "on the floor." He testified that this made him feel "useless[,]" "worthless[,]" and "not a man[.]" He also testified that his child saw him "laying on the floor unable to get up" "many times."

When asked the degree of the worst pain that he felt as a result of the accident on a scale of one to ten—with ten being "unbearable pain"—appellee testified:

> Couple times when I was down on the floor, that my wife had to fe[e]d me, was nine close to a ten. Some of the times it was six, seven. Couple times around a five, but it was always there. It was always present. Pain was always just there nagging you[.]

At trial—which took place over four years after the accident—Appellee testified that he continued to have pain:

> I still have problems. I mean, I still wake up with pain. It's better sometimes. I'm good some days. Some other times, it's bad. But, I learned to deal with the pain. I pretty much have to—I had to learn to manage the pain. It's something that's not going to go away. It's going to stay there. It's going to stay with me

> for the rest of my life. The only thing that I have to do right now is just manage it.

In addition, Dr. Hagarty—the chiropractor who treated appellee—testified that the records from the medical clinic that appellee visited within twenty-four hours of the accident reflected that appellee was in "severe pain." The records indicated that pain was in his "neck, arms, low back, left shoulder" and was "constant" and present or "made worse" when his body was in "[e]ssentially every position." Dr. Hagarty also explained that the MRI showed that one disk in appellee's back "had a bulge in it where it had slipped out of its normal position." Another disk "had a pretty severe herniation" and the protrusion caused left "nerve root impingement"—meaning "pressing into it, or pinching it almost." Hagarty testified "that was why he was getting the symptoms going all the way down his leg on the left side." Dr. Hagarty testified that he believed the MRI confirmed appellee's testimony that "only his left side hurt[.]" He testified that there was "no doubt" that the MRI reflected "a disk hitting a nerve" and he believed the bulge on appellee's spine "was caused by the accident." Appellants point to appellee's testimony that he was "released completely" by his chiropractor in October 2010 "with occasional minimal low back pain and had been working for quite a while[.]" But Dr. Hagarty testified that returning "to work without restriction" was not "the same thing as saying returning to work without pain[.]" He testified that he does not "like people to take off work" and he feels "like if they can do at least part or some form of their job," he "want[s] them back."

Appellee also testified that, when the truck hit his car, he thought he was "going to die" and then he thought he would not see his wife again. He had fear that he would lose his job because the new company car that he was driving was wrecked. He testified that, after the accident, he "dreaded to drive at first because" he "was just afraid."

He testified that he was proud of what he did for his family and, "being in pain and being afraid and not being able to do it, it just makes you feel like what's going to happen." He was

concerned that he would get fired from work because of poor performance. He was concerned that, if he got fired, he would not be able to support his wife and children, he would not be able to pay his bills, and he would lose his home. He testified that "[i]t was just stressful all around." He also testified:

> After the accident, you were afraid of—I mean, of not doing enough, that you would lose your job.
>
> Not being able to get up. I mean, I was afraid that my pain was going to stay there forever. That it was going to get worse. That I was going to get to a point that I'm going to be bound to a wheelchair. That I wasn't going to be able to walk. That was my fear, that I wasn't going to be able to provide for my family.
>
> That I wasn't able to be a dad for my kids. That I wasn't going to be able to play soccer. That I wasn't going to be able to throw a ball with my six-year-old. That I wasn't able to be there for them.

He testified that, as a result of the accident, he had difficulty getting his lawnmower out of a shed and pushing it. He testified that trying to get the mower started by pulling a rope "was painful" and he was not able to start it. As a result, he received complaints and then notices from their homeowner's association about not maintaining their yard, which made him "feel really bad" and embarrassed.

Appellee also testified that, during church services, his "back would just lock up" or his leg would cramp up and he "had to stay there" until his wife or six-year-old helped him up. He testified that he felt "worthless" and embarrassed that he had "the pain" and had "to be limping through church down to the parking lot, holding your wife and holding your six-year-old to be able to get across the parking lot."

Appellee's wife, Cindy Guajardo, testified that, as a result of the accident, appellee's relationship with his children was different because it was difficult for him to carry them and, although they wanted to be on his lap and be around him, "[i]t was hard because he was in pain." She also testified that the accident affected their marital relationship because "[s]ex was almost

nonexistent." She testified that this affected appellee. Appellee likewise testified that the accident affected his relationship with his wife because he was unable to sleep in the same bed as her because the floor was "the only thing" that was "comfortable[.]"

Appellee and Cindy Guajardo also testified that appellee received numerous awards for his job performance prior to the accident, but Cindy testified that he received no awards or praise at work after the accident. She also testified that "[g]oing out to the park, going to the mall, it was hard for him because he couldn't be walking straight" and "[s]uddenly he has pain." She testified that "you can only understand pain if you live with someone that has chronic pain, that has been constantly in pain." She further testified that "[i]t's hard and depressing" for him, as well as for her and the children.

We conclude that the evidence is factually sufficient to support the jury's award of past physical pain and mental anguish. As a result, we resolve appellants' first issue against them.

DAMAGES FOR PAST PHYSICAL IMPAIRMENT

In their third issue, appellants argue that, although there is some evidence of past physical impairment, there is insufficient evidence to support the jury's award of $150,000 for past physical impairment. Physical impairment—also sometimes called loss of enjoyment of life—encompasses the loss of the injured party's former lifestyle. *Day*, 2015 WL 1743153, at *2. "Physical impairment is an element of damages that extends beyond loss of earning capacity and beyond any pain and suffering, to the extent that it produces a separate loss that is substantial or extremely disabling." *Thompson v. Martinez*, 217 S.W.3d 680, 684 (Tex. App.—Dallas 2007, pet. struck); *see Dawson*, 107 S.W.3d at 752; *see also Golden Eagle*, 116 S.W.3d at 772.

Appellants argue that, although appellee testified that the pain from the accident limited his ability to engage in various activities, "there was no testimony on the duration of any problems" other than evidence that his "issues only continued" through the summer and fall of

2010 following the accident. Appellants also argue that testimony by appellee's chiropractor established that appellee received medical treatment only through October 2010 and there was no evidence of any additional medical treatment after October 2010—over four years prior to trial. Appellants assert that, as a result, the evidence demonstrates that any physical impairment was limited to a four-month period after the accident and does not support the jury's $150,000 award for past physical impairment. In addition, appellants argue that—although appellee contends the accident affected his job performance, which caused him to lose his job as a field technician—appellee controverted his testimony by admitting that he lost his job as a result of a reduction in force.

Appellee argues that the evidence of past physical impairment was legally and factually sufficient to support the jury's award. Appellee contends that the "jury could have reasonably inferred that Appellee's physical impairment continued long **after** the collision[.]"

Appellee testified that prior to the accident, he would dance with his wife, play in the park with his children, play soccer, carry his children, bowl, and fish. He stated that his family likes "to be active" and he "never had a problem [with] any physical activity." He testified that, after the accident, he "couldn't get up," "couldn't walk," and could not "even take the kids to the park" because of the pain. He also testified that the family "stopped going to church" because he was not able to change positions to kneel, stand, and sit during the service. Prior to the accident, appellee took care of his lawn. After the accident, he was unable to do so because he could not pull the rope to get the mower started and had difficulty pushing the mower. He testified that he had not bowled since the accident, and had not been able to participate in laser tag.

Cindy Guajardo, appellee's wife, also testified that their family was "[v]ery, very active." She stated that they went for walks and to the park, maintained their lawn, washed their car and cleaned house, fished, played video games, and jogged. She testified that they were "[v]ery, very

active" in their church. She testified that, because of the accident, she and her family missed out "on a lot of things[.]" She testified that they are no longer able to drive to visit family in Mexico because "after the accident" appellee could not "stay sitting for a long time." And it was difficult for him to drive for fifty minutes or an hour and fifteen minutes to visit their parents. She also testified that going to the park or mall was "hard for him" because "[s]uddenly he has pain." She stated that they used to go dancing and fishing but "that was hard." She also testified that they could not take advantage of a free ticket to Six Flags "[r]ight after the accident" and "for the years after" because appellee could not go. As noted above, both appellee and Cindy Guajardo testified that the injuries from the accident affected their marital relationship, and Cindy testified that it affected their sexual relations.

In addition, appellee testified that prior to the accident, he received numerous awards for his job performance and was the "go-to guy." He described that job as being "a blessing" and a "Godsend" that provided a good schedule and great benefits, allowed him to provide for his family and manage his time, and was a "good company [to] work for." He testified that he "enjoyed going out" and "enjoyed talking to people" in his former job. He testified that, after the accident, his performance "started dropping" because he was "limited in his mobility" and was in "pain[.]" He "felt that after the accident," he "was not able to do [his] job." He testified that, if he "didn't do the job," he "would get [his] managers on [his] back." He had to ask for assistance to perform tasks such as lifting heavy items that he could no longer perform independently because of the pain from his injury. He testified that he was laid off in March 2012 "due to performance evaluations[.]" He testified that, at the time of trial, he had a new job working with "[e]ngines, the train throughout" "from city to city" for a railroad company. *See Day*, 2015 WL 1743153, at *4 (stating evidence of difficulty accomplishing work tasks and inability to work may support an award of future physical impairment damages and noting evidence that difficulty

in assuming awkward positions and adverse effect on strength of abdominal muscles would impact future job performance as an automobile body repairman); *Demby v. Rivers*, No. 01-08-00965-CV, 2009 WL 4437093, at *3 (Tex. App.—Houston [1st Dist.] Dec. 3, 2009, no pet.) (mem. op.) (appellee's inability to work after the accident was a part of appellee's proof of physical impairment damages). Appellants argue that appellee controverted his testimony when he testified on cross-examination that he lost his job as a result of "a reduction in force" and he was "the next to be let go[.]" But the jury may resolve inconsistencies in the testimony of any witness. *Genie Indus., Inc. v. Matak*, 462 S.W.3d 1, 13 (Tex. 2015).

Appellants argue that the only testimony concerning the duration of appellee's impairment indicated that his physical impairment only lasted four months after the accident and, as a result, does not support the award of $150,000 for past physical impairment. Appellants also argue that the only testimony on the nature of appellee's impairment was appellee's testimony that his wife had to feed him while he lay on the floor "[s]ince the accident, through a whole year, that summer, that the [sic] fall." And they state that there was no testimony that appellee received any medical treatment after October 2010. But evidence of appellee's physical impairment discussed above included evidence of loss of appellee's former lifestyle as a result of the accident. And it was "particularly within the jury's province to resolve these matters" concerning damages for physical impairment "and determine the amounts attributable thereto." *Lanier v. E. Founds., Inc.*, 401 S.W.3d 445, 455 (Tex. App.—Dallas 2013, no pet.).

We conclude that the evidence is factually sufficient to support the jury's award for past physical impairment. We resolve appellants' third issue against them.

DAMAGES FOR FUTURE PHYSICAL PAIN AND MENTAL ANGUISH DAMAGES

In their second issue, appellants argue that there is "no support, or, alternatively, insufficient support" for the jury's award of $50,000 for future physical pain and mental anguish.

Appellants also argue that appellee's reliance on evidence of past pain and mental anguish does not support damages for future pain and mental anguish. And, conversely, appellee argues that there is legally and factually sufficient evidence to support the jury's award for past physical pain and mental anguish.

To recover for future damages, appellee had to present evidence that, in reasonable probability, he would suffer compensable physical pain and mental anguish in the future. *See Adams v. YMCA of San Antonio*, 265 S.W.3d 915, 917 (Tex. 2008) (per curiam); *Fisher v. Coastal Transp. Co.*, 230 S.W.2d 522, 523–24 (Tex. 1950). "An award of future damages in a personal injury case is always speculative." *Day*, 2015 WL 1743153, at *4 (quoting *Pipgras v. Hart*, 832 S.W.2d 360, 365 (Tex. App.—Fort Worth 1992, writ denied)).

Appellants argue that there was "very little testimony" regarding potential future pain and mental anguish offered by appellee. They assert that the only evidence was appellee's testimony that he "still wakes up sometimes with pain, but that he has learned to deal with it." And appellants argue that there was no testimony from a doctor or chiropractor that appellee will continue to experience pain and mental anguish as a result of the accident. In addition, appellants argue that there was "absolutely no evidence that would support any future mental anguish."

Appellee testified that he "still" has "problems" and he still wakes up with pain. He testified that the pain is "better sometimes" and he feels "good some days" but that, at "other times, it's bad." He stated that he has learned to "deal with" and "manage the pain." He testified, "It's something that's not going to go away. It's going to stay there. It's going to stay with me for the rest of my life." He then stated, "The only thing that I have to do right now is just manage it."

In addition, Dr. Hagarty testified that—around four months after he began treating appellee—he concluded appellee had "responded pretty well to the treatment" and "could be released." But Dr. Hagarty testified that he could feel that appellee "still had tightness on both sides in that lower back area." Dr. Hagarty testified that, as a result of his final examination of appellee, appellee's prognosis—or current status—"was fair at that point time [sic], but he did remain guarded." Dr. Hagarty noted that appellee "still had a little bit of some muscle tension that I showed in the final exam," along "those two muscle[s] that run along the lower back there." In addition, Dr. Hagarty testified that some people who are in an accident "may have lingering problems for an extended period of time[.]" Dr. Hagarty also stated that, "especially with disk injuries," he "see[s]" that people can have the problems for "the remainder of their life[.]" He then testified that appellee "absolutely" suffered a disk injury that was "significant" and can "cause pain[.]"

Appellants cite *Strahan v. Davis*, 872 S.W.2d 828, 834 (Tex. App.—Waco 1994, writ denied), with the parenthetical explanation that "evidence of current minor pain supported only speculation that the pain would continue in the future." But *Strahan* is distinguishable. In that case, the only evidence supporting an award for future physical pain was the appellee's testimony that his knee popped and his eye itched. *Id.* The court held that there was "a complete absence of evidence to support the jury's award of future pain and mental anguish" to the appellee. *Id.* Here, in contrast, appellee testified that he "still wake[s] up with pain" and he will have the pain "for the rest of [his] life."

We conclude that the evidence is legally and factually sufficient to support the jury's award of $50,000 for future physical pain and mental anguish. *See Dawson*, 107 S.W.3d at 752 (concluding testimony of continued pain in neck and back from injuries and mental anguish from accident was legally and factually sufficient to support award for future pain and suffering).

We resolve appellants' second issue against them.

DAMAGES FOR FUTURE PHYSICAL IMPAIRMENT

In their fourth issue, appellants argue that there is no evidence supporting the jury's award of $50,000 for future physical impairment and, as a result, this Court should reverse and render the judgment as to that damage award. Appellants argue that appellee provided no testimony on the "likelihood of any future physical impairment" and mental anguish and sought no further treatment since he was released from medical treatment without restrictions in October 2010. Appellants also argue that there is no evidence or testimony of "any future problems or procedures which might be necessary." In addition, appellants argue that appellee incorrectly relies upon evidence of past physical impairment to support damages for future physical impairment. Appellee argues that there was legally and factually sufficient evidence to support the jury's award for future physical impairment.

As discussed above, appellee and his wife testified to his continuing pain and that the pain impaired his ability to participate in activities that he and his family enjoyed prior to the accident, such as playing with his children, driving to visit family members, attending church, and mowing his lawn. *See Day*, 2015 WL 1743153, at *4 (evidence of "continuing medical complications" and "continuing pain" as part of evidence supporting finding of future physical impairment); *Plainview Motels, Inc. v. Reynolds*, 127 S.W.3d 21, 39 (Tex. App.—Tyler 2003, pet. denied) (evidence of activities that appellee cannot participate in as a result of injuries supported jury's award for future physical impairment). Appellee testified that the injuries impaired his performance at his former job as a field technician because he was unable to lift heavy items and perform tasks that he formerly did independently without assistance. He testified that his inability to perform these tasks resulted in his losing his job as a field technician.

See Day, 2015 WL 1743153, at *4 (evidence of difficulty accomplishing work tasks or inability to work may support an award of future physical impairment damages).

We conclude that the evidence is legally and factually sufficient to support the jury's award for future physical impairment. *See id.* at *3–4 (concluding jury's finding of future physical impairment is supported by factually sufficient evidence and the amount awarded for future physical impairment was not excessive). We resolve appellants' fourth issue against them.

In addition, we have reviewed the evidence to determine whether, when combined, the jury's awards for past and future physical pain and mental anguish and past and future physical impairment were excessive as a whole. After reviewing the evidence, we conclude that the evidence was sufficient to support the jury's findings of damages as a whole for past and future physical pain and mental anguish and past and future physical impairment (a total of $500,000). *See Golden Eagle*, 116 S.W.3d at 773–74. As a result, we conclude that the total amount was not excessive. *See id.*

We overrule appellants' four issues and affirm the trial court's judgment.

CONCLUSION

We affirm the judgment of the trial court.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

150202F.P05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JACOB SWEARINGER AND UNITED VAN LINES, LLC D/B/A ONE UNITED DRIVE, Appellants

No. 05-15-00202-CV V.

ABRAHAM EDILBERTO GUAJARDO, Appellee

On Appeal from the 192nd Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-12-03165.
Opinion delivered by Justice Lang-Miers, Justices Fillmore and Brown participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee ABRAHAM EDILBERTO GUAJARDO recover his costs of this appeal from appellants JACOB SWEARINGER AND UNITED VAN LINES, LLC D/B/A ONE UNITED DRIVE.

Judgment entered this 5th day of August, 2016.