

**Reversed and Rendered in Part, Reversed and Remanded in Part, and Opinion
filed January 8, 2026.**



In The

Fourteenth Court of Appeals

NO. 14-24-00104-CV

EXXON MOBIL CORPORATION, Appellant

V.

**TAMARA BROWN, DEMARCUS FRIELS, AND BRAYAN ROQUE,
Appellees**

**On Appeal from the 295th District Court
Harris County, Texas
Trial Court Cause No. 2019-52989-A**

OPINION

In this appeal from a final judgment rendered after a trial by jury, the issues involve two complaints of charge error, plus a host of other complaints challenging whether the evidence is legally and factually sufficient to support various categories of damages. We overrule each of the charge error complaints, but we sustain some of the sufficiency challenges.

I. BACKGROUND

This is a personal injury case, arising out of a series of explosions at Exxon Mobil's Baytown Olefins Plant. The explosions were caused by an accumulation of popcorn polymer, an industrial byproduct that expanded under pressure and then set in motion the rupture of a pipe, the combustion of hydrocarbons, and the igniting of a large depropanizer tower.

The resulting fire was massive. It reached higher than seven hundred feet above the top of the tower, and it burned for twelve hours.

No one died in the incident. Nor was anyone burned. But many individuals sued Exxon, claiming other sorts of injuries.

This court disposed of some of those claims in an earlier permissive appeal, where we concluded that Exxon was entitled to summary judgment because the exclusive remedy for certain individuals was their recovery of workers' compensation benefits. *See ExxonMobil Corp. v. Alvarez*, 693 S.W.3d 794 (Tex. App.—Houston [14th Dist.] 2024, no pet.).

But before we issued our opinion in that permissive appeal, a trial was held for six other individuals. One of those plaintiffs, Mario Rojas, recovered nothing from the jury. Two of the plaintiffs were awarded some amount of damages, but they were both severed out later because of workers' compensation benefits. The three remaining plaintiffs—Brayan Roque, DeMarcus Friels, and Tamara Brown (collectively, the "Plaintiffs")—were not covered by workers' compensation insurance and received sizeable awards, which Exxon has now challenged in this appeal.

A. Brayan Roque

Roque worked for a subcontractor as a pipe welder. There was a conflict in the evidence as to Roque's exact position at the time of the explosions. During his deposition, Roque said that he was two hundred yards away from the depropanizer tower. But at trial, he claimed that he was much closer.

Roque said that when he saw the fireball, he took off running in the opposite direction. He jumped over obstacles and ducked under structures. In the course of his escape, he claimed that he bumped his shoulder into something hard.

There were other conflicts in the evidence as to the scope of Roque's injuries. On the same day of the incident, Roque signed a witness statement, where he purported to write, "I do not feel like I need any medical attention at the moment." And on the very next day, he signed another statement, where he purported to write that he "feel[s] good." But at trial, Roque claimed that someone else wrote these statements.

The fire and explosions occurred on July 31, 2019, but Roque did not seek medical attention until eleven days later, on August 11. His chief complaints were headache, shoulder pain, back pain, and neck pain. An MRI taken on September 28 revealed two herniated discs in the lower back. Over the course of the next three years, Roque received a series of treatments, including physical therapy, epidural steroid injections, nerve ablations, and a discectomy.

The jury determined that Exxon was liable to Roque and awarded him more than \$12 million in damages. Exxon has not challenged Roque's recovery for his loss of past earning capacity (\$45,000); past pain (\$1.5 million); or future pain (\$3 million). But Exxon has challenged the remaining awards, which were damages for future medical expenses (\$373,877.76); loss of future earning capacity (\$874,000);

past mental anguish (\$1.5 million); future mental anguish (\$1.5 million); past physical impairment (\$2 million); future physical impairment (\$1 million); past disfigurement (\$250,000); and future disfigurement (\$250,000).

B. DeMarcus Friels

Friels testified that he was operating an excavator about three hundred feet away from the depropanizer tower at the time of the explosions. He felt the ground shake beneath him, and when he turned and saw the ball of fire, he jumped from the excavator and ran for his life. The jump was from about five feet high.

Like Roque, Friels also signed a written statement on the day of the explosions that he was not injured and that “no treatment at time [was] needed.” On the day after the explosions, he signed another statement, reporting “no changes.”

Friels first sought medical attention on August 4, which was four days after the incident. He appeared at the hospital, complaining of heart palpitations and shortness of breath, but not of back pain. Friels—who is six feet and nine inches tall, and at the time weighed three hundred and sixty pounds—has had a history of heart issues since he was a child.

Friels first complained of back pain on August 8, which was eight days after the incident. His medical records indicate that his symptoms began that same day, after he was “pushing and pulling heavy generators at work [and] had sudden pain to low back and neck.” Four days later, on August 12, he appeared for a “Fit For Duty” exam, where he again complained of lower back pain, but he could “not remember a specific incident in which he injured his lumbar area.” The objective finding at the exam was that he had “FROM,” or free range of motion. He was directed to take over-the-counter NSAIDs, with alternating heat and ice packs. He

was also discharged and cleared to work, provided that he abstained from heavy lifting.

MRIs taken later showed that Friels had herniated discs in both his cervical and lumbar spine. His treatment included physical therapy, more than thirty visits to a chiropractor, and epidural steroid injections.

Friels suffered a paralyzing injury from an unrelated motor vehicle accident in 2021. Because of that injury, he requested just four measures of damages, and the jury awarded him a total of \$2 million. Exxon has not challenged the awards for past pain (\$150,000); past mental anguish (\$200,000); or past physical impairment (\$150,000). But Exxon has challenged the sole remaining award for future mental anguish (\$1.5 million).

C. Tamara Brown

Brown worked as a nondestructive testing technician. On the day of the incident, she was with a coworker on a platform fifty feet in the air, collecting ultrasonic thickness readings of a valve. When she heard the explosion, her coworker urged her to hurry down the platform. She hastily complied, but while she was still inside the ladder cage, Brown heard another explosion and fell on top of the coworker.

Brown received medical attention on the same day of the incident. Her chief complaint was pain in the elbow and knee. The next day, she complained of more pain to the neck and back. An MRI taken on August 8, eight days after the incident, showed that she had a herniated disc in her neck.

Brown's treatment consisted of physical therapy, epidural steroid injections, nerve ablations, and a cervical discectomy.

The jury awarded her more than \$13 million. Exxon has not challenged her awards for loss of past earning capacity (\$104,000); loss of future earning capacity (\$90,000); past pain (\$2 million); or future pain (\$2 million). But Exxon has challenged the remaining categories of future medical expenses (\$416,000); past mental anguish (\$2 million); future mental anguish (\$2 million); past physical impairment (\$1.5 million); future physical impairment (\$2 million); past disfigurement (\$500,000); and future disfigurement (\$500,000).

II. CHARGE ERROR COMPLAINTS

Though we ultimately dispose of this appeal on the grounds presented in Exxon's damages complaints, which are discussed further below, we still address the charge error complaints, which were presented first in Exxon's brief, because the same issues may arise again on remand.

A. Occurrence vs. Injuries

The trial court drafted a charge that was based on, but modified from, the model instructions of the PJCs. That charge contained a single liability question that was written as follows: "Was the negligence, if any, of ExxonMobil, a proximate cause of the occurrence in question, if any, to any of the following Plaintiffs?" *See* Texas Pattern Jury Charges: Malpractice, Premises & Products § 66.4, at 181 (2022). The charge further defined the phrase "occurrence in question" as "the fire that occurred on July 31, 2019 at ExxonMobil's Baytown Olefins Plant."

The charge also had several damages questions, one for each of the Plaintiffs, which were written as follows: "What sum of money, if paid now in cash, would fairly and reasonably compensate [the Plaintiff] for [his/her] injuries, if any, that resulted from the occurrence in question?" *See* Texas Pattern Jury Charges: Malpractice, Premises & Products § 80.3, at 301 (2022).

Exxon objected that the liability question focused on the “occurrence” as opposed to the “injuries.” *See* Texas Pattern Jury Charges: Malpractice, Premises & Products § 66.1, at 177 (2022) (expressing a preference for injuries over occurrence). Exxon proposed a different liability question, which would have asked, “Was the negligence, if any, of ExxonMobil a proximate cause of the injuries in question, if any, to any of the following Plaintiffs?” The trial court denied that request. Exxon now complains of that ruling, which we review for an abuse of discretion. *See Thota v. Young*, 366 S.W.3d 678, 687 (Tex. 2012).

The gist of Exxon’s complaint is that the charge, as submitted, only required the jury to find proximate causation with regards to the fire, and not the Plaintiffs’ injuries. Exxon argues that this amounts to harmful charge error because the Supreme Court has said that an element of premises liability is that the owner’s negligence “proximately caused the plaintiff’s injuries.” *See United Supermarkets, LLC v. McIntire*, 646 S.W.3d 800, 802 n.4 (Tex. 2022) (per curiam).

The Plaintiffs respond that there is no charge error because the Supreme Court approved of the same manner of submission in *Morgan v. Compugraphic Corp.*, 675 S.W.2d 729 (Tex. 1984). That case involved a default judgment, so there was no jury charge. It also involved claims of ordinary negligence and products liability, not premises liability. But in a footnote, the Supreme Court cited approvingly to model instructions that were similarly worded to the instructions used here. *Id.* at 731 n.2.

Exxon replies that *Morgan* is “old” and does not address the proper method of submitting a premises liability case. Both of those observations may be true, but Exxon did not supply any authority in its reply brief demonstrating that the Plaintiff’s reliance on *Morgan* is incorrect.

During oral argument, Exxon referred for the first time to three cases even older than *Morgan*. The first two were *Norton v. Caster*, 125 Tex. 48, 81 S.W.2d

487 (1935) and *Phoenix Refining Co. v. Tips*, 125 Tex. 69, 81 S.W.2d 60 (1935). Both of those were car wreck cases, not premises liability cases, and they each involved the same type of charge error: there was no mention at all of proximate causation. Those omissions make the cases distinguishable because the jury here was affirmatively asked to find, first, whether Exxon’s negligence proximately caused the fire, and second, whether the Plaintiffs’ injuries resulted from that fire.

The third case was *Carey v. Pure Distributing Corp.*, 133 Tex. 31, 124 S.W.2d 847 (1939). That case did not involve a claim of premises liability either. Nor did it involve any complaint of charge error. Instead, the issue was whether the evidence supported a finding of proximate causation.

Exxon appears to seize on the language in *Carey* where the Supreme Court addressed whether the defendants’ negligence “was the proximate, and not the remote, cause of the resulting injuries.” *Id.* at 35, 124 S.W.2d at 849. But nothing in that sufficiency analysis demonstrates that a trial court errs when, consistent with *Morgan*, it submits a charge that asks whether the defendant’s negligence proximately caused the “occurrence” instead of the “injuries.”

Exxon disavows any argument that the use of “occurrence” is always wrong as a matter of law. And despite its repeated reference to the PJCs, Exxon does not argue that there was any evidence of the Plaintiffs’ pre-occurrence negligence—in which case the use of “injury” would be particularly appropriate—or that the Plaintiffs were negligent in fleeing the explosion or reacting as they did. *See Texas Pattern Jury Charges: Malpractice, Premises & Products* § 66.1, at 177 (2022).

However, Exxon still argues that the use of “occurrence” was error in this case because of “the fact pattern” (i.e., the nature of the Plaintiffs’ injuries) and because of how the trial court narrowly defined the occurrence as the fire. Exxon explains that the charge “watered down” the burden of proof because it focused on proximate

causation of the “easy thing” (the fire) but not the “hard things,” which Exxon characterizes as the Plaintiffs’ “unforeseeable and exaggerated” injuries.

Exxon seems to suggest that the charge made the Plaintiff’s recovery inevitable, but Exxon overlooks that Rojas, a separate plaintiff not involved in this appeal, recovered nothing from the jury. By his own counsel’s admissions, Rojas was “less injured” than the Plaintiffs, though Rojas had still sought \$240,000 in damages for his past and future pain and mental anguish. The jury’s refusal to award anything to Rojas is some indication that the charge did not “water down” the burden of proof.

But even if Rojas had not been involved in this case, Exxon’s legal argument would still be foreclosed by *Morgan*, which held that once proximate causation is established for the event being sued upon (just as when liability is established in a default), the plaintiff need only establish a causal nexus between that event and her injuries. *See Morgan*, 675 S.W.2d at 730. (“Upon consideration of the court of appeals holding that it was incumbent upon Morgan to prove proximate cause, we reach the somewhat different conclusion that Morgan was required to prove a causal nexus between her injuries and her exposure to chemical fumes.”).

Earlier opinions from the courts of appeals have similarly held that a plaintiff is not required to prove that her exact injury was foreseeable if liability is otherwise established. *See, e.g., El Paso Drive-In Cafes, Inc. v. Wilson*, 467 S.W.2d 200, 205 (Tex. App.—El Paso 1971, no writ) (“Since the element of foreseeability is the principal constituent legal implication in the definition of proximate cause, it is necessary that it be applied to the alleged acts of negligence to impose liability on any tortfeasor. Yet, this having been established, the tortfeasor then becomes liable for any damages or injuries resulting therefrom. It is not necessary that a tortfeasor foresee the effect of injuries or damages arising from a negligent act, since it is liable

whether or not they are foreseen.”); *Cantu v. Del Carmen Pena*, 650 S.W.2d 906, 907 (Tex. App.—San Antonio 1983, writ ref’d n.r.e.) (“The Texas courts have distinguished between foreseeability of a collision and foreseeability of injury to the occupants of the car involved in the collision, holding that if the collision was foreseeable no inquiry need be made concerning foreseeability of injury to the occupants of the vehicle.”); *Cowden Cab Co. v. Thomas*, 425 S.W.2d 886, 888 (Tex. App.—Fort Worth 1968, writ ref’d n.r.e.) (“If one be responsible for a collision because of dereliction of duty in his act or omission to act, he is answerable in damages for any and all damage therefrom resulting whether or not they were foreseeable.”).

Exxon responds that these cases from the lower courts of appeals are distinguishable because they mostly concern car wrecks. But *El Paso Drive-In Cafes* was a premises case, not a car wreck case. Exxon has offered no critique of that opinion.

Exxon relatedly argues that the outcomes in the car wreck cases were “unsurprising.” Exxon explains that there can be no harm from using “occurrence” as opposed to “injuries” in a car wreck case because if the collision was foreseeable on account of the defendant’s negligence, then injuries to the passengers must have also been foreseeable. Exxon suggests, by implication, that the injuries in this case were not foreseeable—and therefore, the charge resulted in harm—because the Plaintiffs were not working on the depropanizer tower at the time of the explosions and none of them suffered any burns. This argument seems to mischaracterize foreseeability.

Foreseeability does not necessarily equate to predictability. *See Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie*, 578 S.W.3d 506, 519 (Tex. 2019). Rather, foreseeability means that “the actor should have reasonably anticipated the dangers

that his negligent conduct created for others.” *Id.* It “does not require that a person anticipate the precise manner in which injury will occur once he has created a dangerous situation through his negligence.” *Id.* It requires only that “the general danger, not the exact sequence of events that produced the harm, be foreseeable.” *Id.*

The danger of allowing an accumulation of popcorn polymer was that it could expand under pressure and rupture metal pipes, leading to a loss of containment, and thereby cause a massive explosion and fire. If Exxon should have reasonably anticipated those risks, as the jury so found, then Exxon should have also anticipated that the explosions and fire would create a panic and that any workers in the vicinity might get injured as they fled for their lives, like the Plaintiffs did here. This has been the law since before *Carey*. See 133 Tex. at 35, 124 S.W.2d at 849 (“All that it required is that the injury be of such a general character as might reasonably have been anticipated; and that the injured party should be so situated with relation to the wrongful act that injury to him or to one similarly situated might reasonably have been foreseen.”).

Exxon lastly cites to *Union Pump Co. v. Allbritton*, 898 S.W.2d 773 (Tex. 1995). That case involved a defective pump that caused a fire at an industrial facility. *Id.* at 774. After the fire was extinguished, the plaintiff volunteered to assist in the inspection of a separate purge valve that was causing problems. *Id.* On her way back from the valve, the plaintiff stepped over a pipe rack, rather than go around it, which was the safer course, and she slipped because the pipe rack was wet in the aftermath of the fire. *Id.* The plaintiff sued the maker of the defective pump. *Id.* The Supreme Court held that the maker was entitled to summary judgment because the pump did no more than furnish the condition that made the plaintiff’s injuries possible. *Id.* at

776. A concurring justice similarly reasoned that there was no proximate causation because the crisis had already abated. *Id.* at 776 (Cornyn, J., concurring)

Exxon seems to cite *Allbritton* for the proposition that certain injuries may not be foreseeable following a fire at an industrial facility. But the facts of that case are too different. The Plaintiffs’ theories here were that they were injured while fleeing the fire—*before* the crisis was abated. *Allbritton* does not have any apparent application to this case.

For all of the foregoing reasons, we conclude that the trial court did not abuse its discretion by rejecting Exxon’s requested submission.

B. Nature, Duration, and Severity

The charge defined mental anguish as “anguish that causes a substantial disruption in the plaintiff’s daily routine or a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.”

Exxon requested a variation on this definition that would have included language about the “nature, duration, and severity” of the Plaintiffs’ claimed mental anguish. The full definition would have stated that “mental anguish must be of a nature, duration, and severity that it causes a substantial disruption in the plaintiff’s daily routine or a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.”

The trial court refused Exxon’s requested definition, and now Exxon contends that the trial court abused its discretion by making that ruling.

Exxon’s requested submission invoked the standard for determining whether the evidence is sufficient to support an award for mental anguish damages. *See Parkway Co. v. Woodruff*, 901 S.W.2d 434, 444 (Tex. 1995) (“An award of mental anguish damages will survive a legal sufficiency challenge when the plaintiffs have

introduced direct evidence of the nature, duration, and severity of their mental anguish, thus establishing a substantial disruption in the plaintiffs’ daily routine.”). Exxon has not cited to any authority demonstrating that the jury should be apprised of this standard. Exxon merely advances the policy position that “adding some more structure cannot hurt and can only help.”

The Plaintiffs respond that Exxon’s requested definition was improper because issues regarding the sufficiency of the evidence are questions of law, which are not within the province of the jury to decide. *See Yowell v. Piper Aircraft Corp.*, 703 S.W.2d 630, 634 (Tex. 1986) (“No evidence is a question of law.”); *Spencer v. Eagle Star Ins. Co. of Am.*, 876 S.W.2d 154, 157 (Tex. 1994) (“A question which calls for a finding beyond the province of the jury, such as a question of law, may be deemed immaterial.”); *Grohman v. Kahlig*, 318 S.W.3d 882, 887 (Tex. 2010) (per curiam) (“A trial court commits error if it submits a question of law to the jury.”).

We conclude that the trial court did not abuse its discretion by refusing the additional language requested by Exxon.

III. DAMAGES COMPLAINTS

In a personal injury case, the claimant must prove both the existence and the amount of his or her damages. *See In re Liberty Cnty. Mut. Ins. Co.*, 679 S.W.3d 170, 174 (Tex. 2023) (orig. proceeding) (per curiam). Exxon challenges whether the Plaintiffs satisfied both of these burdens, arguing in some instances that there is no evidence to support the existence of certain damages, and in others that the amount of damages is excessive.

In a “no evidence” or legal sufficiency challenge, we review the record in the light most favorable to the challenged finding, crediting favorable evidence if a reasonable factfinder could and disregarding contrary evidence unless a reasonable

factfinder could not. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). The evidence is sufficient to support a finding if the evidence rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Id.* at 822. The evidence is insufficient to support a finding only if (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact. *Id.* at 810.

In an excessiveness or factual sufficiency challenge, we consider and weigh all of the evidence, not just the evidence that supports the jury's finding, and decide whether the challenged finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406–07 (Tex. 1998).

We examine all of Exxon's legal sufficiency challenges because the remedy for a successful legal sufficiency challenge is rendition of judgment, and we are obliged to address those points that would afford a party the greatest amount of relief. *See Bradleys' Elec., Inc. v. Cigna Lloyds Ins. Co.*, 995 S.W.2d 675, 677 (Tex. 1999) (per curiam). But we only examine two of Exxon's factual sufficiency challenges because, as we explain further below, those challenges, which we hold to be successful, require a new trial on all categories of damages for which the evidence is legally sufficient. *See Serv. Corp. Int'l v. Guerra*, 348 S.W.3d 221, 233 (Tex. 2011) (declining to consider whether an award was excessive because a remand was required for other reasons).

A. Mental Anguish

We begin our review with the awards for mental anguish damages, which is the only category of challenged damages common to all three Plaintiffs.

As indicated earlier, the charge defined mental anguish as “anguish that causes a substantial disruption in the plaintiff’s daily routine or a high degree of mental pain and distress that is more than mere worry, anxiety, vexation, embarrassment, or anger.” We measure the sufficiency of the evidence against this given definition because there was no valid objection to it. *See Osterberg v. Peca*, 12 S.W.3d 31, 55 (Tex. 2000).

1. There is legally sufficient evidence to support the existence of Roque’s mental anguish in the future.

Exxon does not challenge the finding that Roque suffered some amount of mental anguish in the past. Instead, Exxon only challenges the finding that Roque will continue to suffer such anguish in the future.

To support his claim for future mental anguish, Roque was required to demonstrate a reasonable probability that he would suffer compensable mental anguish in the future. *See Adams v. YMCA of San Antonio*, 265 S.W.3d 915, 917 (Tex. 2008). And to withstand a legal sufficiency review, he was also required to present evidence describing the nature, duration, and severity of his mental anguish. *See Parkway*, 901 S.W.2d at 444.

Roque testified that he was frozen in fear when he first saw the fire, but that he “snapped out of it” when he felt the heat radiating from the tower. He ran for his life, afraid that the entire plant would blow up and that he would die by being burned alive. When he reached safer ground, he was shaking and wanting to cry. He finally did cry when he returned home and clutched his wife.

Roque said that he could not sleep that first night. He was paranoid and numb. He developed nightmares that involved him standing in front of the tower, where it would be burning and leaning over, but he was stuck and could not escape. Sometimes he would wake up in a panic, and other times his wife would wake him

up and calm him down. He said that these nightmares happened every day for the first two years, but as of the time of the trial, they have become less frequent: “once a week, once a month, it just depends.”

Roque testified that he returned to work at the plant because of a lack of better options: he has too many financial obligations and no other job training. He said that he is scared on a daily basis because, as a welder, he produces sparks and heat, which can be a source of ignition for any sort of escaping gas. He is afraid of fires, and that fear has made him hypervigilant. Alarms startle him, as do people moving quickly around the premises. On one occasion at work, he heard a loud noise from the slamming tailgate of a dump truck, but he mistakenly believed that the sound portended something more ominous, and he took off running for safety.

Roque testified that he wants to be healthy and happy again. He said that his stress levels have been different since the incident because he has to cope with both the anxiety of work and the pain within his body. He worries that, if there is another incident, he will not be able to run away as quickly. Relatedly, he worries that he will be terminated for not physically performing as he once did, and that he will then be unable to provide for his family. He described one occasion where, after an ablation procedure, he was still in pain and so frustrated by his physical limitations that he asked to be laid off. He also said that he is sad because his kids think that he no longer wants to play with them, and because his wife has to take on more physical labors at home.

Dr. George Glass, a psychiatrist, opined that Roque suffers from depression and PTSD, for which he prescribed antidepressants and sleeping medications. He also testified that the feelings that arise from near-death experiences can become less intense over time, but that they do not go away completely.

Viewing all of this testimony in the light most favorable to the verdict, we conclude that Roque produced legally sufficient evidence that he will continue to suffer mental anguish in the future.

Roque described the nature of his mental anguish both in terms of his nightmares, which were reoccurring, and in terms of the anxiety he feels while on the job and at home. He is fearful of being injured again at the plant. He is also distressed by the thought of being terminated for performance reasons and then being unable to provide for his family. He is likewise distressed by the changes within his family: he cannot play with his children, and the physical tasks that were once left to him have shifted to his wife.

He also described the duration of this mental anguish. The nightmares have persisted for more than three years since the incident, although as of the time of the trial, they have become less frequent. And his fears at work are chronic: he has anxiety every day.

As for severity, there was testimony that the nightmares will wake him or his wife. He is also triggered into panic by loud sounds at work and has become so frustrated on occasion by his physical limitations that he has requested termination.

This evidence demonstrates the existence of anguish causing a substantial disruption in daily routine. *Cf. Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788, 797 (Tex. 2006) (mentioning the plaintiff's nightmares and strained family relationships as bases for an award of future mental anguish); *Martinez v. Kwas*, 606 S.W.3d 446, 467 (Tex. App.—Houston [1st Dist.] 2020, pet. denied) (concluding that there was sufficient evidence of future mental anguish where the plaintiff described her daily anxiety at work, which challenged the way that she perceived herself, and which compelled her to quit a career that she once loved); *Thomas v. Uzoka*, 290 S.W.3d 437, 455 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (stating that proof of

mental anguish can include painful emotions such as grief, wounded pride, and despair).

2. There is factually insufficient evidence to support the amount awarded for Roque’s mental anguish in the future.

Mental anguish damages are inherently difficult to quantify because the alleged injury is a subjective, unliquidated, and nonpecuniary loss. *See PNS Stores, Inc. v. Munguia*, 484 S.W.3d 503, 518 (Tex. App.—Houston [14th Dist.] 2016, no pet.). Nevertheless, such damages are recoverable, and we afford the jury a measure of discretion when deciding on the amount of those damages, but that discretion is not unfettered. *See Bentley v. Bunton*, 94 S.W.3d 561, 605 (Tex. 2002) (recognizing that the jury is not afforded “carte blanche”). There must be an evidentiary basis for the jury’s award. *See Hancock v. Variyam*, 400 S.W.3d 59, 68 (Tex. 2013). And the jury must decide on an amount that, in the language of the standard jury charge, “would fairly and reasonably compensate” the plaintiff for his or her loss. In other words, the jury “cannot simply pick a number and put it in the blank.” *See Saenz v. Fid. & Guar. Ins. Underwriters*, 925 S.W.2d 607, 614 (Tex. 1996).

We recently considered an excessiveness challenge in *Garza v. Escamilla*, 712 S.W.3d 718 (Tex. App.—Houston [14th Dist.] 2025, no pet.). That case involved a garden-variety car wreck, where the plaintiff had suggested a simple formula for her noneconomic damages: one dollar for every waking hour of loss, or sixteen dollars per day. *Id.* at 727. The jury credited that suggestion and awarded different amounts for the plaintiff’s past and future damages—e.g., \$30,352 for her past pain, and \$200,000 for her future pain. *Id.* at 727–28. We determined that these amounts were supported by factually sufficient evidence because the amounts were rationally based on the plaintiff’s formula as applied to different passages of time. *Id.*

We did not hold then—nor do we hold now—that an award of noneconomic damages must be supported by a similar formula that is based on a function of time. Noneconomic damages compensate for intangibles, which are “incapable of precise mathematical measure.” *See Brady v. Klentzman*, 515 S.W.3d 878, 887 (Tex. 2017). But we recognize that when time-based formulas are suggested, they can assist the jury in providing some evidentiary basis for its findings. *See HCRA of Tex., Inc. v. Johnston*, 178 S.W.3d 861, 871 (Tex. App.—Fort Worth 2005, no pet.) (“The duration of the pain and mental anguish is an important consideration.”); *see also Gregory v. Chohan*, 670 S.W.3d 546, 560 (Tex. 2023) (plurality op.) (stating that time, or duration, is relevant to both the existence of mental anguish damages and to the amount awarded).

Roque did not suggest any time-based formula here. In closing arguments, he requested \$6 million for his past mental anguish and another \$6 million for his future mental anguish, with no particular explanation for either amount. He requested the very same amounts for his past and future pain, and he specifically asserted that the latter category would persist “for the next thirty years.” The jury rejected these huge dollar figures across the board. As to mental anguish in the future, the jury returned an award of \$1.5 million, a quarter fraction of what was sought, but that amount was still identical to the amount awarded for Roque’s mental anguish in the past, despite an apparent ten-fold difference in the passages of time.

We cannot be certain of what dynamics may have been at play here. Did the jury award equal amounts for Roque’s past and future damages because it believed that the severity of his mental anguish would lessen over time but still persist over a much longer period? Or did the jury simply pick a number and put it in both of the blanks?

While time-based formulas may be helpful, they are not dispositive in a factual sufficiency analysis. For a separate measure, we may look to other cases as “reasonable guideposts” in our assessment of damages, though we must be mindful that each case is unique and that individuals may experience mental anguish in myriad ways. *See Anderson v. Durant*, 550 S.W.3d 605, 619–20 (Tex. 2018) (stating that an award “appear[ed] to be excessive compared to awards in cases involving similar or more egregious behavior”).

Large awards have historically received the most judicial scrutiny. *See Universe Life Ins. Co. v. Giles*, 950 S.W.2d 48, 54 (Tex. 1997) (“Similarly, concerned with the subjective nature of mental anguish damages, we have admonished courts to closely scrutinize such awards.”). In a defamation case, an award of \$7 million in mental anguish damages was held to be excessive where the evidence merely established that the plaintiff had suffered from the loss of sleep, from embarrassment in the community, and from disruptions to his family relationships. *See Bentley v. Bunton*, 94 S.W.3d 561, 607 (Tex. 2002). And in a car wreck case, an award consisting of \$24 million in noneconomic damages, including \$6 million for past and future mental anguish, was similarly held to be excessive because “the force from the impact of the collision was not objectively severe” and there was “sparse and equivocal testimony concerning [the plaintiff’s] noneconomic damages.” *See FTS Int’l Servs., LLC v. Patterson*, No. 12-19-00040-CV, 2020 WL 5047913, at *18 (Tex. App.—Tyler Aug. 26, 2020, pet. granted, judgm’t vacated w.r.m.).

This is not to say that large awards cannot withstand scrutiny. But when mental anguish awards exceed \$1 million, they have frequently been accompanied by shocking or catastrophic injuries.

For example, one such award was upheld in a case where a teenager working a summer job “essentially had both of his hands ripped off.” *See Rentech Steel, L.L.C. v. Teel*, 299 S.W.3d 155, 165 (Tex. App.—Eastland 2009, pet. dism’d) (past mental anguish of \$1.75 million and future mental anguish of \$300,000). We upheld a larger award in a case where the defendant’s negligence caused an extremely painful condition known as trigeminal neuralgia, which was also described by pain experts as “the suicide disease.” *See Alonzo v. John*, 647 S.W.3d 764, 777 (Tex. App.—Houston [14th Dist.] 2022) (past mental anguish of \$1.7 million and future mental anguish of \$3.1 million), *rev’d on other grounds*, 689 S.W.3d 911 (Tex. 2024) (per curiam).

Even larger awards have been upheld in cases involving traumatic brain injuries. In one such case, the plaintiff fell eighty feet from an oil rig and suffered permanent cognitive deficits and significant clinical depression. *See Stewart & Stevenson, LLC v. Foret*, No. 01-11-01032-CV, 2013 WL 4337319, at *11 (Tex. App.—Houston [1st Dist.] Aug. 15, 2013, no pet.) (mem. op.) (unsegregated past pain and mental anguish of \$1 million and unsegregated future pain and mental anguish of \$5 million). In another case, the plaintiff was in a devastating car crash that left her in a coma for ten weeks because the air bags did not deploy. *See Gen. Motors Corp. v. Burry*, 203 S.W.3d 514, 551–53 (Tex. App.—Fort Worth 2006, pet. denied) (unsegregated past pain and mental anguish of \$5 million and unsegregated future pain and mental anguish of \$10 million).

And some of the very worst cases are those involving extreme burn injuries, where the pain was so agonizing and the available treatment so limited that the plaintiffs wanted to end their own lives. *See Emerson Elec. Co. v. Johnson*, 601 S.W.3d 813, 841 (Tex. App.—Fort Worth 2018), *aff’d*, 627 S.W.3d 197 (Tex. 2021) (past mental anguish of \$2 million and future mental anguish of \$3 million); *Critical*

Path Res., Inc. v. Cuevas, 561 S.W.3d 523, 568–69 (Tex. App.—Houston [14th Dist.] 2018, pet. granted, judgment vacated w.r.m.) (past mental anguish of \$5 million and future mental anguish of \$10 million for one burn victim, and past mental anguish of \$2 million and future mental anguish of \$6 million for a second burn victim).

Roque’s injuries cannot compare to any of those just mentioned. And appropriately so, the jury here awarded him a lesser amount of damages for his future mental anguish than almost all of those cases.

However, Roque’s injuries are comparable to those seen in many car wreck cases, where plaintiffs frequently suffer herniated discs and other sorts of trauma to the spine. Many such plaintiffs also endure mental anguish from the constant pain that results from their injuries, as well as from the distress created by their diminished mobility and strained family relationships. Yet the damages for mental anguish in those car wreck cases are usually much smaller—even when submitted in broad form along with pain. *See Press Energy Servs., LLC v. Ruiz*, 650 S.W.3d 23, 51–53 (Tex. App.—El Paso 2021, no pet.) (unsegregated past pain and mental anguish of \$500,000 and unsegregated future pain and mental anguish of \$250,000); *Munoz v. Castillo*, No. 13-18-00451-CV, 2020 WL 1856476, at *7 (Tex. App.—Corpus Christi Apr. 9, 2020, no pet.) (mem. op.) (unsegregated past pain and mental anguish of \$250,000 and unsegregated future pain and mental anguish of \$625,000); *Hulsey v. Attalla*, No. 01-18-00180-CV, 2019 WL 3484082, at *10 (Tex. App.—Houston [1st Dist.] Aug. 1, 2019, no pet.) (mem. op.) (unsegregated past pain and mental anguish of \$25,000 and unsegregated future pain and mental anguish of \$175,000); *Swearingen v. Guajardo*, No. 05-15-00202-CV, 2016 WL 4162785, at *1 (Tex. App.—Dallas Aug. 5, 2016, no pet.) (mem. op.) (unsegregated past pain and mental anguish of \$250,000 and unsegregated future pain and mental anguish of

\$50,000); *Goggans v. Ford*, No. 05-14-01239-CV, 2015 WL 8523302, at *4 (Tex. App.—Dallas Dec. 9, 2015, pet. denied) (mem. op.) (unsegregated past pain and mental anguish of \$50,000 and unsegregated future pain and mental anguish of \$25,000); *Simmons v. Bisland*, No. 03-08-00141-CV, 2009 WL 961522, at *3 (Tex. App.—Austin Apr. 9, 2009, pet. denied) (mem. op.) (unsegregated past pain and mental anguish of \$400,000 and unsegregated future pain and mental anguish of \$550,000).

The jury award Roque \$3 million for his future pain—an amount not challenged by Exxon. It is necessary to consider that amount when comparing his recovery to other cases in which the awards for pain and mental anguish were unsegregated.

Even outside of car wreck cases, plaintiffs who have suffered serious physical and emotional trauma have still received much smaller mental anguish awards than Roque. *See Gordon v. Redelsperger*, No. 02-17-00461-CV, 2019 WL 619186, at *3 (Tex. App.—Fort Worth Feb. 14, 2019, no pet.) (mem. op.) (unsegregated past pain and mental anguish of \$400,000 and unsegregated future pain and mental anguish of \$200,000 upheld in a case where a retired NFL player punched and choked a much older man, leading to lingering physical and psychological problems); *PNS Stores, Inc. v. Munguia*, 484 S.W.3d 503, 517–18 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (unsegregated past pain and mental anguish of \$150,000 and unsegregated future pain and mental anguish of \$520,000 upheld in a case where a shopper suffered a head injury from a falling object in the store, and where the injury led to headaches, ringing in the ears, photosensitivity, fear, irritability, and changed personality); *Katy Springs & Mfg., Inc. v. Favalora*, 476 S.W.3d 579, 594 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (past mental anguish of \$150,000 upheld in a case where the plaintiff suffered a workplace injury, ultimately leading

to spinal surgery, chronic pain, and depression); *Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788, 797 (Tex. 2006) (future mental anguish of \$20,000 in a case where the plaintiff was severely beaten by a security officer at a nightclub, which caused the plaintiff to become depressed, humiliated, noncommunicative, unable to sleep, and angry, and which also led to headaches, nightmares, and strained family relationships).

Of course, none of these cases dealt with a major fire at an industrial plant, except for one of the burn cases, where the injuries were catastrophic. *See Critical Path Res.*, 561 S.W.3d at 542. But that is not to say that there are no other cases involving a serious on-the-job injury that brought the plaintiff close to death, and that resulted in significant physical and emotional suffering.

Perhaps the nearest guidepost is *Martinez v. Kwas*, 606 S.W.3d 446 (Tex. App.—Houston [1st Dist.] 2020, pet. denied). That case arose out of a collision between an ambulance, where the plaintiff had been working unrestrained as a paramedic, and a dump truck, which had been carrying a heavy load of broken concrete. *Id.* at 450, 453. In the aftermath of the collision, the plaintiff could not breathe. *Id.* at 466. She thought that her chest had been crushed, and that she was going to die. *Id.* at 466–67. She was transported to the hospital by helicopter, where she was discovered to have fractured ribs, damage to her spleen, and a laceration to her leg, which subsequently became infected. *Id.* at 466. When she was later discharged from the hospital, she was no longer her former self. She still experienced shortness of breath, and she could not move around because of the tremendous amount of pain. *Id.* For several months, she could not even stand up straight. *Id.* She became distressed by her inability to provide for her family. *Id.* at 467. She experienced sleeplessness and anxiety, for which she actively sought treatment. *Id.* This anxiety persisted when she eventually returned to her job as a paramedic. *Id.*

Every day, her mind worried about what was happening outside of the ambulance. *Id.* She ultimately resigned, explaining that her being “mentally messed up” was not fair to either her partners or her patients. *Id.* In her suit against the dump truck company and its driver, the jury awarded her an unsegregated \$700,000 for her future pain and mental anguish, which our sister court upheld against a factual sufficiency challenge. *Id.* at 468.

Kwas has many parallels with this case. The plaintiff in each suffered an on-the-job injury. At the time of the injury, the plaintiff came to fear that he or she would soon die. And for an extended period of time after the injury, the plaintiff experienced pain, sleeplessness, diminished mobility, and anxiety with returning to work.

There was a difference in the nature of the two physical injuries—serious blunt force trauma in *Kwas*, as compared to herniated discs with Roque. There was also a difference in the source of those injuries—a violent collision with a dump truck in *Kwas*, as compared to a fire with Roque. But the damages awarded in *Kwas* were still in keeping with the same range of damages seen in most car wreck cases, where other plaintiffs suffered many of the same back injuries and corresponding mental distress as Roque.

Yet the jury here awarded Roque more than double as compared to *Kwas*—\$1.5 million for future mental anguish alone, plus an even larger amount for future pain that Exxon has not even challenged on appeal. There are no comparable guideposts for such a figure.

Nor is there an evidentiary basis that would explain it, or for that matter, why the jury awarded the exact same amount for Roque’s past mental anguish. Though he testified at trial that he still has pain, Roque acknowledged that the pain has lessened over time and has become more manageable. He testified that his

nightmares have become less frequent, and his wife similarly testified that “he has improved a lot.” Relatedly, Roque only spoke a single time with Dr. Glass, his psychiatrist. Roque did not refill any of the prescriptions that had been written by Dr. Glass, and at the time of trial, he was not seeking care from any other sort of mental health professional.

We conclude that the award of \$1.5 million for future mental anguish is excessive.

3. There is legally insufficient evidence to support the existence of Friels’s mental anguish in the future.

Friels ran for his life at the time of the explosions, fearing that he might be consumed by the flames. When he returned home, he said that his heart was still pumping fast, and that his body felt numb. His night was mostly sleepless.

Four days later, while he was sleeping, he replayed the events of the explosions in his dreams, but in his reimagining, the fire caught him and he died. Friels said that he jumped out of bed in a rage, with his “heart beating crazy.” His wife took him to the hospital, where he complained of heart palpitations and shortness of breath.

Friels had a history of anxiety and irregular heartbeats even before the explosions, but he said that his anxiety attacks occurred frequently thereafter and that he would be triggered by loud noises, like those caused by kids or the slamming of doors. He mentioned one occasion shortly after he returned to work when he heard a siren sound for lunch, and he took off running because it was the same siren that had sounded at the time of the explosions.

Friels began seeing Dr. Susana Rosin, a clinical psychologist, in November of 2019, a little more than three months after the incident. He had multiple visits with

her, both in person and over the phone, and he said that her counseling would calm him down.

Dr. Rosin testified that Friels exhibited a high level of distress in their first session. At that initial meeting, Friels was “extremely agitated” and “extremely upset.” Dr. Rosin knew that Friels had already been prescribed Xanax. She wrote a letter to another provider so that Friels might obtain a prescription for a longer acting antidepressant.

At their second session, which occurred in December of 2019, Dr. Rosin learned that Friels was still having nightmares. He would wake up in a fog, feeling disoriented, tired, and anxious. She determined that he met the criteria for PTSD. She also remarked that his physical complaints might be causing some emotional distress because the pain was keeping him from sleeping.

Dr. Rosin testified that Friels’s symptoms were severe at the beginning of treatment, but that they improved over time. She explained that the medication helped in achieving this moderation. She said that she taught Friels certain coping techniques, which involved deep breathing, relaxation, and physical exercise. She also remarked that Friels experienced some relief when he was laid off during the pandemic, because his absence from the plant removed him from the emotional triggers, though she also recognized that this absence was a “Catch-22-type situation” because Friels liked to work.

Friels stopped seeing Dr. Rosin in January of 2021, several months before a motor vehicle accident left him paralyzed and in a wheelchair. Dr. Rosin never learned why Friels had stopped seeing her because he never returned to seek treatment.

Dr. Rosin opined that the paralyzing accident was “a horrible tragedy,” and she testified that she could “only guess” about Friels’s current mental state because she had not seen or evaluated him in quite some time. But she added that “we’re a sum of our cumulative experiences,” and she explained that the trauma from Friels’s paralyzing accident would not erase the trauma from the explosions. She opined that there was a reasonable probability that Friels would continue to experience mental anguish in the future.

There was no evidence that Friels was seeing any mental health professional at the time of trial, which was nearly two years after the paralyzing accident. Friels said that he still has anxiety attacks, but he acknowledged that they have gotten better since the explosions. He also said that he still has nightmares or flashbacks and he still experiences triggers. He isolates himself, and he thinks that the flashbacks might stick with him for life.

Exxon does not challenge whether Friels suffered compensable mental anguish in the past. Exxon only challenges whether the evidence is legally sufficient to support a finding that he will suffer such anguish in the future.

Like Roque, Friels was required to substantiate his claim of mental anguish with evidence demonstrating its nature, duration, and severity. *See Parkway*, 901 S.W.2d at 444. Friels described the nature of his mental anguish in terms of his nightmares, flashbacks, isolation, and anxiety attacks. He said that he had been experiencing the nightmares three or four times each week in 2020, which was several months after the explosions. But he did not describe their frequency at the time of trial in 2023, or whether they were so severe that he would wake up in a panic. And when asked to describe the impact to his daily routine from all of his claimed emotional struggles, including his anxiety attacks, his answer was similarly lacking in detail:

- Q. And, of course, you're not telling the jury that what happened to you and the wheelchair has to do with the Exxon explosion?
- A. Not at all.
- Q. Even though we're sympathetic and feel for you, but the jury's not going to look at your wheelchair situation. You understand that, right?
- A. Yes.
- Q. And it's been clearly explained to them, right?
- A. Yes, sir.
- Q. And you agree?
- A. Yes, sir.
- Q. And so what you're here explaining to the jury is what you went through physically and emotionally from the time of the explosion all the way to, of course, May 7 of 2021 [the date of the paralyzing accident]?
- A. Still today, I—I still have nightmares. Still want to be to myself. Still anything triggers. Still today.
- Q. So, the emotional scars don't go away overnight?
- A. No, sir.
- Q. And as we sit here today, this time of the year, in 2023—I almost said 2022—are you still suffering from the emotional part?
- A. Yes, sir.
- Q. And does it still keep you awake sometimes?
- A. Yes, sir.
- Q. And do you still have the issues of getting startled or—or flashbacks thinking back to the fire?
- A. Yes, sir.
- Q. And when that happens, is it—does that interrupt your daily routine, what you do every day?
- A. Yes, sir. Like it's—I could have the day planned out and if something triggers me, and it's like now I can feel when the panic attack is coming on, so I try to calm myself down. But after—

even after I do my routine of, you know, trying to relax, my day is still—yeah, it ain't the same no more.

This testimony is not sufficient. A finding of mental anguish cannot be based on a generalized, conclusory assertion that a plaintiff has suffered a substantial disruption in daily routine. *See Guerra*, 348 S.W.3d at 232 (“Generalized, conclusory descriptions of how an event affected a person are insufficient evidence on which to base mental anguish damages.”). Likewise, the bare testimony that Friels would be kept awake and experience a generalized anxiety attack does not reveal any evidence of the “high degree of mental pain and distress” that is required to establish the existence of compensable mental anguish. *See id.* (plaintiff’s statement that “I have had lots of nights that I don’t sleep just thinking” did not demonstrate compensable mental anguish); *Gunn Infiniti, Inc. v. O’Byrne*, 996 S.W.2d 854, 861 (Tex. 1999) (“Simply because a plaintiff says he or she suffered mental anguish does not constitute evidence of the nature, duration, and severity of any mental anguish that is sufficient to show a substantial disruption of one’s daily routine.”). There must be more details. *See Parkway*, 901 S.W.3d at 444.

The testimony from Dr. Rosin was not sufficient to support an award of compensable mental anguish in the future either. She had not seen or evaluated Friels in two years. By her own words, she could “only guess” about Friels’s current mental state. And while Dr. Rosin testified that the trauma from the explosions would not be erased by the trauma from the paralyzing accident, such testimony did not reveal any specific evidence of the lasting nature, severity, and duration of Friels’s future mental anguish. *See Favalora*, 476 S.W.3d at 598 (a doctor’s testimony that an injured plaintiff would have a bleak future without psychiatric treatment was not evidence of compensable mental anguish).

Because the record does not contain any specific details of a substantial disruption in Friels's daily routine or a high degree of mental pain and distress, as required by *Parkway*, we conclude that the evidence is legally insufficient to support the finding that he will continue to suffer compensable mental anguish.

4. There is legally sufficient evidence to support the existence of Brown's mental anguish in the past.

Because she had been working on a platform fifty feet in the air, Brown had to make her escape down a series of ladders. As she made her descent, Brown heard another explosion and came to fear that she would be burned to death. Her hands began to shake and she fell "like a bag of potatoes," which led to a number of physical injuries.

Brown could not sleep that first night. She said that her mind was racing, thinking of all the possible things that might have happened. She explained that she had once worked on the depropanizer tower that caught fire. She imagined that if she had been on the tower at the time of the explosions, either she would have been killed by the fire, or she would have been forced to jump.

Her trouble with sleeping persisted, partly because of the pain and discomfort from her physical injuries, and partly because of nightmares, from which she had never suffered before. The nightmares have been a variation of events, like the fire hovering over her, or her running away from the towering inferno. At first, these nightmares happened "almost every night." But as of the time of trial, the nightmares happened "maybe a couple of times a week."

Brown developed mixed emotions about returning to work. Initially, she did not want to return at all because she was worried about being put in the same dangerous situation as before. But then her worry shifted to concerns about her career and her financial security. Brown explained that, before she became a

nondestructive testing technician, she had various low-paying jobs, like a waitress and a caregiver. She did not want to lose her well-paying job as a technician, or abandon her dream of buying a home.

The anxiety has affected her mental state at work. On her first day back, she was working on another platform and her hands were shaking. On a later date, an alarm went off, and she started running because the same depropanizer tower had caught fire again. She cried when she got to safety. And on a separate date, while working in an area with high pressure steam, Brown heard an abnormally loud noise. Her heart started to race, and she felt like everything was caving in on her.

Even outside of work, Brown has experienced panic attacks. She described one occasion when, while driving, she saw a burning eighteen-wheeler on the side of the road. Traffic had slowed down because of rubbernecking, and she tried to move to an outside lane away from the wreckage, but no one was letting her over and she started to freak out and cry. She also described how blaring train horns in her neighborhood have reminded her of alarms from the plant.

Dr. Glass, the same psychiatrist who spoke with Roque, diagnosed Brown with major depressive disorder and PTSD. He opined that her symptoms are less severe now than they were immediately after the incident, but that she will continue to have them for a while.

We conclude that the evidence was sufficient to show the existence of past mental anguish. Brown lived through a near-death experience, which caused her both physical and emotional trauma. She began having frequent nightmares, which continued through the time of trial. She struggled both with going to work and with staying at home. Regardless of her location, she experienced panic attacks, which made her freak out and cry. She was also diagnosed with depression and PTSD, for which she received treatment. This evidence established the nature of Brown's

mental anguish, its lasting duration, and the severity of her injuries. It also established a high degree of mental pain and distress that was more than mere worry or anxiety. *See Fifth Club*, 196 S.W.3d at 797–98.

Exxon contends that the evidence is insufficient because Brown returned to work for a time, and she also went back to school, where she earned an associate’s degree and began her pursuit of a bachelor’s degree in mechanical engineering. Exxon argues that this evidence establishes that Brown’s daily routine was not substantially disrupted, thereby negating a finding of mental anguish.

We reject this argument for two reasons. First, Brown did not have to establish a substantial disruption in her daily routine if she otherwise established “a high degree of mental pain and distress,” as we conclude that she did. *See Saenz*, 925 S.W.2d at 614 (addressing substantial disruption and high degree of mental pain in the disjunctive). Second, and relatedly, even if we assumed that Brown’s daily routine was not disrupted, that fact does not negate the evidence that she suffered compensable mental anguish. *See Guerra*, 348 S.W.3d at 233 (holding that there was legally sufficient evidence of the existence of mental anguish despite evidence that the plaintiff volunteered at a nursing home, assisted her church, and traveled occasionally).

Exxon also argues that the evidence is insufficient because Dr. Glass did not list enough symptoms needed for a diagnosis of major depressive disorder. But this argument attacks the weight of Dr. Glass’s testimony, which we do not reevaluate in a sufficiency analysis. *See City of Keller*, 168 S.W.3d at 819–20.

5. There is legally sufficient evidence to support the existence of Brown’s mental anguish in the future.

Brown addressed her future mental anguish with the following line of testimony:

- Q. We talked about your nightmares earlier.
- A. Yes.
- Q. And you described it, immediately after the explosion you were having them almost every night.
- A. Yes.
- Q. What about currently? Do you—you know, the last say couple of months. Do you still have those nightmares?
- A. Yes, I do.
- Q. And with—how frequently do you have night—nightmares now?
- A. Maybe a couple of times a week.
- Q. Would—would you say that the—the emotional effects that the—the anxiety, the—the—the—nightmares, the panic attacks have caused you a substantial disruption of your daily life?
- A. Yes.
- Q. And why is that?
- A. Well, because when I can't get any sleep, it makes—it's kind of like a cycle. It makes me feel bad throughout the day. It makes me have more anxiety. It makes me not able to focus. And then, my pain, it seemed like my pain is amplified. And because there's pain, then a lot of times that's the reason I can't get to sleep. And it just—you know—but—but it affects me throughout the day. Like, I have—I have anxiety and I think that the anxiety is worse with the less sleep I get.

When coupled with the other testimony that Brown has had zero pain-free days since the incident, this evidence supports a reasonable probability that she will continue to suffer mental anguish in the future.

6. There is factually insufficient evidence to support the amount awarded for Brown's mental anguish in the future.

Like Roque, Brown requested \$6 million for her past mental anguish and another \$6 million for her future mental anguish, without any sort of explanation for either amount. She requested the same amounts for her past and future pain, and also

like Roque, she indicated that the latter category was based on a period of thirty years, even though her life expectancy was greater.

The jury awarded her \$2 million for her past mental anguish and another \$2 million for her future mental anguish—plus an additional \$2 million for her past pain and \$2 million for her future pain that Exxon does not contest. Exxon contends that both of the mental anguish amounts are excessive. We need only address the award for future mental anguish.

There is no evidentiary basis for the amount chosen by the jury. Nor is there any explanation for why the jury awarded an identical amount for the past award, which represented a period that was ten times shorter.

Brown's award of \$2 million is larger than what Roque received in the same category, which was \$1.5 million. Yet Brown and Roque had similar physical injuries (herniated discs) and similar mental and emotional struggles (nightmares and anxiety). We previously determined that Roque's award was excessive because there were no reasonable guideposts that would support it. We must necessarily reach the same determination with Brown's award, which is even farther outside the range of anything familiar to our case law.

7. Impact on Remaining Challenges

When there is sufficient evidence to support the existence of damages but not the amount awarded, our typical remedy is to reverse and remand for a new trial, although we also have the discretion to suggest a remittitur. *See Gregory*, 670 S.W.3d at 564–65. In its briefing, Exxon invited us to suggest a remitter, but Exxon did not offer any guidance on the appropriate amount of the remittitur. When pressed during oral argument, Exxon similarly did not provide any guidance. We decline to suggest a remittitur in this case.

Because liability was contested below, we cannot order a separate trial on unliquidated damages alone. *See* Tex. R. App. P. 44.1(b). Therefore, a new trial must be ordered for all categories of damages for which the evidence is legally sufficient. To determine that scope of remand, we now address Exxon’s remaining legal sufficiency challenges, but not its remaining factual sufficiency challenges. *See* Tex. R. App. P. 47.1; *Guerra*, 348 S.W.3d at 233.

B. Physical Impairment

Damages for physical impairment are intended to compensate an injured claimant for the loss of a former lifestyle. *See Brazos Contractors Dev., Inc. v. Jefferson*, 596 S.W.3d 291, 312 (Tex. App.—Houston [14th Dist.] 2019, pet. denied). Such losses have traditionally focused on the claimant’s daily functions or favorite activities, such as sports, hobbies, and other forms of recreation. *See Figueroa v. Davis*, 318 S.W.3d 53, 64–65 (Tex. App.—Houston [1st Dist.] 2010, no pet.); *Patlyek v. Brittain*, 149 S.W.3d 781, 787 (Tex. App.—Austin 2004, pet. denied).

The PJC’s recommend the following definition for physical impairment:

“Physical Impairment” means a loss or diminution of the injured party’s ability to engage in tasks or activities for one’s own benefit or enjoyment. In assessing damages for physical impairment, you may consider the loss of enjoyment of life. The effect of the physical impairment must be substantial and extend beyond any pain, suffering, mental anguish, lost wages, or diminished earning capacity.

See Texas Pattern Jury Charges: Malpractice, Premises & Products § 80.3, at 305 (2022). This model definition tracks *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757 (Tex. 2003), which also states that the effect of the claimant’s loss must be “substantial.” *Id.* at 772.

Some lower courts of appeals have departed from the standard set forth in *Golden Eagle Archery* by stating in the disjunctive that the loss must be “substantial or extremely disabling.” *E.g.*, *Thomas v. Martinez*, 217 S.W.3d 680, 684 (Tex. App.—Dallas 2007, pet. stricken); *Dollison v. Hayes*, 79 S.W.3d 246, 253 (Tex. App.—Texarkana 2002, no pet.).

The trial court in this case also incorporated the “extremely disabling” standard, but in an even more atypical definition, it stated in the conjunctive that the loss must be both “substantial and extremely disabling.” We reproduce the full definition here:

“Physical impairment” means the loss of a former lifestyle, which is substantial and extremely disabling. The effect of any physical impairment must be substantial and extend beyond any pain, suffering, mental anguish, lost wages or diminished earning capacity.

We measure the sufficiency of the evidence against this given definition because there was no objection to it. *See Osterberg*, 12 S.W.3d at 55.

1. There is legally insufficient evidence to support the existence of Roque’s physical impairment in both the past and the future.

Roque argues that his past and future awards are supported by legally sufficient evidence because he testified that he can no longer bend over or stay in fixed positions for a long period of time, which interferes with his job performance as a welder. We perceive two problems with this argument.

First, this particular line of testimony addresses Roque’s diminished earning capacity, which pertains to a separate category of damages and is specifically excluded from the charged definition for physical impairment.

Second, even if this line of testimony did address the category of physical impairment, there is no evidence that this work-related loss has been “extremely disabling.”

“Extreme” has an ordinary meaning of “existing in the highest or the greatest possible degree.” *See Webster’s Third New International Dictionary* 807 (2002). “Disabling” has an ordinary meaning of “incapacitat[ing]” or “deprive[d] of physical, moral, or intellectual strength.” *See Webster’s Third New International Dictionary* 642 (2002).

Roque did not show that any work-related losses have incapacitated him or have deprived him of strength to the greatest possible degree. The evidence actually showed that he returned to work and that he continues to work.

Aside from any claimed work-related losses, Roque also argues that he suffered compensable physical impairment because he testified that he can no longer ride bicycles or play soccer with his children. His testimony on this subject was cursory:

- Q. And how about the pain? You’re dealing with pain, you know, sometimes during the day, sometimes in the morning or in the afternoon. When you’re in that kind of pain, when you’re affected by the pain, did that interrupt your daily routine?
- A. Yes, sir, it does, because I have to deal with the stress, with pain. With my wife as a—as—you know, as partners in life, you know, it’s hard. My body was—wasn’t good in that moment. With my kids, I couldn’t do the stuff that we used to do. Riding bikes, it was one of the things that they enjoyed. Playing soccer. They—they—kids cannot understand what, you know, grown up people going through. They—it’s sad.

In other cases where the plaintiff had the more familiar burden of showing that the effect of a physical impairment was merely “substantial,” these same types of losses were held to be sufficient to support the jury’s award. *See Escamilla*, 712

S.W.3d at 726 (the plaintiff “cannot enjoy spending time outdoors or with her grandchildren”); *Favalora*, 476 S.W.3d at 599 (the plaintiff “could no longer work out or engage in other physical activities he had enjoyed in the past”); *Plainview Motels, Inc. v. Reynolds*, 127 S.W.3d 21, 39 (Tex. App.—Tyler 2003, pet. denied) (the plaintiff was “restricted [in] his ability to run, bicycle, participate in triathlons, and play with his boys”).

But because of the atypical definition given in the charge, Roque was held to the higher burden of showing that his losses were, and will continue to be, both “substantial and extremely disabling.” Roque’s unadorned testimony that his losses have been “sad” is not evidence that his past impairments, though substantial, have had an effect that was “extremely disabling.” Likewise, there is no evidence that his future impairments are compensable.

2. There is legally insufficient evidence to support the existence of Brown’s physical impairment in both the past and the future.

Brown’s physical impairments were largely described by Dr. Sasha Iversen, her life care planner. Dr. Iversen testified that Brown has difficulty with bending over and picking up her grandchildren. She also testified that Brown has had a decreased ability to participate in “social avocation activities” like running, cooking, and being with family.

All of this testimony would support findings that the effect of Brown’s physical impairment has been substantial. But as with Roque, there was no additional testimony that the effects of her impairments have been, or will continue to be, extremely disabling.

Brown suggests in her briefing that her awards should be upheld because her pain has prevented her from enjoying her former lifestyle. But Brown has already

been compensated separately for pain. And in the words of the jury charge, her loss for physical impairment must “extend beyond . . . pain.”

Brown also refers to testimony from her neurosurgeon that she may need additional surgery in twenty years to correct any problems that commonly develop after the spine is fused. This evidence merely provides a medical backdrop for Brown’s physical impairment. It does not provide any insights into her former lifestyle, or whether the loss of that lifestyle has been or will continue to be substantial and extremely disabling.

C. Disfigurement

The charge defined disfigurement according to its traditional common law meaning, which is “that which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen or imperfect, or deforms in some manner.” *See Goldman v. Torres*, 341 S.W.2d 154, 160 (Tex. 1960). And because there were no objections, we use this given definition for measuring the sufficiency of the evidence. *See Osterberg*, 12 S.W.3d at 55.

1. There is legally sufficient evidence to support the existence of Roque’s disfigurement in both the past and the future.

After conservative treatments failed to resolve his lower back pain, Roque agreed to have total disc replacements at the L4-L5 and L5-S1 levels. His surgeons completed the disc replacements using an anterior procedure, meaning that they approached the lumbar spine by making an incision through the lower portion of the abdomen and then by moving the internal organs to the side.

Roque testified that the procedure left a scar, which he considers “ugly.” He also said that he does not like the scar because it is a permanent reminder of the explosions. His wife similarly testified that the scar has made Roque feel insecure about himself.

Exxon contends that this testimony is insufficient to support a finding of disfigurement because there was no picture or video of the surgical scar, and because Roque never lifted his shirt for the jury to examine it in open court.

This court has previously recognized that a jury may validly award zero damages on a disfigurement claim where the plaintiff sought relief on the basis of a surgical scar but presented no visual evidence of the scar itself. *See Belford v. Walsh*, No. 14-09-00825-CV, 2011 WL 3447482, at *8 (Tex. App.—Houston [14th Dist.] Aug. 9, 2011, no pet.) (mem. op.). However, this court has never held that such a result is mandatory, or that the evidence is legally insufficient without some sort of visual depiction of the scar. We decline to make that rule here. The more sensible rule is that the plaintiff's failure to produce such visual evidence is a matter for the jury to consider when making its credibility determinations.

Exxon also contends that Roque's feelings about his surgical scar are irrelevant under *Four J's Community Living Center, Inc. v. Wagner*, 630 S.W.3d 502 (Tex. App.—Houston [1st Dist.] 2021, pet. denied), which held that a similarly worded definition for disfigurement “does not have any mental or emotional element.” *Id.* at 517. But we are not bound by that case, and we need not distinguish it either, because this court has already held that such feelings can support a finding of disfigurement. *See Nw. Mall, Inc. v. Lubri-lon Int'l, Inc.*, 681 S.W.2d 797, 804 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.) (upholding an award based on testimony that “Mrs. Spencer considered herself deformed and would only wear clothes that covered the scars”).

Based on the uncontroverted testimony that Roque underwent surgery, that the surgery left him with a permanent scar, and that he considers the scar to be ugly, we conclude that Roque produced more than a scintilla of evidence to support his past and future claims of disfigurement. *See Hopkins Cnty. Hosp. Dist. v. Allen*, 760

S.W.2d 341, 344 (Tex. App.—Texarkana 1988, no writ) (“Plaintiffs who feel ugly, who hide their disfigurement under clothes and gloves, and who avoid shaking hands, are embarrassed by their scars and may recover future disfigurement damages absent evidence that there will be further scarring or deforming.”).

2. There is legally sufficient evidence to support the existence of Brown’s disfigurement in both the past and the future.

Brown suffered from a herniated disc at the C6-C7 level. She underwent a complete discectomy and interbody fusion, which her surgeon performed anteriorly—i.e., through an incision in the front of the neck.

Brown has a visible scar from the surgery, which she displayed to the jury. She said that she hates the scar because people stare at it and sometimes ask her about its origin.

Exxon contends that this evidence is insufficient because there are no record descriptions of the scar, nor details of how the scar has impaired Brown’s beauty, symmetry, or appearance. We are not persuaded that such direct evidence is necessary. The jury saw the scar for itself. Brown also testified that people notice the scar in conversations, which she does not like. We can reasonably infer from Brown’s testimony that the scar is disfiguring.

Exxon also asserts that there is no evidence that Brown’s scar will worsen in the future. But Brown’s surgeon testified that the fusion will put stress on other segments of the spine, and that most patients with similar conditions will require additional surgery within twenty years. That is some evidence of future disfigurement.

Exxon finally repeats an argument it made with regards to Roque, claiming that Brown’s feelings are irrelevant to a determination of whether her disfigurement

is compensable. We reject that argument as contrary to our established precedent. *See Nw. Mall, Inc.*, 681 S.W.2d at 804.

For all of the foregoing reasons, we conclude that there is legally sufficient evidence of Brown’s past and future disfigurement.

D. Future Medical Expenses

To recover future medical expenses, the plaintiff has the burden of showing that there is a reasonable probability that such expenses will be incurred in the future. *See Whole Foods Mkt. Sw., L.P. v. Tijerina*, 979 S.W.2d 768, 781 (Tex. App.—Houston [14th Dist.] 1998, pet. denied). No precise evidence is required to satisfy this burden, though the preferred method is through expert medical testimony. *Id.*

The jury may base its finding of a reasonable probability on a consideration of the “substance of the testimony.” *See Ins. Co. of N. Am. v. Myers*, 411 S.W.2d 710, 713 (Tex. 1966). The finding need not depend “on semantics or on the use by the witness of any particular term or phrase.” *Id.*

The jury may also consider such factors as “the injuries the plaintiff suffered, the medical care rendered before trial, the progress toward recovery under the treatment received, and the plaintiff’s condition at the time of trial.” *See Kelsey-Seybold Med. Grp., PLLC v. Roberts*, No. 01-23-00025-CV, 2024 WL 4564833, at *8 (Tex. App.—Houston [1st Dist.] Oct. 29, 2024, pet. denied) (mem. op.).

1. There is legally sufficient evidence to support the finding that Roque will incur future medical expenses.

Roque’s future medical expenses were addressed by Dr. Iversen, his and Brown’s life care planner. Dr. Iversen was not one of Roque’s treating physicians, but she is board certified in physical medicine and rehabilitation, and she reviewed all of Roque’s medical records. After identifying Roque’s diagnoses, disabilities,

and impairments, Dr. Iversen prepared a life care plan with an estimate of his future costs. This life care plan addressed multiple categories of expenses: physician services, routine diagnostics, medications, laboratory studies, rehabilitation services, equipment and supplies, and environmental modifications and essential services. Altogether, Dr. Iversen projected that the total cost of this plan was nearly \$447,000.

The jury awarded Roque a slightly larger amount—an even \$462,000—but after a remittitur, the trial court reduced that award to \$373,877.76.

Exxon argues that the trial court should have reduced the award to zero, largely because Roque had returned to work by the time of trial and, for months or years, he had not visited any of his medical or rehabilitation professionals. These criticisms are misdirected insofar as they challenge weight of the evidence, which has no bearing in a legal sufficiency analysis. *See Finley v. P.G.*, 428 S.W.3d 229, 234–35 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (upholding an award of future medical expenses despite evidence that the plaintiff had not seen a counselor in five years).

Exxon also challenges Dr. Iversen’s testimony that Roque will incur certain expenses, as well as her testimony regarding the probable cost of those expenses. At this stage though, we need only determine whether there was legally sufficient evidence that Roque will incur some amount of medical expenses in the future.

Roque testified that, at the time of trial, he was still in pain and that the pain intensifies when he goes to work, where he is sometimes forced into uncomfortable physical positions. To address that pain, Roque testified that he has to take pain medications like Advil.

Dr. Iversen included these pain medications in her life care plan, which she described as follows:

So you have pain medications for the more mild days, you have pain medications for the more severe days, you have topical medications, so they can go to work, so it's not going to be absorbed into the system and get drowsy. You have over-the-counter medicines they can go buy themselves, and then you have, maybe, some prescription medication.

And a lot of those can be mixed, but we want to be responsible in how we treat pain and not put people in risky situations with strong medications. So I have included things like anti-inflammatories, Tylenol, muscle relaxers, gels, creams, things that will, kind of, address his pain, help his function, and get him, kind of, through the day.

This was more than a scintilla of evidence to show that Roque, in all reasonable medical probability, will incur some amount of medical expenses in the future. *See Diamond Offshore Servs. Ltd. v. Williams*, 510 S.W.3d 57, 78 (Tex. App.—Houston [1st Dist.] 2015) (concluding that the evidence was sufficient to support an award of future medical expenses based on testimony regarding the degenerative nature of the plaintiff's conditions and his need for pain medication and physical therapy for the remainder of his life), *rev'd on other grounds*, 542 S.W.3d 539 (Tex. 2018).

2. There is legally sufficient evidence to support the finding that Brown will incur future medical expenses.

Our analysis is no different with respect to Brown. She testified that she takes Tylenol to manage her pain, and Dr. Iversen similarly accounted for a variety of pain medications in her life care plan, both prescription and over-the-counter.

There was also evidence about future surgical needs from Dr. Juan Martin, Brown's neurosurgeon. Dr. Martin performed Brown's ACDF, or anterior cervical discectomy and fusion, and he testified that this type of surgery puts stress on other segments of the spine, which often requires corrective surgery many years in the future. He explained that "if you wait twenty years, most patients that have a second-

level ACDF will undergo another ACDF.” Dr. David Rosenfield, who was Exxon’s expert, also acknowledged that Brown’s ACDF could have consequences in the future because the plate that was installed in her spine can lead to “increased torque above that area and below, and that can cause wear and tear at those areas.”

Altogether, this testimony is more than a scintilla of evidence that in all reasonable probability Brown will incur medical expenses in the future.

E. Roque’s Lost Earning Capacity in the Future

Earning capacity refers to a person’s power to earn a livelihood. *See Strauss v. Continental Airlines, Inc.*, 67 S.W.3d 428, 435 (Tex. App.—Houston [14th Dist.] 2002, no pet.). When that power is diminished as a result of an injury, damages for lost earning capacity may be recoverable in a personal injury suit. *Id.*

This category of damages requires the factfinder to determine the amount of income that the plaintiff might have earned in the future, which is always uncertain. *See McIver v. Gloria*, 169 S.W.2d 710, 712 (Tex. 1943). We afford the jury wide discretion in determining the proper amount, but as with other categories of damages, the jury’s discretion is not unfettered; its finding must be based on more than mere conjecture. *Id.*

Evidence of actual earnings at the time of trial is the best evidence of future earning capacity, but it is not the only evidence in an inquiry that looks many years or decades into a person’s future. *See W & T Offshore, Inc. v. Fredieu*, 610 S.W.3d 884, 899 (Tex. 2020). Other factors that may be considered are evidence of the plaintiff’s stamina, efficiency, ability to work with pain, and work-life expectancy. *See Hospadales v. McCoy*, 513 S.W.3d 724, 743 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

In this case, Roque supported his claim for lost earning capacity with the expert testimony of Robert Johnson, an economist. Johnson testified that he based his calculation of Roque's lost earning capacity on a two-step methodology: first, he considered what Roque's earning capacity would have been had he never been injured; and second, he considered what Roque is now capable of earning because of his injuries. The difference between those two amounts is Roque's lost earning capacity.

Johnson looked at a number of sources when making his assessment. These sources included Roque's past earning statements, W-2s, and tax returns. They also included other sources like Roque's life care plan, the recommendations of his vocational consultant, and government documents concerning fringe benefits and interest rates, among others.

Johnson estimated that, if Roque had not been injured and if he had continued working at his full potential as a welder for the next thirty-one years, until he was eligible for social security, then his preinjury earning capacity was \$5,979,003. Johnson arrived at that figure, which had a present value of \$2,721,500, by taking annual after-tax earnings of \$87,522, and adjusting them upwards over time for wage growth and other fringe benefits.

Johnson then performed other calculations based on two career trajectories. The first trajectory assumed that Roque continued working as a welder, but that his earning potential was reduced because of the pain and impairments resulting from his injuries. Johnson began with one of Roque's recent paystubs, which showed income of \$2,584 over a two week period, and then Johnson extrapolated that income over a year to arrive at \$67,184 in pretax earnings ($\$2,584 \times 26$), which he further calculated to be \$59,637 in after-tax earnings. With that latter amount considered over the next thirty-one years, Johnson estimated that Roque's postinjury earning

capacity was \$3,868,179, which had a present value of \$1,847,702. Thus, in this first of two career trajectories, Roque's lost earning capacity, when reduced to its present value, amounts to \$873,798 (\$2,721,500 *less* \$1,847,702).

The second trajectory assumed that Roque would transition to a less physically demanding job, like a dispatcher or hotel clerk, which is what Roque's vocational consultant had recommended. Johnson estimated that if Roque made this transition, then his after-tax earnings would drop from \$59,637 to an average of \$27,952 per year. And when that lower figure is considered over the next thirty-one years, along with wage growth and fringe benefits, then Roque's postinjury earning capacity was \$1,670,260, with a present value of \$877,516. On this set of assumptions, Roque's lost earning capacity, when reduced to its present value, amounts to \$1,843,984 (\$2,721,500 *less* \$877,516).

The jury was accordingly presented with a range of damages, spanning \$873,798 on the low end and \$1,843,984 on the high end. The jury chose the low end and assessed Roque's damages at an even \$874,000.

Exxon suggests that the evidence cannot support the jury's finding because Roque has returned to work as a welder, and he has been working overtime. But these facts do not preclude a finding of lost earning capacity. *See W & T Offshore*, 610 S.W.3d at 898–99 (upholding a finding of lost earning capacity, despite evidence that the plaintiff had found a new job with a better salary).

Exxon also challenges Johnson's testimony in two points. First, Exxon contends that there is no evidentiary basis for Johnson's input value of \$87,522, which were the annual after-tax earnings that Johnson used to calculate Roque's preinjury earning capacity. We disagree. Johnson testified that his calculations were based on Roque's earnings statements, W-2s, and tax returns. This specific number related to Roque's earnings from 2022. Though that year was after Roque had

suffered his injuries, the Supreme Court has said that “evidence of actual earnings at the time of trial is the best evidence of future earning capacity.” *Id.* at 899. Johnson also explained that he used these most recent earnings figures because of changes in the tax rate.

In its second point, Exxon contends that there is no evidentiary basis for Johnson’s input value of \$59,637, which Johnson derived after considering a single paystub for a two-week pay period. Exxon suggests that the paystub was not representative of Roque’s actual earnings, but Exxon does not cite to any evidence showing that a different calculation would have been more appropriate.

We conclude that the evidence is legally sufficient to support Roque’s claim for lost earning capacity.

IV. CONCLUSION

A. We partially reverse the trial court’s judgment and render judgment as follows:

1. The part of the judgment awarding Roque \$2 million for past physical impairment and \$1 million for future physical impairment is reversed and judgment is rendered that Roque take nothing as to these categories of damages.
2. The part of the judgment awarding Friels \$1.5 million for future mental anguish is reversed and judgment is rendered that Friels take nothing as to this category of damages.
3. The part of the judgment awarding Brown \$1.5 million in past physical impairment and \$2 million in future physical impairment is reversed and judgment is rendered that Brown take nothing as to these categories of damages.

- B. We partially reverse the trial court's judgment and remand the case for a new trial on Roque's and Brown's claim for negligence, including all categories of damages except those identified in the preceding Paragraphs A.1 and A.3.
- C. The scope of remand shall not include the following:
1. the claim for gross negligence, which the jury declined to answer, and for which no complaint has been raised on appeal;
 2. any claims by Friels, because we rendered judgment on the only part of the trial court's judgment that was challenged on appeal as to Friels, and nothing regarding Friels remains to be remanded; and
 3. any claims by Rojas, who, though addressed in the trial court's judgment, is not a party to this appeal.

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justices Wise and Jewell.