

# The Louisiana Jury Verdict Reporter

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July 2023

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## Auto Negligence -

The plaintiff complained of a neck injury after a rear-end wreck and underwent several ESIs, his expert suggesting the plaintiff will require a few injections per year for the rest of his life – the defendant diminished the injuries and looked to pre-existing degenerative conditions – the court entered a strange instruction that allowed the jury to award the plaintiff only the percentage of his damages that represented an aggravation of those pre-existing conditions, in this case the jury deciding just 12% was aggravated, thus reducing the jury award by 88%

*Lawson v. Kling et al*, 75293

Plaintiff: Jim S. Hall and Matthew B. Moreland, *Jim Hill & Associates*, Metairie

Defense: Andrew C. Weinstock and Joseph C. McAloon, *Duplass*, Metairie

Verdict: \$45,500 for plaintiff less 88% assigned to pre-existing conditions

Parish: **St. John the Baptist**

Judge: Nghana Lewis

Date: 6-27-23

Corey Lawson, age 46, was involved in a rear-end crash on 11-16-19. It occurred in rural St. John the Baptist Parish on Hwy 61 near Airline Highway. Just after clearing a red light intersection, Lawson came upon traffic that had suddenly

COREY LAWSON  
VERSUS  
STARR INDEMNITY AND LIABILITY COMPANY, JONES INDUSTRIAL HOLDING, INC., BRETT KLING, ENTERPRISE FM TRUST AND STATE FARM MUTUAL  
INSURANCE COMPANY OF ILLINOIS or MOBILE INSURANCE COMPANY  
FILE NO. 13827221 DEPUTY CLERK: VERDICT FORM  
FILED: JUL 27 2023 6:47 PM

1. Do you find that the plaintiff Corey Lawson sustained any injuries, which, more probably than not, were caused by the vehicular accident on November 16, 2019?  
Yes  No   
(IF THE ANSWER TO QUESTION NO. 1 IS "YES" GO TO QUESTION 2. IF THE ANSWER TO QUESTION NO. 1 IS "NO", STOP, SIGN AND DATE THE BOTTOM OF FORM)

2. Do you find that the plaintiff Corey Lawson sustained any damages as a result of these injuries?  
Yes  No   
(IF THE ANSWER TO QUESTION NO. 2 IS "YES" GO TO QUESTION 3. IF THE ANSWER TO QUESTION NO. 2 IS "NO", STOP, SIGN AND DATE THE BOTTOM OF FORM)

3. Do you find that plaintiff Corey Lawson had any pre-existing injuries, prior to the November 16, 2019 accident?  
Yes  No   
(IF THE ANSWER TO QUESTION NO. 3 IS "YES" GO TO QUESTION 4. IF THE ANSWER TO QUESTION NO. 3 IS "NO", GO TO QUESTION 5)

4. Please signify as to what percentage Corey Lawson's pre-existing injuries, were aggravated by the November 16, 2019 accident.  
12%

5. Please state what sum of money, if any, would reasonably and fairly compensate the plaintiff, Corey Lawson for his damages (if zero or none, please write "0").

a. Past Medical Expenses	\$ 25,000
b. Future Medical Expenses	\$ 18,500
c. Physical Pain and Suffering- Past, Present and Future	\$ 2,000
d. Mental Pain and Suffering- Past, Present and Future	\$ 0
e. Loss of Enjoyment of Life Past, Present and Future	0
TOTAL:	\$ 45,500

PLEASE SIGN, DATE AND RETURN YOUR VERDICT.  
FOR PLAINTIFF: *Matthew B. Moreland*  
FOR DEFENSE: *Joseph C. McAloon*  
DATE: 6-27-2023

### Jury Instruction No. 10:

#### § 18.10. Aggravation of pre-existing condition

In your consideration of the items of damage you should bear in mind that under the law the one liable or responsible for an accident must take the injured person as he finds him, and is responsible for all the natural and probable consequences of his wrong, even though they are more serious or harmful by reason of a pre-existing condition, physical defect or weakness of the injured person. If the accident results in aggravation of a previous condition of disability or of pain of the injured person, the one responsible is liable both for the aggravation of the pre-existing condition and for any new injuries resulting from the accident.

However, plaintiff must prove (1) the prior existing condition and (2) the extent of the aggravation. If you find that plaintiff would have faced this aggravation of her condition whether this incident happened or not, then plaintiff is not entitled to damages or that portion of her claim, since the defendant is not responsible for the normal and natural results of plaintiff's prior condition.

### The Lawson v. Kling verdict form and relevant jury instruction on damages

stopped. He was able to stop. Behind him in traffic was Brett Kling, driving a commercial vehicle for Jones Industrial Holdings and which was insured by Starr Indemnity.

Kling couldn't stop in time and rear-ended Lawson. It was a moderate collision and airbags in Lawson's vehicle deployed. Lawson was taken to an ER by ambulance and initially complained only of back pain.

Thereafter Lawson treated with a chiropractor for back pain and then subsequently mentioned neck pain. He was then referred for an MRI and it was recommended he have cervical ESIs. The cervical MRI revealed degenerative disc disease and a small herniation.

Thereafter Lawson followed with Dr. Fred DeFrancesch, a Pain Management physician. He performed a total of five cervical ESIs

on Lawson and has recommended he have a few injections per year for the rest of his 27-year life expectancy. Both DeFrancesch and the also treating Dr. Andrew Todd, Orthopedics, testified at trial by video for Lawson. Lawson also relied on Shael Wolfson, Economist, who quantified the future medicals at \$607,588.

In this lawsuit Lawson sought damages from Kling and his employer. That represented his medical bills, future medicals and non-economic damages. As the case went to the jury Lawson's lawyer asked for an award of more than \$820,000 in damages.

The defense conceded fault for the wreck and focused instead on causation and pre-existing conditions. That defense focused on the fact that there was no immediate claim of neck injury at the ER. An expert, Dr. Kevin

Martinez, Pain Management, believed that Lawson had sustained only a temporary soft-tissue strain injury.

This case was tried for two days and the jury then deliberated an hour. As fault was no issue the jury was asked if Lawson had sustained an injury. The jury said yes. It separately answered that he sustained damages because of his injuries.

The court moved to a third question. Did Lawson have pre-existing injuries. The answer was yes. The next question was the percentage to which those pre-existing injuries were aggravated. The jury answered 12%. [Ed. Note - In this context the 12% is an obvious quotient result.] Because of this finding any damages awarded would be reduced by 88% to reflect just a 12% aggravation of the pre-existing conditions.

This is the interesting and odd part. Judge Lewis' instructions explained that the defendant was responsible for the aggravation of pre-existing injuries **and** for any "*new injuries.*" However the verdict form provided only for aggravation (the jury answering just 12%) without any finding as to a new injury.

In any event the jury continued to damages. Lawson took \$25,000 for his medicals and \$18,500 more for future care. His physical pain and suffering was \$2,000. The jury rejected mental pain and suffering as well as loss of enjoyment of life. The raw verdict totaled \$45,500. While no judgment had been entered at the time of this report, presumably it will be for Lawson representing just 12% of \$45,500 or a net award of \$5,460.