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The Constitutional Authority Giving Our Appellate Courts Jurisdiction of Fact Should Be Repealed

William E. Crawford*

INTRODUCTION

The Louisiana Constitution of 1974, Article V, Section 5(C) provides that “[e]xcept as otherwise provided by this constitution, the jurisdiction of the supreme court in civil cases extends to both law and facts.”¹ The courts of appeal are given the same appellate jurisdiction of fact.

The right to civil trial by jury in Louisiana is found in Louisiana Code of Civil Procedure article 1731(A): “Except as limited by article 1732, the right of trial by jury is recognized.”²

In our federal system, the right to civil trial by jury is found in the Seventh Amendment: “In Suits at common law, where the value and controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, *and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.*”³

For states other than Louisiana, their constitutions contain provisions to the effect that the right to civil trial by jury, as known at the common law, “shall remain inviolate.”⁴ In those states and in the federal system, courts may review the record of the jury trial, and if the verdict was reached on insufficient evidence or on improper instructions, the case may be remanded for further trial. Nevertheless, the reviewing court has no authority to issue its own positive judgment in place of that rendered by the court on the verdict rendered by the jury.

In Louisiana, however, the grant of jurisdiction of fact to our appellate courts enables them to review the record of a civil jury trial, to find that on the facts the jury verdict was wrong, and then to issue its own judgment contrary to the verdict of the jury.

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1. LA. CONST. art. V, § 5(c).
2. LA. CODE CIV. PROC. art. 1731(A) (2012).
3. U.S. CONST. amend. VII (emphasis added).
4. See, e.g., ALA. CONST. art I, § 11; MISS. CONST. art. III, § 31; OKLA. CONST. art. II, § 19; S.C. CONST. art I, § 14; TENN. CONST. art. I, § 6.

I. JURISDICTION OF FACT IN LOUISIANA: SEVERAL EXAMPLES

In the case of *Brewer v. J.B. Hunt Transport, Inc.*, the plaintiff filed suit for personal injuries sustained when he rear-ended an 18-wheel tractor-trailer owned by J.B. Hunt.⁵ “Following a two-week trial, the jury returned a verdict in favor of the defendants, finding Brewer 100 percent at fault for the collision.”⁶ The court of appeal reversed the jury’s allocation of 100% fault to Brewer and found the defendants 60% at fault for the accident, assessing plaintiff Brewer with only 40% of the fault.⁷ The court of appeal awarded special damages in the amount of \$10,677,634.93 and general damages in the amount of \$2,500,000, subject to reduction by Brewer’s degree of fault.⁸ That was a judgment rendered by the court of appeal.

The supreme court granted certiorari and, after reviewing the record, found that the defendants were 30% at fault and that Brewer was 70% at fault.⁹ “In all other respects, the judgment of the court of appeal [was] affirmed.”¹⁰ Thus, the court of appeal exercised its jurisdiction of fact only to be partially overruled by the supreme court’s exercise of jurisdiction of fact, while the jury found Brewer to be 100% at fault. Therefore, even though the appellate courts were exercising their constitutional authority, it appears that the jury verdict was meaningless.

In another case, *Menard v. Lafayette Insurance Company*, “[f]inding manifest error in the jury’s award for future medical expenses, the appellate court increased the award to \$1,413,508.75.”¹¹ The supreme court granted certiorari and concluded: “[W]e reverse the Court of Appeal’s judgment and reinstate the jury’s verdict.”¹² Had the supreme court not granted certiorari, the court of appeal’s dramatic change of the jury’s verdict would have stood as the law in that case.

In *Fontenot v. Patterson*, the jury entered a verdict assigning 90% fault to the defendant driver, 10% fault to the plaintiff driver, and 0% fault to the Louisiana Department of Transportation and

5. 35 So. 3d 230, 233 (La. 2010).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. 31 So. 3d 996, 999 (La. 2010). The jury rendered judgment in the plaintiff’s favor: \$88,373.73 for future medical expenses.

12. *Id.* at 1000.

Development (DOTD).¹³ The trial judge granted a judgment notwithstanding the verdict (JNOV) and awarded additional damages in the amount of \$500,000 to the plaintiff.¹⁴ The court of appeal reduced the defendant's 90% liability to 50% and allocated 50% to the DOTD.¹⁵ After certiorari review by the supreme court, the case was remanded to the court of appeal "to review only the jury's verdict and to utilize the manifest error standard."¹⁶ The court of appeal then changed the allocation of fault accordingly to 60% to the defendant and 40% to the DOTD.¹⁷ On certiorari, the supreme court "reverse[d] the court of appeal's judgment as to the allocation of liability and assessment of damages and cost and reinstate[d] the jury's verdict."¹⁸

The Appendix below shows the same exercise of jurisdiction of fact to reverse a jury's verdict and to render a contrary judgment. It is not a plaintiff-versus-defendant issue because there are opinions reversing jury verdicts for plaintiffs and defendants alike.¹⁹

Similarly, in *Fauria v. Doe*, the plaintiffs' \$50,000 jury award was reversed by the appellate court with judgment rendered to the contrary.²⁰ Also in *McLean v. Hunter*, the jury found for the defendant doctor, but the supreme court reversed and remanded to the court of appeal.²¹ The court of appeal, however, tried the case again on the record and likewise rendered judgment for the defendant.²² In *Whittle v. Miller Electric Manufacturing Company*, the supreme court went on to say that "the jury clearly erred when it accepted the testimony of [the plaintiff's expert witness] over that of all other[s]."²³ The verdict in favor of the plaintiff was reversed and judgment was rendered for the defendant.²⁴

13. 23 So. 3d 259, 265 (La. 2009). This was an intersectional collision involving two drivers and an allegation against DOTD for allowing an obstruction prohibiting proper outlook for traffic.

14. *Id.* at 266.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 275.

19. *E.g.*, *Thames v. Zerangue*, 411 So. 2d 17, 18 (La. 1982). The jury found in favor of the following motorists, but the supreme court reversed and rendered for the defendant preceding motorist.

20. 483 So. 2d 148, 149 (La. Ct. App. 4th 1985).

21. 495 So. 2d 1298, 1299–1300 (La. 1986) (a dental malpractice action).

22. *McLean v. Hunter*, 510 So. 2d 771, 778 (La. Ct. App. 1st 1987).

23. 507 So. 2d 266, 272 (La. Ct. App. 3d 1987). The jury found in favor of the plaintiff for \$563,000, and the appellate court reversed, stating that "the only evidence supporting the jury's conclusion is the opinion testimony [of the plaintiff's expert witness]." *Id.* at 271.

24. *Id.* at 272.

Perhaps the most graphic example of appellate review of fact occurred in *Joseph v. Broussard Rice Mill, Inc.*²⁵ The plaintiff was a longshoreman employee of Stevedores and was injured when sacks of rice fell on him in a warehouse.²⁶ The sacks of rice came from and were stacked by Broussard Rice Mill (Broussard).²⁷ The jury found 13.6% fault for Broussard, 72.4% fault for Stevedores and 14.0% fault for the plaintiff, and it awarded \$482,760.00 in damages.²⁸ The trial judge granted JNOV, allocating 100% fault to Broussard and increasing the damages to \$1,011,743.00.²⁹ The court of appeal affirmed the JNOV, and the supreme court granted writs, finding the allocation of fault to the plaintiff to be clearly wrong.³⁰ The jury's fault allocation to Stevedores and to Broussard was correct, but after the reallocation of the plaintiff's fault, the resulting allocation was 15.5% to Broussard and 84.5% to Stevedores (the employer from whom there would be no payment).³¹ The damage award by the jury was reinstated. As the net result, the plaintiff collected 15% of the original jury award of damages.

A selected number of similar cases are compiled in the Appendix.

II. PRACTICAL CONSEQUENCES WITH JURISDICTION OF FACT

The National Center for State Courts shows the data below.³²

A. Grand Total of Incoming Cases at the Appellate Level

Louisiana	10,646
Alabama	4,996
Arkansas	1,287
Georgia	5,144
Kentucky	3,224
Maryland	2,885
North Carolina	2,968
Tennessee	3,424
Virginia	5,206

25. 772 So. 2d 94 (La. 2000).

26. *Id.* at 97.

27. *Id.*

28. *Id.* at 98.

29. *Id.*

30. *Id.* at 106.

31. *Id.*

32. NAT'L CTR. FOR STATE COURTS, COURT STATISTICS PROJECT, STATE COURT CASELOAD STATISTICS (2010), available at <http://www.courtstatistics.org/Other-Pages/StateCourtCaseloadStatistics.aspx>.

B. Original Filings on Other Matters

Louisiana	6,208
Arkansas	117
Georgia	609
Kansas	185
Kentucky	282
Virginia	445

C. Total Decisions by Full Opinion

Louisiana	2,034
Georgia	1,465
Virginia	501

D. Number of Appellate Justices and Judges

Louisiana	60
Arkansas	19
Colorado	23
Georgia	19
Iowa	16
Kansas	19
Kentucky	21
Maryland	20
Mississippi	19
South Carolina	14
Virginia	18

It is, of course, impossible to make the adamant conclusion that jurisdiction of fact is the cause of the vastly higher caseload in Louisiana compared with other states of similar populations. Yet, the author thinks that there is no other reasonable conclusion.

APPENDIX

I. SUPREME COURT

A. 2003

1. *McGuire v. New Orleans City Park Improvement Association*³³

A golf ball struck a jogger in the groin area, prompting the jogger to sue the state agency operating the park where the golf course was located. The district court entered judgment on the jury verdict that assessed 40% fault to the park operator and 60% comparative fault to the jogger. The court of appeal affirmed. The supreme court held that the jogger, who had previously jogged the route and observed golfers on the day that he was injured, should have anticipated encountering golf balls; thus, the park operator owed no duty to provide additional warnings.³⁴

B. 2004

1. *Toston v. Pardon*³⁵

The court of appeal reversed the jury's determination that the defendant, Louisiana Department of Transportation and Development (DOTD), was the cause-in-fact of an accident involving the defendant intoxicated driver. The supreme court affirmed the appellate court's decision to the extent that the driver's negligence was a cause-in-fact of the accident. However, it reversed the court of appeal's failure to assign fault to the DOTD and reallocated fault.

2. *Bujol v. Entergy Services, Inc.*³⁶

Injured plant employees and survivors of an employee who died due to injuries sued the insurers of the plant owner's companies. Following a jury verdict for the plaintiffs, the district court judge partially granted a motion for JNOV and reduced the compensatory damages awarded. The court of appeal affirmed in part, reversed in part, amended in part, and remanded. The supreme court reversed

33. 835 So. 2d 416 (La. 2003).

34. *See id.* synopsis, available at Westlaw.

35. 874 So. 2d 791 (La. 2004).

36. 922 So. 2d 1113 (La. 2004).

the jury's verdict, holding that the employees failed to prove the parent corporation's assumption of a duty to act by affirmatively choosing to provide a safe working environment.³⁷

3. Green v. K-Mart Corporation³⁸

A customer brought a personal injury action against a store and its assistant manager for injuries that she sustained in the store. The jury awarded special damages and loss of consortium for her two minor children and held the store 95% at fault and the manager 5% at fault. The court of appeal found that the jury erred in finding the store manager at fault and assessed the store with 100% of the fault. It also increased the awards for future medical expenses and loss of consortium and, in addition, granted a general damage award. The supreme court held that the evidence supported the jury's award for future medical care, so it reversed the court of appeal's increase but affirmed the award for general damages.

C. 2005

1. Smith v. Department of Transportation & Development³⁹

A jury awarded the plaintiff sublessee damages for the cost of relocation, moving expenses, and loss of improvements. The district court granted a motion of JNOV on the issue of loss of leasehold-advantage damages, setting aside the portion of the jury verdict awarding no damages for this claim, and awarded damages. The supreme court reviewed the record and found that the evidence overwhelmingly supported the plaintiff's claim for damages for the loss of leasehold claim and that the jury's failure to award these damages was unreasonable. However, the supreme court reversed the jury's award for the value of improvements that the plaintiff made to the leased property.

37. See *id.* synopsis, available at Westlaw.

38. 874 So. 2d 838 (La. 2004).

39. 899 So. 2d 516 (La. 2005).

*D. 2006**1. Lam v. State Farm Mutual Automobile Insurance Company*⁴⁰

A child was injured as a passenger in the middle vehicle of a three-vehicle accident. An action was brought against the driver of the rear vehicle, the driver and owner of the forward vehicle, and the repair shop that had worked on the forward vehicle prior to its loss of power on the highway. The jury assigned no fault to the repair shop and apportioned fault between the plaintiffs and the other defendants. The court of appeal reversed the assignment of fault to the shop and to the injured child's father. The supreme court reversed the court of appeal's allocation of fault to the shop, reinstating the jury's finding. It affirmed the appellate court's finding of the father's fault.

*E. 2007**1. Detraz v. Lee*⁴¹

A pedicure customer brought a negligence action against the nail salon, claiming that the pedicure caused a bacterial infection on her legs. The jury found for the salon. The court of appeal reversed in the customer's favor. The supreme court, however, reversed the court of appeal's judgment, finding the evidence to support the jury finding that the salon's negligence did not cause the customer's infection.⁴²

*2. Alex v. Rayne Concrete Service*⁴³

An injured concrete worker brought an action against a concrete supplier and its insurer. The jury entered a verdict finding the worker 80% at fault. The worker filed a motion for new trial, at which the jury found the worker 45% at fault. The court of appeal conducted a de novo review after concluding that the trial judge committed legal error in allowing a peremptory strike against an African-American prospective juror. Under this de novo review, the court of appeal apportioned 20% of fault to the worker and awarded damages. The supreme court found that the appellate

40. 946 So. 2d 133 (La. 2006).

41. 950 So. 2d 557 (La. 2007).

42. See *id.* synopsis, available at Westlaw.

43. 951 So. 2d 138 (La. 2007).

court erred when it conducted a de novo review of the record. The matter was remanded back to the trial court for a new trial.⁴⁴

F. 2008

1. *Miller v. LAMMICO*⁴⁵

A patient who developed an infection following a caesarian section brought a medical malpractice action. The jury assigned percentages of fault against the defendant doctors. The jury's damages award exceeded \$500,000. In reducing the award, the trial court applied the fault percentages before applying the statutory damages cap. The court of appeal reversed application of the fault percentages before the cap reduction. The supreme court then reversed the part of the appellate court's judgment amending the trial court's judgment to reflect a reduction of the damage award to the statutory cap prior to allocation of comparative fault, reinstated the trial court's judgment as to calculation of damages, and affirmed that part of the appellate court's judgment affirming the jury's damage award.

2. *Bouquet v. Wal-Mart Stores, Inc.*⁴⁶

An injured store patron brought an action against a store to recover for injuries sustained in a slip-and-fall accident. The jury awarded damages for the patron. The court of appeal increased the general damages portion of the award. The supreme court held that the court of appeal's amendment of the general damages award could not be sustained, affirming the jury's general damages award.

3. *Sher v. Lafayette Insurance Company*⁴⁷

An insured sued a commercial property insurer due to a bad faith breach of contract in handling a hurricane damage claim. The jury found for the insured and awarded attorney fees and costs. The court of appeal affirmed in part and amended in part, reducing some of the damages and eliminating the award of attorney fees.

44. *See id.* synopsis, available at Westlaw.

45. 973 So. 2d 693 (La. 2008).

46. 979 So. 2d 456 (La. 2008) (per curiam).

47. 988 So. 2d 186 (La. 2008).

The supreme court affirmed in part, reversed in part, and rendered a judgment further reducing the total award.⁴⁸

G. 2010

*I. Lastrapes v. Progressive Security Insurance Company*⁴⁹

Plaintiffs, husband and wife, filed suit against the defendant, husband's uninsured motorist (UM) insurer, seeking recovery for injuries that the husband sustained in an accident and also penalties and attorney's fees. A jury awarded damages in some categories and not others. The trial court granted statutory penalties in a JNOV. Subsequently, the court of appeal awarded plaintiffs additional damages. However, the supreme court reversed the appellate judgment that affirmed the district court's grant of JNOV and award of penalties and attorney fees. The supreme court further reversed the appellate judgment that had overturned the district court's JNOV denial on the issues of future medical expenses, future pain and suffering, loss of enjoyment of life, and loss of consortium. But in all other respects, the court of appeal's judgment was affirmed.

H. 2011

*I. Johnson v. Louisiana Farm Bureau Casualty Insurance Company*⁵⁰

The jury in this case found that the defendant insurance company "had properly mailed the notice [of nonrenewal] to plaintiff's post office box, but that the post office had failed to deliver it."⁵¹ The jury thus issued a judgment in favor of the plaintiff. The court of appeal affirmed. The supreme court, however, maintained that the insurer had properly mailed the nonrenewal notice, holding that the homeowner's policy was not renewed.⁵²

48. See *id.* synopsis, available at Westlaw.

49. 51 So. 3d 659 (La. 2010) (per curiam).

50. 60 So. 3d 607 (La. 2011) (per curiam).

51. *Id.* at 607–08.

52. See *id.* synopsis, available at Westlaw.

2. Johnson v. Morehouse General Hospital⁵³

The jury in a medical malpractice case found that the hospital committed malpractice and apportioned 80% fault to the hospital and 20% to the doctor. The court of appeal held that the jury erred in finding the hospital liable on three of the four counts, apportioning fault at 20% to the hospital and 80% to the doctor. The supreme court subsequently held that the court of appeal was correct in finding the hospital liable for only one act of negligence, but it apportioned fault equally at 50%–50% between the hospital and the doctor.

3. Brooks v. State ex rel. Department of Transportation & Development⁵⁴

After an operating engineer was killed in a backhoe accident, his wife and children filed a wrongful death action against the DOTD. The district court entered a judgment on a jury verdict in the plaintiffs' favor. The court of appeal amended the verdict, attributing to plaintiff 20% of the fault. The supreme court reversed and rendered judgment, holding that the risk of the operating engineer's imprudent operation of the backhoe was outside the DOTD's duty to maintain public roadways.⁵⁵

II. APPELLATE COURTS

A. 2002

1. Simmons v. Transit Management of Southeast Louisiana, Inc.⁵⁶

A jury verdict found that the defendant and the plaintiffs were each 50% comparatively at fault in causing the victim's injuries and failed to make an award for physical pain and suffering. The court of appeal amended the judgment to hold the defendants 100% at fault and further awarded the plaintiffs for the victim's physical pain and suffering.⁵⁷

53. 63 So. 3d 87 (La. 2011).

54. 74 So. 3d 187 (La. 2011).

55. *See id.* synopsis, available at Westlaw.

56. 819 So. 2d 1083 (La. Ct. App. 4th 2002).

57. *See id.* synopsis, available at LEXIS.

*B. 2003**1. Cousins v. Realty Ventures, Inc.*⁵⁸

After a real estate agent purchased property for himself when he knew that a client was interested, the client brought an action for the agent's fiduciary duty breach. The district court entered a jury verdict for the client and awarded damages. The court of appeal subsequently amended the trial court judgment, awarding plaintiff damages plus interest.⁵⁹

*2. Wood v. Spillers*⁶⁰

Plaintiff driver filed suit against the defendants—a telephone company, a property owner, and the property owner's employee—for injuries sustained when a telephone cable dropped onto the driver's vehicle. The jury found the company 100% negligent and awarded the driver damages. The court of appeal reversed the damages award, finding no breach of duty to have caused the injury.⁶¹

*3. Ferrouillet v. Department of Transportation & Development*⁶²

A driver and passenger sued another motorist who drove the wrong way on a highway exit ramp. The district court entered a judgment on a jury verdict in favor of the plaintiffs and granted the driver's motion for JNOV. The court of appeal attributed 100% of the fault for the accident to the motorist.⁶³

*4. Yuspeh v. Koch*⁶⁴

The plaintiffs, minority shareholders, sued the majority shareholders for the values of their minority stock after a freeze-out merger approved by the defendants. The jury entered a verdict for the minority shareholders. The court of appeal reversed the

58. 844 So. 2d 860 (La. Ct. App. 5th 2003).

59. *See id.* synopsis, available at Westlaw; *id.* synopsis, available at LEXIS.

60. 843 So. 2d 555 (La. Ct. App. 5th 2003).

61. *See id.* synopsis, available at LEXIS.

62. 836 So. 2d 686 (La. Ct. App. 4th 2003).

63. *See id.* synopsis, available at Westlaw.

64. 840 So. 2d 41 (La. Ct. App. 5th 2003).

mental anguish and nonpecuniary damage awards and revalued the minority stock.⁶⁵

5. *Held v. Aubert*⁶⁶

The district court entered judgment against the physician in a medical malpractice action concerning injuries sustained by a newborn during birth. The court of appeal upheld the newborn's damage award but reversed the parents' mental anguish award.

6. *Landry v. Leonard J. Chabert Medical Center*⁶⁷

The family members of a woman who died brought a medical malpractice action against her doctors and the medical center where she had been treated. The district court entered judgment against the doctors and medical center on a jury verdict and awarded costs to the family. But, the court of appeal reversed the award, assessing the family with one-fourth of the appeal costs.⁶⁸

7. *Richardson v. Aldridge*⁶⁹

The passengers from both vehicles involved in an accident sued in negligence against the other vehicle's driver. The jury found that neither driver had been negligent. Initially, in its original opinion, the appellate court affirmed; however, on rehearing, the court of appeal found negligence and fault on the parts of both drivers, awarding the passengers with general damages.⁷⁰

8. *Cox v. Julian*⁷¹

An accident victim sued the driver of another vehicle and her insurer for personal injuries. The jury awarded the victim damages, including those for future medical care, but none for future pain and suffering. The trial judge amended the award to include damages for future pain and suffering. The court of appeal increased the award of

65. *See id.* synopsis, available at LEXIS.

66. 845 So. 2d 625 (La. Ct. App. 1st 2003).

67. 858 So. 2d 454 (La. Ct. App. 1st 2003).

68. *See id.* synopsis, available at LEXIS.

69. 854 So. 2d 923 (La. Ct. App. 2d 2003).

70. *See id.* synopsis, available at Westlaw.

71. 846 So. 2d 986 (La. Ct. App. 5th 2003).

damages for physical and mental pain, suffering, and anguish incurred from the accident date to the trial date.⁷²

9. *Robinson v. North American Salt Company*⁷³

The jury awarded the plaintiff maintenance worker damages for his employer's negligence and intentionally tortious activity. The trial court granted plaintiff's JNOV and increased the award. On appeal, the court upheld the JNOV but reduced the award to reflect credit for worker's compensation benefits paid to plaintiff.

10. *Chisholm v. Clarendon National Insurance Company*⁷⁴

After their son died in an automobile–mobile home collision on the highway, plaintiff parents brought a wrongful death action against the defendants, mobile home movers and their insurer. A jury held that the movers were not negligent. However, the court of appeal reversed, apportioning the victim's fault at 30% and the movers' fault at 70%.⁷⁵

11. *Sullivan v. Murphy*⁷⁶

The plaintiff driver and passenger brought an action against the defendants—a tow truck driver, a state trooper, and their employers—for injuries sustained in an automobile accident. The jury rendered a verdict for the plaintiffs, awarding them special damages. The district court granted JNOV and awarded plaintiffs general damages. The court of appeal reversed, assessing 100% of the fault to the plaintiffs.⁷⁷

12. *Boutte v. Kelly*⁷⁸

After an automobile collision with a city tow truck, the plaintiff sued the City of New Orleans and the car manufacturer for the driver's negligence and for the manufacturer's defective seatbelt design. A bifurcated trial was held, with the judge determining the City's liability and the jury determining the private parties' liability. The judge found the City free from fault, but the jury allocated 40%

72. See *id.* synopsis, available at LEXIS.

73. 865 So. 2d 98 (La. Ct. App. 1st 2003).

74. 850 So. 2d 1070 (La. Ct. App. 2d 2003).

75. See *id.* synopsis, available at LEXIS.

76. 852 So. 2d 1277 (La. Ct. App. 2d 2003).

77. See *id.* synopsis, available at LEXIS.

78. 863 So. 2d 530 (La. Ct. App. 4th 2003).

fault to the City's driver. The jury also assigned 40% fault to the passenger and 20% to the manufacturer. The district court entered judgment against the manufacturer for 50% of the jury's award. The court of appeal reversed and amended part of the award such that 30% of the fault was assigned to the driver of the plaintiff's car, 20% to the city, and 50% to the manufacturer.

13. *Hays v. State*⁷⁹

Property owners brought an action against a university and a town after a sewage discharge into a stream that crossed their property. In a bifurcated trial, the jury, determining the university's liability, assessed 44% fault against the university and 56% fault against the town and awarded property damages. The judge, determining the town's liability, agreed with the jury's allocation of fault and awarded general damages. On appeal, the court reduced the damages and costs assessed against the university and raised those assessed against the town.

14. *Murray v. German Mutual Insurance Company*⁸⁰

The victim of an automobile accident filed suit against the other driver. The victim's insurer intervened, asserting subrogation. The district court recognized the insurer's subrogation claim and granted judgment against the defendant driver; however, the court required the insurer to pay the victim's attorney fees. The court of appeal reversed, holding that the insurer was not required to pay the victim's attorney fees despite subrogation.⁸¹

15. *Temple v. Sherman*⁸²

A father and son were injured in an automobile accident when returning home from a job site in their employer's van. The district court granted the son's tort-damage claim against the employer but denied the father's claim on grounds that the father was within the course and scope of his employment when the accident occurred, thus restricting him to worker's compensation damages. On appeal, the court reversed judgment in favor of the son, holding that he was within the course and scope of his employment at the time of

79. 856 So. 2d 64 (La. Ct. App. 2d 2003).

80. 856 So. 2d 81 (La. Ct. App. 2d 2003).

81. See *id.* synopsis, available at Westlaw.

82. 856 So. 2d 77 (La. Ct. App. 2d 2003).

accident, likewise restricting him to workers' compensation damages.⁸³

C. 2004

1. *Alexander v. Ford*⁸⁴

The jury in a personal injury suit arising from an automobile accident found the injured driver 20% comparatively negligent and awarded him damages for pain and suffering and for medical expenses. On appeal, the court amended the judgment, finding jury error in failing to award the full amount of the injured driver's past medical expenses, and it increased the damages amount for those expenses.⁸⁵

2. *Crutchfield v. Landry*⁸⁶

While standing alongside his tractor-trailer, a truck driver was struck and killed by the defendant, a minor driver who was drunk at the time of the accident. The victim's family brought a wrongful death action against the defendant minor. The jury found that the defendant inn, which had served alcohol to the minor that evening, was 40% at fault for the accident. Further, it found the driver 30% at fault and the defendant street liquor vendors 30% at fault. The court of appeal reversed, allocating 60% fault to the minor and 40% fault to the defendant street vendors.⁸⁷

3. *Rizzuto v. State*⁸⁸

After suffering injuries in a single-vehicle accident, a driver and passenger sued the DOTD claiming that the accident, which occurred upon swerving to avoid a phantom vehicle, was caused by unreasonably dangerous road conditions. The district court entered judgment on a jury verdict for the plaintiffs; however, the court of appeal amended, reallocating the fault for the DOTD at 40%, the plaintiff driver at 3%, and the phantom driver at 57%.⁸⁹

83. *See id.* synopsis, available at Westlaw.

84. 866 So. 2d 890 (La. Ct. App. 5th 2004).

85. *See id.* synopsis, available at LEXIS.

86. 870 So. 2d 371 (La. Ct. App. 4th 2004).

87. *See id.* synopsis, available at LEXIS.

88. 870 So. 2d 1034 (La. Ct. App. 4th 2004).

89. *See id.* synopsis, available at LEXIS.

4. LeRay v. Bartholomew⁹⁰

In a medical malpractice suit, the jury found for the patient and her parents, allocating the fault of one doctor at 10% and another at 90%. Additionally, the doctors and the Louisiana Patients Compensation Fund (LPCF) were cast in judgment for costs. The court of appeal amended the trial court's judgment to exclude the doctors from the part of the judgment that taxed the defendants for all court costs and held the LPCF solely responsible for payment of costs awarded in judgment.

5. Scramuzza v. River Oaks, Inc.⁹¹

A patient sued a hospital for injuries that he sustained while he was being transported. The jury found that the injuries were caused by an unreasonably dangerous condition at the hospital, yet it found the parties equally at fault. The court of appeal amended the judgment, reducing the past medical damages award.⁹²

6. Roberts v. Owens-Corning Fiberglas Corporation⁹³

The wife and children of a deceased pipefitter brought a wrongful death and a survival action against numerous manufacturers and premises owners alleging liability for plaintiff's mesothelioma. After plaintiff's settlement with most of the defendants, the district court entered judgment on a jury verdict against the remaining defendants. Both parties moved for JNOV, and both motions were granted in one judgment. Later, the trial court, on its own motion, entered a second JNOV to increase the premises owner's fault allocation. On appeal, the court reversed the first JNOV, nullified the second, and amended the judgment to hold the owner responsible for its virile share of the decedent's survival damages.⁹⁴

7. Young v. Bernice Community Rehabilitation Hospital⁹⁵

In a medical malpractice action, the jury found that the defendant hospital had not been negligent in treating the plaintiff

90. 871 So. 2d 492 (La. Ct. App. 5th 2004), *superseded by statute*, LA. REV. STAT. ANN. § 40:1299.42(B)(2) (Supp. 2013).

91. 871 So. 2d 522 (La. Ct. App. 5th 2004).

92. *See id.* synopsis, available at LEXIS.

93. 878 So. 2d 631 (La. Ct. App. 1st 2004).

94. *See id.* synopsis, available at Westlaw.

95. 870 So. 2d 467 (La. Ct. App. 2d 2004).

patient. On appeal, the court reversed, rendering judgment in the patient's favor.

8. *Petranick v. White Consolidated Industries*⁹⁶

After an automobile accident in which he sustained injuries, the plaintiff driver sued the defendant driver and his employer. The jury apportioned 35% of the fault to the injured driver and 65% fault to the defendant. The district court granted JNOV, reapportioning the fault at 10% to the injured driver and 90% to the defendant, increasing award amounts, and granting a loss of consortium claim. On appeal, the court affirmed the fault distribution and the loss of consortium award but reinstated the jury verdict as to the other awards.⁹⁷

9. *Andrus v. L.A.D. Corporation*⁹⁸

A customer contending that he was attacked by a dog owned by the defendant business brought an action against the business and its insurer. After a jury trial, the district court entered judgment against the defendants. The court of appeal reversed, finding that the plaintiff did not establish that the dog posed an unreasonable risk of harm. The defendant business, therefore, was not strictly liable. Furthermore, the plaintiff did not claim that the dog owner was negligent, thus precluding any recovery for plaintiff's injuries.

10. *Andrews v. Dufour*⁹⁹

The plaintiff driver of one vehicle sued defendants, the driver of another vehicle and an automobile manufacturer, after an interstate highway collision. The jury awarded the plaintiff damages, assessing fault at 20% to the defendant driver and 80% to the manufacturer. The court granted a motion for JNOV and reduced the award, finding the plaintiff 50% at fault, the defendant driver 25% at fault, and the manufacturer 25% at fault. The court of appeal reversed, assigning the fault as 50% to defendant driver and 50% to plaintiff.

96. 870 So. 2d 1164 (La. Ct. App. 5th 2004).

97. See *id.* synopsis, available at LEXIS.

98. 875 So. 2d 124 (La. Ct. App. 5th 2004).

99. 882 So. 2d 15 (La. Ct. App. 4th 2004).

11. Chatelain v. Rabalais¹⁰⁰

In a legal malpractice suit, the jury awarded general and special damages to the clients involved. The court of appeal reversed all special damages in one category and some of the general damages in one category.¹⁰¹

12. Pamplin v. Bossier Parish Community College¹⁰²

A student sued a community college and school board for a slip and fall that occurred on campus. The jury found in favor of the student. The court of appeal reversed, holding that the college did not know that the drain plate on which the student slipped was defective.

13. Perkins v. Wurster Oil Corporation¹⁰³

A gas station customer brought an action against an oil company and an owner of a gas pump after he was injured. The district court entered judgment on a jury verdict for the company. The court of appeal held that the trial judge erred by not instructing the jury on *res ipsa loquitur*. The court found that the owner of the gas pump was responsible and entirely at fault for the customer's injuries.¹⁰⁴

14. Payne v. Tonti Realty Corporation¹⁰⁵

The plaintiff filed an action against his coworker and employer alleging an intentional tort in a collision with a golf cart. The jury found for the defendants, but on appeal the judgment was reversed and remanded. On remand, the jury found in the worker's favor. However, the court of appeal reversed the jury verdict that was in favor of the worker and dismissed the case with prejudice.¹⁰⁶

100. 877 So. 2d 324 (La. Ct. App. 3d 2004).

101. *See id.* synopsis, available at LEXIS.

102. 878 So. 2d 889 (La. Ct. App. 2d 2004).

103. 886 So. 2d 1229 (La. Ct. App. 3d 2004).

104. *See id.* synopsis, available at Westlaw.

105. 888 So. 2d 1090 (La. Ct. App. 5th 2004).

106. *See id.* synopsis, available at LEXIS.

15. *Davis v. Fenerty*¹⁰⁷

A motorist involved in an automobile accident brought a personal injury action against an intoxicated driver and his insurer. The jury found the intoxicated driver negligent, awarding damages to the motorist. The trial court granted JNOV and increased the plaintiff's award. The court of appeal subsequently amended part of the JNOV, reinstating the portion of the jury verdict that refused the motorist punitive damages.¹⁰⁸

D. 2005

1. *Rathey v. Priority EMS, Inc.*¹⁰⁹

A man and his wife brought a personal injury action against an emergency medical company, emergency medical technicians (EMTs), the sheriff's office, and deputies, alleging that the husband sustained injuries as a result of the negligent use of hard restraints by EMTs and deputies to restrain him while he was having an epileptic seizure at a restaurant. The jury found for the plaintiffs. On appeal, the court held that, even though the evidence established that the EMTs were negligent, they could not be liable for the injured person's past and future lost wages. Thus, the court of appeal reduced the general damages award.¹¹⁰

2. *Walker v. Corsetti*¹¹¹

A patient brought a medical malpractice suit against a surgeon. The district court entered judgment on a jury verdict for the surgeon. The court of appeal reversed the judgment and awarded damages to the patient and her husband.

3. *Sevin v. Parish of Plaquemines*¹¹²

A family sued the Parish of Plaquemines and State of Louisiana for the drowning deaths of a mother and two children. In a bifurcated trial, the case against the State was tried to a jury, whereas the case against the Parish was tried to the bench. The jury

107. 892 So. 2d 55 (La. Ct. App. 5th 2004).

108. *See id.* synopsis, available at LEXIS.

109. 894 So. 2d 438 (La. Ct. App. 4th 2005).

110. *See id.* synopsis, available at Westlaw.

111. 900 So. 2d 991 (La. Ct. App. 5th 2005).

112. 901 So. 2d 619 (La. Ct. App. 4th 2005).

returned a verdict for the plaintiffs, assessing fault to the State at 41%, the Parish at 37%, and the drowned mother at 22%. After a subsequent hearing, the trial court rendered a judgment finding the Parish free from fault and reallocating its 37% of fault proportionately between the State and the mother. The court of appeal vacated the trial court decision and rendered judgment in favor of the Parish and the State but against the family.

4. *Provost v. USA Truck, Inc.*¹¹³

After a fatal accident that occurred when a motorist struck a disabled truck on the shoulder of an interstate highway, the deceased motorist's parents brought a wrongful death action against the trucking company. The jury awarded damages to each parent and assessed fault at 25% to the company and 75% to the deceased motorist. The district court granted JNOV and increased the damages awards. But on appeal, the court held that the proper allocation of fault was 75% to the company and 25% to the deceased motorist.¹¹⁴

5. *Seagrave v. Dean*¹¹⁵

As a result of his termination, a track coach sued his former employer, a university, and asserted claims for abuse of rights, defamation, and racial discrimination. The jury awarded the coach damages for lost wages and emotional distress based on the racial discrimination claim. Moreover, the court of appeal reversed the judgment, finding that the coach failed to prove his claim.¹¹⁶

6. *Basco v. Liberty Mutual Insurance Company*¹¹⁷

In a suit following an accident between a truck driver and a car driver, a jury was tasked with determining whether the truck driver was injured and, if so, the appropriate damage award. The jury found that the truck driver was injured but only awarded him damages in certain categories. On appeal, the court held that the verdict was internally inconsistent. The jury's rejection of claims for several types of damages was ultimately reversed.

113. 901 So. 2d 1220 (La. Ct. App. 3d 2005).

114. *See id.* synopsis, available at Westlaw.

115. 908 So. 2d 41 (La. Ct. App. 1st 2005).

116. *See id.* synopsis, available at LEXIS.

117. 909 So. 2d 660 (La. Ct. App. 3d 2005).

7. *Gates v. Honey*¹¹⁸

The defendant motorist in a car-accident suit filed a reconventional demand against the plaintiff driver, the driver's insurer, and the DOTD, alleging that the drop off at the accident site was the cause of the collision with the driver. The jury found for the motorist and awarded him damages, and the court of appeal reversed. On appeal, the court held that the evidence was insufficient to establish that the shoulder edge caused the motorist to lose control and collide with the driver.¹¹⁹

8. *Yellott v. Underwriters Insurance Company*¹²⁰

After colliding with a truck, an injured motorist sued the truck driver's employer for his injuries. The jury allocated 50% of the fault to the motorist and awarded damages in some categories, while rejecting damages in others. The court of appeal reassessed the fault as 10% to the motorist and 90% to the truck driver. The court also reduced some types of damages that the jury had awarded, and it awarded some types of damages that the jury had rejected.

9. *Sciambra v. Jerome Imports, Inc.*¹²¹

After an automobile accident, the driver brought suit against a company that repaired the brakes on his car. The jury found the company liable for 60% of the accident and the driver liable for 40%. The district court granted JNOV and increased the damage award. Subsequently, the court of appeal reapportioned the fault as 70% to the company and 30% to the driver and reversed the district court's increase of damages.

10. *Cormier v. Colston*¹²²

A tenant sued her landlord for injuries that she sustained when she fell on the property. A jury found both parties equally at fault and awarded future medical expenses, but it declined to award the tenant any additional damages. The court of appeal reversed the

118. 909 So. 2d 1025 (La. Ct. App. 2d 2005).

119. *See id.* synopsis, available at Westlaw.

120. 915 So. 2d 917 (La. Ct. App. 3d 2005).

121. 921 So. 2d 145 (La. Ct. App. 4th 2005).

122. 918 So. 2d 541 (La. Ct. App. 3d 2005).

jury's refusal to award the tenant general damages and past medical expenses.

E. 2006

1. *Hussey v. Russell*¹²³

After an automobile accident, an injured driver and the mother of a deceased driver brought suits against the State of Louisiana because of the condition of the roadway. These cases were consolidated. The jury found the State 20% at fault and the deceased driver 80% at fault. The parties stipulated that the injured driver's claims did not exceed the \$50,000 jury trial amount, and the trial judge tried them alone. The trial judge assessed 35% of the fault to the State and 65% to the deceased driver. On appeal, the court found that the trial judge's assignment of 35% fault to the State was more reasonable than the jury's assignment of 20%, so it amended the judgment accordingly.

2. *Reed v. State Farm Mutual Automobile Insurance Company*¹²⁴

Following a collision, a dirt bike rider sued the other motorist involved. The jury found the two equally at fault and awarded damages. However, the court of appeal reversed, finding no negligence on the motorist's part.

3. *Trahan v. Deville*¹²⁵

A passing motorist brought an action against a turning motorist after the passing motorist swerved her car to avoid a collision and ran into a mailbox. The jury found in favor of the turning motorist. The court of appeal reversed, awarding damages to the passing motorist.

4. *Norfleet v. Lifeguard Transportation Services*¹²⁶

The children of a deceased nursing home resident filed claims against the nursing home following their mother's death. The jury awarded general and special damages but not wrongful death

123. 934 So. 2d 766 (La. Ct. App. 1st 2006).

124. 929 So. 2d 871 (La. Ct. App. 3d 2006).

125. 933 So. 2d 187 (La. Ct. App. 3d 2006).

126. 934 So. 2d 846 (La. Ct. App. 4th 2006).

damages. The court of appeal reversed the jury's findings regarding the wrongful death claim.

5. *McDaniel v. Carencro Lions Club*¹²⁷

A singer was injured when he fell at a performing arts center and brought an action against the parish that owned the center, the club that rented the center, and the event promoter. In a bifurcated trial, the trial court considered the claims against the parish, whereas the jury considered the claims against the club and promoter. The trial court attributed fault among the parties as 75% to the singer, 15% to the parish, 8% to the promoter, and 2% to the club. The jury apportioned fault as 41.5% to the parish, 35.5% to the singer, 21% to the promoter, and 2% to the club. Finally, on appeal, the court reallocated fault as 65% to the parish, 25% to the singer, 8% to the promoter, and 2% to the club.¹²⁸

6. *Greer v. State*¹²⁹

A motorcyclist filed suit against the State of Louisiana and a landowner following an accident resulting from a tree that had fallen in the road. The jury allocated fault as 40% to the motorcyclist, 40% to the State, and 20% to the landowner, and awarded damages. The court of appeal reassigned the fault between the parties as 60% to the State and 40% to the motorcyclist and amended the damage award.¹³⁰

7. *Lewis v. State Farm Insurance Company*¹³¹

City employees involved in an automobile accident in a city truck sued the city's UM insurance carrier on coverage and bad faith claims. The district court entered judgment on a jury verdict in the employees' favor and awarded damages. Yet, the court of appeal vacated the damage awards because, as recorded on the jury verdict form, the two awards were inconsistent. Therefore, the court rendered new damage awards.

127. 934 So. 2d 945 (La. Ct. App. 3d 2006).

128. *See id.* synopsis, available at Westlaw.

129. 941 So. 2d 141 (La. Ct. App. 3d 2006).

130. *See id.* synopsis, available at Westlaw.

131. 946 So. 2d 708 (La. Ct. App. 2d 2006).

*F. 2007*1. *Freeland v. Bourgeois*¹³²

The defendant driver injured the plaintiff when he ran a stop sign and hit the plaintiff's vehicle. The jury determined that the plaintiff was not injured and therefore did not award damages. The court of appeal reversed the judgment and awarded both general and special damages.

2. *Mouhot v. Twelfth Street Baptist Church*¹³³

A church attendee sued the church for personal injuries after she tripped and fell on the church premises. Following a jury verdict, the district court allocated 45% of the fault to the plaintiff and 55% to the church. The district court awarded damages. The court of appeal, however, found that the church was 100% at fault and reversed the district court ruling.

3. *Broussard v. Medical Protective Company*¹³⁴

A patient's family filed a medical malpractice suit claiming that the patient's doctor was negligent in failing to rule out a serious cardiac problem that ultimately resulted in the patient's death. The jury found in the doctor's favor. However, the court of appeal reversed the judgment of the trial court, rendered judgment in the family's favor, and awarded damages.¹³⁵

4. *Leighow v. Crump*¹³⁶

After an accident at work, an employee brought suit against a customer. The jury found in the employee's favor, awarding her special damages but no general damages. On appeal, the court ruled that the jury's failure to award general damages, together with its award for special damages, constituted an abuse of discretion. Thus, the court partially reversed and amended the district court judgment to include a general damage award for the employee's past pain and suffering.¹³⁷

132. 950 So. 2d 100 (La. Ct. App. 3d 2007).

133. 949 So. 2d 668 (La. Ct. App. 3d 2007).

134. 952 So. 2d 813 (La. Ct. App. 3d 2007).

135. *See id.* synopsis, available at Westlaw.

136. 960 So. 2d 122 (La. Ct. App. 1st 2007).

137. *See id.* synopsis, available at LEXIS.

5. *Pena v. Delchamps, Inc.*¹³⁸

A jury awarded damages to a customer after she slipped and fell in a store, injuring her knee. The court of appeal increased the damages awarded because it determined that the previous amount awarded was abusively low.

6. *Richard v. Board of Supervisors of Louisiana State University and A & M College*¹³⁹

The plaintiff filed suit against two of Louisiana's public universities and a university employee, alleging racial discrimination and retaliation. The jury found that the university employee's conduct violated the plaintiff's civil rights but found no retaliation. The district court awarded \$1.00 in nominal damages. On appeal, the court held that the university employee did not have qualified immunity as to 42 U.S.C. §1983 claims. The court further held the plaintiff was entitled to \$10,000 in compensatory damages, as well as reasonable attorney's fees.¹⁴⁰

7. *Trant v. United Fire & Casualty Insurance Company*¹⁴¹

The plaintiffs sued a condominium association after an unknown third party suddenly opened a fire door that struck the plaintiff and knocked him down. On the jury's verdict, the district court found the association at fault, entering judgment in the plaintiffs' favor. The court of appeal reversed the judgment, finding that the door was not defective or unreasonably dangerous.¹⁴²

8. *Newsom v. Lake Charles Memorial Hospital*¹⁴³

The wife and children of a deceased patient filed suit against the treating hospital for medical malpractice. The jury found that the plaintiffs had failed to prove the applicable standard of care. The court of appeal reversed the verdict, finding for the plaintiffs.¹⁴⁴

138. 960 So. 2d 988 (La. Ct. App. 1st 2007).

139. 960 So. 2d 953 (La. Ct. App. 1st 2007).

140. *See id.* synopsis, available at Westlaw.

141. 954 So. 2d 797 (La. Ct. App. 4th 2007).

142. *See id.* synopsis, available at Westlaw.

143. 954 So. 2d 380 (La. Ct. App. 3d 2007).

144. *See id.* synopsis, available at LEXIS.

9. Charan v. Bowman¹⁴⁵

A jury found that the DOTD was 30% liable for an automobile accident that occurred during adverse weather conditions because the bridge where the accident occurred was in the DOTD's care, custody, and control. On appeal, the court reversed and dismissed the suit against the DOTD.¹⁴⁶

10. Layssard v. State¹⁴⁷

During the course and scope of his employment, a Department of Public Safety and Corrections officer struck a turning vehicle, injuring its driver. The jury determined that the officer was 100% at fault and awarded the driver various damages. On appeal, the court reversed the future medical expenses award.¹⁴⁸

11. Parfait v. Transocean Offshore, Inc.¹⁴⁹

The district court entered judgment on a jury verdict against the defendants, an employer and oil company, in favor of an employee who had sustained injuries in a work-related accident. The jury found the employer 75% at fault and the oil company 25% at fault. The court of appeal reversed and amended the judgment, casting the employer with 100% fault. The appellate court also reduced the damages award.¹⁵⁰

12. Venissat v. St. Paul Fire & Marine Insurance Company¹⁵¹

After a sheriff's deputy rear-ended a driver at a traffic light, the plaintiff driver sued for his injuries. The jury awarded the plaintiff damages. The court of appeal then amended the judgment to increase the damage award.

13. Rideau v. State Farm Mutual Automobile Insurance Company¹⁵²

While attempting to cross the street, a ten-year-old child was struck by an oncoming truck, causing her serious injuries and

145. 965 So. 2d 466 (La. Ct. App. 1st 2007).

146. *See id.* synopsis, available at LEXIS.

147. 963 So. 2d 1053 (La. Ct. App. 3d 2007).

148. *See id.* synopsis, available at LEXIS.

149. 992 So. 2d 465 (La. Ct. App. 4th 2007).

150. *See id.* synopsis, available at LEXIS.

151. 968 So. 2d 1063 (La. Ct. App. 3d 2007).

ultimately death. The child's parents sued the truck company, claiming negligence on the driver's part. The district court held the truck company as vicariously liable through its employee for 60% of the fault and that the child and her mother were each 20% at fault. The court awarded the parents damages. Both parties appealed, and the court of appeal decreased the damage awards.

14. *Munar v. State Farm Insurance Company*¹⁵³

After a traffic accident, a pedestrian sued the local government and the driver of the vehicle that struck her. The district court allocated fault to the city at 15%, the driver at 10%, and the pedestrian at 75%. The trial court awarded damages in a JNOV. The court of appeal found the pedestrian liable for 80% of her damages and the driver liable for the remaining 20%.

15. *Millican v. Coregis Insurance Company*¹⁵⁴

The driver of a pickup truck filed suit against a school bus driver and the school board after a collision. The district court ruled in defendants' favor after the jury found that the plaintiff was not injured. Subsequently, the court of appeal vacated the trial court judgment, rendered judgment against the defendants, and awarded damages.

G. 2008

1. *Leonard v. Harris*¹⁵⁵

After an automobile accident, the jury allocated fault equally between the plaintiff and the defendant. The court of appeal later amended the judgment to assess the defendant with 100% of the fault and increased the damages award.

2. *Goutro v. F.G. Sullivan, Jr., Contractor, L.L.C.*¹⁵⁶

A driver filed a personal injury action against the DOTD and its contractor. The jury verdict held the defendants as 50% at fault

152. 970 So. 2d 564 (La. Ct. App. 1st 2007).

153. 972 So. 2d 1273 (La. Ct. App. 3d 2007).

154. No. 2006 CA 1270, 2007 WL 4480201 (La. Ct. App. 1st Dec. 21, 2007).

155. No. 2007 CA 1481 (La. Ct. App. 1st Mar. 26, 2008).

156. 986 So. 2d 673 (La. Ct. App. 3d 2008).

and the driver as 50% at fault. The jury further awarded the driver damages. The court of appeal amended the judgment to increase certain damages awards and awarded additional damages for the loss of enjoyment of life.¹⁵⁷

3. State ex rel. Department of Transportation & Development v. Wade¹⁵⁸

After the DOTD brought an expropriation proceeding in an effort to improve a highway, the landowners affected reconvened, seeking additional compensation. The jury found in the landowners' favor, awarding increased compensation. On appeal, the court reversed some of the awards and affirmed others.¹⁵⁹

4. Kennedy-Fagan v. Estate of Graves¹⁶⁰

This wrongful death action arose after the decedent's husband shot decedent and then himself. The decedent's daughter filed suit against the husband's estate. The district court entered a judgment on a jury verdict in plaintiff's favor, but on appeal, the court amended the judgment to reduce the total damages award.

5. Jenkins v. State¹⁶¹

A volunteer police officer's automobile accident with a tractor-trailer caused the officer serious injuries. Therefore, he and his family sued the DOTD and the town. The jury apportioned 90% of the fault to the DOTD and 10% to the town, awarding damages to the officer. However, the court of appeal reversed and vacated the loss of consortium award. The court also amended the judgment to reduce the damages awards.¹⁶²

6. Harris v. Delta Development Partnership¹⁶³

The plaintiff was injured when she tripped and fell at an apartment building, so she filed a negligence action against the owner of the apartment complex. The jury awarded damages for past medical expenses and past loss of earnings but declined to

157. See *id.* synopsis, available at LEXIS.

158. 984 So. 2d 918 (La. Ct. App. 3d 2008).

159. See *id.* synopsis, available at LEXIS.

160. 993 So. 2d 255 (La. Ct. App. 1st 2008).

161. 993 So. 2d 749 (La. Ct. App. 1st 2008).

162. See *id.* synopsis, available at LEXIS.

163. 994 So. 2d 69 (La. Ct. App. 1st 2008).

award several other types of damages. The court of appeal subsequently awarded general damages, maintaining that the trial court's refusal to do so was an abuse of discretion.

H. 2009

*1. Fournet v. Smith*¹⁶⁴

The jury in a personal injury suit arising from a two-car collision allocated fault and set damages. The court of appeal set aside the award for past and future pain and suffering and amended the judgment to provide for an award for all elements of general damages, thus increasing the award.

*2. Barnes v. Riverwood Apartments Partnership*¹⁶⁵

A man suffered injuries when he stepped into a hole on a street behind an apartment complex and brought an action against the landlord. The court of appeal found that the district court, after a jury trial, had entered an indeterminate judgment. The court of appeal vacated the verdict and remanded the case. Upon remand, the district court found that the landlord was not strictly liable because the landlord did not own the property on which the injury occurred. The court of appeal reversed that decision, held the landlord strictly liable for the injuries, and awarded medical expenses and damages to the plaintiff.

*3. Gradnigo v. Louisiana Farm Bureau Casualty Insurance Company*¹⁶⁶

After a motor vehicle accident, a driver and her husband sued for personal injuries and loss of consortium. The district court granted a motion for a directed verdict on the issue of liability in favor of the driver, and the jury awarded damages for past and future medical expenses, though not for past and future loss of enjoyment of life. The court of appeal amended the damages granted—increasing the award for past medical expenses and awarding damages for past and future loss of enjoyment of life.

164. No. 2008 CA 0586, 2009 WL 103166 (La. Ct. App. 1st Jan. 15, 2009).

165. 16 So. 3d 361 (La. Ct. App. 2d 2009).

166. 6 So. 3d 367 (La. Ct. App. 3d 2009).

4. *Stewart v. State*¹⁶⁷

After an accident at an intersection, a driver and the parents of a deceased passenger sued the other driver. They also sued the DOTD, claiming that the intersection was unreasonably dangerous. On a jury verdict finding the DOTD to be 47% at fault, the district court entered judgment. The court of appeal reversed, however, holding the jury's finding that the intersection was unreasonably dangerous as clearly without evidentiary support; thus, the DOTD was not at fault. The court of appeal assigned fault entirely to the other driver.

5. *Teague v. St. Paul Fire & Marine Insurance Company*¹⁶⁸

A physician sued in legal malpractice the defense attorneys assigned by his insurance to represent him in a medical malpractice case. The physician alleged that the attorneys had failed to obtain his consent when they settled the suit. The jury verdict favored the physician and awarded him damages. But the court of appeal reversed, holding the physician's claim as preempted. The supreme court reversed and remanded the case back to the court of appeal, holding that the claim was not preempted. On remand, the appellate court reversed the jury verdict and rendered judgment in the attorneys' favor.

6. *Pickering v. Paraguya*¹⁶⁹

A deceased patient's representative brought a medical malpractice suit against the patient's doctor. At trial, the jury found that the doctor had not breached the standard of care. The judgment was reversed by the court of appeal, which held the doctor to have breached the standard of care and awarded \$500,000 in general damages.

7. *Sarhan v. Florists Mutual Insurance Company*¹⁷⁰

After a motor vehicle accident, the plaintiffs brought a personal injury action. The jury found the defendants liable for damages but did not award damages for loss of consortium. The court of appeal amended to increase the awards of some types of damages and

167. 9 So. 3d 957 (La. Ct. App. 1st 2009).

168. 10 So. 3d 806 (La. Ct. App. 1st 2009).

169. 9 So. 3d 320 (La. Ct. App. 3d 2009).

170. No. 2008 CA 0840, 2009 WL 1331456 (La. Ct. App. 1st May 13, 2009).

reversed the award for future medical expenses. The appellate court also awarded damages for loss of consortium.

8. *Augustine v. SAFECO National Insurance Company*¹⁷¹

Following an automobile accident, a motorist and her husband sued the other motorist for personal injuries. Unhappy with the amount of damages awarded by the jury, the motorist and her husband filed a motion for JNOV on the issue of damages. The district court granted the motion and significantly increased the damages award. The court of appeal affirmed the JNOV in some damages categories but reversed the increases for future loss of earnings, loss of consortium, and future medical expenses.¹⁷²

9. *Young v. United States Automotive Association Casualty Company*¹⁷³

After a hurricane destroyed their house, the insured plaintiffs sued their insurer, asserting underpayment on their homeowner's policy. The district court entered judgment on the jury verdict, awarding plaintiffs damages. Subsequently, the court granted a motion for JNOV and awarded more than twice as much in damages. The court of appeal, however, reversed the JNOV and reinstated the jury verdict, finding sufficient evidence as support.

10. *Chalmette Retail Center, L.L.C. v. Lafayette Insurance Company*¹⁷⁴

A retail-center owner sued its insurer following damage caused by a hurricane, alleging bad faith, as well as arbitrary and capricious failure to pay a claim timely. At trial, the jury awarded the retail-center owner damages and penalties. The court of appeal affirmed the damages award for loss of business income but reduced the award of penalties for arbitrary and capricious failure to pay the claim timely.¹⁷⁵

171. 18 So. 3d 761 (La. Ct. App. 3d 2009).

172. *See id.* synopsis, available at LEXIS.

173. 15 So. 3d 327 (La. Ct. App. 4th 2009).

174. 21 So. 3d 485 (La. Ct. App. 4th 2009).

175. *See id.* synopsis, available at LEXIS.

11. State, Department of Transportation and Development v. Wagner¹⁷⁶

In an expropriation case, the jury determined the amount of damages for the DOTD to pay a landowner for the taking of his property due to a road construction project. On appeal, the court awarded more than twice the amount of damages, holding that the jury erred in awarding only part of the proven amount of damages sustained by the landowner.

12. Brumfield v. Spera¹⁷⁷

In an automobile accident, the jury found no fault on the plaintiff's part but failed to award damages. The court of appeal reversed part of the judgment and awarded the plaintiff damages.

13. Ford Motor Credit Company v. Dunham¹⁷⁸

A car dealership required a co-signer for a loan on a customer's car. The dealership allowed the customer to take the paperwork and bring it back with the co-signer's signature. After the car company sued the customer and the co-signer, the co-signer filed an answer and a reconventional demand, denying liability and alleging that her signature was a forgery. The jury found that the company was negligent but that negligence was not a legal cause of the damages. The court of appeal reversed, assessing fault and awarding damages to the alleged co-signer.

I. 2010

1. Cluse v. H & E Equipment Services¹⁷⁹

The purchaser of a bulldozer sued the seller, alleging unlawful conversion of the bulldozer and defamation. At trial, the jury found that there had been no completed sale of the bulldozer and no defamation. However, the court of appeal found that the jury erred as a matter of law in concluding that there had been no completed sale. The court of appeal reviewed the case de novo because of the legal error committed by the jury. The court reversed the jury's

176. 25 So. 3d 221 (La. Ct. App. 3d 2009), *aff'd as amended*, 38 So. 3d 240 (La. 2010).

177. No. 2009 CA 0566, 2009 WL 4982128 (La. Ct. App. 1st Dec. 23, 2009).

178. No. 2009 CA 0615, 2009 WL 4981913 (La. Ct. App. 1st Dec. 23, 2009).

179. 34 So. 3d 959 (La. Ct. App. 3d 2010).

findings, holding that the seller wrongfully converted the purchaser's property after the completed sale and awarding special and general damages for conversion and for defamation.¹⁸⁰

2. *Cox v. Shelter Insurance Company*¹⁸¹

After a four-vehicle accident, the jury found that the plaintiff, an injured motorist, was 50% at fault. On appeal, the court partially reversed the judgment and ruled in the injured motorist's favor, assigning no fault to the injured motorist.

3. *Audubon Orthopedic & Sports Medicine, AMPC v. Lafayette Insurance Company*¹⁸²

The insured plaintiff sued its insurance company for a breach of its business interruption policy following a hurricane. At trial, the jury found the insurer liable for both damages and statutory penalties. The district court entered judgment on the jury verdict, but upon motion for an amendment of judgment, the trial court vacated the previous judgment and entered a new judgment, amending the jury's penalties. The district court also increased the attorney's fees award in a third judgment following a motion for new trial. Ultimately, the court of appeal reduced the penalty award and reversed the district court's decision to grant attorney's fees.

4. *Ratliff v. LSU Board of Supervisors*¹⁸³

The surviving children sued two physicians for medical malpractice and also asserted survival and wrongful death claims. The jury found the doctors liable, assigning 70% fault to one doctor, 20% fault to the other, and 5% fault to the decedent. The jury also awarded damages for physical and mental pain and suffering, disability, loss of enjoyment of life, and wrongful death. The court of appeal amended the judgment to allocate 25% of the fault to the patient and reversed the award of damages for loss of enjoyment of life.¹⁸⁴

180. See *id.* synopsis, available at LEXIS.

181. 34 So. 3d 398 (La. Ct. App. 3d 2010).

182. 38 So. 3d 963 (La. Ct. App. 4th 2010).

183. 38 So. 3d 1068 (La. Ct. App. 4th 2010).

184. See *id.* synopsis, available at LEXIS.

5. *Vappie v. Maumus*¹⁸⁵

A patient and her husband sued a physician for medical malpractice. The jury found the physician 75% at fault and the patient 25% at fault; it awarded damages for pain and suffering generally but not specifically for future pain and suffering. Following a motion for JNOV, the district court adjusted the fault to attribute 100% to the physician and awarded damages for future pain and suffering. On appeal, the court reversed the award of damages for future pain and suffering, holding that the jury award already took into account both past and future pain and suffering.

6. *Pfefferle v. Haynes Best Western of Alexandria*¹⁸⁶

Hotel guests, a husband and wife, sued the hotel in relation to injuries that the wife sustained while sitting on a sleeper sofa. At trial, the jury allocated 45% of the fault to the hotel, 10% to the wife, and 45% to an unnamed third party. The jury awarded damages for past medical expenses but did not award damages for future medical expenses, pain and suffering, disability, loss of enjoyment of life, or loss of consortium. The court of appeal reapportioned the hotel's fault to 90% and amended the judgment to include general damages.¹⁸⁷

7. *Tingle v. American Home Assurance Company*¹⁸⁸

After an accident causing their injury and their daughter's death, parents sued a truck driver and his employer. Following a jury trial, the district court awarded compensatory and exemplary damages. On appeal, the court amended the judgment to reduce the wrongful death awards.

8. *Simon v. State Farm Mutual Automobile Insurance Company*¹⁸⁹

On account of injuries sustained in a collision with a pickup truck, the plaintiff passenger sued the truck driver and the company that owned the truck. The district court entered judgment on a jury verdict, awarding the passenger damages. The court of appeal found

185. 36 So. 3d 1123 (La. Ct. App. 4th 2010).

186. 38 So. 3d 1189 (La. Ct. App. 3d 2010).

187. *See id.* synopsis, available at LEXIS.

188. 40 So. 3d 1169 (La. Ct. App. 3d 2010).

189. 43 So. 3d 990 (La. Ct. App. 3d 2010).

the trial judge's failure to sustain the passenger's multiple objections to constitute legal error. On a de novo review, the court reversed the judgment, awarding general and special damages.¹⁹⁰

9. Schysm v. Boyd¹⁹¹

The plaintiff driver sued a horse's owners and the DOTD following injuries sustained when the plaintiff collided with the horse on an interstate highway. At trial, the jury allocated fault at 50% to the DOTD, 30% to the horse owners, and 20% to the driver, and awarded damages to the driver. On appeal, the court affirmed, except that it reversed the jury's finding that the DOTD was liable, ultimately assigning no fault to the DOTD.¹⁹²

10. Welch v. Willis-Knighton Pierremont¹⁹³

A deceased patient's spouse and child brought a medical malpractice action against the hospital where the patient had been treated. The jury found in the plaintiffs' favor. On appeal, the court affirmed the jury verdict and award. However, the court reversed the dismissal of the deceased patient's second child, ruling in the child's favor and awarding her damages.¹⁹⁴

11. Baltazar v. Wolinski¹⁹⁵

The plaintiff, the leading motorist in an automobile accident, sued the defendant, the trailing motorist. After a jury trial, the district court awarded the plaintiff damages. The court of appeal amended the judgment to increase the awards. The court also reversed a separate judgment that awarded damages to an intervening insurance company.

12. Bianchi v. Kufoy¹⁹⁶

A patient and his wife sued the patient's eye surgeon for medical malpractice. According to the jury, the doctor breached the appropriate standard of care; however, the jury failed to find

190. See *id.* synopsis, available at LEXIS.

191. 47 So. 3d 977 (La. Ct. App. 2d 2010).

192. See *id.* synopsis, available at LEXIS.

193. 56 So. 3d 242 (La. Ct. App. 2d 2010).

194. See *id.* synopsis, available at LEXIS.

195. 53 So. 3d 591 (La. Ct. App. 3d 2010), *aff'd in part, rev'd in part per curiam*, 56 So. 3d 947 (La. 2011).

196. 53 So. 3d 530 (La. Ct. App. 3d 2010).

proof of causation. Thus, no damages were awarded. The court of appeal reversed the lower court ruling and awarded damages.

13. *Skinner v. Christus St. Frances Cabrini Hospital*¹⁹⁷

A patient's widow and children brought a medical malpractice action against the hospital and nurse that had treated the patient. The jury found in the plaintiffs' favor, maintaining that the hospital and nurse failed to demonstrate the appropriate standard of care, and awarded plaintiff damages. On appeal, the court reversed; it set aside the judgment awarding plaintiffs general damages, reasoning that the jury's conclusion that the care provided caused a lost chance of survival was manifestly erroneous.

J. 2011

1. *Brignac v. Williamson*¹⁹⁸

In a suit arising out of an automobile accident, the district court rendered judgment following a jury verdict in the plaintiff's favor. The court of appeal amended to reduce the amount of the award for loss of future earning capacity.

2. *Clement v. Estate of Larose*¹⁹⁹

After a man died in an automobile accident while operating a truck for his employer, his surviving spouse and four children brought a wrongful death claim against the estate of the man who was driving the other vehicle and who was also killed in the accident. The jury found in the plaintiffs' favor and awarded damages. The jury also found that the UM coverage on the primary policy provided to the employer had been validly rejected but that the UM coverage on the excess policy had not been validly rejected; thus, the jury reasoned, the UM coverage was in effect at the time of the accident. The court of appeal then found that the jury committed legal error in finding that UM coverage on the excess policy was not validly rejected and reversed the judgment against the insurance company.

197. 53 So. 3d 567 (La. Ct. App. 3d 2010).

198. No. 2010 CA 1117, 2011 WL 579196 (La. Ct. App. 1st Feb. 11, 2011).

199. No. 2010 CA 1798, 2011 WL 1944116 (La. Ct. App. 1st May 3, 2011).

3. *Deville v. Frey*²⁰⁰

The plaintiff filed a personal injury suit against the defendant driver who injured him in an automobile accident, as well as the driver's employer. The district court entered judgment on the jury verdict, finding that the plaintiff had not been injured due to the accident. On appeal, the court reversed, maintaining that the plaintiff had indeed suffered injuries, and awarded damages.

4. *Pritchett v. Dollar General Corporation*²⁰¹

After a customer was injured due to falling merchandise, she brought suit against the store. The jury found the store to be 60% at fault and the customer to be 40% at fault and awarded damages to the customer. The trial judge granted JNOV, assigning 100% of the fault to the store, and increased the damages. The court of appeal reversed the JNOV and reinstated the jury's assessment of fault. The court affirmed the increase in damages from the JNOV.

5. *Starr v. State*²⁰²

The passengers involved in a single-vehicle accident sued the DOTD, alleging a lack of sufficient notice of a sharp curve on the highway, as the accident's cause. The jury found the DOTD 24% at fault for the plaintiffs' damages. On appeal, the court affirmed the jury's allocation of fault and its future loss of earnings award, but the court reversed as to the past lost earnings award.²⁰³

6. *Le v. Nitetown, Inc.*²⁰⁴

The plaintiffs sued a nightclub for injuries sustained from the nightclub's bouncers. The jury classified the defendants' conduct as party intentional and party negligent. Based on one of the plaintiff patron's comparative negligence, the district court reduced the damages awards as to both plaintiffs. On appeal, the court reversed the reduction in damages, as well as the assessment of court costs and fees to one plaintiff patron. The court further increased the jury's general damages awards.²⁰⁵

200. 63 So. 3d 435 (La. Ct. App. 3d 2011).

201. No. 2010 CA 1466, 2011 WL 1940435 (La. Ct. App. 1st May 6, 2011).

202. 70 So. 3d 128 (La. Ct. App. 2d 2011).

203. *See id.* synopsis, available at Westlaw.

204. 72 So. 3d 374 (La. Ct. App. 3d 2011).

205. *See id.* synopsis, available at Westlaw.

7. *Destiny Services, L.L.C. v. Cost Containment Services, L.L.C.*²⁰⁶

The jury found that the defendants breached fiduciary duties and committed fraud. The court of appeal affirmed with respect to the damages awarded for fraud but vacated the judgment to the extent that it awarded damages arising from the alleged breach of fiduciary duties.

8. *Siemens Water Technologies Corporation v. Revo Water Systems, L.L.C.*²⁰⁷

A water-filtration-system manufacturer sued an employee and a competing manufacturer, alleging the violation of a confidentiality agreement, the violation of the Uniform Trade Secrets Acts, and trade dress infringement. In accordance with the jury's verdict, the district court ruled in the plaintiff manufacturer's favor. On appeal, the court amended in order to reduce the jury's award.²⁰⁸

9. *Davis v. State*²⁰⁹

The plaintiff sued the DOTD for his injuries after a single-vehicle accident, claiming that the DOTD failed to properly inspect and maintain the highway. After the jury returned a verdict in the DOTD's favor, the driver filed a motion for JNOV, which the trial court granted. The court held the driver and the DOTD as equally at fault. The court of appeal reversed and reinstated the jury verdict.

10. *Harris v. St. Tammany Parish Hospital Service District No. 1*²¹⁰

The decedent's husband filed a general negligence suit against a hospital and a funeral home and a medical malpractice suit against the same hospital and a nurse. The cases were consolidated and heard before a jury, which found for the defendants. On appeal, the court vacated the part of the judgment that dismissed the plaintiff's entire civil action with prejudice in the negligence suit. The court then amended the judgment, finding that the plaintiff had established

206. No. 2010 CA 1895, 2011 WL 4375318 (La. Ct. App. 1st Sept. 20, 2011).

207. 74 So. 3d 824 (La. Ct. App. 3d 2011).

208. *See id.* synopsis, available at Westlaw.

209. 78 So. 3d 190 (La. Ct. App. 3d 2011).

210. Nos. 2011 CA 0941, 2011 CA 0942, 2011 WL 6916523 (La. Ct. App. 1st Dec. 29, 2011).

that the hospital was negligent and had breached its duty to the plaintiff, and awarded damages.

K. 2012

1. *Cormier v. Republic Insurance Company*²¹¹

The plaintiff, and injured motorist, sued a truck driver and the truck's owner after the truck backed into the plaintiff's vehicle. The jury awarded the plaintiff damages for past medical expenses, past income lost, past pain and suffering, and future pain and suffering. On appeal, the court found that the jury abused its discretion in failing to award the plaintiff damages for her resulting disability and loss of enjoyment of life. Thus, the court awarded the plaintiff such damages.²¹²

2. *Smith v. Coffman*²¹³

The former employee of a medical corporation sued his former employer, seeking several remedies, such as damages, unpaid wages, and a declaration that he could work in a particular parish. The jury returned a verdict in the plaintiff's favor. On appeal, the court affirmed some portions of the award and reversed others.²¹⁴

3. *Borck v. Register*²¹⁵

In a case arising out of an automobile and bicycle collision, the jury found the bicyclist to be 60% at fault and the motorist to be 40% at fault and awarded damages. The trial judge granted JNOV, assessed 100% of the fault to the motorist, and increased the damages award. The court of appeal amended, assessing the bicyclist at 25% fault and the motorist at 75% fault. The court also reduced the damages.

4. *Darbonne v. Bertrand Investments, Inc.*²¹⁶

After falling in front of a convenience store, a woman filed suit against the store's owner. The jury found the woman to be 60% at

211. No. 11-632, 2012 WL 147903 (La. Ct. App. 3d Jan. 18, 2012).

212. *See id.* synopsis, available at Westlaw.

213. 87 So. 3d 137 (La. Ct. App. 2d 2012).

214. *See id.* synopsis, available at Westlaw.

215. No. 2011 CA 1172, 2012 WL 584224 (La. Ct. App. 1st Feb. 10, 2012).

216. No. 11-1224, 2012 WL 716381 (La. Ct. App. 3d Mar. 7, 2012).

fault and the owner to be 40% at fault and awarded damages. The court of appeal amended the judgment of the trial court to increase the damage awards.

5. *Deligans v. Ace American Insurance Company*²¹⁷

After suffering injuries in an automobile accident, the first driver and her husband sued the second driver and the second driver's employer. The jury returned a verdict in plaintiffs' favor. On appeal, the court amended, increasing the award amounts as to some types of damages.²¹⁸

6. *Bourque v. Essex Insurance Company*²¹⁹

After having her home remodeled four months prior, the plaintiff claimed that she was injured in her kitchen due to a light fixture that fell and struck her head. The plaintiff thus sued the defendant remodeling contractor. The jury found for the defendant. The plaintiff was granted a new trial; however, the jury reached the same result. On appeal, the court found it impossible to determine the jury's intent because of the compound interrogatory. The court, therefore, vacated the verdict and rendered judgment in the plaintiff's favor.

7. *Broussard v. State*²²⁰

A delivery driver who fell in an elevator at a state-owned building brought suit against the state. The jury found the plaintiff to be 40% at fault and the state to be 60% at fault and awarded damages. The court of appeal reversed the judgment finding no liability on the state's part.

8. *Richard v. Artigue*²²¹

After a three-car accident, the driver of the lead vehicle sued the driver of the following vehicle for damages. In accordance with the jury verdict, the district court apportioned 60% of the fault to the following driver and 40% of the fault to sudden emergency-third-

217. 86 So. 3d 109 (La. Ct. App. 3d 2012).

218. See *id.* synopsis, available at Westlaw.

219. 86 So. 3d 840 (La. Ct. App. 3d 2012), *rev'd per curiam*, 90 So. 3d 1031 (La. 2012).

220. No. 2011 CA 0479, 2012 WL 1079182 (La. Ct. App. 1st Mar. 30, 2012).

221. 87 So. 3d 997 (La. Ct. App. 3d 2012).

party fault and awarded damages. On appeal, the court reversed the judgment, holding the defendant driver 100% at fault. The court also increased the damages award.