

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE**  
**AT KNOXVILLE**

**THOMAS NEELY,**

**Plaintiff,**

v.

**No.: 3:05-CV-304**  
**Guyton**

**FOX OF OAK RIDGE, INC.,**

**Defendant.**

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A NEW TRIAL**

Comes now the Plaintiff, Thomas Neely, hereinafter ("Plaintiff") and moves this Honorable Court for a new trial pursuant to Federal Rules of Civil Procedure 49(b) and 59. In support of this Motion Plaintiff should show as follows:

**Statement of Facts and Argument**

On June 21, 2006, following a two-day trial the Jury in this case returned an inconsistent verdict finding the Defendant, Fox of Oak Ridge, Inc., hereinafter ("Defendant") negligent in this cause of action, but not the legal cause of injuries to Plaintiff. *See Verdict Form*, attached hereto as "Exhibit A". The jury then awarded Plaintiff \$30,000.00 in compensatory damages. Exhibit A. The Plaintiff hereby asks this Court for a new trial because the verdict is inconsistent with the answers under Rule 49(b) and it reflects a lack of understanding and state of general confusion on the part of the jury.

**The Plaintiff is entitled to a new trial under Federal Rule of Civil Procedure 49(b).**

In determining what constitutes an inconsistent verdict, Federal Courts must turn to state law. Tipton v. Michelin Tire Co., 101 F.3d 1145, 1148 n.4 (6<sup>th</sup> Cir. 1996). Under Tennessee state

law a Defendant is not liable for damages unless all the elements of negligence are proven by a preponderance of the evidence, including the element of proximate or legal cause. McClenahan v. Cooley, 806 S.W.2d 767, 774 (Tenn. 1991). The Jury's verdict is internally inconsistent as well as inconsistent with Tennessee state law. Id. In order for the Jury to award compensatory damages to the Plaintiff, they should have found that the Defendant was the legal cause of the Plaintiff's injuries as Tennessee law requires and as they were instructed in the Preliminary Jury Instructions, attached hereto as ("Exhibit B"). McClenahan, 806 S.W.2d at 767 (1991).

Under the Federal Rule of Civil Procedure 49(b) when one of more of the Jury's answers to interrogatories are inconsistent with the judgment, the trial court may "enter the judgment, according to the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial." Fed. R. Civ. Pro. 49(b).

In this case the trial court did not enter judgment, according to the answers, as a \$30,000.00 damage award is not in accordance with the answer number two (2) on the Jury's verdict form, nor did the trial court return the jury for further consideration of its answers and judgment, therefore this Court should order a new trial pursuant to Fed. R. Civ. Pro. 49(b). See Hinkle v. Waddell, NO. 90-648, 1991 U.S. App. LEXIS 23535 at \*8 ( E.D. Ky. Sept. 27, 1991) (A trial court should rectify an inconsistent verdict by sending the jury back for further deliberation or by ordering a new trial).

**The Plaintiff is entitled to a new trial under Federal Rule of Civil Procedure 59.**

Federal Rule of Civil Procedure 59 allows for a new trial where there has been a trial by jury, for any reason for which new trials have been granted by courts of the United States. Fed. Rule of Civ. Pro. 59(a). The Court of Appeals for the Sixth Circuit has held that it is an "abuse of discretion for a trial court to not grant a new trial when a jury verdict reflects a lack of understanding or general