

**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