

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

THOMAS NEELY,

Plaintiff,

v.

No.: 3:05-CV-304
(Phillips/Guyton)

FOX OF OAK RIDGE, INC. and

Defendant

DEFENDANT'S RESPONSE TO MOTION FOR NEW TRIAL

Comes now the defendant, and in response to plaintiff's motion for a new trial, would state unto this Honorable Court as follows:

The defendant respectfully asserts that the verdict entered as the judgment of this Court was entered appropriately. There is no inconsistency with the verdict. If the Court does find some inconsistency, then the substantive law of Tennessee requires that the Court uphold the verdict if it is able to do so, which obviously the Court did in this case. Finally, while not conceding that any error was committed by the Court in entering this verdict as judgment, any possible error which the plaintiff has raised or could raise is harmless under Rule 61 of the Federal Rules of Civil Procedure, because the alleged inconsistency causes no direct harm to the plaintiff.

I. There is no inconsistency with the verdict

As indicated by the jury in this case, and the subsequent entry of the judgment by this Court, the unanimous verdict was that the defendant's employee was negligent, with said negligence being vicariously attributable to the defendant. Before entering the general verdict, the jury also unanimously held that the "injuries" of the plaintiff were not legally caused by the negligence of the