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IN THE TWELTH JUDICIAL DISTRICT OF TENNESSEE
CIRCUIT COURT OF MARION COUNTY

REX MASSENGALE,

Plaintiff

v.

WINIGENE DRURY and GREGORY
LEWIS next of kin of RYAN LEWIS,
Deceased

Defendants.

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No.: 14210

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CIRCUIT COURT CLERK
EVELYN C. GIBSON

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR A NEW TRIAL

COMES NOW the Defendants, by and through their undersigned attorneys, GOINS, CARPENTER & JAMES, pursuant to Rule 59 of the Tennessee Rules of Civil Procedure, and in Response to the Plaintiff's Motion for a New Trial heretofore filed against them, would show unto this Honorable Court as follows:

1. At the Trial heard before this Honorable Court on September 15, 2006, the Plaintiff, by and through his attorneys, called four (4) witnesses to offer testimony in his case-in-chief, which included Dr. Scott DesJarlais, Dr. Gregory White, the Plaintiff's son, Rex Massengale, Jr., and the Plaintiff himself.
2. The Defendants, by and through their attorneys, called two (2) witnesses, which included Dr. Brian Smith and Co-Defendant, Gregory Lewis.
3. Of the six (6) total witnesses that offered testimony at the Trial, only one (1), the Plaintiff, was able to testify pertaining to the events and sequences of the motor vehicle accident in question. Additionally, there was no expert proof presented by the plaintiff regarding the issue of causation of the accident. The plaintiff did not meet his burden of proof.
4. At Trial, the Plaintiff's testimony was offered to prove negligence against Ryan Lewis, who was driving the other vehicle involved in the accident. Near the end of the Plaintiff's

testimony, when further questioned with regard to the specific conduct of driver Ryan Lewis and his operation of the vehicle during the immediate period preceding the accident, he [the Plaintiff] stated explicitly "I don't have a clue." Furthermore, the Plaintiff was incapable of stating whether Ryan Lewis was driving in excess of the speed limit prior to the accident in question.

5. Under Tennessee law, at the Trial, the Plaintiff carried the burden of proving all of the requisite elements of negligence by a preponderance of the evidence, as follows: standard of care; breach; cause-in-fact; proximate cause; and damages. Because the Plaintiff's testimony failed to adequately demonstrate that Ryan Lewis had breached a standard of care owed to him [the Plaintiff], the jury verdict was appropriate as the Plaintiff had failed to meet his burden of proof.

6. Based on the foregoing, the Defendants would show that the jury returned a verdict that was consistent with the weight of the evidence produced at Trial. Moreover, the jury's finding that the Defendants were not liable for negligence per se or otherwise, was just and proper.

WHEREFORE, having fully responded, the Defendants pray that this Honorable Court issue an Order denying the Plaintiffs' Motion against them for good cause shown.

Respectfully Submitted,

GOINS, CARPENTER & JAMES


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CERTIFICATE OF SERVICE

I, the undersigned attorney, on this the ^{KK} day of November 2006 do hereby certify that the foregoing document has been served upon all counsel of record for the parties at interest in this case by placing a true and exact copy of the same in the United States Mail, postage prepaid, in a properly addressed envelope of the same to such attorney as follows.

Harvey Cameron
28 Courthouse Square, Suite 100
Jasper, TN 37347


GOINS, CARPENTER, & JAMES