

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

CHARLES ROY DEGAN)	
)	
Plaintiff,)	
)	
)	
)	
v.)	No. 99–2878
)	
PRISON REALTY TRUST, INC. d/b/a)	
CORRECTIONS CORPORATION OF)	
AMERICA)	
)	
Defendant.)	

**ORDER GRANTING DEFENDANT PRISON REALTY TRUST, INC’S
MOTION FOR A NEW TRIAL**

Before the Court is the motion of Defendant Prison Realty Trust, Inc. d/b/a Corrections Corporation of America (“CCA”) for judgment as a matter of law or, alternatively, for a new trial. CCA asserts that it is entitled to judgment as a matter of law because Plaintiff Charles Degan: (1) failed to offer evidence that the corporation itself caused the constitutional violation; (2) failed to offer evidence that a policymaking official authorized, approved or acquiesced in the alleged unconstitutional conduct of subordinates; and (3) failed to offer evidence that any corporate policy of the Defendants was the moving force that caused the constitutional deprivation. In support of a new trial, CCA avers that: (1) the verdict is contrary to the clear weight of the evidence; and (2) the Court committed two errors of law. The Court has jurisdiction pursuant to 28 U.S.C. § 1331. For the following reasons, CCA’s motion for a new trial is **GRANTED**.

I. Procedural History

Plaintiff filed a “Complaint for Failure to Protect and Inadequate Medical Treatment in Violation of 42 U.S.C. [§] 1983” in the United States District Court for the Western District of Tennessee on October 7, 1999. The Complaint named as defendants CCA, West Tennessee Detention Facility (“WTDF”), Patrick Casey [Warden at WTDF], Robert Mercier [employee of CCA], David Forshee [Unit Manager at WTDF], Stephen Dotson [Assistant Warden at WTDF], Mark S. Staggs [Chief of Security at WTDF], Karen Sullivan [Pod Guard at WTDF], Steven Shaw [employee of CCA], Mr. Guzman [employee of CCA], Wanda Lynn Bellows, LPN [nurse at CCA], Jim Rout [then Mayor of Shelby County], Marion Hopkins [Warden at Shelby County Criminal Justice Center (“SCCJC”)], Physician’s Assistant Clayburn [employee of SCCJC], and Reginald Weaver [inmate at WTDF]. Pursuant to 42 U.S.C. § 1983, the Complaint alleged that Defendants violated Plaintiff’s Eighth and Fourteenth Amendment rights under the United States Constitution by failing to protect him and by depriving him of necessary medical treatment. The case was initially assigned to Honorable Jon P. McCalla.

By consent between the parties, Defendants Jim Rout and Marion Hopkins were dismissed with prejudice on November 24, 2002. Defendant Shelby County was dismissed with prejudice on February 14, 2000. Plaintiff’s claims against Defendant Steve Claiborne were dismissed without prejudice on June 14, 2000. The Court dismissed the claims against Defendants Dotson, Staggs, Shaw, Forshee, Casey and Mercier, each of whom held supervisory positions, because Plaintiff failed to allege that any of these Defendants were personally involved in or responsible for the allegedly unconstitutional activity. See Order Granting in Part and Den. in Part Defs.’ Mot. for Summ. J., Jan. 22, 2001, at p. 5. Because there is no respondeat superior liability under § 1983, Defendants were

entitled to judgment as a matter of law. Id. Plaintiff's failure to protect claim against CCA and WTDF was dismissed because Plaintiff failed to show that WTDF's policy of staffing one guard for every two cell blocks was constitutionally deficient. Id., at p. 8-9. Finally, Plaintiff abandoned his claims against Defendants Sullivan, Gutzman, and Weaver, whereupon the Court dismissed Plaintiff's claims against them without prejudice on January 31, 2001.

Thus, all that remained were Plaintiff's claims for deliberate indifference to a serious medical need and severe emotional distress against Defendants CCA and Bellows. These claims were tried before a jury from March 19-23, 2002. The jury issued a general verdict in favor of Defendant Bellows, but found CCA liable for Plaintiff's injuries. The jury granted Plaintiff \$35, 000 in compensatory damages, and \$200, 000 in punitive damages. Defendant timely filed the instant motion for judgment as a matter of law on April 6, 2001.

This Court informed the parties that it would assume administration responsibilities for the case at a status conference on February 15, 2002. After review of the record, the Court issued an Order directing the parties to submit briefs addressing five issues:

1. Is this action a Bivens action or an action pursuant to 42 U.S.C. § 1983?
2. If this action is a Bivens action, is summary judgment mandated under the Supreme Court's decision in Malesko?
3. Which individuals are responsible for the decisions resulting in the denial of medical care to the plaintiff? Were they named in the original complaint?
4. If this action is properly construed as a Bivens action, was Judge McCalla's January 22, 2001 order dismissing certain defendants in error? Is reconsideration of that order appropriate in this context?
5. Did CCA waive any objections it may have had to the imposition of corporate liability under Malesko by failing to object to the fact that this action was brought pursuant to 42 U.S.C. § 1983?

Order Directing the Parties to File Supplemental Mem. in Connection With CCA's Mot. for J. As A Matter of Law or, Alternatively, For A New Trial, Mar. 8, 2002, at p. 2.

Plaintiff filed his Supplemental Memoranda on April 15, 2002. CCA submitted its brief on May 20, 2002.

II. Factual Background

The facts in this case are largely undisputed. Plaintiff was an inmate at WTDF in October 1998. WTDF is a private prison owned and operated by CCA which houses federal prisoners pursuant to a contract with the USMS. On October 7, 1998, Plaintiff was in line for lunch at WTDF when another inmate, Reginald Weaver, stepped into line in front of Plaintiff. The two argued and Mr. Weaver threw a glass of iced tea on Plaintiff. The guard on duty, Defendant Sullivan, intervened, and the two inmates sat at separate tables for the remainder of the meal. At the end of the meal, Mr. Weaver attacked Plaintiff, breaking his jaw and leaving him with other injuries. After the altercation, Plaintiff was taken to the medical department at the WTDF. There, Defendant Bellows examined Plaintiff, and Defendant Shaw took Polaroid photographs of Plaintiff's injuries. Plaintiff subsequently was transferred to the Baptist Hospital Emergency Room in Covington, Tennessee for treatment.

On October 9, 1998, Plaintiff saw Dr. Richard Babin who assessed his injuries and scheduled him for surgery on October 14, 1998. During surgery, Plaintiff's jaw was wired shut to permit proper healing. The wires were to remain in place for six weeks, and Plaintiff was scheduled to have weekly, post-operative check-ups with Dr. Babin. The wires were to be removed by Dr. Babin at the conclusion of the six week period.

Plaintiff returned from surgery to the WTDF on October 15, 1998. At the direction of the USMS, Plaintiff was transferred to the medical wing of the SCCJC on the same day. Plaintiff's medical records were not sent with him. While at the SCCJC, Plaintiff did not have any of the weekly check-ups prescribed by Dr. Babin, despite the fact that he told the nurse who fed him liquid meals that he was scheduled to see Dr. Babin. The nurse told Plaintiff that she was unaware of any appointments with Dr. Babin. Plaintiff visited a doctor once during his six weeks at the SCCJC. On that occasion, Plaintiff had complained about a loose wire protruding from his gums that was cutting his mouth. Plaintiff was sent to the Regional Medical Center, where he was seen by Dr. Chin. Dr. Chin cut the errant wire and gave Plaintiff some dental wax.

On December 1, 1998, Plaintiff was transferred back to the WTDF. Upon return to the WTDF, Defendant Bellows took Plaintiff's temperature and blood pressure and inquired how his jaw was healing. Plaintiff told Defendant Bellows that the wires were still embedded in his gums and that he had not seen Dr. Babin at all. Defendant Bellows told Plaintiff that she would look into getting him an appointment. He was then examined by Dr. King, a WTDF dentist, who tended to another loosened wire.

During the three weeks following his return to CCA, Plaintiff requested medical treatment several¹ times by filing medical request forms in WTDF's "sick call" box. On the forms, Plaintiff indicated that his gum tissue was growing over the wires, and that he needed to see Dr. Babin for post-operative check-ups. After filing a medical request form, an inmate could typically expect to

¹There is a discrepancy between the Complaint and Plaintiff's trial testimony as to the number of requests that were filed. The Complaint at paragraph 18 states that Plaintiff made two formal requests for treatment. At trial, Plaintiff testified that the Complaint is in error and that he filed approximately six requests. Trial Tr. March 20, 2001, at pp. 60-61.

have his request addressed that same day. Plaintiff never received any responses to these requests. He did, however, receive a response to a request to be in a smoke-free block of the WTDF, which was filed during the same period of time.

On at least two occasions, Plaintiff encountered Defendant Bellows in the hallway. When Plaintiff asked her the status of his request for dental treatment, Defendant Bellows assured him that she was still working on getting him an appointment. When Plaintiff asked Dr. King for additional dental wax to cover loose wires, Dr. King told Plaintiff that he did not have any. Thus, both Defendant Bellows and Dr. King knew that Plaintiff still had the wires in his gums when he returned to the WTDF.

Starting on December 23, 1998, Plaintiff began a two to three day process of unscrewing the wires out of his gums, using only a pair of nail clippers as a tool and a piece of polished stainless steel as a mirror. CCA officers watched him go through this process. Plaintiff told Defendant Bellows on December 24, 1998 that he had taken the wires out of his gums. Plaintiff remained at CCA until September 1999. During that nine month period, Plaintiff did not receive any follow-up treatment from CCA. Plaintiff now suffers a malocclusion of his teeth and other oral ailments.

II. Standard of Review

Federal Rule of Civil Procedure 50(b) permits a party to file a post-verdict motion for judgment as a matter of law. In ruling on the motion, a court may let the verdict stand, order a new trial pursuant to Fed. R. Civ. P. 59(a), or grant the motion. Fed. R. Civ. P. 50(b)(1)(A-C). The standard of review a district court must follow when evaluating a motion for judgment as a matter of law is well-settled. “The standard for granting JNOV requires a finding that ‘viewing the admissible evidence most favorable [sic] to the party opposing the motions, a reasonable trier of fact

could draw only one conclusion.” Amer. & Foreign Ins. Co. v. Bolt, 106 F.3d 155, 157 (6th Cir. 1997); Hicks v. Frey, 992 F.2d 1450, 1457 (6th Cir. 1993). Thus, only if the court finds that the evidence so strongly favors a judgment for the movant, may the court grant judgment as a matter of law.

The standard for granting a new trial is not as straightforward. District courts are empowered to grant new trials “in an action where there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted.” Fed. R. Civ. P. 59(a)(1). The Supreme Court made clear that in criminal cases the mere fact “verdicts cannot be rationally reconciled” is not sufficient basis to grant a new trial to a criminal defendant. U. S. v. Powell, 469 U.S. 57, 69 (1984). This rule, however, has not been expressly extended to civil trials.

The Sixth Circuit has not explicitly stated that inconsistent verdicts are grounds for a new trial. Nonetheless, grant of a new trial is generally within the sound discretion of the district court. Hopkins v. Coen, 431 F.2d 1055, 1059 (6th Cir. 1970). Furthermore, where the inconsistent verdicts appear to have resulted because “the jury was either in a state of confusion or abused its power” a new trial is required. Id. Thus, the Court finds that when the circumstances are appropriate, a district court in the Sixth Circuit has the authority to order a new trial when a jury renders inconsistent verdicts.

IV. Analysis

The issues in this case are many and complex. The Court first addresses the questions which the Court ordered the parties to brief. As the Court finds that none of these issues were dispositive of the case, the Court next addresses the issues raised in the motion under consideration.

A. The Five Questions Briefed By the Parties

1. Is this action a Bivens action or an action pursuant to 42 U.S.C. § 1983?

Section 1983 prohibits anyone acting under color of state law from depriving any person of “any rights, privileges, or immunities secured by the Constitution.” 42 U.S.C. § 1983. CCA is a private facility housing federal prisoners pursuant to a contract with the USMS. There is no evidence in the pleadings, nor was any presented at trial, to indicate that CCA operates under “color of state law.” Although CCA serves a traditional state function by housing prisoners, CCA has no connection to Tennessee’s criminal justice system other than interactions with state or municipal jails made in furtherance of its contract with the USMS. Thus, this case was not properly brought as a § 1983 case.

In Bivens v. Six Unknown Agents Fed. Bureau of Narcotics, 403 U.S. 388, 397 (1971), the Supreme court held that a cause of action for violation of Constitutional rights may be brought against individual federal agents. Accordingly, the case sub judice is more properly brought as a Bivens action, since CCA, the WTDF and all of the other individual Defendants are federal agents. However, as discussion below determines, this finding does not affect the outcome of the instant motion.² See infra at IV.A.2., 3. & 5.

²While several courts have addressed the impropriety of § 1983 claims brought against federal actors, the Court could not find any published opinion which addressed this issue at the same procedural stage as the instant case. See Tavarez v. Reno, 54 F.3d 109, 109-110 (2nd Cir. 1995) (where plaintiff brought action against federal agents under § 1983, the court “properly construed the complaint as an action under Bivens”); Brown v. Phillip Morris Inc., 250 F.3d 789, 800 (3^d Cir. 2001) (affirming district court’s grant of summary judgment on plaintiff’s § 1983 claim improperly brought against federal actors); Bedney v. Hagston, 846 F.2d 69 (4th Cir. 1988) (unpublished opinion) (stating that plaintiff’s § 1983 complaint filed against federal defendants is properly construed as a Bivens complaint); Cf. Cash v. Los Angeles County Dist. Attorney, 1995 WL 115577, at *3 n1 (9th Cir. 1995) (unpublished opinion) (plaintiff’s claim against state officials was improperly brought as a Bivens action instead of pursuant to § 1983).

2. If this action is a Bivens action, is summary judgment mandated under the Supreme Court's decision in Malesko?

The Court finds that this question must be answered in the negative. Even if this case been brought properly under Bivens, the Supreme Court's holding in Correctional Servs. Corp. v. Malesko, 122 S.Ct. 516 (2001) (holding that a private corporation housing federal prisoners is not a proper Bivens defendant) would not be dispositive of this case. Malesko was not decided until nine months after the jury returned verdicts in this case, and three months after CCA filed the instant motion. The effect of a change in law on a motion for judgment as a matter of law filed after a jury renders a verdict is an issue of first impression in the Sixth Circuit. The Court finds that such a change of law does not effect a post-verdict motion for judgment as a matter law. A ruling to the contrary would strip parties of any level of certainty during the litigation process. It would hold them responsible for presenting evidence on every possible legal permutation which might occur after a trial concluded. If a successful party's trial preparation was voided merely because the defeated party had the fortuity of having an issue decided in his favor in the days following trial, our trial system would be turned completely upside-down. As a result, judicial economy would be unattainable. Furthermore, a Court reviewing a motion for judgment as a matter of law bases its decision only on the evidence that is in the trial record. The record obviously cannot include evidence based on post-verdict law.

Moreover, post-verdict changes in law do not present circumstances similar to the conditions which warrant reconsideration of court orders as permitted by Fed. R. Civ. P. 59(e). A motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) may be made for one of three reasons: 1) An intervening change of controlling law; 2) Evidence not previously available has become

available; or 3) It is necessary to correct a clear error of law or prevent manifest injustice. Fed. R. Civ. P. 59(e); Helton v. ACS Group and J & S Cafeterias of Pigeon Forge, Inc., 964 F. Supp 1175 (E.D. Tenn. 1997). In this case, there would be no intervening change in the law controlling a pending case, but rather a post-verdict change in the controlling law in a completed case. Thus, even reconsideration of a court order would be improper if based on a post-verdict change in law.

Finally, a court may not grant judgment as a matter of law based on an issue the court raises sua sponte, and which was not addressed by either of the parties during the proceedings. Amer. & Foreign Ins. Co., 106 F.3d. at 159-160 (“[A]llowing a judge to sua sponte raise a new post-verdict issue, and proceed to overturn a jury verdict on that basis contravenes the dictates of Rule 50(b).”). If a change in law did not arise until after the case was submitted to the jury, the issue could not have been raised during the proceedings. Notably, neither of the parties in the case sub judice raised the Bivens/Malesko issue until ordered to do so by the Court. Furthermore, CCA has conceded that post-verdict changes in law cannot support judgment as a matter of law.

The Supreme Court did not decide Malesko until November 27, 2001. The jury issued its verdict against CCA on March 22, 2001. Accordingly, Malesko does not require the Court to grant CCA’s motion for judgment as a matter of law.

Alternatively, CCA suggests that even if the Court is not required to grant judgment as a matter of law, the Court still has the authority to dismiss this case under 29 U.S.C. § 1915A. This argument is without merit. The purpose of § 1915A is expressed through its title: “Screening.” Section 1915A permits courts sua sponte to dismiss federal prisoner complaints in order to relieve federal dockets of frivolous lawsuits filed by prisoners. Crawford-El v. Britton, 523 U.S. 574, 597 n.18 (1998). This power is not restricted to any period of time following the commencement of

litigation. 28 U.S.C. §1915A. However, this statute is not to be employed as a strategic maneuver for bested defendants. Using this statute to dismiss a case in which a jury already has determined liability would go against the letter and the spirit of § 1915A. It is no matter that this case should have been based on a different cause of action. Moreover, CCA waived its right to assert the defense of failure to state a claim upon which relief could be granted. See infra IV.A.5. Therefore, there can be no relief for CCA under § 1915A.

3. Which individuals are responsible for the decisions resulting in the denial of medical care to the plaintiff? Were they named in the original complaint?

It is undisputed that there is no clearly identifiable individual who inflicted unconstitutional harm on Plaintiff. All individual Defendants named in the Complaint were dismissed with the exception of Defendant Bellows. As stated above, the jury exonerated her.

4. If this action is properly construed as a Bivens action, was Judge McCalla's January 22, 2001 order dismissing certain defendants in error? Is reconsideration of that order appropriate in this context?

Even if this action were properly brought as a Bivens action, Judge McCalla's January 22, 2001 order dismissing certain defendants was not in error. Bivens actions may be brought against individual federal agents who allegedly inflict unconstitutional harm. Bivens, 403 U.S. at 397. The January 22 Order specifically found that "the Complaint does not allege any direct action or inaction by Defendants [Dotson, Staggs, Shaw, Forshee, Casey, and Mercier] in any capacity other than as supervisors of individuals who had direct contact with Plaintiff." Order Granting in Part and Den. in Part Defs.' Mot. for Summary J., at p. 5. This finding indicates that Plaintiff could not have

sustained an allegation that these Defendants contravened the Constitution. Accordingly, the Court finds that these Defendants were properly dismissed, and the Order need not be reconsidered.

5. Did CCA waive any objections it may have had to the imposition of corporate liability under Malesko by failing to object to the fact that this action was brought pursuant to 42 U.S.C. § 1983?

CCA avers that it has not waived any defense it may have had under Bivens or Malesko because it asserted the defense of failure to state a claim in its answer to the Complaint. This argument is unavailing. Federal Rule of Civil Procedure 12 governs when and how defenses must be asserted. Subparagraph 12(h) states: “A defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.” Fed. R. Civ. P. 12(h). In the Sixth Circuit, the law on preservation of the defense of failure to state a claim is well settled: The “defense of failure to state a claim upon which relief can be granted is protected from waiver through trial.” Romstadt v. Allstate Insurance Company, 59 F.3d 608, 611 (6th Cir. 1995) (emphasis added). The First Circuit opinion cited by CCA, McIntosh v. Antonio, 71 F.3d 1086, 1091 (1st Cir. 1995) (holding that raising a defense in an answer preserves the defense until the defense is deleted from the pleading or resolved by the court), does not conflict with this rule. CCA overlooks the fact that a jury verdict constitutes a resolution by the court that plaintiff did in fact state a claim upon which relief could be granted. Accordingly, CCA waived its right to assert post-verdict that Plaintiff failed to state a claim for which relief could be granted.³

³The Court notes also that CCA, repeatedly through the initial stages of the litigation and throughout the trial, stipulated that it was acting under color of state law in the administration of the jails. The only explanation CCA offers to explain this egregious error is that counsel “fail[ed] . . . to recognize that CCA was acting pursuant to a contract with a federal agency, and that there was no state involvement” in its operations. CCA’s Supplemental Mem. In

B. Motion for Judgment as a Matter of Law or, Alternatively, For a New Trial

CCA submits that it is entitled to judgment as a matter of law because: (1) Plaintiff did not identify any policy of CCA which was directly related to his alleged deprivation of rights; (2) Plaintiff did not offer any evidence that the one employee of CCA who was aware of his situation had the authority to establish policy for CCA; and (3) the jury exonerated Defendant Bellows, the only remaining individual defendant, and an entity cannot be held liable for constitutional violations if a plaintiff fails to demonstrate that an employee of the entity acted unconstitutionally. The Court finds that CCA's third argument is dispositive.⁴ The Court further finds that CCA's alternative remedy of a new trial is more appropriate than judgment as a matter of law.

The Supreme Court and the Sixth Circuit make it abundantly clear that § 1983 liability is not sustainable against an employer if no employee was found to have acted unconstitutionally. City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986); Scott v. Clay County, Tenn., 205 F.3d 867, 879 (6th Cir. 2000); Hancock v. Dodson, 958 F.2d 1367, 1376 (6th Cir. 1992). Therefore, CCA cannot be held liable if none of its employees have been found to have acted unconstitutionally towards Plaintiff. CCA, however, has pointed to no authority which states that a Plaintiff must name as a

Connection With Its' Mot. for J. As A Matter of Law, at p. 5. Counsel is ethically obligated to know his client well-enough to advocate zealously and effectively. The Court will not excuse such an error by taking exception to the 12(h) rule of waiver of the defense of failure to state a claim upon which relief can be granted.

⁴The jury specifically found that CCA's policy of failure to respond to prisoners' medical needs constituted deliberate indifference. Thus, CCA's first argument is unavailing. See infra at n.4. CCA's second argument fails because the testimony at trial clearly indicates that there was more than one CCA employee who was aware of Plaintiff's medical problems. See supra at II. Accordingly, CCA's motion for judgment as a matter of law cannot be granted on either of these bases.

defendant the specific actor who inflicted unconstitutional injury, and the Court refuses to adopt such a holding.⁵

The jury in this case clearly believed that even though Defendant Bellows was not at fault, Plaintiff was deprived of medical care in violation of the Constitution.⁶ WTDF nurses and doctors were aware that Plaintiff was desperately in need of post-operative treatment. He was examined by Defendant Bellows and Dr. King, and he requested several times to be seen by Dr. Babin. These requests were made verbally and in writing. Nonetheless, it remains unclear who is responsible for this harm. Accordingly, the jury cleared Defendant Bellows, the only remaining individual defendant, but did not absolve CCA.

When a constitutional violation is a result of an omission, i.e. failure to provide medical care, it is difficult to determine where to place the blame. In other words, the constitutional tortfeasor may not have been one single policymaker, but the collective inaction by several authority figures. Trial testimony reveals individuals who were not named as defendants, but who the jury may have believed were policymaking individuals whose acquiescence in the injurious behavior constituted deliberate indifference. For instance, Dr. King, a WTDF dentist who examined Plaintiff at least once

⁵The court notes that Heller, Scott, and Hancock are distinguishable from the instant case because they involve alleged violations of the Fourth Amendment. In such circumstances, the actors are readily identifiable. Even if the complainant does not know the names of the arresting or searching officers, such information is clearly documented on police reports, time sheets, etc. However, in a case such as this where the violation is one of failure to act, it may be extremely difficult, if not impossible, to pinpoint and name as a defendant the culpable individual, as it may be unclear who should have acted.

⁶A note from the jury is telling: “CCA’s disorganization and inconsistent application of policies and procedures does not bode well. One can only surmise that without major corporate restructuring to address these deficiencies, this case will be one of many to follow. . . . The plaintiff’s request for medical treatment were reasonable. CCA’s responses to those requests were unreasonable. In fact, they constituted deliberate indifference.”

before Plaintiff extracted the wires from his gums; and/or one or more of the medical supervisors, the people in charge of the medical department at WTDF, could have violated Plaintiff's constitutional rights. Therefore, it is quite possible that the jury believed that one or several CCA employees who were not named as defendants, but who were discussed during the trial, were deliberately indifferent to Plaintiff's medical needs, and accordingly imposed liability on CCA. Because the verdict was general and did not ask the jury to name the malfeasant employee, it is unclear whether the jury determined which employee prompted the verdict against CCA, or that no employee was at fault.

Thus, as the verdicts stand now, they are inconsistent and cannot be reconciled. Accordingly, the Court finds that the appropriate remedy is to grant a new trial.

III. Conclusion

For the foregoing reasons, CCA's motion for a new trial is **GRANTED**. The Clerk of Court is directed to set the matter for a trial on the merits. CCA's motion for judgement as a matter of law is **DENIED**. As all deadlines for dispositive motions have passed, the Court will not entertain further dispositive motions.

IT IS SO ORDERED this ____ day of _____, 2003

BERNICE BOUIE DONALD
UNITED STATE DISTRICT JUDGE