

IN THE _____ COURT OF _____ COUNTY
STATE OF _____

_____)	
)	
)	
Petitioner/Plaintiff,)	
)	
Vs.)	NO. _____
)	
_____)	
Respondent/Defendant)	
)	

**MOTION FOR JUDGMENT NOTWITHSTANDING THE
VERDICT, OR, IN THE ALTERNATIVE, FOR A NEW TRIAL**

Plaintiff, _____, pursuant to Rules ____ and ____ of the _____ Rules of Civil Procedure, by and through counsel, moves the Court for a Judgment Notwithstanding the Verdict, or in the Alternative, for a New Trial, and in support thereof of states as follows:

BACKGROUND

1. On the ____ day of _____, 20____, this case was tried before a _____ County jury.
2. During the trial, the Defendant unduly prejudiced and misled the jury by asking the Plaintiff and other witnesses about an "arrest of Plaintiff" and about Plaintiff's alleged drug and alcohol problem." The defendant had no evidence concerning a conviction of a crime nor ever substantiated any alcohol or drug abuse, even though the defendant asked each witness whether they had information about the Plaintiff's alleged alcohol and drug abuse. The defendant continued to build its entire case on the alleged lack of character and the alleged immoral conduct of the Plaintiff. Defendant, without any evidence to support its position, then

argued on closing that the Plaintiff had poor character, that she had an alcohol problem, abused drugs and was known for her "partying".

3. All of the evidence presented in this case, including testimony of the Plaintiff, testimony of _____, testimony of a medical physician, medical records and interrogatory responses of the Defendant, overwhelmingly proved that Plaintiff went into _____ on the _____ day of _____, 20____, slipped on water that was admittedly left on the floor after putting bags of ice into an ice cooler and was injured. No other evidence existed. The Defendant's entire defense was a theory that the Plaintiff lied about the fall because the Defendant had no information that it ever occurred. This is not only contradicted by the testimony of the Plaintiff, testimony of Ms. _____, testimony of the physician and the other medical records but is also contradicted directly by the responses to discovery which stated that the manager of the store remembered a lady falling by the ice cooler on the same day that _____ fell.

4. Pursuant to Rule ____ of the _____ Rules of Evidence, the admission of a person's arrest is strictly prohibited and can only be admitted if a person has been convicted of a crime that is punishable by death or imprisonment in excess of one year, or the conviction of the crime involving dishonesty or false statement. There is absolutely no substantiation that Plaintiff was convicted of a crime. The defense apparently received the information concerning an arrest from a pleading filed in a pending divorce procedure, which clearly only alleged that an arrest was made of the Plaintiff for non-criminal purposes.

5. Further, questions concerning the alleged alcohol and drug abuse were totally impermissible and unduly prejudicial. Rule ____ of the _____ Rules of Evidence states that the credibility of a witness _____ only be attacked by evidence as it relates to her reputation for truthfulness and untruthfulness. Questions concerning an allegation of drug and

alcohol abuse were totally irrelevant to Plaintiff's reputation for truthfulness and was unduly prejudicial to the Plaintiff's case. The prejudicial nature of the questioning, particularly without any creditable evidence that was presented, the Plaintiff is entitled to a judgment notwithstanding the verdict.

NEW TRIAL

10. In the alternative, Plaintiff is entitled to a new trial since the questions and argument by the Defendant so unduly prejudiced the jury that the jury was unable to fairly review the credible evidence presented at the trial and render a fair verdict.

11. "A new trial shall be granted in a number of circumstances, such as when the verdict is against the overwhelming weight of the evidence, or when the jury has been confused by faulty jury instructions, or when the jury has departed from its oath and its verdict is a result of bias, passion, and prejudice." _____ v. _____, _____ (____. ____). A Motion for New Trial authorizes "the trial judge to set aside any or all parts of the issues tried and [to] grant a new trial as justice requires." Comment, _____. R.Civ.P. _____. At least six factors have been provided by the _____ Supreme Court for this Court to consider when determining whether a new trial should be granted. _____ v. _____, _____ (____. ____). The six factors to be considered are as follows:

- (1) Has the search for the true facts proceeded as far as it reasonable [sic] can under the peculiar facts and circumstances of the case?
- (2) To what extent would it be unfair to the party in whose favor the verdict was returned in effect to give that party's adversary a second bite at the apple?
- (3) Considering the evidence, is there a substantial basis for belief that the jury disregarded their oaths and failed to follow the instructions of the Court in reaching its verdict?

- (4) Assuming arguendo that the verdict is unjust (by reference to the underlying facts of the transaction or occurrence, the complete truth of which we will never know), what is the impact of that "injustice" upon the party against whom the verdict is returned?
- (5) If a new trial is ordered, will the party in whose favor the verdict has been returned be deprived of some fair advantage he enjoyed in the first trial? And,
- (6) Are there any other factors present, peculiar to the particular case of the parties, that would render just or unjust the grant or denial of a new trial?

12. It is totally impermissible to create a defense, by asking prejudicial questions about the Plaintiff's conduct without substantiation, and argue to the jury the same non-substantiated conduct should be the basis of their verdict. The defense irreparably tainted the jury when it asked inappropriate questions about an arrest and alleged alcohol and drug problems. The defense continued to taint the jury as it inappropriately argued to the jury that Plaintiff's "conduct" would support a finding for the defense. It is obvious, since the overwhelming evidence in this case proved that Plaintiff was injured due to the negligence of the Defendant, that the Defense's inappropriate questions and argument did not allow the jury to fairly view the evidence and return a fair and just verdict.

WHEREFORE, Plaintiff, _____, respectfully requests this Court to enter a judgment in her favor notwithstanding the verdict, or in the alternative, enter an order granting Plaintiff a new trial.

This the ____ day of _____, 20____.

Respectfully submitted,

Dated: _____

Name: _____
Title: _____

Address:
Address:
City, State, Zip:
Phone:
Fax:
E-Mail:
Attorney No.:

CERTIFICATE OF SERVICE

I, _____, do hereby certify that I have this day mailed,
U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to
_____, at the following address;

THIS the ____ day of _____, 20____.