

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE

THOMAS NEELY, Plaintiff

v.

FOX OF OAK RIDGE, INC. and BENJAMIN H. CURD, Defendants

APPEARANCES:

ROBERT J. ENGLISH, MICHAEL C. INMAN, Attorneys for the Plaintiff, Thomas Neely

CLINT J. WOODFIN, Attorney for the Defendant, Fox of Oak Ridge, Inc. and Benjamin H. Curd

DEPOSITION OF THOMAS M. KOENIG, M.D. November 30, 2005

NO. 3:05-CV-304 PHILLIP/GUYTON

1 client and Mr. Inman's client, Thomas Neely. And if you 2 would throughout this deposition, testify based on 3 reasonable medical certainty or probabilities. Will you do 4 that for us? 5 A I will. 6 Q Okay. Dr. Koenig, where do you practice 7 medicine? 8 A I practice in Knoxville, Tennessee, on 9 Kingston Pike. 10 Q What's your specialty? 11 A Orthopedic surgery. 12 Q Doctor, what does that mean, what does 13 that entail? 14 A It involves the study and treatment of 15 bones, muscles, tendons, ligaments, discs and nerves. 16 Q Okay. And where did you take your 17 medical training, sir? 18 A Most of my medical training was in 19 Philadelphia, Pennsylvania. I went to a medical school 20 there called Hahnemann Medical University, and then from 21 there I did a residency for five years at Hahnemann Medical 22 University, and then I did an optional one year in 23 Washington, D.C. with George Schonholtz in arthroscopy. 24 Q Okay. Doctor, where do you do your 25 surgeries here in Knoxville when you do surgery?

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Table with 2 columns: WITNESS and PAGE. Includes THOMAS M. KOENIG, M.D. with sub-entries for Direct, Cross, and Redirect Examination.

EXHIBITS

Table with 3 columns: NO., DESCRIPTION, and PAGE. Lists exhibits 1 through 4 including Curriculum vitae, List of medical expenses, and MRI reports.

1 A I've got privileges at a fair number of 2 facilities. Most of my surgery is done out west, the more 3 major cases at Parkwest. There are a bunch of surgery 4 centers like Parkwest Surgery Center Tower, Knoxville 5 Surgery Center, Fort Sanders West. It may be easier to 6 tell you where I don't have privileges, but primarily out 7 here in the west. 8 Q Okay. Is that for convenience sake? 9 A Yes. Whenever I first came here in 10 1992, I didn't mind the travel so much and thus I had 11 privileges at Children's, I'm sorry, East Tennessee 12 Children's, U.T., Regional, and as your practice matures, 13 you don't have the time to run around to the various 14 different places, so it's more or less stayed out here in 15 the west. 16 Q Doctor, as a matter of maturity, how 17 long have you practiced, been licensed to practice 18 orthopedic surgery in the state? 19 A In the state, since '92. 20 Q Okay. Are you Board certified, sir? 21 A Yes, sir. And recently recertified. 22 Q Okay. What does it mean to be Board 23 certified, Dr. Koenig? 24 A When you sit for your Boards the first 25 time, you undergo a rigorous written exam with several

1 The videotaped deposition of THOMAS M. KOENIG, 2 M.D., taken by agreement of counsel, for any and all 3 purposes allowable under the Federal Rules of Civil 4 Procedure, before DENISE M. HOOD, Court Reporter and Notary 5 Public in and for the State of Tennessee at Large, on the 6 30th day of November, 2005, at the office of the witness, 7 11808 Kingston Pike, Knoxville, Tennessee.

8 It is agreed that the reporter may swear the 9 witness, take the deposition stenographically, and 10 afterwards reduce the same to typewritten form when the 11 completed deposition may be used in the above-styled cause.

12 The plaintiff does not waive any objections until 13 the time of the trial. All formalities are expressly 14 waived as to caption, certificate, transmission, and the 15 reading and signing of the deposition by the witness.

16 THOMAS M. KOENIG, M.D., 17 having been first duly sworn, was examined and 18 deposed as follows:

19 DIRECT EXAMINATION

20 BY MR. ENGLISH:

21 Q Would you state your name for the 22 record?

23 A Sure. Thomas Martin Koenig, M.D.

24 Q Dr. Koenig, my name is Bob English, as 25 you know, and I'm here to ask you some questions about my

1 hundred questions. I no longer remember, but I'm sure it's 2 four or five hundred questions, and you have to pass those. 3 On the assumption that you've passed those, then the Board 4 queries you as to what you actually do as far as practice 5 goes, and you have to simulate for them and gather all the 6 x-rays, all the operative reports for about a six-month 7 period of your time and they have the ability to scrutinize 8 that. They ask you to come to Chicago and you carry a 9 bunch of bags with x-rays and all kinds of stuff, MRI's, 10 your operative reports, and then they grill you. You sit 11 for about eight hours and they ask you anything and 12 everything and hopefully you pass, and if you pass, then 13 you are, at that time, Board certified. I think ever since 14 1988, if you're certified, you're certified for a limited 15 time, ten years, then you had to re-sit for Boards again. 16 Q And you did so? 17 A Yes, sir. I think I'm good through the 18 year 2014, if I'm not mistaken. I have a CV, if you'd 19 like. 20 Q Doctor, we have a copy of your CV. 21 Would you hand that to the doctor and see if that's the 22 most recent CV he has, Ms. Court Reporter? 23 A Yes. That is correct. And I'm 24 recertified through the 31st of December, 2014. 25 MR. ENGLISH: Let's make your CV Exhibit

1 No. 1 to your deposition, sir.  
 2 THE WITNESS: Sure.  
 3 (Exhibit No. 1 was filed.)  
 4 Q And, Doctor, at the request of my  
 5 partner, Michael Inman, did you see, examine and treat  
 6 Thomas Neely for injuries to his neck and his back that he  
 7 sustained on or about the 12th day of July of 2004, sir?  
 8 A Yes, sir, I did.  
 9 Q Okay. When did you initially see him,  
 10 sir?  
 11 A I saw him on the 12th of October, 2004.  
 12 Q And when you saw him, Doctor, I know  
 13 you've got very detailed notes, and I'm not going to ask  
 14 you to go over all the notes verbatim, but let's talk  
 15 specifically about what you found in his neck and what you  
 16 found in his low back that you think was either caused by  
 17 or aggravated by the wreck that we're here about today, the  
 18 wreck of July the 12th of 2004.  
 19 A Sure. And if I give you too much of an  
 20 abridged version, please -- I've got more detail to back up  
 21 my thoughts.  
 22 Q I understand that.  
 23 A He did come with a chief complaint of  
 24 low back pain, so his back pain hurt him more than his neck  
 25 pain. That was his secondary complaint.

1 Q Yes, that's what I meant.  
 2 A Okay.  
 3 Q Yeah, okay.  
 4 A He also had a congenital fusion, and  
 5 this is also not unusual. When you have someone that has  
 6 one congenital problem, often you find analogous, or  
 7 similar other structures, that are a little funny, and in  
 8 this regard, this vertebrae was also fused partially to the  
 9 sacrum, to the buttocks bone, if you will.  
 10 Q When you say congenital, what do you  
 11 mean, Doctor? What does that mean?  
 12 A The way you were born.  
 13 Q Okay. He was born --  
 14 A The way your genes made you.  
 15 Q Okay. What else did you find on that  
 16 initial visit?  
 17 A As far as orthopedically to his lumbar  
 18 spine, that was pretty much it. He had a few other  
 19 contributing medical problems. He's an overweight  
 20 gentleman, that's not going to do well on a back problem,  
 21 and he has a previous history of tobacco use and things of  
 22 that nature, which also are not great for having back pain,  
 23 but as far as actual additional mechanical problems, that  
 24 was what was discovered in the first office visit. In an  
 25 effort to answer your question fully, which you said please

1 Q All right.  
 2 A After examining him as well as examining  
 3 multiple other medical records, those from Dr. Degnan's  
 4 office, emergency room records from Methodist Medical  
 5 Center, a bunch of CAT scans, x-rays and things of that  
 6 nature, basically he was given several diagnoses. Those  
 7 diagnoses -- and I should also tell you that at first we  
 8 saw him for his back, and then we were able to add on to  
 9 that because he's got a very complex case. We then added  
 10 on the neck thereafter.  
 11 Q Thank you.  
 12 A When we first saw him, we told him that  
 13 he had a lumbosacral strain, if you will. This is a  
 14 tearing of the ligaments much like you might do with a  
 15 severe ankle sprain of types. We also noted that he had  
 16 some degenerative disc disease. Without a doubt, the  
 17 sprain occurred secondary to the motor vehicle accident.  
 18 The degenerative disc disease is a little equivocal, could  
 19 be that there was a little bit that was preexisting, could  
 20 be that this was made worse. However, it should be  
 21 remembered that the patient specifically stated he had no  
 22 problems in regard to his back before. We did recognize  
 23 that he had some congenital problems. In other words, he  
 24 was born with some minor abnormalities. Fortunately, like  
 25 most congenital abnormalities, he didn't even know about

1 include the cervical spine, the neck, if you will, on a  
 2 subsequent visit, on a follow-up visit --  
 3 Q When?  
 4 A Let's see here. We followed him up  
 5 frequently. We saw him on the 2nd of November, we saw him  
 6 again on the 15th of December, and I think it was on that  
 7 visit, on the 15th of December that we actually took --  
 8 were able to take a harder look in regard to his neck.  
 9 Q Okay.  
 10 A To answer your question there, what we  
 11 felt was attributed to the motor vehicle accident was a  
 12 cervical strain, again analogous to a ligamentous tear much  
 13 like you would have with an ankle sprain. We also noted  
 14 that he had C4-5 and C6-7 preexisting degenerative disc  
 15 disease, meaning if we can over here on the model, I'll  
 16 turn this to the side so you can see both front and back,  
 17 there are seven cervical vertebrae, one, two, three, four,  
 18 five, six, seven, each of these have a vertebral body up in  
 19 front. There's gray or darker appearing discs in there,  
 20 and the discs that were between the fourth and fifth  
 21 vertebrae as well as between the sixth and seventh  
 22 vertebrae were degenerative. They weren't as thick and as  
 23 plump as normal, as one would hope a person of his age  
 24 would have.  
 25 Q Was that something that preexisted the

1 il.  
 2 Q Okay.  
 3 A And those were that he had sacralization  
 4 of L5, and if I can over here, you should have five  
 5 nonribbed bearing lumbar vertebrae. Here's one, two,  
 6 three, four, five. This is, of course, normal. This is  
 7 not exactly what Mr. Neely has. Mr. Neely over here on the  
 8 fifth side, instead here in the back of having a discrete  
 9 transverse spinous process, it started to look more like  
 10 the sacrum down here, what we call sacralization, and it  
 11 started to be fused down here.  
 12 Q Was he born with that, Doctor?  
 13 A Yes, sir, almost certainly.  
 14 Q And the accident had nothing to do with  
 15 that?  
 16 A No, sir.  
 17 Q Does this skeleton that you're referring  
 18 to, does that fairly and accurately anatomically represent  
 19 Mr. Neely's skeleton?  
 20 A It represents a normal skeleton.  
 21 Q Okay.  
 22 A From which then I can tell you what's  
 23 not on Mr. Neely.  
 24 Q Okay. All right.  
 25 A If that's fair.

1 accident, in your opinion?  
 2 A Yes, sir. I think that he had some  
 3 preexisting degeneration, but that this was made worse with  
 4 the accident.  
 5 Q Okay.  
 6 A So I'm trying to be fair to all parties.  
 7 I think he had some that was there, but it wasn't hurting  
 8 him and now through the accident, his preexisting disease  
 9 is made a little bit worse. He was also noted to have some  
 10 mild fascial trigger points. These are basically muscles  
 11 around the neck that get hard and spastic much like a  
 12 charley horse, and they would -- of course, this particular  
 13 skeleton doesn't have muscles on it, but they would be  
 14 located roughly one centimeter to the left of C3, which  
 15 would be right about here.  
 16 Q What did you do for that trigger point?  
 17 A Treated him with physical therapy, and I  
 18 believe a cortisone injection, if I'm not mistaken.  
 19 Q Okay. What is cortisone, Doctor, and  
 20 how do you inject it, how deep do you go to inject it?  
 21 A You go to the level that the muscle is,  
 22 and unfortunately on a gentleman who is six foot, one and  
 23 three hundred and thirty-eight pounds, there's a fair bit  
 24 of atapost tissuc or a fat layer that you've got to go  
 25 through, so we probably went in about an inch and a half