

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 Examination, Cross Examination, 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 deep.
 2 Q Would that be a painful procedure for
 3 him, Doctor?
 4 A I think it'd be moderately painful for
 5 anybody.
 6 Q All right.
 7 A But usually short-lived. I mean the
 8 shot hopefully in two or three days has more benefit than
 9 it did negative.
 10 Q Okay. And then when did you next see
 11 him after that occasion?
 12 A I saw him on the 12th of January. I
 13 also saw him on the 6th of July, and I saw him on the 15th
 14 of November, 2005.
 15 Q Doctor, when you saw him on all these
 16 occasions, did you see him for his neck and his back
 17 injuries?
 18 A Yes, sir.
 19 Q Okay. The last time he was in in
 20 November, this month, you also saw him for his knee, I
 21 believe?
 22 A Yes, sir.
 23 Q That has nothing to do with this
 24 accident, Doctor, to the best of our knowledge, so we don't
 25 want to discuss the knee as far as you saw him, and if you

1 Q Let me just briefly go over that.
 2 Assume that, number one, on that bill he was taken by
 3 ambulance from the scene of the wreck where he was
 4 rear-ended and taken to Methodist Medical Center
 5 complaining of headaches, low back pains, neck pains, and
 6 he had three CT scans of the head, the neck and a
 7 multi-planar or reconstruction CT, and he had x-rays of his
 8 low back. Assume that all those tests were done at the
 9 hospital. Does that bill at the hospital, forty-three
 10 fifty-nine eighty-eight, is that reasonable and necessary
 11 and related to the wreck, in your professional opinion?
 12 A Yes, sir, as does the ambulance for five
 13 hundred and thirty.
 14 Q Okay. Well, do all of these bills, and
 15 let me just go through them and tell you what the bills are
 16 for based on what he will testify to, the emergency room
 17 doctor, No. 3, was five seventy-nine; the radiology imaging
 18 was four fifteen for interpreting the scans, and then his
 19 family doctor he saw either three or four times complaining
 20 of neck and low back pain from the wreck, the day after the
 21 wreck, a hundred and eighty-eight dollars, and Dr. Jonathan
 22 Degnan, an orthopedic surgeon, saw him three or four times,
 23 and then he went to therapy at the request of his family
 24 doctor, Dr. Martin, for right at three months, two and a
 25 half months. That's No. 7.

1 would, I'm going to ask you about some bills in a few
 2 minutes and if you could have your secretary or office
 3 manager take out any bills from the knee, from your charge
 4 for that date, that would be real helpful to us.
 5 A Fine. I can send you an amended bill
 6 that --
 7 Q That'd be fine.
 8 A -- that subtotals that.
 9 MR. ENGLISH: That will be fine. We'll
 10 have the court reporter contact you about getting
 11 that.
 12 THE WITNESS: Fine.
 13 Q So from the time you first saw him on
 14 October the 12th of '04 until you last saw him in November
 15 the --
 16 A 15th.
 17 Q -- 15th of '05, it looks like he'd been
 18 in to see you or your office on five or six different
 19 occasions?
 20 A That'd be a fair representation.
 21 Q And just generally speaking, tell the
 22 Court and jury how he was doing neckwise and low backwise
 23 for injuries from this wreck whenever he came to see you
 24 these five or six times, Doctor.
 25 A For the most part, he was unchanged. He

1 A Right.
 2 Q And Dr. Degnan prescribed a TENS unit
 3 that you later re-prescribed, I believe, for Mr. Neely.
 4 No. 9, your bill of fourteen seventy-eight less whatever,
 5 if there is a charge for the knee exam when you delete that
 6 from your bill, and the Healthsouth Diagnostic Center for
 7 an MRI of his low back on the 27th of October of '04,
 8 twelve sixty-five, and an MRI of his neck on January the
 9 10th of '05, and a referral to Dr. Jack Scariano for a
 10 neurological consultation where he saw him about two or
 11 three times in the amount of four hundred and nine dollars.
 12 Do those figures appear to be reasonable and necessary and
 13 related to what you know about this man's treatment for his
 14 neck and back injuries from this wreck?
 15 A Yes, sir, they do.
 16 MR. ENGLISH: Let's introduce that as
 17 the next numbered exhibit.
 18 (Exhibit No. 2 was filed.)
 19 Q And, Doctor, I'm not going to belabor
 20 the point, but you've had some expenses here that you've
 21 had this man incur at your direction and on your
 22 prescription. Tell me what the TENS unit is that you
 23 re-prescribed for him after it was initially prescribed by
 24 Dr. Degnan.
 25 A Yes, this is a transdermal electrical

1 was actually pretty miserable. The exams were limited
 2 because he said that he had substantial pain. We tried as
 3 best as possible to accommodate him. However, you know,
 4 you can only spend so much time with a patient catering to
 5 his pain here in the office. You try two or three
 6 different ways to get the data that you need, but I mean he
 7 hurt. We tried a fair bit of conservative care and
 8 semi-conservative or semi-invasive care. We tried physical
 9 therapy, multiple nonsteroidal anti-inflammatories, what
 10 they call tincture of time, some things just -- you know,
 11 give them enough time and they go away, none of these
 12 things seemed to work for him.
 13 Q Okay. Doctor, I hand you a list of
 14 medical expenses incurred, I think through the 15th of this
 15 month when you last saw him, and I think your bill for
 16 fourteen seventy-eight would be less than that amount or
 17 maybe more than that amount, but if you would, do not
 18 include anything in -- we need an updated bill from you for
 19 this.
 20 A Fine.
 21 Q But look at those -- have you actually
 22 looked at the underlying bills from that, Doctor?
 23 A Yes, sir. You were kind enough to give
 24 me those before the deposition, and I've had a chance to
 25 leaf through those.

1 nerve stimulator. In short, these are electrical pads that
 2 you put on a particular area. They look much like EKG
 3 leads that you'd put on your chest, but you can put these
 4 on your neck, you can put them on your back. They get
 5 hooked up. These leads get hooked up to a unit about the
 6 size of a large cigarette packet that's got a couple of
 7 batteries in it. There are basically two controls, a
 8 volume and intensity, and the patient is taught how to
 9 maximize that as best as possible. You try to crank this
 10 up as much as possible and then back it down just a hair,
 11 and what it does is it will stimulate the underlying
 12 muscles via stimulating the nerves, and sometimes patients
 13 can feel contractures much like an eye twitch. You can
 14 feel that sort of tingle in your back or in your neck and
 15 often that gives relief of pain. Sometimes people complain
 16 that that's just because you've fatigued the muscle, it no
 17 longer has the ability to become spastic. It's pooped,
 18 it's tired, so now it doesn't have to sit there and cramp
 19 anymore. Sometimes you can also make muscles stronger that
 20 way, and you can also decrease edema, the swollen, angry,
 21 irritated tissues that are underlying there.
 22 Q Doctor, whenever it shocks, is that a
 23 painful shock, or is it just a mild shock?
 24 A It can be if it's cranked up all the
 25 way. The patient should be taught that he should go to