

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:

DIRECT EXAMINATION

19 BY MR. ENGLISH:

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

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

23 Q Dr. Koenig, my name is Bob English, as 24 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 that point of pain and back it down just a little bit so
 2 it's not painful for him.
 3 Q Is this helping him, according to what
 4 he reported to you?
 5 A Yes. He had reported that he had
 6 benefits from it from when Dr. Degnan had prescribed it,
 7 and thus we re-prescribed it.
 8 Q Doctor, explain to the Court and jury
 9 these two MRI's of his neck and his low back that you
 10 ordered. Exactly what is that, and how does that work and
 11 what does it show?
 12 A Sure. I think probably the nicest way
 13 to understand that would be the following: If you took a
 14 loaf of bread, and they don't teach you medical art work in medical
 15 school, but I'll try here, that's a loaf of bread as best
 16 as I can draw it here, you might -- by looking at the
 17 outside, you can thump it, you can put your stethoscope on
 18 it, you can squeeze it, and you might never learn that
 19 there was a baked-in walnut that fell into this batter, yet
 20 if I gave you a tool, like a knife, you could take several
 21 slices. These slices, the ones I've drawn here, show
 22 normal white bread, no problems. This slice, however,
 23 would show you a little sliver of walnut, the problem, the
 24 defect, the pathology. This slice here would show you a

1 neck first?
 2 A Yes, sir. I utilized the A.M.A. Guides
 3 to the Evaluation of Permanent Impairment, Fifth Edition,
 4 to calculate his impairment. This is a Bible, if you will.
 5 It's a gold standard, so it's not just the doctor's thumb
 6 that says, oh, I think he deserves five percent here or
 7 whatever. I carefully tried to delineate that and itemize
 8 that for you and anybody else that was interested. In
 9 regard to his cervical spine, he has some limited range of
 10 motion. He can't bring his chin down all the way to his
 11 chest. He can't bring his chin up all the way to the
 12 ceiling. He can't rotate fully to the left and right. He
 13 can't laterally bend this way, to the right and left
 14 either, and when you take all that and you use the A.M.A.
 15 Guides, he comes up with a sixteen percent impairment for
 16 lack of range of motion.
 17 Q Okay. To the neck?
 18 A To the neck. Yes, sir, I'm sorry. I
 19 believe that was your question, to the neck.
 20 Q Okay.
 21 A And I apologize if I was vague. You
 22 also utilizing the A.M.A. Guides, can add additional
 23 impairment because of actual spine pathology or what they
 24 call spine disorders, and in that regard, when you take a
 25 look at these sick discs that are there, he could have an

1 big chunk of walnut. This slice here would show you a
 2 sliver of walnut, and then you'd be back to white bread.
 3 And in short, out of this study, only this portion, these
 4 three slices, would be abnormal, and the MRI does a similar
 5 process with the neck or with the back. It takes this as a
 6 loaf of bread, and it makes several slices, and it images
 7 those. It's as if you took that slice out, took a black
 8 and white picture of it, and then you could take a look at
 9 those slices and see where is there a defect, where is
 10 there a problem.
 11 Q Did the MRI of his neck show any defects
 12 that you feel are attributable to the wreck?
 13 A Yes, sir. The MRI did verify that he
 14 had a C4-5 degenerative disc disease with left sided disc
 15 protrusion.
 16 Q What is a protrusion, Doctor?
 17 A Protrusion, this is if you think of
 18 these discs over here, Mr. English, as if this were a jelly
 19 donut.
 20 Q Yes, sir.
 21 A And if this were degenerative and
 22 squished in height and you were to squish your jelly donut,
 23 the jelly has to go somewhere and the jelly will go out the
 24 weakest part. It will go out the hole that was used to
 25 fill that donut. Well, that jelly coming out is going to

1 additional seven percent impairment, and again, I'm
 2 abridging this, I'm happy to go into how I got that seven,
 3 but --
 4 Q That's not necessary.
 5 A But it was seven percent because of the
 6 specific spine disorders. One might sit there and say,
 7 well, look, just add the two of them, you've got a range of
 8 motion impairment and a spine disorder impairment, seven
 9 and sixteen should equal twenty-three. However, the A.M.A.
 10 Guides is trying to be fair, and it realizes, look, if you
 11 already have one impairment, adding another one is not
 12 necessarily arithmetically accurate. You need to look at
 13 this aggregate, put it together. It's kind of like if you
 14 already have an amputation here and you receive another
 15 amputation here, is that as much of a deficit to that
 16 patient as if you just had amputated a person from here
 17 once. This little bit doesn't add that much.
 18 In short, these numbers aren't added, they're
 19 combined. They use a special table called the combined
 20 values chart, Page 604, and that totals a twenty-two
 21 percent impairment to the cervical spine.
 22 Q Would that be to the body as a whole?
 23 A To the body as a whole, but for his
 24 pathology of his neck.
 25 Q Okay. Does he have any preexisting

1 go out the weakest part, which is, unfortunately in Mr.
 2 Neely, towards the back, and that's where his nerve roots
 3 arc. The nerve roots are these little yellow structures
 4 right over here and because the jelly went out and is
 5 pushing on there, it can cause an irritation to the nerve.
 6 What's fortunate, though, is that Mr. Neely does not suffer
 7 what we call true radiculopathy to whereby he has a mash
 8 defect whereby any one of these nerves has a decreased
 9 reflex or decreased strength or he has numbness and
 10 tingling just dedicated to that nerve. So it's not likely
 11 that operating on these discs is going to substantially
 12 make him better.
 13 Q Have you ever done an operation on a
 14 disc in someone's neck, Doctor?
 15 A Yes, sir.
 16 Q On how many occasions, roughly?
 17 A Probably a hundred in the neck and a
 18 hundred in the lumbar spine.
 19 Q Is it your professional opinion that
 20 surgery in his neck or his low back will not help him?
 21 A I think he would have less than a fifty
 22 percent chance of improvement.
 23 Q Do you have an opinion, Doctor, as to
 24 whether or not this man suffers any permanent impairment as
 25 a result of the wreck that we're here about today to his

1 impairment to the cervical spine that you need to deduct
 2 from that in order to be fair?
 3 A Yes, sir. And that's what we tried to
 4 do. We tried to actually anticipate that, and we said,
 5 look, he's got some preexisting problems and because of the
 6 congenital problems that also existed here that you didn't
 7 specifically ask me about, but he's got some congenital
 8 issues here as well. I doubt he had full range of motion
 9 to begin with. I used my clinical judgment to figure out
 10 what do I think based on his history and based on the
 11 pathology on the x-rays and C1 scan, what was it likely
 12 that he had even though he said he had no problems,
 13 probably he had some minor problems that he was unaware of,
 14 and in that regard, I found that he had a -- an eight
 15 percent impairment to the person as a whole in regard to
 16 the cervical spine that was preexisting.
 17 Q Okay. So when you subtract that from
 18 the twenty-two percent impairment, what is his total
 19 impairment to the person as a whole concerning his neck
 20 injury as we sit here today, in your opinion?
 21 A Yes, sir. Give me one second.
 22 Q I'll refer you to Page 8, the second
 23 paragraph, Doctor.
 24 A Thank you. Yes, and that can be
 25 arithmetically accomplished whereby it would be a straight