

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE**  
**AT KNOXVILLE**

**THOMAS NEELY,**

**Plaintiff,**

**v.**

**No.: 3:05-CV-304**  
**(Guyton)**

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

**Defendants.**

**PRETRIAL ORDER**

Now come the parties, through their respective counsel, and respectfully submit to the Court, pursuant to the Court's scheduling order, the pretrial order which will be applicable in this case, to wit:

**I. JURISDICTION OF THE COURT**

Jurisdiction is based upon diversity of citizenship and an amount in controversy in excess of the amount required by law, exclusive of interest, costs, and expenses, pursuant to 28 U.S.C. Sec. 1332. Venue is proper as alleged in paragraph 1 of Plaintiff's Complaint.

**II. SUFFICIENCY OF PLEADINGS**

The parties state that the pleadings are in conformity and/or have been amended to conform with the Court's pretrial order.

**III. PLAINTIFF'S THEORY OF THE CASE**

Plaintiff's theory of the case is that on July 12, 2004, Defendant Fox of Oak Ridge, Inc.'s employee and agent, Benjamin H. Curd, was traveling west on State Route 61/Charles Seivers Blvd. in Anderson County, Tennessee in a negligent and reckless

manner. The Defendant Fox of Oak Ridge, Inc.'s agent was following the Plaintiff Thomas Neely's vehicle too closely than reasonable and prudent, not having due regard for the speed of said vehicles and the traffic upon the rain-slicked highway. Hence, the Defendant Fox of Oak Ridge, Inc.'s agent crashed into the rear of Plaintiff Thomas Neely's vehicle, while the Defendant's passing lane was clear of traffic, as Mr. Neely slowed for traffic in his lane of travel. After the collision Plaintiff Thomas Neely was rushed to the emergency room by way of the ambulance.

Plaintiff Thomas Neely was seriously injured, he has not worked since the wreck and he is totally and permanently disabled. Plaintiff Thomas Neely's related injuries have required him to undergo treatment for his injuries, which has and will continue to include pain management for life.

Plaintiff Thomas Neely further aver that Defendant Fox of Oak Ridge, Inc.'s agent violated the following rule of the road as set out in Tennessee Code Annotated, for which the corporate defendant is responsible:

T.C.A. § 55-8-124 (c), Following too closely

Due to the severity and permanency of his injuries and the resulting economic losses, Plaintiff seeks compensatory damages in such amounts as the jury deems fair and just.

#### **IV. DEFENDANT'S THEORY OF THE CASE**

The Collision in the above case occurred when the vehicle driven by the plaintiff stopped suddenly, and the vehicle driven by defendant Benjamin Curd was unable to stop in time. The vehicle driven by Benjamin Curd impacted the vehicle driven by the plaintiff. Mr. Curd was in the course and scope of his employment with Fox of Oak Ridge, Inc., at the time of the accident.

The plaintiff's claimed extent of injury and damage is not supported by the evidence. While it is feasible that the plaintiff may have sustained a temporary aggravation of conditions that pre-existed the accident, the medical proof from the medical doctors that the plaintiff was referred to by his attorneys does not prove by a preponderance of the evidence that the plaintiff has sustained injury to the degree he claims. In fact, some of the testimony from the medical experts is in direct conflict with the testimony of the plaintiff with regard to activities, alleged symptoms, and the historical account of the accident.

## **V. ISSUES**

(1) Was the wreck the fault of the Defendants Benjamin H. Curd and Fox of Oak Ridge, Inc.?

(2) If so, what is the amount of compensatory damages that Plaintiff is entitled to recover?

## **VI. STIPULATIONS OF FACT**

(A) Plaintiff, Thomas Neely was a citizen and resident of McCreary County, Kentucky at all times material to this case.

(B) All Defendants were citizens of the state of Tennessee at all times material to this case.

(C) On July 12, 2004, the defendant driver Benjamin H. Curd was operating a Chevrolet Van as the agent of defendant, Fox of Oak Ridge, Inc. There was a motor-vehicle collision between the defendants' van and the automobile driven by Plaintiff, Thomas Neely.

## **VII. QUESTIONS OF LAW OR EVIDENCE (Novel or unusual)**

None.

### **VIII. ESTIMATED DURATION OF TRIAL**

It is estimated that the trial of this case will take approximately two (2) days.

### **IX. SETTLEMENT ATTEMPTS**

Settlement prospects are unknown at this time.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

s/ H. Bruce Guyton  
\_\_\_\_\_  
HONORABLE H. BRUCE GUYTON  
U.S. MAGISTRATE JUDGE

s/ Michael C. Inman  
\_\_\_\_\_  
Michael C. Inman, TN Bar No.: 022858  
Attorney for Plaintiff  
706 S. Gay Street  
Knoxville, TN 37902  
(865) 546-6500

s/ Robert J. English  
\_\_\_\_\_  
Robert J. English, TN Bar No.: 001038  
Attorney for Plaintiff  
706 S. Gay Street  
Knoxville, TN 37902  
(865) 546-6500

### **ATTORNEY FOR DEFENDANTS**

s/ Clint J. Woodfin  
\_\_\_\_\_  
Clint J. Woodfin, TN Bar No.: 016346  
Spicer, Flynn & Rudstrom, PLLC,  
800 S. Gay Street, Suite 1400  
Knoxville, TN 37929  
(865) 673-8516