

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION

|                   |   |                 |
|-------------------|---|-----------------|
| THOMAS NEELY,     | ) |                 |
|                   | ) | No. 3:05-CV-304 |
| Plaintiff,        | ) |                 |
|                   | ) | Knoxville, TN   |
| vs.               | ) | June 21, 2006   |
|                   | ) | 9:30 a.m.       |
| FOX OF OAK RIDGE, | ) |                 |
|                   | ) |                 |
| Defendant.        | ) |                 |

TRANSCRIPT OF JURY TRIAL (CONTINUED)  
BEFORE THE HONORABLE H. BRUCE GUYTON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: Robert J. English, Esq.  
Michael C. Inman, Esq.  
Robert J. English & Associates  
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Knoxville, TN 37902

For the Defendant: Clint J. Woodfin, Esq.  
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1           A           Yes, sir. I forgot I was in an automobile  
2 accident over 20 years ago. And I just forgot about it.

3           Q           Okay. Was it much like the one we are here  
4 today about?

5           A           Yes. I clipped the rear end of another  
6 vehicle.

7           Q           Did you acknowledge responsibility for that?

8           A           Yes, I did.

9           Q           Okay. You also told me about a deer running  
10 into you. But you didn't consider that a wreck?

11          A           I didn't. A deer actually hit me on the way  
12 to work one night. And I didn't --

13          Q           Okay. When you went out to measure the curb  
14 next to the entrance that the car in front of you was entering,  
15 you testified yesterday that you measured it seven inches above  
16 the lowest part next to the curb?

17          A           Yes. As I pointed out in the photo.

18          Q           Was the entrance to the car that was going  
19 across, what was the height of that entrance?

20          A           The lowest point was three inches.

21          Q           Okay. And what was the highest point?

22          A           Seven inches.

23          Q           Okay. So there was a distinct bump there?

24          A           Yes.

25          Q           Okay. When you slowed down so that you

1           wouldn't hit that car that was turning, in the rear, how fast  
2           do you think you were going when you were impacted?

3           A           I was nearly at a stop.

4           Q           Okay. And had you been following that car a  
5           safe distance behind in your opinion?

6           A           Yes. Three, four, five car lengths. I had  
7           seen him turn on his turn signal.

8           Q           Okay. And whenever he did that, what did you  
9           do?

10          A           I slowed down too, along with the other  
11          vehicles.

12          Q           Okay. Did you put your turn signal on?

13          A           No.

14          Q           Okay. You weren't planning on turning there?

15          A           No. I had no intention.

16          Q           Okay. And when I asked you yesterday about  
17          the effects of the injuries from this wreck on your life, has  
18          it had any effect on your ability to pay your bills?

19          A           Yes. I'm currently behind in about everything  
20          that we have. I'm delinquent on one month in our land payment.  
21          I was almost two. But we did manage to make one payment. When  
22          we get close to that second month, the people from the bank  
23          threaten to foreclose.

24                   MR. WOODFIN: Your Honor, I'm going object to  
25                   that. That's hearsay.

1 did, or did not do, was negligent. It's as simple as  
2 that.

3 There's no testimony from Mr. Curd whatsoever.  
4 The only thing that the plaintiff can say is that he  
5 was struck in the rear. Why? The jury can't tell  
6 why. There is nothing for them to determine. Nothing  
7 for them to weigh. There is no way that the plaintiff  
8 can argue that negligence can be inferred just because  
9 an accident happened.

10 THE COURT: All right, Mr. Woodfin. The  
11 evidence that has been put in the record so far by the  
12 plaintiff was that he was driving in a reasonable  
13 manner down the road. He slowed almost to a dead stop  
14 in order to allow a car to turn in front of him into a  
15 shopping mall area. At that point, he was struck in  
16 the rear by another vehicle.

17 That raises to the jury a question as to  
18 whether or not the car that struck him was being  
19 operated in an unreasonable manner in the  
20 circumstances then existing.

21 I think that your argument is that their case  
22 is weak. But it's still a jury question. So,  
23 respectfully, your motion will be denied.

24 And shall we bring the jury back in?

25 MR. WOODFIN: There's one other matter I need

1 Q And why didn't you work for Lester Fox  
2 anymore?

3 A He's got a used car lot in Clinton.

4 Q Are you still working --

5 A I -- Paul Benton.

6 Q All right. Is that the same location when you  
7 worked with Fox?

8 A Yeah. Uh-huh (affirmative).

9 Q Okay. Mr. Fox sold the business?

10 A Yeah.

11 Q And you just stayed with the business?

12 A Yeah.

13 Q All right. How many hours a day do you work,  
14 sir?

15 A Sometimes over ten.

16 Q And how many days a week?

17 A Five.

18 Q All right. On the day that this accident  
19 happened, July 12, 2004, you were driving the van, were you  
20 not?

21 A That's right.

22 Q Tell these ladies and gentleman how you came  
23 to drive that van?

24 A I went to pick the van up to have some work  
25 done on it. And when I was coming back, it was raining.

1 Q And where were you going to take the van?

2 A Back to Fox in Oak Ridge.

3 Q All right. And had it been raining the whole  
4 time you were driving?

5 A Yeah.

6 Q Okay. Were you driving on Charles Sievers  
7 Boulevard on that day?

8 A Yeah.

9 Q As you were driving, were you driving faster  
10 or slower than the speed limit?

11 A I was driving slower than the speed limit.

12 Q Why?

13 A I just don't like to be driving fast.

14 Q What were the weather conditions like?

15 A It rained pretty good.

16 Q And at some point, this vehicle that was  
17 driven by Mr. Neely was in front of you; right?

18 A Yeah. That is right.

19 Q Okay. And tell us what happened then, when  
20 that vehicle was in front of you?

21 A He stopped and was on the phone. And before I  
22 could stop, I slid into him.

23 Q When you hit the brakes, did your vehicle  
24 slide?

25 A It slid.

1 Q And did you expect that to happen on that wet  
2 road?

3 A I didn't expect it to, but it did.

4 Q So you tried to stop?

5 A I tried to stop.

6 Q Tell me about the impact between the two  
7 vehicles.

8 A It wasn't hit that hard.

9 Q Did anything happen to you inside of the van?

10 A No. It sure didn't.

11 Q Can you see those pictures up there on that  
12 screen in front of you?

13 A Yeah.

14 Q Okay. Tell us what those pictures show. Is  
15 that the van you were driving?

16 A Yeah.

17 Q The one with the ladders on top of it there?

18 A Yeah. Uh-huh (affirmative).

19 Q Okay. And that's two pictures of the same  
20 vehicle?

21 A Yeah.

22 Q And that's the vehicle you were driving?

23 A Yeah.

24 Q Can you see those two pictures that are up  
25 there now?

1 A Yeah.

2 Q Does that show what damage was done to the  
3 vehicle you were driving in this accident?

4 A A little dent in the bumper.

5 Q Go ahead and... I'm going to point my finger,  
6 and you tell me if I'm in the right place when it comes up on  
7 there, okay?

8 A Okay. Yeah.

9 Q Can you see where my finger is?

10 A Yeah. I see your finger.

11 Q And on the top one also?

12 A Yeah.

13 Q Any other damage done to that van you were  
14 driving?

15 A No, it wasn't.

16 Q When you got out, did you go see Mr. Neely?

17 A Yeah. I went around and seen him.

18 Q How was he sitting?

19 A He was leaning back, but the seat went all the  
20 way down. It was down, but it was not all the way.

21 Q Did you call an ambulance?

22 A Yeah. I went ahead and called an ambulance.

23 MR. WOODFIN: All right. Okay. Your Honor,  
24 these will be defendant's Exhibits 13 and 14. I would  
25 offer those at this time.



1 THE COURT: Do you have an objection,  
2 Mr. English?

3 MR. ENGLISH: No.

4 THE COURT: All right. Exhibits 13 and 14  
5 will be admitted.

6 (Exhibit 13 - was marked and admitted.)

7 (Exhibit 14 - was marked and admitted.)

8 MR. WOODFIN: That's all, Mr. Curd. Thank  
9 you. You just sit there for a minute. Mr. English is  
10 going to ask you some questions.

11 MR. CURD: Okay.

12 CROSS EXAMINATION

13 BY MR. ENGLISH:

14 Q Mr. Curd, you were driving a big full-sized  
15 van, weren't you?

16 A Yes. Big van.

17 Q Big van?

18 A Uh-huh (affirmative).

19 Q And the bumper is heavy gauge steel, isn't it?

20 A Yeah. They're heavy.

21 Q And when you gave your deposition, I asked  
22 your attorney to furnish me with a repair estimate, didn't I?

23 A Uh-huh (affirmative).

24 Q Do you know whether or not I've ever been  
25 given that?

1 A For the van?

2 Q Yeah. Do you know whether your attorney ever  
3 found that or not?

4 MR. WOODFIN: Well, Your Honor, I'm not this  
5 man's attorney. I hate to clarify that in front of  
6 the jury like that. This man is not a party to this  
7 case.

8 BY MR. ENGLISH:

9 Q Mr. Curd, at the time of this wreck, of course  
10 it was raining, and it was raining pretty hard, and you knew  
11 that?

12 A Yeah.

13 Q And you've driven for many years?

14 A Uh-huh (affirmative).

15 Q And you knew that whenever it rained --

16 THE COURT: Mr. Curd, you have to answer yes  
17 or no.

18 A Yes.

19 Q And you knew that when it rained the roads get  
20 slick, you being a professional driver?

21 A Yeah.

22 Q And you know that whenever the roads get slick  
23 you're supposed to slow down and be careful, didn't you?

24 A Yeah. I slowed down.

25 Q Okay. But you were following Mr. -- according

1 to your deposition, you were following Mr. Neely about 20 feet  
2 behind him at 35 miles an hour on a wet road, weren't you?  
3 Didn't you tell me that in your deposition under oath?

4 A Yeah.

5 Q Okay. And when he stopped, you say for no  
6 reason at all -- and that's what you told me in the  
7 deposition --

8 A Yeah. That's right.

9 Q He just bowed up and stopped for no reason?

10 A Yeah. He was on the phone.

11 Q Okay. And whenever you stopped, he was going  
12 about 35 miles an hour; is that right?

13 A I guess that's as fast as he was going.

14 Q Okay. And when he stopped -- you told me on  
15 the deposition that he stopped his car on a rain-slickened  
16 road --

17 A Yeah.

18 Q -- going 35 miles an hour, in about five feet?

19 A Yeah.

20 Q Okay. And then whenever he stopped, you were  
21 so close to him -- you were 20 feet behind him?

22 A Yeah.

23 Q And you were going about the same speed limit,  
24 about 35? The same speed, not the speed limit?

25 A Yeah.

1 Q Okay. And you couldn't get stopped because  
2 you were too close to him?

3 A I slid.

4 Q Okay. And if you had gone into the other  
5 lane, you wouldn't have hit him, would you?

6 A I couldn't go in the other lane.

7 Q Why couldn't you?

8 A I was over here.

9 Q Couldn't you go in the left-hand lane? The  
10 fast lane?

11 A No. I couldn't right then.

12 Q Why? Do you remember me asking you, or  
13 Mr. Inman asking you in your deposition -- page --

14 A You know, I tried to miss, to get over -- I  
15 hit him.

16 Q Page 18.

17 "Do you know whether or not the passing lane  
18 was clear?"

19 And you said, "I'd say it was."

20 A Uh-huh (affirmative).

21 Q Do you remember giving that statement?

22 A Yeah. But I tried to get -- but I hit him as  
23 I was trying to.

24 Q I understand that. But if you had been  
25 following a little further back, you would have probably not

1 have hit him?

2 A Yeah.

3 Q And if you had been following a little slower,  
4 you probably wouldn't have hit him?

5 A Yeah.

6 Q And if the roads weren't wet, you probably  
7 wouldn't have hit him?

8 A That's right. If they wasn't wet, I wouldn't.

9 Q Okay. And you were following -- since you  
10 were in this big van, this big heavy van, you were following  
11 about one car length behind him, or 20 feet behind him whenever  
12 he --

13 A It was 20 feet.

14 Q -- whenever you realized there was going to be  
15 a wreck --

16 A Yeah.

17 Q -- on a rain-slickened road? And he didn't  
18 have anything to do with you following that close to him, did  
19 he?

20 A I don't reckon he did.

21 Q And he didn't have anything to do with you  
22 driving that fast, that close behind him, did he?

23 A I don't reckon he did.

24 Q And I know he didn't, and I know you didn't,  
25 have anything to do with it raining that day.

1                   A           If he hadn't stopped on me, I wouldn't have  
2 hit him.

3                   Q           I know it. But you're telling this jury that  
4 he stopped for no reason at all?

5                   A           He was talking on the telephone.

6                   Q           And he stopped --

7                   A           Yeah.

8                   Q           -- going 35 miles and hour --

9                   A           In the road.

10                  Q           -- in five --

11                  A           Yeah.

12                  Q           -- on a wet road?

13                  A           Yeah. He sure did.

14                  Q           Okay. And then after you hit him going 35  
15 miles an hour, or 25 miles an hour -- you slowed down some when  
16 you hit him, didn't you?

17                  A           Yeah. I sure did.

18                  Q           And you knocked him about two or three feet  
19 you said?

20                  A           Yeah. Something like that.

21                  Q           And you hit him, totaled his vehicle, broke  
22 his seat, and knocked him two or three feet forward? Is that  
23 right?

24                  A           I don't know. His seat was broke. His  
25 seat -- the thing on his top back seat went all the way down

1 when I went up there to see about him.

2 Q Well, you saw it?

3 A Yeah.

4 Q I thought you told me that --

5 A I didn't know the seat was broke.

6 Q Okay. On Page 13 of your deposition... And I  
7 asked you, "And his seat broke in the wreck, because you saw  
8 that, didn't you?"

9 And you said, "Yeah --

10 THE COURT: Mr. Curd, wait until he finishes  
11 his question, and then you start your answer.

12 MR. CURD: All right.

13 THE COURT: The Court Reporter can't take down  
14 both of you talking at the same time.

15 All right. Mr. English, restate you question.

16 And then we'll get the answer.

17 BY MR. ENGLISH:

18 Q You told me on your deposition, his seat  
19 broke. I asked you, "And his seat broke in the wreck, because  
20 you saw that, didn't you?"

21 And your answer was, "Yeah. I seen the seat  
22 laying back."

23 A That's right.

24 Q Okay. And that's exactly what your testimony  
25 is today?

1 A Yeah.

2 Q Okay. And he was looking up at the ceiling of  
3 his car, wasn't he?

4 A Yeah.

5 Q Okay. Fox Motor Company is out of business at  
6 this time, aren't they?

7 A Yeah.

8 Q You're working for the people that bought them  
9 out?

10 A Yeah.

11 Q Okay. That van that you were in, that big  
12 van, that sort of felt like it's built real strong, isn't it?

13 A Yeah, it is.

14 Q And you weren't hurt in this wreck?

15 A No. I sure wasn't.

16 Q And he was in a real small compact car, was he  
17 not?

18 A Yeah.

19 MR. ENGLISH: Thank you, sir.

20 THE COURT: Mr. Woodfin.

21 MR. WOODFIN: Nothing further for this  
22 witness, Your Honor.

23 THE COURT: Thank you, sir, for your  
24 testimony. You may step down.

25 May this witness be excused?