

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:

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1 Mr. Inman.

2 MR. INMAN: Thank you, Your Honor.

3 THE COURT: Before you begin that -- I'm
4 sorry.

5 MR. INMAN: Yes, sir.

6 THE COURT: Mr. English, you read for the
7 record the actuarial chart?

8 MR. ENGLISH: I did.

9 THE COURT: Do you have a copy of that that
10 you can pass to the Clerk? I need to see that.

11 Does it have circled the pertinent --

12 MR. ENGLISH: Yes, Your Honor. It's
13 highlighted.

14 THE COURT: Thank you. I'm sorry. I should
15 have asked for this when you first introduced it.
16 Thank you.

17 All right. Mr. Inman.

18 MR. INMAN: Thank you, Your Honor.

19 CLOSING ARGUMENT

20 BY MR. INMAN:

21 Ladies and gentlemen of the Jury, I want to
22 introduce myself. My name is Michael Inman. And I am the
23 individual that everybody has been talking about here recently.
24 I feel somewhat infamous today, especially after yesterday --
25 and today's testimony as well.

1 Yes, I'm the individual, the attorney that
2 referred Mr. Neely to these doctors. That was me. But I'm not
3 going to sit here and apologize to you folks. I did it.

4 Much like some of you who have a medical
5 background, you take an oath. As an attorney, I take an oath.
6 And as part of that oath, I am to try my best to properly
7 represent my client. And as part of that, to properly
8 represent my client, I have to counsel my client. And at
9 times, yeah, that means to seek treatment for them.

10 Now, you can probably tell that I'm very nervous.
11 There is a good reason for that. This is one of my first jury
12 trials. I just have to tell you. I am not the speaker that
13 Mr. Woodfin is. I can't sit here and rattle off the way he
14 does. And therefore, I wasn't even planning to speak to you
15 folks. I was going to defer to Mr. English.

16 But sitting here and listening to the testimony
17 and exhibits that were put on, it's come to my attention,
18 you're wondering who I am. Why am I sitting here? Why have I
19 referred Mr. Neely to all these doctors?

20 And I felt that I had an obligation that I needed
21 to get up and I needed to tell you why. I'm sitting here
22 telling you that, yes, I did send him to these doctors.

23 What Mr. Woodfin has not told you, and he doesn't
24 want you to hear, is he has the right to send him to any doctor
25 he wants to. If he doesn't believe Mr. Neely, he could have

1 sent him to a doctor.

2 He had the ability, and dare I say it, the
3 obligation and duty to his client to do so. He can get a
4 second opinion. He didn't do that. He did not do that.

5 And yesterday, it came to my attention, and I'm
6 sure it came to yours... You're very observant. You sit here
7 and you study us. And quite frankly, I didn't know whether to
8 look at you or, not look at you. This is one of my first
9 cases, as I said.

10 And I don't know how you look at us. You're
11 always thinking we're plotting and trying to maybe figure out
12 some strategy. And sometimes, yes, we were. But at the same
13 time, I want to bring to your attention, there was a lot of
14 thank you's. The defendants attorney thanked you a lot
15 yesterday.

16 But I'll tell you what you haven't heard. You
17 haven't heard the first apology. You haven't heard the first,
18 "I am sorry," by the defendant. That hasn't... Those words
19 haven't come across his lips one time.

20 Now, as to -- as to this case... You know, for
21 me, as well as yourselves, this is just another day. But
22 unfortunately for Mr. Neely, this is the rest of his life. And
23 this impacts him for the rest of his life.

24 So, yes, I am nervous. Yes, I am tired. I have
25 to admit that to you. We do everything, as attorneys, we can

1 for our clients. And once again, that shouldn't have to be
2 apologized for. But as to this defendant, they haven't even
3 admitted liability.

4 Mr. Neely, who was driving over one hundred
5 miles, at least an hour and 15 minutes, according to his
6 testimony, to the job that he dearly loved, in an effort to
7 support his family, was crashed into by the defendant's driver,
8 Mr. Curd, who is professional driver. He was crashed into,
9 forever, forever, according to the testimony of the doctors,
10 taking his ability away to support his family.

11 The doctor depositions... Let me go back though.
12 It goes beyond that. It goes beyond his ability to properly
13 care for his family as far as money. He can't do the things
14 that he normally did before. This has interfered, as his
15 testimony alluded to, with his sex life due to the back pain,
16 due to the prescription, these narcotics.

17 He also has two small children. These two
18 children, one of which was conceived after the accident, are
19 now reaching for daddy. They want to be held by daddy. They
20 want to be picked up. And Mr. Neely, more than anybody, wants
21 to provide that for them. He can't do that.

22 Those limits that you heard the doctor put on
23 him, those are real. If the defendant doesn't believe it, they
24 could have sent him to a doctor. They didn't. They have no
25 testimony whatsoever to say otherwise.

1 As to the defendant's driver, as he testified
2 here earlier, he was going too fast, too close, on too slick a
3 road. And yes, he crashed into the rear of this vehicle.
4 There was a passing lane. But he was out of control. He's
5 testified to that.

6 And they still won't accept responsibility. They
7 have yet to step up to the plate and accept the responsibility
8 for causing this accident.

9 And that's not the only thing they won't accept.
10 They don't want to tell you, and they don't want you to hear,
11 as you heard through Mr. Neely's testimony, that his vehicle
12 was totaled. They don't want you to hear that.

13 They don't want you to see these pictures of a
14 huge van -- steel. He testified this is a gauged steel bumper.

15 And as you know, when you have a huge vehicle
16 crash into a small vehicle, sometimes you might get a minor
17 puncture on the vehicle that it hit. And it will total the
18 vehicle that it crashed into. Well, that is the case, ladies
19 and gentlemen.

20 And they also didn't want you to hear that he's
21 unemployable. He testified that he put in applications, even
22 with the "no duty" restrictions put on him by his doctor, to
23 try to support his family. His newborn child, his daughter,
24 his three-year-old son, they rely on him.

25 His wife was not working at the time of this

1 accident. She was caring and raising these children. He had
2 at least one child at that time. And then comes another child,
3 a minor child. She can't work. She can't help raise these
4 children. And as lot of you know who have children, can't
5 afford the daycare that it would cost to go and work. There's
6 been no assistance.

7 And I want to refer you back to Dr. Koenig's
8 deposition. And as you heard, he put on Mr. Neely a "no duty"
9 restriction.

10 As Dr. Koenig testified, he was asked: "What are
11 those restrictions?"

12 And he stated, answer: "On July 6th, it was
13 written for no repetitive bending, stooping, squatting, or
14 lifting greater than 15 pounds. He should be allowed frequent
15 changes of position."

16 Question by Mr. English: "Are those still the
17 restrictions that you put on him pertinent at this time, sir?"

18 Answer: "No in effect, I should state that those
19 were amended further whereby he was placed on no duty."

20 No duty, ladies and gentlemen. No duty.

21 Further answer: "Meaning that I really don't
22 think he can do anything."

23 You've heard Dr. Browder's deposition and
24 testimony that he couldn't go back to work. You also heard the
25 cross examination of Dr. Koenig that he couldn't go back to

1 work. He's been placed on permanent "no duty" restrictions,
2 and he's not going to get any better, as the doctors have
3 testified to.

4 Furthermore as to the pain and suffering that
5 Mr. Neely suffered through with this, he has testified that
6 it's been great, it's been exceeding. It's been so great, as a
7 matter of fact, that he's been put on pain management for
8 life -- more than likely for life. Methadone. For those of
9 you in the medical profession, you know what methadone is going
10 to do to this man.

11 Methadone, unfortunately, is going to have an
12 affect on him in years to come. And it's going to get more
13 expensive.

14 As to -- this is Dr. Koenig. And the doctor came
15 back with, I believe -- let me rephrase this.

16 Mr. English asked Dr. Koenig: "Doctor, did you
17 have any opinion as to whether or not this man will suffer pain
18 in the future as a result of these injuries?"

19 Answer: "Yes, sir. I think that unfortunately,
20 also. And that's the reason why we sent him to a pain
21 management consultant -- to Dr. Browder."

22 Referring to Dr. Browder who has been treating
23 him for his pain. In his deposition I just want to remind you,
24 he stated: "He has not be able to return to work. Apparently,
25 the type of job that he has requires the ability to physically

1 restrain patients who may become violent. So he may not be
2 able to return to that position." These are the words of a
3 doctor.

4 The defendant is going to get up here and he's
5 going tell you it hasn't been proven. He's going to tell you
6 that they're not responsible. Once again, they want to hide
7 what the facts -- what the truth is.

8 We've laid it out here for you. There's no doubt
9 that this man being the driver or a defendant is going too
10 fast, too close, on too slick a road. There's no doubt about
11 it.

12 He even testified there was a clear passing lane.
13 And that is the unfortunate result of this wreck which caused
14 Mr. Neely these injuries. Which are of a permanent nature.

15 Now, I would like... I apologize. As I stated,
16 I wasn't really planning on speaking with you today. I was
17 going to let Mr. English present this case. But I felt I owed
18 a duty to Mr. Neely to tell you why I'm sitting here, and why I
19 haven't said a word.

20 Now, Mr. Neely, as you heard read into the
21 record, is 48 years of age. The Tennessee Code Annotated table
22 stated that he has a life expectancy of 32.85 years. His
23 actual medical expenses to date, which have been filed as
24 exhibits, and which will be available to you, is sixteen
25 thousand, two hundred and eighty-five dollars (\$16,285). And

1 that's not current.

2 The actual medical expenses of Dr. Browder, which
3 has also been provided as an exhibit, too, which you'll have
4 access to, is five thousand, seven hundred and forty-three
5 dollars (\$5,743), plus office visits from 6/19/06 of eighty
6 dollars (\$80) for five visits for each one of them. That
7 equals four hundred, plus (\$400+).

8 The actual lost earnings... The date of this
9 wreck was July 12, '04. He hasn't worked a day since. And as
10 of 6/20/06, that's one hundred and one weeks, times three
11 hundred and seventy dollars (\$370), pursuant to his tax return
12 which has been provided as an exhibit. That equals
13 thirty-seven thousand, three hundred and seventy dollars, plus
14 (\$37,370+). We're not including interest on this. This is not
15 including inflation. This is just what he was making. And
16 this is the low figures.

17 Now to the actual losses. They total at 6/20/06,
18 three hundred thousand, seven hundred and ninety-eight dollars,
19 plus (\$300,798+). Once again, that's not with inflation.
20 That's not with interest. That's actual loss.

21 As for future medical expenses, as I alluded to.
22 At this time this monthly visit to Dr. Browder for pain
23 management is eighty dollars (\$80). And he stated in his
24 testimony that that's only going to go up. But at eighty
25 dollars (\$80) for life, with the life expectancy that we have

1 of 394 months are thirty-one thousand, five hundred and twenty
2 dollars (\$31,520). That's what he has to look forward to,
3 ladies and gentlemen. That's what he has.

4 And his future lost wages, from 6/20 to 2/23,
5 which is age 65, retirement age, that is at 867 weeks at a rate
6 of three hundred seventy dollars (\$370). Mind you, we took
7 into consideration and we left his pay rate the same. We
8 didn't give him a bonus. We didn't give him inflation. We
9 didn't put in any interest. But that amount is three hundred
10 twenty thousand, seven hundred and ninety dollars (\$320,790).
11 With the two combined, that's four hundred twelve thousand
12 dollars (\$412,000).

13 Now, as to the future, who knows? There's no
14 telling when this whole thing is going to end. But we do know
15 he's going to have pain. The doctor says more likely than not,
16 yes, he will have pain for life. If he's lucky to live to this
17 ripe old age.

18 His loss of enjoyment. Can you put a dollar
19 amount on that? Is it possible to put a dollar amount on this
20 man not being able to pick up his children? And the medicine,
21 once again, that's just going to go up.

22 We all know what medicine costs. We all know
23 what medical expenses are these days. Think about a loaf of
24 bread two years ago, or three years ago. Has it not gone up?

25 Think about the price of gasoline two or three

1 years ago, and what it is today. These expenses are only going
2 to get higher.

3 But we're asking you to do what's right and
4 what's just, and come back with a verdict for Mr. Neely.

5 THE COURT: Mr. Woodfin.

6 MR. WOODFIN: Thank you.

7 CLOSING ARGUMENT

8 BY MR. WOODFIN:

9 Thank you all for listening to us over these past
10 few days. I'll try to be brief.

11 You heard the evidence in this case. You've been
12 able to weigh the credibility of the witnesses that you've
13 heard. And you should be able to make a decision on what you
14 have heard.

15 A lawsuit starts out with the filing of a
16 complaint. And I mentioned that in the beginning of this
17 presentation that I made to you, that the complaint was the
18 amount that we were sued for. The complaint is a part of this
19 record of this Court. I'll just read this to you.

20 "Wherefore the plaintiff's demand the jury to try
21 this cause and award judgment in such amount that the jury
22 deems fair, but not to exceed two million, five hundred
23 thousand dollars (\$2,500,000) in compensatory damages."

24 Yet, the plaintiff expects my client to apologize
25 to him for an accident that they did not cause. They expect us