

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.  
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For the Defendant: Clint J. Woodfin, Esq.  
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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