

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 to apologize to you for not hiring a doctor to evaluate this
2 man when there's no need for us to hire a doctor to evaluate
3 this man.

4 The only doctors that he presented here today on
5 his behalf tell you that everything they conclude is based on
6 what he has said, and he has told them.

7 This case reminds me of a house of cards. I
8 remember when I was a kid, taking a deck or two and trying to
9 set them all up, and stack them up really high. The most
10 important part of that deck, or that stack, was the base.

11 In this case, the base upon which this whole case
12 is built is Mr. Neely, and him telling these things to his
13 doctors.

14 But then we take a look at what actually
15 occurred. The fact that he was not giving his doctors correct
16 information about what happened in the accident. The fact that
17 he told you this car that he was driving was totaled.

18 You've seen the photographs. Yet, he tells us
19 the next day he drove it home to Kentucky after it was totaled.

20 He tells his doctors he lost consciousness. And
21 then he tells us he didn't. Then he tells us he doesn't
22 remember.

23 So what happens is, the base upon which this
24 house of cards is built begins to erode. The support for
25 whatever else is presented to you in the case by way of expert

1 testimony, expert opinion, conclusions, damages, naturally
2 falls when that base erodes. If they cannot support their
3 claim for damages, the opinions of their experts with that
4 underlying credible testimony, the case must fail.

5 You're going to be asked to do three things in
6 this case. The first one is you'll be asked to determine
7 whether or not this accident was caused by Mr. Curd, and
8 therefore is attributable to my client, Mr. Fox and his auto
9 company that he had.

10 The second thing you'll be asked to determine if
11 you decide that that's true, and I don't know that that's true.
12 I heard Mr. Curd say that he did not do anything wrong. He
13 just accidentally slid on a wet road. To me, that's not
14 negligence. But that's for you-all to decide.

15 If you do determine that he was negligent, the
16 next question you're going to be asked is whether or not this
17 conduct was the cause of all these things that Mr. Neely has
18 told you about today. I know the answer to that question. I
19 think you do, too.

20 And then the final question is, what amount of
21 damages should compensate Mr. Neely for what he has told you
22 he's gone through, and which is, in your opinions, related to
23 this accident?

24 I think I know the answer to that question. And
25 I think you know as well.

1 All the things we heard from the doctors are all
2 dependant on Mr. Neely giving valid complaints and saying, I'm
3 having pain down my arms, I'm having pain down my legs.

4 Because as the doctors said, there was no test to
5 verify that. As a matter of fact, they said on several
6 occasions that the tests did not verify that there were these
7 radicular problems. So it's all been based on what Mr. Neely
8 said.

9 I pointed out numerous times where Mr. Neely has
10 been inconsistent in his testimony in this case, and has, at
11 times, changed his testimony. That's not a sufficient base to
12 hold up this house of cards. So if there's nothing to hold it
13 up, the whole case, by its very definition, has to fail.

14 Listening to what these doctors said, they
15 acknowledge that they listen to their patients. That's what
16 doctors do. They believe what the patient says. They're
17 trying to help the patient, so they give credibility to what
18 the plaintiff says.

19 They don't investigate. They don't know all the
20 facts. I tell them certain things during cross examination,
21 but they're still going to try to help the plaintiff.
22 Especially in situations where doctors are seeing people upon
23 referral from their lawyers.

24 I don't know about you folks, but if I need to go
25 to the doctor, I don't call a lawyer.

1 Sometimes we see that these doctors continue to
2 treat these people after a referral from their lawyers. And
3 you can see how things develop. The doctor doesn't know all
4 the information. The doctor doesn't have the information that
5 actually, Mr. Neely was not knocked unconscious at the scene.
6 They're just told that he was.

7 And whether they're asked if that makes a
8 difference, well of course they're going to say it doesn't make
9 a difference, because they're an advocate for their patient.

10 But you eight folks that are here today listening
11 to this case over these past few days are the advocate for the
12 system. And I remember when I talked with you in the opening
13 about being fair and reasonable, not only to both parties, but
14 the legal system as a whole.

15 When the judge instructs you about the evidence
16 in this case and how you're to decide, he's probably going to
17 say something along these lines:

18 To recover damages from permanent injury, the
19 plaintiff must prove the future effect of the injury to a
20 reasonable certainty. While it's not necessary the evidence
21 conclusively or absolutely show that the injury is permanent,
22 you may not award damages for a permanent injury based on mere
23 conjecture or possibility.

24 When that base of this case is erased, what we're
25 left with is a bunch of conjecture, a bunch of speculation, and