

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 a bunch of evidence which will not allow you to conclude the
2 amount of damages that Mr. Neely is seeking in this case is
3 appropriate to award him.

4 He's testified he can't work. But he's testified
5 he's applied for jobs. He's testified he tried to put down
6 information on these applications about his pre-existing
7 problems.

8 I don't know that applications include that
9 anymore. You don't know that either, because he didn't tell
10 you anything about those specific applications, or bring you
11 any evidence of those applications. But that's the kind of
12 stuff that we're dealing with; speculation, conjecture, and a
13 desire to try to get money out of my client.

14 Mr. English said something on day one of this
15 trial that is very, very pertinent. He said on July 14, 2004,
16 the day of this accident, Mr. Neely's life was changed forever.
17 I agree with that. But it was changed by him.

18 It was on that day that, and the days that
19 followed afterwards, that he decided, I'm not going to live my
20 life anymore like I used to. I'm going to try to get money out
21 of this lawsuit. Don't reward him for that.

22 CLOSING ARGUMENT

23 BY MR. ENGLISH:

24 First of all, Mr. Woodfin is incorrect. I didn't
25 say July the 14th, I said July the 12th his life was changed

1 forever. Because that's when this accident happened. It
2 wasn't the 14th.

3 Mr. Woodfin didn't tell you that when we file our
4 lawsuit in a rear-end collision that he files an answer denying
5 that it's his fault even though this man was following too
6 closely, too fast on a rain-slickened road. And they still
7 have put this man through total hell for the last two years --
8 this Corporation.

9 Now, Michael asked me to help him in this case
10 because I've tried a few cases. And I find that it's my job to
11 help my clients if I can. I talk to a lot of people about
12 representing them, and I don't take many cases of the people I
13 talk to.

14 And if I can help someone, and I honestly believe
15 or know that they're hurt, I'm going to help them. I'm going
16 to do everything I can.

17 I've lost some cases I should have won. I've won
18 some cases I should have lost. But whenever I saw the reports
19 on Tom Neely...

20 And Mr. Woodfin didn't mention a word about those
21 two MRIs that showed two protruding disks in his neck and a
22 bulging disk in his neck, and four disks in his back that were
23 bulging. He's didn't say a word about it. Not a word. Not
24 one word. He's trying to defend this case, a rear-end
25 collision. And this is a case...

1 Most collision cases get settled. They never get
2 tried because the defendants generally settle these cases
3 because it's obvious to everybody, hopefully to you, who caused
4 the wreck.

5 Tom didn't have any control over how fast this
6 man was driving behind him. Or how close he was following
7 behind him. Or whether the road was slick. He had no control
8 over that. You heard it.

9 And it just does not make sense that he would
10 stop for no apparent reason on a rain-slickened road. And for
11 him to be able to stop from 35 miles an hour in five feet is
12 incredible. It's unbelievable. And I'm sure you do not
13 believe that.

14 And for him to have been hit hard enough to total
15 his car, and for Mr. Woodfin to object to you hearing that his
16 car was totaled... Yes, he drove it back to Kentucky. He had
17 to, to salvage it. It took him two and a half hours, I believe
18 he said, to get it back. And then he drove it to his mothers
19 one time. And then that was the last time he drove that.

20 He didn't want you to hear that about it being
21 totalled. He didn't want you to hear about the seat being
22 broke. Him being hit so hard that it was broken.

23 And for Mr. Curd to come in here and say that, I
24 was going 35, and then I slowed down and hit him about
25 45 (sic), and knocked him forward about two or three feet and

1 broke his seat and totalled it. He didn't mention a word about
2 that. I wonder why? Because that just doesn't stand the light
3 of day as being honest and truthful.

4 This case should have never gotten into a
5 lawyer's hands. This case should have been settled early on.
6 And Mr. Neely shouldn't have been put through by this
7 defendant, this corporate defendant that no longer exists,
8 shouldn't have been put through this for the last two years --
9 and his wife.

10 These people have gone from him working ever
11 since he was 13 years old mowing yards, working at the Scott
12 County Hospital. It's gone from that to this man living on
13 food stamps. And he's never done that before.

14 You saw what he said when I asked him about how
15 this affected the way he felt about him being unable to care
16 for his wife and his children. This is just a horrible
17 situation. And it cries out for justice. And it's all we can
18 do.

19 They're not accepting responsibility. And I want
20 you to do what you think is right, and what is fair, and what
21 is just. When we sue for an amount here, we have to put a top
22 figure in it. And I said, and he read, and he read correctly,
23 "...which the jury deems fair and just, but not to exceed two
24 and a half million dollars."

25 It's not for me to say what this case is worth.

1 But I want to talk to you just a few minutes about some
2 elements of the damages.

3 For instance, Tom Neely will never, ever, ever
4 work again. A board-certified orthopedic surgeon said that on
5 cross examination. And a board-certified pain specialist said
6 that. That's the head, the president, of all the pain
7 specialists that's in the State of Tennessee. These are two of
8 the best people that I know. And I'm not apologizing for
9 sending Tom.

10 Actually, I thought I sent him to Dr. Browder,
11 but I didn't, apparently. Dr. Koenig sent him to him. I am
12 not apologizing for that if I had.

13 I would have, because I know Dr. Browder is a
14 good doctor. I know Dr. Koenig is an excellent doctor. If I
15 had to go to him, or if I had a family member, I would
16 certainly want one of those people to see him.

17 And both of those doctors said that this man
18 can't work. Mr. Woodfin is talking about, well, he's applying
19 for jobs. Yes, he's applied for jobs. He's starving to death.
20 He's going to the flea markets and watching the kids while his
21 wife can eke out a meager existence, when this man took care of
22 them all of his life. All of his life. He took care of
23 himself from age 13. He took care of his wife for the
24 twenty-two years they've been married.

25 And he had a job he dearly loved that he drove

1 200 miles a day to, roughly, back and forth. And he wanted to
2 work there until they ran him off at age 65.

3 You can say what you want to about the damage
4 that was done to this van, or the damage that wasn't done to
5 the van. That was a big huge van. It was a tank. A tank hits
6 a little car, there's not going to be any damage done to it.
7 You know that.

8 You know when a big tractor-trailer, or a big van
9 hits a little car, you know who's going to come out second best
10 in that collision. And that's exactly what happened to Tom.
11 That's why his seat broke. That's why he hasn't worked a day
12 since this.

13 He did go back to Dr. Koenig. Dr. Koenig...
14 Shortly before he gave the deposition -- two weeks before the
15 deposition. Dr. Koenig wanted him to go back to work.

16 It's my obligation as a lawyer to get people back
17 to work. To get them back as good as I can. You know, whether
18 you make money on them, or whether I don't make money on them,
19 it's my job as a human being to try to get them to do the best
20 they can. And the same way with Dr. Koenig.

21 He sent him back to try to go to work. He went
22 back and tried to go to work at the job he loved. At the job
23 he would go 200 miles a day to, five days a week for a year and
24 a half.

25 And they wouldn't take him back because he was on

1 drugs, he was on methadone, and he had a lifting restriction.
2 And that lifting restriction has been taken off to a "no duty"
3 restriction. He can't work any. So this man...

4 And the law requires that we prove our case by
5 competent medical proof. Mr. Woodfin has the right. And as
6 Mr. Inman said, he has the obligation if he doesn't believe our
7 doctors, to send him to a doctor of his own. And he didn't
8 choose to do that. He could have sent him to any doctor in
9 this town to have him evaluated, and to give an opinion in this
10 case. He didn't do that for one reason.

11 After I filed the complaint, and after he filed
12 the answer, he filed the interrogatories. And when we answer
13 them under oath, we tell him who the doctors are that we've
14 been going to. We're not trying to hide anything from anybody.

15 And he sends me a medical authorization for him
16 to get the records himself, because I guess he doesn't trust
17 me. And I signed this. And he gets it. And he knows exactly
18 what was wrong with this man. From day one, once he got those
19 medical records pursuant to the authorization that I signed.

20 And if he didn't believe those, he could have
21 certainly gotten months ago... He could have gotten a doctor
22 to look at him and give an opinion.

23 He chose not to do this. This is a big
24 corporation. Fox Motors of Oak Ridge is a big corporation
25 that's been sold and it's no longer in existence.

1 He's got an obligation to come in here and prove
2 his case by reasonable medical certainty by a doctor. And he
3 had the means, and the method, and the opportunity to do that.
4 And he didn't do it because he saw the handwriting on the wall.

5 He saw the two MRIs that were read by Dr. Yount,
6 a board-certified radiologist. He saw the two MRIs that were
7 read by Dr. Koenig, a board-certified orthopedic surgeon who
8 actually read the reports and saw the films. And he saw the
9 reports of Dr. Joe Browder, who actually treated this man, and
10 who has treated him, and will treat him probably for the rest
11 of his life if Tom lives that long, or if Joe Browder lives
12 that long. Somebody is going to treat this man for the rest of
13 his life.

14 He's never going to work again. And he will turn
15 65 in 2023. So he's got a long ways to go.

16 And let's talk about the projections that
17 Mr. Inman put up here for just a minute. The actual medical
18 expenses, these were proved -- these weren't even contested by
19 Mr. Woodfin. So this sixteen thousand (\$16,000) goes without
20 saying. The actually medical expenses proven by Dr. Browder --
21 they were not contested, fifty-seven hundred dollars (\$5,700).
22 Office Visits since I took Dr. Browder's deposition, eighty
23 dollars (\$80) a month for five months. That's four hundred
24 more dollars (\$400).

25 And then let's talk about the next line, the

1 actual lost earnings. The date of the wreck was 5/12/04, right
2 here to 7/12 -- 5/12/04 to 6/20/06, that was 101 weeks as of
3 yesterday. That's 101 weeks at three hundred seventy dollars
4 (\$370) a week.

5 Now, if you look at one of the exhibits, the 2004
6 IRS tax for this man, he averaged about four hundred and twenty
7 dollars (\$420) a week the year of this wreck in '04. Look at
8 that. Do the math. He only worked -- he never worked after
9 the 12th of July. So he worked about 28 weeks. You divide 28
10 into the twelve thousand two hundred and one (\$12,201) that he
11 got, and it's going to be about four hundred and twenty dollars
12 (\$420). We didn't take that figure. We were conservative
13 because he was getting overtime during that period of time.

14 And those are documents 2002, 2003, and 2004.
15 And they verify his testimony that he was making a lot more
16 money whenever he had the wreck than he was at the Scott County
17 Hospital.

18 Future medical expenses, according to Dr. Browder
19 on Page 13 of his deposition, are eighty dollars (\$80) a month
20 for life, for 394 months, that's thirty-one thousand dollars
21 (\$31,000) and change.

22 Well, Tom may die tomorrow. He may live a lot
23 longer than his life expectancy. There's no guarantee of life
24 for him, or you, or me, or anyone else.

25 But there is one guarantee. He's got a life

1 expectancy of roughly 34 more years, or 33 more years. And if
2 I know anything, and if you know anything, prices are going up
3 in the next 33 years.

4 Think back, those of you that are old enough to
5 think back 33 years when you were spending money, what a loaf
6 of bread cost then. What a doctors visit cost then. What a
7 tank of gas cost 30 years ago. It was a lot less.

8 What do you think it will be like? Do you think
9 Dr. Browder's office is going to be charging eighty dollars
10 (\$80) a visit 20 or 30 years down the road? Of course not.
11 That's a low figure.

12 His future wage loss to 2/23/23, when he turns
13 age 65, that's 867 weeks at what he's making now. Assuming he
14 never gets another raise. Assuming inflation stops and wages
15 don't go up for the next, roughly 15 or 16 years, whatever that
16 would be, that's what he has lost when he turns 65, retirement
17 age.

18 Now, these figures right here, this is what he's
19 out right now, the sixty thousand dollars (\$60,000).
20 This is what he's going to be out if prices don't change, him
21 going to the doctor for the rest of his life.

22 This is what he's going to lose if he doesn't get
23 a raise, not being able to work until he turns age 65. His
24 actual accrued losses are four hundred and twelve thousand
25 dollars (\$412,000).

1 Now, let's talk about his pain for life, his loss
2 of enjoyment for life, and his medicine for life.

3 THE COURT: One minute, Mr. English.

4 BY MR. ENGLISH:

5 His pain for life, even though he's going to
6 retire, hopefully at 65, or he would have been able to, he's
7 going to live for another 33 years -- roughly. And he's going
8 to have pain every day. And he's sleeping about two or three
9 hours a night. But say he sleeps eight hours a night and he's
10 up sixteen hours a night (sic). Would you give him ten dollars
11 an hour for the pain he's going through? That's a huge amount
12 of money.

13 And what about his loss of enjoyment of life
14 where he can't take care of his children. He can't go hunting.
15 He can't go fishing. He can't do the things that put the
16 frosting on life that you all worked hard all week to do. He
17 just can't do that.

18 And what about this last thing, the medicine for
19 life. I put a question mark on all three of those things. I
20 don't know what the medicine is going to cost. Dr. Browder
21 said it's been going up about twice as fast as the inflation
22 index. What it will be in 30 years, nobody knows. That's for
23 you to say.

24 Ladies and gentlemen, I tried to do the best I
25 can to present Tom's case. I don't think liability is an issue

1 here. I don't think damages should be an issue here. But I
2 want you to do what you think is right, and what you think is
3 fair, and what you think is just.

4 You go back and you decide he's entitled to
5 whatever the football coach at the university makes in a year
6 after losing five games -- two million dollars. And if you
7 give him half that amount, you give him half justice, but you
8 give him injustice. Just do what you think is right. Treat
9 him the way he should be treated. He didn't do anything to
10 cause this. And these people have been horrible to him.

11 THE COURT: All right. Thank you,
12 Mr. English.

13 All right. At this time, ladies and gentlemen
14 of the jury, the Court is going to give you your final
15 instructions and your jury charge. You will get a
16 copy of this to take back to the jury room with you,
17 but I always read it anyway before you go back.

18 JURY CHARGE

19 Now that you have heard and seen all the evidence
20 in this case, and have heard the final argument of the
21 attorneys, it is my duty to instruct you on the law which
22 governs this case.

23 It is your duty as jurors to follow the law as
24 stated in these instructions, and to apply the rules of law to
25 the facts as you find them from the evidence in this case. You