

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 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