

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 of this element of damage is missing based on the
2 proof that's been presented to the Court. And we
3 would respectfully move that the Court direct a
4 verdict in our favor on the issue of damages.

5 THE COURT: Mr. English.

6 MR. ENGLISH: Your Honor, the proof is that
7 this man hasn't worked a day since his wreck two years
8 ago, almost. That proof is that he went to doctors,
9 four certified orthopedic specialists that restricted
10 him to 15 pounds lifting and sent him back to try to
11 go to work. And he couldn't go to work. They
12 wouldn't take him back.

13 The proof is that the other pain doctor that
14 he was referred to by the orthopedicist says he
15 probably won't be able to work. This certainly
16 goes...

17 He can argue that to the jury, but this is a
18 question of -- not of a disability, but it goes to the
19 weight of the evidence.

20 The jury may not believe that he is unable to
21 go to work. Or that he is able to work. But this is
22 certainly a jury question.

23 THE COURT: All right. The Court is going to
24 find that there has been an adequate foundation put in
25 the record with regard to his lost earning capacity

1 based on the fact that he hasn't worked for the last
2 couple of years, and what he was making before that.
3 And I don't think the fact that he made application to
4 some other places for employment changes any of that.

5 So the bottom line is, that's a question for
6 the jury to decide whether or not he's entitled to
7 that element of damage. And if so, how much. But he
8 certainly has laid a predicate for it. So that motion
9 respectfully will be denied.

10 Mr. Woodfin, anything else?

11 MR. WOODFIN: Nothing further, Your Honor.
12 Thank you.

13 THE COURT: Are we ready to bring the jury
14 back in?

15 MR. ENGLISH: I believe so, Your Honor. With
16 30 minutes per side, Mr. Inman will start for us.
17 Would that be too much, Your Honor?

18 THE COURT: Well, do you have witnesses?

19 MR. WOODFIN: Mr. Curd.

20 THE COURT: Okay. Well, have you all agreed
21 on an amount of time for closing?

22 MR. WOODFIN: We really haven't.

23 THE COURT: I would think 30 minutes ought to
24 be sufficient. Actually, neither one of you used the
25 whole 15 the first time. So maybe we won't use the