

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 the negligence was a legal cause of the injury or damages for
2 which a claim was made, you have found that party to be at
3 fault.

4 The plaintiff has the burden to prove the
5 defendant's fault. If the plaintiff fails to do so, you should
6 find no fault on the part of the defendant.

7 I want to talk to you now about the concept
8 called negligence per se. A person who violates a statute or
9 ordinance is negligent. However, a person violating a statute
10 or ordinance is not at fault unless you also find that the
11 violation was a legal cause of the injury or damage for which a
12 claim has been made.

13 The plaintiff in this case alleges that the
14 defendant Fox of Oak Ridge's employee, Mr. Curd, violated the
15 following statute as set forth in §55-8-124(a) of the Tennessee
16 Code Annotated: "The driver of a motor vehicle shall not
17 follow another vehicle more closely than is reasonable and
18 prudent, having due regard for the speed of such vehicles and
19 the traffic upon and the condition of the Highway."

20 I want to talk to you now about damages. If you
21 find in favor of the plaintiff, you should assess damages in an
22 amount that would reasonably compensate him for each of
23 following elements of loss or harm, if any, that he has
24 suffered, or will suffer, as a legal result of the fault of the
25 defendant. Each of these elements of damages is separate. You

1 may not duplicate damages for any element by also including
2 that same loss or harm in another element of damage.

3 The plaintiff Thomas Neely shall be awarded the
4 following elements of damage experienced in the past, if any:
5 Physical pain and suffering; mental or emotional pain and
6 suffering, including anguish; distress; fear; humiliation;
7 grief; shame or worry; loss of capacity for the enjoyment of
8 life; or disfigurement.

9 You shall also award compensation for the present
10 cash value of: Physical pain and suffering; mental or
11 emotional pain and suffering, including anguish; distress;
12 fear; humiliation; grief; shame or worry; loss of capacity for
13 the enjoyment of life; or disfigurement reasonably certain to
14 be experienced by a party in the future.

15 There is no set mathematical formula for
16 computing reasonable compensation for physical pain and
17 suffering, mental or emotional pain and suffering, loss of
18 capacity for the enjoyment of life, disfigurement; nor is the
19 opinion of any witness required as to the amount of such
20 compensation.

21 In making an award for such damages, you must use
22 your best judgment and establish an amount of damages that is
23 fair and reasonable in light of the evidence before you.

24 The next element of damages that the plaintiff
25 Thomas Neely may recover is for reasonable and necessary

1 expenses for medical care, services and supplies actually given
2 in the treatment of a party as shown by the evidence. And the
3 present cash value of medical expenses reasonably certain to be
4 required in the future.

5 The next element of damages that the plaintiff
6 Thomas Neely can recover is the value of the ability to earn
7 money that has been lost in the past, and the present cash
8 value of the ability to earn money that is reasonably certain
9 to be lost in the future.

10 In deciding what, if any, awards should be
11 made for the loss of the ability to earn, or loss of earning
12 capacity, you should consider any evidence of the party's
13 earning capacity, including among other things, the party's
14 health, age, character, occupation, past earnings,
15 intelligence, skill, talent, experience and record of
16 employment. The loss of the ability to earn money may include,
17 but is not limited to, actual loss of income.

18 Plaintiff Thomas Neely also claims damages for
19 permanent injury. To recover damages for permanent injury, the
20 plaintiff must prove the future effect of the injury with
21 reasonable certainty. While it is not necessary that the
22 evidence show conclusively or absolutely that the injury is
23 permanent, you may not award damages for a permanent injury
24 based upon a mere conjection or a possibility.

25 In determining any damages arising in the future,

1 you must not multiply a dollar amount by the length of time you
2 think the damages will continue, or by the number of years the
3 plaintiff is likely to live. Instead, you must determine the
4 present cash value of the damages you have determined the
5 plaintiff is entitled to recover.

6 In using the expression "present cash value" in
7 these instructions, present cash value means the sum of money
8 needed now, which when added to what that sum may reasonably be
9 expected to earn in the future when invested, would equal the
10 amount of the damages, expenses, or earnings at the time in the
11 future when the damages from the injury will be suffered, or
12 the expenses must be paid, or the earnings would have been
13 received.

14 You should also consider the impact of inflation,
15 it's impact on wages, and it's impact on purchasing power in
16 determining the present cash value of future damages. Damages
17 for future pain and suffering, or disability, are also reduced
18 to present value.

19 As shown by the actuarial tables, the plaintiff
20 Tom Neely's life expectancy is 32.85 years. This life
21 expectancy is not conclusive. It's an average life expectancy
22 of persons who have reached a certain age. You should be aware
23 that many persons live longer, and many die sooner than the
24 average.

25 However, this figure may be considered by you in