

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 are not to single out any one instruction as stating the law by  
2 itself. You should consider all these instructions as a whole.

3 You were selected and sworn as jurors in this  
4 lawsuit to decide the issues of facts and to apply the law to  
5 those facts as the Court gives the law to you.

6 You are to perform this duty without any bias or  
7 prejudice to any party. Our system of law does not permit  
8 jurors to be governed by sympathy, prejudice, or public  
9 opinion.

10 The Court, the parties, and the public expect  
11 that you will carefully and impartially consider all the  
12 evidence in the case, follow the law as stated by the Court,  
13 and arrive at a verdict that you think is just, fair, and  
14 right, under all of the proof.

15 The issues for you to decide are as follows:

16 Number one, was the defendant, Fox of Oak Ridge,  
17 negligent?

18 Number two, was the defendant, Fox of Oak  
19 Ridge's, negligence a legal cause of injuries to the plaintiff  
20 Thomas Neely?

21 Number three, if so, what is the total amount of  
22 compensatory damages that the plaintiff Thomas Neely is  
23 entitled to recover?

24 Let me talk to you about burden of proof again.  
25 This, of course, is a civil case. The plaintiff has a burden

1 of proving the case by what is called the preponderance of the  
2 evidence. That means the plaintiff has to produce evidence  
3 which, considered in light of all the facts, leads you to  
4 believe that what the plaintiff claims is more likely true than  
5 not.

6 To put it differently, if you were to put the  
7 plaintiff's and the defendant's evidence on opposite sides of a  
8 scale, the plaintiff's evidence will have to make the scales  
9 tip somewhat on the plaintiff's side. If the plaintiff fails  
10 to meet this burden, the verdict must be for the defendant.

11 Those of you who have sat on criminal cases have  
12 heard the term "proof beyond a reasonable doubt." That  
13 requirement does not apply to a civil case like this one. And  
14 you should therefore put that out of your mind.

15 Generally speaking, there are two types of  
16 evidence from which you as jurors may properly find the truth  
17 as to the facts of this case.

18 One is direct evidence, such as the testimony of  
19 an eyewitness.

20 The other is indirect or circumstantial evidence.  
21 This is proof of a change of circumstances pointing to the  
22 existence, or the nonexistence of certain facts.

23 Circumstantial evidence proves the fact from which an inference  
24 may be drawn.

25 Let me talk to you about impeachment. What we

1 call impeaching a witness is showing that a witness may not be  
2 telling the truth, and it may be done in various ways.

3 One well recognized method of impeaching a  
4 witness is by rigorous cross examination to involve the witness  
5 in contradictions or misrepresentation about material matters  
6 in the lawsuit that the witness cannot, or does not, explain.

7 Another method is to prove that the witness has  
8 made statements out of court that contradict statements made by  
9 him on the witness stand about material matters.

10 Just how much any method of impeachment may have  
11 succeeded in this case is a matter for you, the jury, to  
12 determine.

13 When a witness is impeached, or is shown to have  
14 made contradictory statements, or is shown to have told an  
15 untruth about a material matter, it is entirely proper for you  
16 to disregard his or her testimony altogether, except where it  
17 is corroborated by other credible evidence.

18 Even an impeached witness, however, may tell the  
19 truth. And if you believe such a witness has told the truth,  
20 you must weigh the witness' testimony just as you weigh the  
21 testimony of other witnesses.

22 It is also possible for a witness to be honestly  
23 mistaken about certain facts. And you may consider the  
24 circumstances under which any prior statements were made.

25 If there were any conflict in the evidence, you

1       should reconcile it if you can without hastily or rashly  
2       concluding that any witness has sworn falsely. For the law  
3       presumes that every witness has told, or tried to tell the  
4       truth. And this presumption prevails until the contrary is  
5       made to appear.

6                 Any evidence to which an objection was sustained  
7       by the Court, or any evidence which you were told to disregard,  
8       must be entirely disregarded. And anything you may have seen  
9       or heard outside of the proper course of the trial touching the  
10      merits of this action is not evidence, and must also be  
11      entirely disregarded by you.

12                Statements and arguments of the attorneys are not  
13      evidence in this case, except when they're made as a  
14      stipulation of the facts. But when the attorneys representing  
15      both sides do stipulate, or agree, to a particular fact, you  
16      must accept that fact as having been conclusively proved.

17                The parties have stipulated that on July 12,  
18      2004, Benjamin Curd was operating a Chevrolet van as the agent  
19      of the defendant, Fox of Oak Ridge, Inc. There was a motor  
20      vehicle collision between the defendant's van and the  
21      automobile driven by the plaintiff, Thomas Neely.

22                I'll make a few comments now about witnesses.  
23      You are not bound to decide any issue of fact in accordance  
24      with the testimony of any number of witnesses which does not  
25      produce in your minds belief in the likelihood of truth as

1 against the testimony of a lesser number of witness, or other  
2 evidence which does produce such belief in your mind.

3 In other words, the test is not which side brings  
4 the greater number of witness, or presents the greater quantity  
5 of evidence, but which witness and which evidence appeals to  
6 your minds as being the most accurate and otherwise  
7 trustworthy.

8 The testimony of a single witness which produces  
9 in your mind belief in the likelihood of truth is sufficient  
10 for the proof of any fact, and would justify a verdict in  
11 accordance with such testimony, even though a number of  
12 witnesses may have testified to the contrary, if after  
13 consideration of all the evidence in the case you hold greater  
14 belief in the accuracy and reliability of the one witness.

15 Now, during the trial of this case, certain  
16 testimony has been shown to you by way of video depositions.  
17 These are sworn answers to questions asked of witnesses in  
18 advance of trial by the attorneys for the parties. Testimony  
19 of a witness certainly may be presented in this form.

20 This testimony is entitled to the same  
21 consideration, and is to be judged as to credibility, and  
22 weighed, and otherwise considered by you the same as if these  
23 witnesses had been present and had testified in court.

24 You have heard testimony from expert witnesses in  
25 this case. In this case they were medical doctors. An expert

1 witness is a person with special knowledge or experience that  
2 allows the witness to give an opinion. You do not have to  
3 accept an expert's opinion. In deciding how much weight to  
4 give each expert's opinion, you should consider the witness'  
5 qualification, experience, and how the expert witness reached  
6 his opinion.

7 Remember that you alone decide how much of a  
8 witness' testimony to believe and how much weight it deserves.

9 Now, the defendant in this case, Fox of Oak  
10 Ridge, is a corporation. This case should be considered and  
11 decided by you as an action between persons of equal standing  
12 in the community of equal worth, and holding the same or  
13 similar situations in life.

14 The fact that the defendant in this case is a  
15 corporation must not prejudice you in your deliberation or in  
16 your verdict. You may not discriminate between corporations  
17 and natural individuals. Both are persons in the eyes of the  
18 law. And both are entitled to the same fair and impartial  
19 consideration, and to justice by the same legal standard.

20 I want to explain to you now what we call  
21 respondeat superior liability. A corporation may act only  
22 through natural persons as its agent or employees. In general,  
23 any agent or employee of a corporation may bind the corporation  
24 by the actions done and statements made while acting within the  
25 scope of the authority as delegated to the agent or the