

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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1 employee by the corporation. Or within the scope of the agent
2 or employee's duties as an employee of the corporation.

3 I want to talk to you now about damages. A
4 plaintiff is entitled to recover compensation for an injury
5 that was legally caused by the negligent conduct of a
6 defendant.

7 In this case, the plaintiff has the burden of
8 proving that the defendant was at fault. In this case, this
9 means the plaintiff has the burden of proving that the
10 defendant was negligent. And two, that the negligence was a
11 legal cause of injury to the plaintiff.

12 Negligence is the failure to use reasonable care.
13 It is either doing something that a reasonably careful person
14 would not do, or the failure to do something that a reasonably
15 careful person would do under circumstances similar to those
16 shown by the evidence.

17 A person may assume that every other person will
18 use reasonable care unless the circumstances indicate the
19 contrary to a reasonably careful person.

20 The second part of fault is legal cause. A legal
21 cause of an injury is a cause which in natural and continuous
22 sequence produces an injury, and without which the injury would
23 not have occurred. A single injury can be caused by a
24 negligent act or omission of one or more persons.

25 If you find that a party was negligent, and that

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