

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 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

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



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

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 conjecture 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

1 connection with other evidence relating to the probable life  
2 expectancy of the plaintiff, including evidence of the  
3 plaintiff's health, occupation, habits and other activities.

4 You are not required to assume that a person  
5 would have lived the number of years specified in the life  
6 expectancy table. All persons do not live to the age of  
7 expectancy, of course. So you will take all of the evidence  
8 before you into consideration in deciding how much weight to  
9 give to the evidence provided by proof of expected life  
10 expectancy.

11 All right. Here are your closing instructions.

12 The fact that I have given you instructions  
13 concerning the issue of the plaintiff's damages should not be  
14 interpreted in any way as an indication that the Court believes  
15 that the plaintiff should or should not prevail in this case.  
16 That is for you, members of the jury, to decide.

17 Members of the jury, you must have no prejudice,  
18 bias or sympathy for or against either party in this lawsuit.  
19 Sympathy or hostility has no place in the trial of a lawsuit or  
20 the making up of your mind as to what your verdict shall be.  
21 Do not permit any such personal consideration to enter into  
22 your deliberation.

23 Your verdict must represent the considered  
24 judgment of each juror. In order to return a verdict, it is  
25 necessary that each juror agree to the verdict. In other

1 words, your verdict must be unanimous. And the Court is going  
2 to confirm that your verdict is unanimous when you return your  
3 verdict.

4 It is your duty as jurors to consult with one  
5 another and to deliberate with a view to reaching an agreement,  
6 if you can do so without violence to individual judgment. Each  
7 of you must decide the case for yourself, but only after an  
8 impartial consideration of all of the evidence with your fellow  
9 jurors.

10 In the course of your deliberations, do not  
11 hesitate to re-examine your own views and change your opinion  
12 if you are convinced that it is erroneous. But do not  
13 surrender your honest conviction as to the weight or effect of  
14 evidence solely because of the opinion of your fellow jurors,  
15 or for the mere purpose of returning a verdict.

16 Remember at all times you are not partisan, you  
17 are the judges. You are the judges of the facts in this case.  
18 Your sole interest is to seek the truth from the evidence.

19 Upon retiring to the jury room, you will first  
20 select one of your members to be the foreperson of the jury.  
21 The foreperson will preside over your deliberations and be your  
22 spokesperson in court.

23 When you have reached a verdict, let the court  
24 security officer know, and you will return here to deliver your  
25 verdict.

1           A verdict form has been prepared for your use,  
2       which I will now explain to you. This is the verdict form. It  
3       has three questions.

4           The first question is: Was the defendant Fox of  
5       Oak Ridge, Inc. negligent?

6           You will either answer yes or no to that question.

7           If your answer is no, you simply have your foreperson  
8       sign the form and return to the court.

9           If your answer is yes, you go to number two: Was  
10      the defendant Fox of Oak Ridge's negligence a legal cause of  
11      injury to the plaintiff Thomas Neely?

12          If your answer to that question is yes, you'll go  
13      to the third question, which is: What is the total amount of  
14      compensatory damages that the plaintiff Thomas Neely is  
15      entitled to recover?

16          Whatever your verdict is, it must be signed and  
17      dated by the foreperson of the jury. And it must state that  
18      your decision must be unanimous.

19          Finally, keep in mind that you should not reveal  
20      to any person, including the Court, how you stand numerically  
21      or otherwise on the questions before you until after you have  
22      reached a unanimous verdict.

23          If it should become necessary during your  
24      deliberations to communicate with the Court, you must do so by  
25      sending me a note signed by your foreperson and brought to me



1 by the Court Security Officer. And hopefully that won't be  
2 necessary, but we'll have something for you to write on if it  
3 is necessary.

4 Finally, the Court wants to emphasize that  
5 nothing that has been said in these instructions, or nothing  
6 that the Court did during the course of the trial was meant to  
7 suggest or convey in any way or manner to you any suggestion as  
8 to what the Court thinks your verdict should be.

9 What the verdict shall be in this case is your  
10 sole and exclusive duty and responsibility.

11 All right. The exhibits that were used at trial  
12 will be brought to the jury room as soon as the lawyers and  
13 clerk have gone through them to make sure they are in good  
14 order. You may now retire to deliberate your verdict.

15 Madam Clerk.

16 DEPUTY CLERK: Please rise.

17 (Jury out for deliberation at 3:25.)

18 THE COURT: The correct procedure, so to  
19 speak, of the Court is, at 5:00 to go back to the jury  
20 room and just inquire as to whether they want to stay  
21 or come back in the morning. The HVAC system  
22 automatically shuts off in here at 5:00. So --  
23 although I really don't think we'll get real  
24 uncomfortable. That's what I would do, is just go  
25 ask. I wanted to let you know that and see if anybody