

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 MR. ENGLISH: But it's an inconsistent
2 judgment, Your Honor.

3 THE COURT: Well, let's take a minute. Let me
4 think about it. Let me think about what we're going
5 to do with this.

6 MR. WOODFIN: And that could be taken up,
7 perhaps on a motion for a new trial later. But I
8 think that's the verdict we have today.

9 THE COURT: Well, let me think about if
10 there's a way that this jury can fix this situation
11 before I let them go. Just give me a couple of
12 minutes.

13 (Court in recess.)

14 DEPUTY CLERK: This Court is again in session.

15 THE COURT: Okay. We've got several options
16 that we can pursue. And I've been going over those
17 options, weighing the pros and cons of them.

18 Obviously, there's an ambiguity in the wording
19 and/or inconsistency.

20 One option would be to revise the verdict form
21 and give it to the jury and tell them to start over.
22 I don't know that I can do that.

23 The other option is to bring the jury in and
24 make sure they are unanimous as to Question No. 2.
25 And if they are, then my intention would be to ask the

1 foreperson if they answered "No" to No. 2, then why
2 did they go on and answer No. 3?

3 And based on that information, if that clears
4 up the ambiguity -- perhaps it will. And if it
5 doesn't, then the Court is going to let the jury go
6 and proceed on.

7 MR. WOODFIN: Your Honor, obviously, you can
8 do whatever you see fit in this situation, but I don't
9 necessarily view the ambiguity, I guess, the way the
10 Court does.

11 THE COURT: I understand.

12 MR. WOODFIN: If they had been asked injuries
13 and damages and came up with that figure, I don't
14 think we have a question. But I'm thinking it's very
15 consistent for them to rule that the injuries were not
16 caused based on the proof that was presented, yet
17 awarded amounts for medical expenses that were proven
18 in this case, which is very close to the figure that
19 they arrived at.

20 If the Court sees a problem with the verdict,
21 I'm a little bit concerned about questioning the jury
22 further about why they came up with that number.

23 I guess we have to look it from the
24 perspective of the answer to the second question
25 should just prevent my client from being awarded

1 damages at all.

2 So if anybody has a problem here, it probably
3 should be me. But I'm not asking the Court for any
4 relief. I am asking the Court to allow this verdict
5 to stand, poll the jury on unanimity, and see if they
6 all agree with that number and the reason they arrived
7 at that.

8 And then if motions post trial are filed by
9 either side, for whatever reason, we can take those up
10 at that time. But I think the appropriate thing to do
11 would be to poll the jury and see if they're unanimous
12 in their decision.

13 If their decision is wrong, or some party
14 feels like they have been wronged by their decision, I
15 guess post trial motions would be appropriate.

16 I'm not prepared, and don't want to be
17 prepared to argue any post trial motions today. I
18 will say that no motion was made after the close of
19 plaintiff's proof, so I'm not sure they are entitled
20 to ask for a judgment notwithstanding the verdict of
21 this case on the damages issue, which is what we're
22 dealing with here.

23 So I think on behalf of my client, I would
24 just request the Court consider asking the jury their
25 opinion about whether or not this was unanimous.

1 If they say that they were, let the verdict
2 stand, and let us file motions to clear it up if it
3 needs to be cleared up.

4 THE COURT: Well, of course, either party can
5 file a motion in the nature of a mistrial even after
6 the verdict has been returned if the verdict is a
7 flawed one.

8 Is there anything else you want to add,
9 Mr. English?

10 MR. ENGLISH: Yes, Your Honor. It's obviously
11 an inconsistent verdict for them to find Fox negligent
12 and say that Fox did not cause the injuries, and then
13 to award damages, you just can't do that.

14 If they had said "Yes" to Question No. 2 and
15 given us thirty thousand dollars (\$30,000), we would
16 be stuck with it.

17 But to say "No," they're not liable for any
18 damages and to give thirty thousand dollars (\$30,000),
19 that's a very inconsistent verdict. And it just can't
20 stand, Your Honor.

21 I think I agree with Clint on that. I think
22 it would be very prejudicial to my client to bring the
23 same jury in here that has just held up their hand and
24 sworn that this was their verdict unanimously and ask
25 them again about it and try to break it down. I think

1 we need another jury to try this case.

2 THE COURT: All right. Well, I appreciate
3 those comments. It's difficult to know exactly what
4 to do. But we're going to ask one question and we're
5 going to see if we get some clarification, and then
6 we'll go from there.

7 Bring the jury in.

8 (Jury in at 5:30.)

9 DEPUTY CLERK: This Court is again in session.
10 Please be seated.

11 THE COURT: I'm sorry to keep you-all longer.
12 But before the Court can accept the verdict form, the
13 Court will need to make another inquiry with regard
14 to -- and the Court understands your response to
15 Question No. 1, being, "Yes."

16 Question No. 2: Was the Defendant Fox of Oak
17 Ridge, Inc.'s negligence a legal cause of injuries to
18 the Plaintiff, Tom Neely?

19 Your answer is "No."

20 And is that the unanimous verdict of everyone
21 on the jury? Please raise your right hand if it is.

22 All right then. All right hands were raised.

23 I must ask you, Madam Foreperson, given that
24 answer to Question No. 2, why did the jury proceed to
25 answer Question No. 3?