

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

Thomas Neely, :
 :
 Plaintiff, :
 :
 vs. : Case No. 3:05-cv-304
 :
 Fox of Oak Ridge, : **Jury Trial-Day 1**
 :
 Defendant. :

Transcript of proceedings before the Honorable H. Bruce Guyton,
U. S. Magistrate Judge, on June 20th, 2006.

Appearances:

On behalf of the Plaintiff:

Robert J. English, Esq.
Michael C. Inman, Esq.
Knoxville, Tennessee

On behalf of the Defendant:

Clint J. Woodfin, Esq.
Jennifer M. Caywood, Esq.
Knoxville, Tennessee

Court Reporter:

Donnetta Kocuba, RMR
800 Market Street, Suite 132
Knoxville, Tennessee 37902
(865) 524-4590

1 MR. ENGLISH: Have any of you ever been involved in
2 a personal injury lawsuit arising out of any kind of personal injury,
3 whether you sued someone or someone has sued you? Mr. (Juror
4 137), you held your hand up?

5 JUROR NO. 137: Yeah, my boy was— he graduated, his
6 graduation, him going to school. Well, I don't know if I can talk
7 about it, but, anyway, got his nose the car just a little bit over the
8 white line, they was a officer hit him, didn't even— and I got sued
9 for \$300,000.

10 MR. ENGLISH: Do you think that would cause you
11 any problems in sitting in this case and listening to the facts and
12 applying the law the judge gives you at the end of the trial and
13 doing what's right and what's just in this case?

14 JUROR NO. 137: I would think so.

15 MR. ENGLISH: We want you to sit on this case if you
16 feel comfortable doing that, but, you know, we're entitled to a fair
17 trial just like the corporation, the Fox Corporation's entitled to a
18 fair trial. And if the fact that you had been— had a suit filed against
19 you once before, would cause you any problems, you know, we
20 need to know it now.

21 JUROR NO. 137: I'm still taking medication from it.
22 It's not been over long.

23 MR. ENGLISH: Okay. When you say you're still
24 taking medication, were you actually in the lawsuit yourself— were
25 you in the car yourself?

1 JUROR NO. 137: No. I was at work.

2 MR. ENGLISH: Did it just tear up your nerves?

3 JUROR NO. 137: Yeah.

4 MR. ENGLISH: Okay. Would that cause you any
5 problems?

6 JUROR NO. 137: That's one of the things I don't know
7 if I could give a- I mean, I don't have a good education to start
8 with.

9 MR. ENGLISH: You're doing fine, sir, you're doing
10 fine, sir.

11 JUROR NO. 137: I can't spell. But the thing that
12 bothers me is whether I, personally, myself, make the right
13 decision. I would hate to- the Bible tells us, "Judge not lest thou be
14 judged," and I try to live my life by the Bible. And I would hate to
15 find him not guilty and him be guilty, me not knowing for sure.

16 MR. ENGLISH: Would you feel more comfortable not
17 sitting on this particular jury, in light of the fact of what you just
18 told us and the fact that you're still taking medication because of
19 that? Would you feel more comfortable?

20 JUROR NO. 137: Probably would, because I've not
21 took my medication this morning.

22 MR. ENGLISH: Okay, sir. Your Honor, I would like
23 to have this man excused.

24 THE COURT: All right. The Court will grant your
25 request. Mr. (Juror 137), the Court appreciates your honesty in

1 Yes, sir, Mr. (Juror 23)? He's got the microphone there
2 behind you. Again, I don't want to get too personal, but what type
3 of back or neck problem did you have?

4 JUROR NO. 23: I had two discs removed and three
5 vertebrae fused in my back.

6 MR. WOODFIN: In your lower back?

7 JUROR NO. 23: Yes, sir.

8 MR. WOODFIN: Was that a result of some accident?

9 JUROR NO. 23: Yes, sir.

10 MR. WOODFIN: How long ago did that occur, sir?

11 JUROR NO. 23: Happened in 1969, in Vietnam, in a
12 helicopter crash.

13 MR. WOODFIN: In looking at your information that
14 you completed after that, you were able to go back and go to work
15 and worked for some years; is that correct?

16 JUROR NO. 23: Yes. I still work now.

17 MR. WOODFIN: How are you doing as far as being
18 able to sit today? Is that something you think may trouble you a
19 little bit or is that something you think you'll be okay with?

20 JUROR NO. 23: It bothers me from time to time, but
21 not, not to where I can't—I take medication for it, though. This is
22 going to be a hard—this is going to be a hard case for me for two
23 reasons. One, I was on a jury that was almost exactly this kind of
24 case. It was a collision case and the person was killed in the car,
25 and it was on a wet, slick, rainy road in Georgia.

1 For three years I drove an ambulance, and I have seen every
2 kind of wreck there's been during that time. But right now I'm
3 waiting on surgery with an orthopedic surgeon for a rotor cuff in
4 my right shoulder that's pretty bad, and that's been going on for
5 about two months.

6 So I spent, I spent 30 years in the Navy, and I spent that 30
7 years in the medical and dental corps. And when it comes to the
8 pain part of this case, not only have I been through a good bit of my
9 own, but I have seen a lot.

10 I spent two tours in Vietnam, and I have seen a lot of pain,
11 stuff. I don't know. I'd love to hear the case and I would like to
12 make— I would like to be able to pass judgment on it, but I'm awful
13 afraid that if you really prove that there's a lot of pain involved in
14 this, then that's going to persuade me, I can tell you now. I'm just
15 telling you, I guess; okay?

16 MR. WOODFIN: I appreciate your candidness about
17 that. Do you think that this particular case and what you've heard
18 about it so far may not be the best case for you to sit on,
19 considering what testimony you're probably going to hear about
20 what Mr. Neely claims, and also your own situation?

21 JUROR NO. 23: I think so. I don't want to be unfair to
22 the folks in the case, and I'm not sure that I can't be if there's a lot
23 of pain involved in this.

24 MR. WOODFIN: I appreciate your candidness, Mr.
25 (Juror 23). Your Honor, I'd move that Mr. (Juror 23) be stricken

1 for cause at this point, given what he's told the Court and us about
2 how he feels about this case.

3 THE COURT: Mr. (Juror 23), are you telling us that
4 you're concerned about your ability to reach a fair verdict in this
5 matter if there's a claimed element of pain as part of the Plaintiff's
6 damages?

7 JUROR NO. 23: Yes, sir.

8 THE COURT: Any comment, Mr. English?

9 MR. ENGLISH: Your Honor, I can't object to this
10 man's statements. I certainly don't object.

11 THE COURT: All right. The request will be granted.
12 Mr. (Juror 23) will be excused for cause. Madam Clerk, if you'll
13 call another juror, please. Mr. (Juror 23), I believe the Clerk's
14 Office will call— or you need to call and check in with the Clerk's
15 Office.

16 (Discussion between Court/courtroom deputy off the record.)

17 THE COURT: Okay. Well, you have to report back,
18 yes, sir. Thank you, sir.

19 (Juror No. 23 excused; and Juror No. 154 called.)

20 (Juror 4 spoke off the record to court security officer; court
21 security officer spoke off the record at the bench with the Court.)

22 THE COURT: Would this impact your ability to sit on
23 the jury?

24 JUROR NO. 4: (Nodded.)

25 THE COURT: It would? All right. Why don't we have

1 heads, and it's part of driving in East Tennessee, I think,
2 sometimes. Was anyone injured in that accident?

3 (All three jurors shook heads no.)

4 MR. WOODFIN: Was there any type of lawsuit filed
5 over any of those issues that were involved in that accident?

6 JUROR NO. 7: No.

7 MR. WOODFIN: Was it such an accident that there
8 was just minor damage done to the automobiles involved?

9 (All three jurors nodded yes.)

10 MR. WOODFIN: Do you think that will impact your
11 ability to listen to the evidence in this case? We're going to see
12 some pictures of the cars, hear testimony about how the accident
13 happened. Do you think that will impact you any way, negatively
14 or positively?

15 (All three jurors shook heads no.)

16 MR. WOODFIN: Okay. Thank you all.

17 THE COURT: All right. Counsel, the forms are on your
18 table. Madam Clerk, if you would collect those, please.

19 All right. Mr. (Juror 7), you are excused, sir. You need to
20 report back in the morning. Appreciate your patience this morning.

21 (Juror 7 excused and left the courtroom.)

22 THE COURT: Madam Clerk, if you would call another
23 juror, please.

24 (Whereupon, Juror No. 19 was called to the jury box.)

25 THE COURT: All right. Mr. (Juror 19), is now going

1 to be in the number three position. Good morning, Mr. (Juror 19).
2 Have you been able to hear all the questions and answers that have
3 been raised so far this morning?

4 JUROR NO. 19: Yes.

5 THE COURT: Do you know Mr. Neely, sir?

6 JUROR NO. 19: No, I do not.

7 THE COURT: Do you know Mr. Fox?

8 JUROR NO. 19: No, sir.

9 THE COURT: Have you had any dealings with Fox of
10 Oak Ridge?

11 JUROR NO. 19: I purchased a vehicle there.

12 THE COURT: Okay. When was that?

13 JUROR NO. 19: Quite a number of years ago.

14 THE COURT: Okay. More than five or six years ago?

15 JUROR NO. 19: Yes. Ten, 15.

16 THE COURT: Does that experience affect in any way
17 your thoughts about this potential case?

18 JUROR NO. 19: No, sir.

19 THE COURT: Okay. Do you know any of the lawyers
20 here today?

21 JUROR NO. 19: No, sir.

22 THE COURT: Are you currently a party in any lawsuit
23 yourself, sir?

24 JUROR NO. 19: No, sir.

25 THE COURT: Any members of your immediate family?

1 JUROR NO. 19: No.

2 THE COURT: Have you ever been a party to a lawsuit
3 in a civil case?

4 JUROR NO. 19: No, sir.

5 THE COURT: Have you ever sat on a civil jury before?

6 JUROR NO. 19: No, sir.

7 THE COURT: Have you ever sat on a jury in a criminal
8 case before?

9 JUROR NO. 19: Yes.

10 THE COURT: And when was that, sir?

11 JUROR NO. 19: I sat in on three in the last two months.

12 THE COURT: Were those all here in federal court?

13 JUROR NO. 19: Yes, they were.

14 THE COURT: Well, sounds like you probably don't
15 have trouble sitting for a couple days then to hear a case, if you've
16 done all that. But I must ask you, do you have any problem sitting
17 in this case for a couple days?

18 JUROR NO. 19: I have some work hardships. I'm a
19 graphic designer. We only have two on staff— we're not a huge
20 company— and one is on vacation at the moment. My boss probably
21 wouldn't be thrilled, but—

22 THE COURT: Well, tell me about that. I assume when
23 you were on these other juries that there were folks there to cover
24 for you; is that correct?

25 JUROR NO. 19: Yes, at those times.

1 THE COURT: And you don't have anyone to cover for
2 you this week?

3 JUROR NO. 19: No. There's just the two of us that are
4 in the graphic design, and the other gentleman's at Disney World
5 right now.

6 THE COURT: Okay. If only you'd known, you could
7 have gone to Disney World?

8 JUROR NO. 19: Believe me, I'd much rather be there.

9 THE COURT: Well, in light of your— what I would call
10 exemplary service recently, I'm tempted to go ahead and excuse
11 you for cause, sir. We appreciate people who sacrifice for the
12 community by serving on a jury, but we don't want to beat them to
13 death at the same time.

14 Counsel, Mr. English, do you have any comments?

15 MR. ENGLISH: We certainly have no objections.

16 THE COURT: Mr. Woodfin?

17 MR. WOODFIN: No objection at all.

18 THE COURT: All right, sir. We will go ahead and
19 excuse you for cause.

20 JUROR NO. 19: Okay. Very sorry.

21 THE COURT: That's fine. I understand. We've already
22 cost you half a day.

23 JUROR NO. 19: I think he'll let me off on that.

24 (Juror 19 excused and left the courtroom.)

25 THE COURT: Madam Clerk?