

**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,	:	<b>Jury Trial-Day 1</b>
	:	
Defendant.	:	

Transcript of proceedings before the Honorable H. Bruce Guyton,  
U. S. Magistrate Judge, on June 20<sup>th</sup>, 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:

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1 MR. ENGLISH: Yes, your Honor.

2 THE COURT: All right. Madam Clerk, bring the jury  
3 in, please.

4 (Jury reconvened in courtroom at 1:03 p.m.)

5 THE COURT: Plaintiff call his first witness, please.

6 MR. ENGLISH: Plaintiff calls Thomas Neely.

7 THE COURT: Mr. Neely, if you could make your way  
8 up to the witness stand, please, and the courtroom deputy will  
9 swear you in.

10 COURTROOM DEPUTY: Would you please raise  
11 your right hand? Do you solemnly swear that the testimony you're  
12 about to give in this matter now before this court will be the truth,  
13 the whole truth, and nothing but the truth, so help you God?

14 MR. NEELY: I do.

15 THE COURT: All right. Mr. English?

16 **DIRECT EXAMINATION**

17 Q. Would you state your name for the record, please?

18 A. Thomas E. Neely.

19 Q. Where do you live, Tom?

20 A. (Address redacted), Strunk, Kentucky.

21 Q. How old are you?

22 A. I'm 48 years of age.

23 Q. And your date of birth?

24 A. (Date of birth redacted).

25 Q. Who do you live with at that address?

1 A. I live with my wife and two children.

2 Q. Okay. Is this your wife seated back there?

3 A. Yes, Sandra.

4 Q. How long have you and Sandy been married?

5 A. Almost 23 years.

6 Q. What are the ages of your children?

7 A. One and a half– pardon me– two and a half. He’ll be three in  
8 September.

9 Q. Okay. And Danielle, how old is she?

10 A. She’s seven months.

11 Q. Okay. Does your wife work outside the home?

12 A. We sell a few things at the local flea market is all.

13 Q. Okay. Tom, what kind of educational background do you  
14 have?

15 A. I graduated high school and I also graduated from Somerset  
16 Vocational Technical School.

17 Q. Okay. What was your area of interest there?

18 A. Graphic arts.

19 Q. Okay. Did you work in that field for a period of time?

20 A. One job is all, for a short period of time.

21 Q. Okay. Tell the jury about when you went to work at Scott  
22 County Hospital. What was your job, what was your title, and what  
23 did you do there?

24 A. I worked at Scott County Hospital for almost 12 years. I was  
25 an orderly and security officer. My jobs included patrolling the

1 hospital. I also brought in patients, when the need arise, from the  
2 emergency room and other areas of the hospital. When a patient  
3 was admitted, we also took them to bed and got them settled. If a  
4 patient needed any assistance, we were there to help out with that.  
5 We helped out the nurses in all kinds of other functions.

6 Q. Did that job have any lifting requirements, Tom?

7 A. Yeah. We had to be able to lift the patients and perform CPR  
8 and everything.

9 Q. Did you have to stand up much or little on that job?

10 A. Over 90 per cent of the time.

11 Q. Okay. When you left that job, where did you go to work?

12 A. I went to Ridgeview Psychiatric Hospital.

13 Q. Okay. And approximately when did you go to Ridgeview?

14 A. In April.

15 Q. Okay. And in April of what year?

16 A. 2003, I believe is when.

17 Q. Okay. When you went to Ridgeview, describe to the jury what  
18 your job was there.

19 A. I was a psychiatric tech. We were involved in different  
20 functions with the patients. We admitted them, went and dealt with  
21 the patients on a one-to-one basis, basically anything that the  
22 patient had needed. Sometimes the patients had to— needed help  
23 getting dressed, bathed.

24 Q. Did you have to do any lifting on that job?

25 A. Yeah. Sometimes we had to help the patients up. Some of

1    them were— needed assistance. Sometimes they got out of control.  
2    It was a psychiatric hospital.

3    Q.    What were your lifting requirements on that job?

4    A.    Seventy-five pounds.

5    Q.    Okay. Could you go back to that job now in the condition  
6    your back's in?

7    A.    No, sir. They won't let you do it because of the drug problem.

8               MR. WOODFIN:   Object to the response, your Honor.  
9    It calls for hearsay as to what someone else said about that job.

10              THE COURT:   Overruled.

11   Q.    Tom, if you would, did you like the last job you were in at  
12   Ridgeview?

13   A.    Yes. It was one of the best jobs I've ever had in my life.

14   Q.    Did you intend to keep that job for a while?

15   A.    Until I retired, hopefully.

16   Q.    Okay. Have you worked at that job since this accident?

17   A.    No. I was not permitted.

18   Q.    Okay. Well, could you, if you had been permitted, could you  
19   do that job?

20   A.    No, I couldn't. I couldn't perform the job.

21   Q.    Okay. Did you ever miss much time from work at Ridgeview  
22   after you went to work there in April, I believe, of '03?

23   A.    No.

24   Q.    What about your job at Scott County Hospital? Did you miss  
25   any extensive period of time after you went to work there for 12

1 years?

2 A. No, I did not.

3 Q. Okay. You ever sued anybody, Tom, other than this one time?

4 A. No.

5 Q. Ever had any car wrecks other than this one time?

6 A. No.

7 Q. Okay. On the day of the accident, just tell the jury how this  
8 wreck happened.

9 A. I was on my way to work.

10 Q. I'm going to stop you from time to time, Tom, if you don't  
11 mind. How far did you have to drive to work each day?

12 A. It was roughly 90 to 100 miles from my home to Ridgeview,  
13 which is located next to Methodist Medical Center.

14 Q. Okay. Go ahead.

15 A. On my way to work, I was traveling down the road, and I  
16 traveled the same way every day. I was— it had just started raining,  
17 the road was just a little wet. I was following a vehicle that turned  
18 on its turn signal to make a right-hand turn into a group of  
19 businesses. I knew by prior drives down through this area that the  
20 vehicle would have to come to almost a complete stop in order to  
21 make the right-hand turn into the group of businesses.

22 Q. Why is that?

23 A. There's a large hump going into the group of businesses that  
24 you have to go over, and you really have to come almost to a dead  
25 stop in order to make the right hand turn into the businesses.

1 Q. Have you gone out, at my request, and measured how high that  
2 hump is that they have to turn over?

3 A. Yes, I did.

4 Q. How high is that?

5 A. It's seven inches.

6 Q. Okay. I'm going to show you a picture which has been marked  
7 Exhibit 5. I'm going to put it up on the screen, hopefully, and I  
8 need some help in adjusting this, I believe. Right side up. Does  
9 Exhibit No. 5 show the hump you're talking about?

10 A. Yes, it does.

11 Q. Can you see that, Tom?

12 A. Yes, I do.

13 Q. Can the members of the jury see that? Is this the hump you're  
14 talking about right— right here?

15 A. Yes, it is. There is a large hump there. The road is real  
16 straight, and you can see a good distance.

17 Q. When the car, the vehicle in front of you, slowed down, what  
18 did you do? How fast were you going when it started to turn?

19 A. The road was wet and everything, so I was going maybe 35  
20 miles an hour. It's a 45 zone through there.

21 Q. Okay. Four lanes?

22 A. Yes.

23 Q. And whenever the car stopped in front of you or slowed down  
24 to turn, what did you do?

25 A. I also slowed and come almost to a dead stop.

1 Q. Okay. And when you came almost to a dead stop, what  
2 happened to you?

3 A. I looked into my rearview mirror and seen a van was coming,  
4 and I knew he wasn't going to be able to stop.

5 Q. Is that the van that hit you, the big van that hit you?

6 A. Yes, I presume. It was a white van coming at me.

7 Q. Okay. Show you another photograph which has previously  
8 been marked as Exhibit 4, and does that show the direction that you  
9 were coming from?

10 A. Yes. It shows the road where we were approaching, where he  
11 was approaching, the area right there.

12 Q. There is a car in the background here that I'm pointing to?

13 A. Yes.

14 Q. Is that the direction you were going?

15 A. Yes. I was coming.

16 Q. Or coming towards you? Okay.

17 A. Yes.

18 Q. And this is a four-lane road running generally east and west in  
19 Clinton; is it not?

20 A. Yes, it is.

21 Q. Okay. And where did you measure the curb to see that it was  
22 seven inches, the bump?

23 A. Right there is— does it show up?

24 Q. Is this where you measured?

25 A. Yes, sir, just a little bit this way of that, uh-huh.



1 Q. Right in there?

2 A. Yes, uh-huh.

3 Q. Okay. And how fast were you going, approximately, Tom,  
4 when you got impacted by the van?

5 A. I was almost to a stop.

6 Q. Okay. Did you have any trouble stopping and avoiding the car  
7 that you were following?

8 A. Oh, yeah, I wasn't— it made the turn successfully.

9 Q. Okay. You didn't hit it?

10 A. No.

11 Q. You weren't knocked into it?

12 A. No, sir.

13 Q. Okay. When you were hit, what happened to the car that you  
14 were in and what happened to you?

15 A. I presume I rolled forward. I was looking up at the ceiling of  
16 the vehicle after the impact.

17 Q. Why were you doing that?

18 A. After the impact I was slung forward, and then my seatbelt  
19 caught me, and I was ejected backwards, and I ended up in the back  
20 seat after the seat broke, and I was laying in a flat position, looking  
21 up at the top of the car.

22 Q. I'll show you Exhibit No. 1. Does that show the seat of your  
23 car that you were in when this wreck happened, in its broke  
24 position?

25 A. Yes. That appears to be it, yes.

1 Q. Okay. And I hand you also what's previously been marked as  
2 Exhibit No. 2. Does this show some of the damage to the rear of  
3 your car in this impact?

4 A. Yes, it does.

5 Q. Okay. What kind of a car was this, Tom?

6 A. It was a Kia Sephia.

7 Q. And does this show the same car that was in the impact?

8 A. Yes, it does.

9 Q. What happened to that car? Do you still have it?

10 A. No, I do not.

11 Q. Was it damaged in the wreck?

12 A. It was totaled.

13 MR. WOODFIN: Your Honor, I'll object to that  
14 response. That requires the Plaintiff to give information from  
15 another source, which would be hearsay. There's no proof in the  
16 record that Mr. Neely owned the car, and he's not competent to give  
17 testimony about the value of it.

18 MR. ENGLISH: Let me clarify it a bit, your Honor.

19 THE COURT: Are you withdrawing your last question?

20 MR. ENGLISH: No, your Honor. I'm going to clarify  
21 it, if I may.

22 THE COURT: All right.

23 Q. Who was the titled owner of this car?

24 (Plaintiff's Exhibit No. 3, a photograph, on viewing screen.)

25 A. My wife.

1 Q. Okay. Is this a car that you drove yourself on many occasions?

2 A. Yes, it is.

3 Q. Okay. Was it titled exclusively her name or your name and  
4 her name?

5 A. Her name.

6 Q. Okay. And were you driving it, when this happened, with her  
7 permission?

8 A. Yes.

9 Q. And were you driving it or had you driven it before with her  
10 permission ?

11 A. Yes.

12 Q. Were you responsible for the maintenance of this car?

13 A. Yes.

14 Q. Were you responsible for putting gas in the car and keeping  
15 the oil filled up and everything in this car?

16 A. Yes, I was.

17 Q. Okay. Did you work on this car yourself?

18 A. No. I'm not a mechanic.

19 Q. Okay. Did you ever drive this car of any significance— well,  
20 did you ever drive this car after the wreck?

21 A. Yes, I did.

22 Q. Tell the jury about when you drove it after the wreck.

23 A. I picked it up from the impound— it was impounded at a local  
24 service station there in Clinton— and drove it back home.

25 Q. How long did it take you to drive it back home that time?

1 A. Two and a half hours, approximately.

2 Q. Okay. Did you ever drive it after that?

3 A. I drove it a half a mile to my mother's, where it remained until  
4 it was picked up after it was settled.

5 Q. Okay. Was it salvaged?

6 A. Yes, it was.

7 Q. Okay. Have you ever driven this car or your wife ever driven  
8 this car since this wreck?

9 A. No.

10 Q. What injuries did you sustain in this wreck, Tom?

11 A. My back is messed up, along with my neck.

12 Q. And you're a big man. How much do you weigh?

13 A. Around 300. It varies between three to three-ten, somewhere  
14 around there.

15 Q. Did you weigh that before this wreck?

16 A. Yes. I've always been big.

17 Q. Had you had any problems working for 12 years at Scott  
18 County Hospital, weighing 300 pounds?

19 A. No, I had not.

20 Q. Had you ever had any trouble working at Ridgeview  
21 Psychiatric Hospital weighing 300 pounds?

22 A. No, I have not, did not.

23 Q. Okay. Had you ever been to a doctor for any neck problems of  
24 any significance or any back problems of any significance before  
25 this wreck?

1 A. No, I did not.

2 Q. Tell us about fracturing your tail bone.

3 A. I worked at a local grocery store when I was young, and we  
4 were taking inventory up on top of one of the dairy cases. I stepped  
5 back off of the dairy case, and somebody had pushed a buggy  
6 behind me without my knowledge, and I fractured the last bone in  
7 your tail bone section, and that's what happened.

8 Q. Had you ever had an MRI of your neck before this wreck?

9 A. No.

10 Q. Had you ever had an MRI of your low back before this wreck?

11 A. No.

12 Q. Had you ever been to a chiropractor or an orthopedist or a  
13 medical doctor for treatment and therapy to your neck before this  
14 wreck?

15 A. No.

16 Q. What about your low back before this wreck?

17 A. No.

18 Q. Tom, what happened at the scene of the wreck? Did you have  
19 any conversations with the driver of the van that hit you?

20 A. No.

21 Q. Okay. Did the police come to the wreck?

22 A. Yes, they did.

23 Q. As a result of your conversations with the police, was an  
24 ambulance called?

25 A. Yes. An officer asked me if I wanted an ambulance.

1 Q. Okay. And did you take one?

2 A. Yes, I did.

3 Q. Where did the ambulance take you?

4 A. I was transported by EMS to Oak Ridge Methodist Medical  
5 E.R.

6 Q. And what did they do for you down there?

7 A. They did x-rays and C.T.'s of my back and my neck.

8 Q. Did they hospitalize you overnight?

9 A. No. They told me they would release me if I followed up with  
10 my family doctor the next day.

11 Q. Did you do so?

12 A. Yes, I did.

13 Q. Did you go to your family doctor the next day?

14 A. Yes, I did.

15 Q. Who was your family doctor?

16 A. Dr. John Martin.

17 Q. And when you went to Dr. Martin the next day, what did he do  
18 about your neck and your back problems from this wreck?

19 MR. WOODFIN: Your Honor, I want to object. Dr.  
20 Martin is not here to testify about what he did or did not do for Mr.  
21 Neely, and the actions or inactions can be determined to be hearsay  
22 just as well as any words can in that situation.

23 MR. ENGLISH: I'm just asking what the doctor did for  
24 him, your Honor, not what the doctor said. That would, obviously,  
25 be hearsay.

1 THE COURT: He's entitled to describe the treatment he  
2 received. Overruled.

3 Q. That's what I want you to do. What treatment did you—

4 A. Dr. Martin recommended that I have some physical therapy  
5 done and that he was going to try to find me an orthopedic surgeon.

6 Q. Was he able to send you to an orthopedic doctor?

7 A. No, because I did not have insurance.

8 Q. Okay. Did you—

9 MR. WOODFIN: Your Honor, I'll object to the  
10 mention of whether or not the Plaintiff is insured or not insured.  
11 We had a motion in limine on that issue in which the Court made  
12 certain rulings about the mention of that. If we could have a  
13 curative instruction to the jury at this point, I think that would be  
14 helpful.

15 THE COURT: Well, it will be sustained. This case is  
16 not a case about insurance; it's a case about liabilities and injuries.

17 MR. ENGLISH: Yes, sir.

18 THE COURT: And so the jury will disregard that—

19 Q. Don't mention insurance.

20 A. All right.

21 THE COURT: —comment. It's not relevant to this case.

22 Q. Right. When you went to take therapy at the instance of Dr.  
23 Martin, your family doctor, what kind of therapy did they give you  
24 and where was this?

25 A. Physical therapy was done in Oneida, at a local physical

1 therapy area right there. They performed heat therapy on my back  
2 and my neck and stimulation therapy.

3 Q. Was it about that time, Tom, that you hired Mr. Inman to  
4 represent you in this case?

5 A. Yes, it was. My wife—

6 Q. Did he get you in to see an orthopedic doctor?

7 A. Yes, he did.

8 Q. Who initially did he send you to?

9 A. He give me the choice of some doctors, and I chose one.

10 Q. Okay. Was that Dr. Degnan?

11 A. Yes, it was.

12 Q. What did Dr. Degnan do for you; not what he told you, but  
13 what did he do?

14 A. He looked at my neck and everything and prescribed some  
15 medications.

16 Q. Did he keep you on physical therapy in Oneida?

17 A. Yes, he did.

18 Q. And how long did you end up going to Dr. Degnan?

19 A. Just a short period of time.

20 Q. Okay. And then did you— well, were you satisfied with the  
21 treatment you were getting from him?

22 A. No, I wasn't. He did not do much for me.

23 Q. Were you still in pain when you were seeing him?

24 A. Yes, I was. I wasn't satisfied with the care.

25 Q. Okay. Did you go see a doctor by the name of Dr. Koenig?



1 A. Yes. Yes, I did.

2 Q. Okay. Did Mr. Inman set you up with that one also?

3 A. Yes. I asked him to recommend another group of physicians,  
4 and I chose Dr. Koenig.

5 Q. Did he recommend people other than Dr. Koenig?

6 A. Yes. He give me a choice to choose from.

7 Q. Okay. And when you started going to see Dr. Koenig,  
8 approximately how long did you go see him for?

9 A. Over a year, I think it was.

10 Q. Okay. And what did he do for you over the period of time that  
11 you saw him?

12 A. He performed C.T., examined me for my back, to start with,  
13 and then the neck, too.

14 Q. Okay. Did he order two MRIs of your neck and your back?

15 A. Yes.

16 Q. And did he order— you had a TENS unit at one time; is that  
17 right?

18 A. Yes, I did.

19 Q. Who ordered that, if you recall?

20 A. I don't recall at this time.

21 Q. Okay. And did he refer you, he being Dr. Koenig, did he refer  
22 you to a neurologist by the name of Jack Scariano?

23 A. Yes, he did.

24 Q. And did you go see him for a time or two?

25 A. Yes, I did.

1 Q. Okay. And did he later refer you, when he quit seeing you, for  
2 the last time, did he refer you to anyone else?

3 A. I don't recall.

4 Q. What about Dr. Browder? Who referred you to Dr. Browder?

5 A. I think he did.

6 Q. Okay. Did he suggest a pain clinic at one time?

7 A. Yes. He thought I needed something extra.

8 MR. ENGLISH: Okay. Your Honor, I'd like to show a  
9 list of specialists, damages that we've just talked about.

10 Q. And do you recognize these bills, Tom, as being bills that you  
11 incurred from the date of the accident up until the time you left Dr.  
12 Koenig's treatment?

13 A. Yes, I do.

14 THE COURT: What exhibit number is that, counsel?

15 MR. ENGLISH: This is Exhibit No. 9, your Honor.

16 Putting them on a little bit out of order because I was a little— I  
17 don't think the jury needs to see all of that. Okay. Can we, like,  
18 turn it around the other way? All of it, your Honor, I'd like for  
19 them to see all of them.

20 Q. The bills that are listed, the 12 bills that are listed on Exhibit  
21 No. 9, those are bills that you incurred as a result of the injuries  
22 that you treated from this wreck; is that correct?

23 A. Yes, it was.

24 Q. Had you ever been to a pain doctor before this wreck?

25 A. No. I never knew.

1 Q. Had you ever been to a neurologist before this wreck?

2 A. No.

3 Q. Had you ever taken physical therapy of any sort before this  
4 wreck?

5 A. No.

6 Q. Once Dr. Koenig finished treating you, you were seen by Dr.  
7 Joe Browder; were you not?

8 A. Yes, I was.

9 Q. And according to documents that we've furnished counsel for  
10 Fox Corporation, Exhibit No. 10, did you first go and see Dr.  
11 Browder on or about the 14<sup>th</sup> of—

12 A. Yes, I did.

13 Q. Let me finish my question.

14 A. Sorry.

15 Q. —of July of '05; is that correct?

16 A. Yes, it is.

17 Q. And were you seeing him as late as the 6<sup>th</sup> of January of this  
18 year, right before we took his deposition?

19 A. Yes.

20 Q. Okay. Now, did Dr. Browder do a caudal block on you in  
21 August and September of '05?

22 A. Yes.

23 Q. What part of your body; do you know?

24 A. On my neck.

25 Q. Did it help you any?

1 A. No. I had no relief.

2 Q. Okay. And after January of '05, have you seen any doctors for  
3 injuries from this wreck?

4 A. Just Dr. Browder.

5 Q. How often do you see him?

6 A. On a monthly basis.

7 Q. When is the last time you saw him?

8 A. Yesterday.

9 Q. And when you go see Dr. Browder, what does he do for you?

10 A. They do an assessment and then give me refills on my  
11 methadone.

12 Q. Okay. Is methadone addictive; do you know?

13 A. Yes, it is.

14 Q. Okay. Dr. Browder's bill totals \$5,743.20. Is that what your  
15 bill with him was as of January of '06, to the best of your  
16 knowledge?

17 A. Yes, it is.

18 MR. ENGLISH: That's Exhibit 10, your Honor.

19 Q. What did Dr. Browder start you out on, what amount of  
20 methadone?

21 A. Two pills a day, ten milligrams.

22 Q. Ten milligrams?

23 A. Twice a day.

24 Q. Okay. Twenty milligrams a day?

25 A. Yes.

1 Q. What are you taking now?

2 A. Forty milligrams a day.

3 Q. Do you take those everyday?

4 A. Yes.

5 Q. Are you taking those today?

6 A. No, I haven't.

7 Q. Are you in pain?

8 A. Quite a bit.

9 Q. When you take your methadone, what does that do to your  
10 memory and your ability to think clearly?

11 A. It makes things not-- makes me not think clearly, impairs my  
12 judgment.

13 Q. Are you thinking clear now?

14 A. Pretty much, yes.

15 Q. Okay. And you furnished us and we furnished, of course, Mr.  
16 Woodfin, copies of your tax records. In 2002, Exhibit No. 6, looks  
17 like you earned \$14,012 in that year?

18 A. Yes, sir.

19 Q. Your wife wasn't working at that time?

20 A. No.

21 Q. You were working at Scott County Hospital?

22 A. Yes, I was.

23 MR. ENGLISH: That's Exhibit No. 6, your Honor.

24 Q. And then in 2003, that's the year you went to work at  
25 Ridgeview?

1 A. Yes.

2 Q. Okay. And 2003 tax returns, it looks like, according to this,  
3 Exhibit 7, that you earned \$19,280?

4 A. Yes, sir.

5 Q. Okay. Was your wife working in 2003?

6 A. No, she wasn't.

7 Q. Was this a combination of money that you had earned— was  
8 this primarily from working at Ridgeview?

9 A. Yes.

10 Q. When did you start in Ridgeview? You may have answered  
11 that, and I apologize if you did.

12 A. In April, 2003, I believe.

13 Q. So you worked most of the year at Ridgeview, then?

14 A. Yes.

15 Q. At Ridgeview how much were they paying you on an hourly  
16 basis, Tom?

17 A. I forgot, don't remember.

18 Q. Okay. But, anyway, you made \$19,000?

19 A. Yes, sir.

20 Q. So this was a better job than Scott County Hospital, obviously?

21 A. Yes, whole lot better.

22 MR. ENGLISH: That's Exhibit No. 7, your Honor.

23 Q. And at Ridgeview did you get any overtime?

24 A. Yes. Usually every month.

25 Q. Okay. On the day of the accident, when this happened, how

1 much were you making a week at Ridgeview without overtime?

2 A. Around 400, something like that.

3 Q. Okay. And we have your tax returns for the year 2004, the  
4 year the accident happened. That's Exhibit No. 8. It looks like, in  
5 2008, you earned \$12,201?

6 A. Yes, sir.

7 Q. Okay. Did you ever work— did you work anywhere other than  
8 at Ridgeview that year?

9 A. No.

10 Q. Did you ever work at Ridgeview after the date of this wreck?

11 A. No.

12 Q. And this wreck happened just a little bit longer than six  
13 months into the year; is that right?

14 A. Yes.

15 MR. ENGLISH: Your Honor, those are all the exhibits,  
16 and I'd like to move for entry at this time.

17 THE COURT: Very well. Any objection, counsel?

18 MR. WOODFIN: Those all 12?

19 MR. ENGLISH: All ten. The depositions are the other  
20 two.

21 MR. WOODFIN: No objection.

22 THE COURT: Very well. Exhibits 1 through 10 will be  
23 received.

24 MR. ENGLISH: May I approach the clerk, your Honor?

25 THE COURT: Yes.

1 Q. Tom, how much overtime did you get a week at Ridgeview,  
2 roughly?

3 A. We usually picked up one day, usually one day a month— one  
4 day a week, usually. We usually stayed short-staffed.

5 Q. Okay. How has this injury from this wreck, how has it  
6 affected your personal life now as far as being able to do things  
7 with your wife and the kids? Do you all—

8 A. Not able to do much of anything.

9 Q. Okay. You've had a child since the wreck?

10 A. Yes, I did.

11 Q. And how did that come about? I know how it came about, but  
12 was this a planned pregnancy or not?

13 A. No, it was not. My wife and I have two children. The second  
14 one, Danielle, was conceived after the accident. I presume it's  
15 because of the medication that I have been put on since then, but I  
16 wasn't on as— the drugs that I am now. I wasn't on the methadone  
17 then. Due to the injuries in my back and my neck, I'm unable to  
18 perform husbandly duties.

19 Q. Well, we know you did one time at least.

20 A. Yes. I meant, but it's really hard for me to be able to perform  
21 sex continually. How it happened with Danielle, I don't know. It's—

22 Q. Were you on methadone when that happened, Tom?

23 A. No, I was not.

24 Q. Okay. What about pain? Does the methadone completely  
25 relieve you of pain?



1 A. It keeps the pain in check as long as I don't do anything.

2 Q. What about sleeping? How many hours did you sleep last  
3 night? I know you had to drive down.

4 A. Two to three hours a night is a normal average. When I lay  
5 down in the bed, it's very excruciating pain, and I have to wait for  
6 the medicine to kick in. I take it before I go to bed, and— it's very  
7 excruciating. I can lay in the bed and quiver until I just have to get  
8 up and wait until the medicine has me almost knocked out and go in  
9 and try to lay down. And I'm back up in two to three hours.

10 Q. What about hunting and fishing? Did you do any of that  
11 before the wreck?

12 A. Yes. I enjoyed both hunting and fishing as hobbies.

13 Q. Do you do that now?

14 A. No, sir, I cannot.

15 Q. Why?

16 A. I cannot do the walking or the squatting and bending.

17 Q. Okay. Tell us about the jobs you applied for at Wal-Mart and  
18 Kroger's. Just tell us about that.

19 A. I went and tried to put in some applications, thinking I could  
20 get on to some other type of positions. I went and put in  
21 applications at Wal-Mart and Kroger, both, and I have not heard  
22 back anything from either one of those.

23 Q. Did they ask you about any lifting restrictions?

24 A. Yes, they—

25 MR. WOODFIN: Objection, your Honor. It's hearsay.

1 MR. ENGLISH: Let me rephrase the question, your  
2 Honor. The way I asked it is obviously hearsay, and I apologize to  
3 the Court.

4 Q. Did you fill out an application?

5 A. Yes, I did.

6 Q. Did the application have on it about any— your ability to lift?

7 A. Yes, it did.

8 MR. WOODFIN: Your Honor, that's still hearsay.

9 MR. ENGLISH: I'm asking what he did, your Honor,  
10 not what the—

11 THE COURT: Overruled.

12 Q. Did you tell the truth on that application?

13 A. Yes, I did. On the application it listed different types of  
14 restrictions that you might have.

15 Q. Did you ever get a call back from either one of those people?

16 A. No, I did not.

17 Q. Have you ever talked to anyone about a job since this accident  
18 without telling them the truth about your condition?

19 A. No, I have not.

20 Q. Let's talk about the flea market. Had your wife ever had a  
21 booth at the flea market before this wreck?

22 A. A long time ago.

23 Q. Okay. She does now?

24 A. Yes, sir.

25 Q. And whenever she does, do you go with her and sort of take

1 care of the children?

2 A. Yes. We have to have— we have to watch our own children  
3 because of our parents are elderly, and we can't afford babysitters.

4 Q. Okay. When you go to the flea market, can you stand, can you  
5 sit, can you lay down? What's your physical situation there?

6 A. I can sit and stand up, moving around. I basically try to watch  
7 the kids while she does the selling. That's basically that.

8 Q. Do you have to do any lifting at the flea market of any  
9 significance?

10 A. No.

11 Q. What do you sell at the flea market?

12 A. We've had the sell off a lot of our stuff and plus we've tried  
13 to—

14 Q. Well, wait a minute. You sold off a lot of your stuff. What do  
15 you mean?

16 A. Stuff that we've accumulated over the years of our own  
17 personal stuff, items.

18 Q. Why did you sell that?

19 A. We had to in order to survive the last two years.

20 Q. Okay. Are you all on food stamps at this time, Tom?

21 A. Yes, I am.

22 Q. Had you ever been on food stamps before this wreck?

23 A. No.

24 Q. What other effects— other than the personal effects and your  
25 sleeping and everything, how has this wreck impacted your life and

1 Sandy's life, your children's lives?

2 A. I'm unable to get down in the floor and play with my son,  
3 Thomas. He wants me to get down in the floor and play with him,  
4 and I can't get down in the floor. My daughter loves to be tossed  
5 up in the air, and I can't do that.

6 Q. Okay. Do they understand why you can't?

7 A. No.

8 MR. WOODFIN: Object, your Honor. I don't know  
9 that we can show what the children understand at this point.

10 THE COURT: Sustained.

11 Q. Tom, are you trying to lose some weight?

12 A. Yes.

13 Q. Have you been successful doing that?

14 A. On and off. Like everybody else that's ever tried to lose  
15 weight, you do, and you fluctuate back and forth.

16 Q. Okay. Now, Mr. Woodfin mentioned something about having  
17 a worker's comp. claim. You got hurt on the job somewhere. Tell  
18 us about that.

19 THE COURT: I'm sorry, Mr. English, just a moment.  
20 Madam Clerk, we need to take a short recess.

21 (Recess had 1:38 p.m.; reconvened without jury 1:44 p.m.)

22 THE COURT: All right. Be seated. Counsel, I  
23 apologize for that brief break.

24 MR. ENGLISH: I certainly understand. I have been  
25 there before.