

**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 JUROR NO. 9: Correct.

2 THE COURT: Do you know of any reason whatsoever
3 that you would not be able to sit on this jury and render a fair
4 verdict based solely on the evidence presented in court and in the
5 context of the Court's instructions and the law?

6 JUROR NO. 9: No, sir.

7 THE COURT: Okay. Have you ever served on a jury
8 before?

9 JUROR NO. 9: No. I have been called many, many,
10 many times, but I've never actually served.

11 THE COURT: Okay. All right. The Court is going to
12 find that this juror is qualified. Mr. English, if you would like to
13 continue your examination of the entire panel.

14 MR. ENGLISH: Ms. (Juror 9), I'll just ask you a
15 couple of questions. Could you hear the questions I asked the other
16 members of the jury?

17 JUROR NO. 9: Yes.

18 MR. ENGLISH: Would you have answered any
19 differently than they did?

20 JUROR NO. 9: (Shook head.)

21 MR. ENGLISH: Okay. I'll direct this to the other
22 members of the jury. Do any of you know of any reason why you
23 can't sit on this jury, listen to the facts and do what's right in this
24 case, do justice? Can you all do that?

25 Mr. Neely has some problems with his back, and from time to

1 time he will need to stand up during the course of this trial to
2 alleviate his back pain. Will the fact that he does need to do this,
3 will this not cause you to feel one way or the other? We're not
4 trying to seek an advantage from this. It's just a fact of his life.
5 Would the fact that he has to stand up periodically to relieve the
6 pain in his back, can you just not— just completely ignore that?
7 Can all of you do that?

8 Mr. Neely was rear-ended by the driver for Fox of Oak Ridge,
9 and his car was totaled in the process and he went to the hospital.
10 Mr. Neely went to his family doctor and wanted— needed to get in
11 to see a specialist, which he later did.

12 And Mr. Inman, who represents him along with me, was hired,
13 and Mr. Inman sent him to an orthopedic specialist because he
14 couldn't get in, he hadn't been able to get in before that. Would
15 that cause any of you any problems, the fact that Mr. Inman got him
16 an appointment with a board-certified orthopedic surgeon, a very
17 fine surgeon?

18 May I see a show of hands just— if that will cause you any
19 problems, let me know, and if it will not cause you any problems. I
20 assume it will not.

21 Okay. Those of you that have sat on juries before, I believe it
22 was Mr. (Juror 23) and Ms. (Juror 29), Ms. (Juror 8) and Mr. (Juror
23 4). May I see a show of hands— I know most of you have sat on
24 civil and criminal. How many of you have sat on civil cases? This
25 is a civil case.

1 Okay. Mr. (Juror 23), Ms. (Juror 8), and Ms. (Juror 29). Of
2 course, this is not a Perry Mason type case. We don't have to prove
3 our case beyond a reasonable doubt. We've got to prove it by a
4 preponderance of the evidence, by 51 per cent of the evidence.

5 If we prove our case by 51 per cent of the evidence, will you
6 fairly and adequately compensate Tom Neely for all of the
7 elements of his damages, if we prove that we have, and the judge
8 tells you that you may? Can all of you do that? May I see a show of
9 hands if you can do that, if you can follow the law?

10 Now, in a case like this we're suing for a lot of money because
11 this has had a drastic, damaging effect on Tom Neely for the last
12 almost two years. He hasn't worked since this wreck. Had a good
13 work record up until the wreck. He was working at one of the best
14 jobs he ever had.

15 And if I prove what I just told you, that this has had a
16 devastating effect on his life and his wife's life, can you
17 adequately compensate him for this, even though it might be a large
18 sum? Can you do that? May I see a show of hands if you can do
19 that?

20 All we're entitled to is a fair trial and justice, and that's all
21 we're asking. Fox of Oak Ridge is entitled to the same thing.
22 Incidentally, Fox of Toyota is not the same as Fox. I think they're
23 brothers or something, but they're not really— they're not involved
24 in this case.

25 Do any of you know of any reason that you can't sit and listen

1 to the facts in this case and do what's right, for religious reasons or
2 personal reasons, or you just feel like people shouldn't sue people
3 for some reason? Do any of you feel like that?

4 I know no one likes to get sued. I turn a lot of lawsuits down
5 for that reason. But do any of you have any preconceived notions
6 about filing a lawsuit?

7 (No response.)

8 MR. ENGLISH: If we prove that, by medical proof
9 from competent board-certified specialists, that Mr. Neely
10 probably never will work again, will you take that into
11 consideration in arriving at what you feel is a fair and just
12 judgment in this case?

13 I'm going to ask you some individual questions, and please
14 don't feel like I'm prying; I'm not. I'm just trying to figure out
15 what's best for my client. I've got an obligation to represent Tom
16 Neely to the best of my ability; that's what I want to do.

17 I certainly don't mean to offend anybody and I'm certainly
18 not asking the questions for that reason. But I'll start with you,
19 Ms. (Juror 9). You're an office manager; is that right?

20 JUROR NO. 9: Uh-huh.

21 MR. ENGLISH: Oak Ridge?

22 JUROR NO. 9: Uh-huh.

23 MR. ENGLISH: What part of Oak Ridge?

24 JUROR NO. 9: I work for Bechtel National in Oak
25 Ridge.

1 MR. ENGLISH: Would the fact that Fox of Oak Ridge
2 is in Oak Ridge where you work– I know you live in Roane County,
3 I believe?

4 JUROR NO. 9: Correct.

5 MR. ENGLISH: Okay. Would that have any bearing
6 one way or the other–

7 JUROR NO. 9: No, sir.

8 MR. ENGLISH: –you doing the right thing? Okay.
9 Thank you. Mr. (Juror 23), I believe you’re a manager for security?

10 JUROR NO. 23: Yes, sir.

11 MR. ENGLISH: And what’s the name of your
12 company, sir?

13 JUROR NO. 23: I work for Western Heights Dental
14 Clinic on Oldham Avenue. I have been there 26 years.

15 MR. ENGLISH: Okay. And in your job as a security
16 man, does that require you to be on your feet a lot?

17 JUROR NO. 23: Yes.

18 MR. ENGLISH: Making the rounds?

19 JUROR NO. 23: Yes.

20 MR. ENGLISH: Pretty physically demanding job?

21 JUROR NO. 23: Yes, it is.

22 MR. ENGLISH: Thank you very much, Mr. (Juror 23).
23 Mr. (Juror 5), I believe you’re retired and you worked at Oak Ridge
24 as an electroplater; is that correct?

25 JUROR NO. 5: Yes.

1 MR. ENGLISH: How long did you work at Oak Ridge?

2 JUROR NO. 5: Thirty-eight years.

3 MR. ENGLISH: Okay. I know you didn't buy a car
4 from Fox of Oak Ridge, but did you ever buy any Toyotas like Ms.
5 (Juror 9)?

6 JUROR NO. 5: No, sir.

7 MR. ENGLISH: Okay. Do you know of any reason
8 why you can't sit and do what's right in this case?

9 JUROR NO. 5: No.

10 MR. ENGLISH: Okay. Ms. (Juror 29), you're on the
11 spot now.

12 JUROR NO. 29: Yeah.

13 MR. ENGLISH: You had sat on some civil and
14 criminal cases?

15 JUROR NO. 29: Yes.

16 MR. ENGLISH: And I'm sure you've probably
17 watched Perry Mason a time or two, as most of us have?

18 JUROR NO. 29: Yeah.

19 MR. ENGLISH: You know, in this case, we have just
20 got to prove our case by a preponderance of the evidence. And do
21 you have any problems with separating a preponderance of the
22 evidence and beyond a reasonable doubt, you know, and like you
23 have to in a criminal case? Do you have any problems?

24 JUROR NO. 29: No.

25 MR. ENGLISH: Okay. Would you pass that back to

1 Ms. (Juror 155)? Ms. (Juror 155), you're from Union County?

2 JUROR NO. 155: No. I'm from Campbell County.

3 MR. ENGLISH: Campbell County, I'm sorry. Is that
4 LaFollette or—

5 JUROR NO. 155: Jacksboro.

6 MR. ENGLISH: Jacksboro, okay. You're an R.N.?

7 JUROR NO. 155: Yes, sir.

8 MR. ENGLISH: Who are you employed by, ma'am?

9 JUROR NO. 155: Team Health.

10 MR. ENGLISH: Okay. You travel around quite a bit
11 or do you?

12 JUROR NO. 155: No. I had just finished—I did work in
13 the U.T. Medical Center emergency department and just transferred
14 to Team Health. I do—I'm like a triage nurse, answer the phone.

15 MR. ENGLISH: Okay. You, with your specialized
16 knowledge of medicine, would you feel like that would be a help to
17 you in determining what injuries this man has, according to the
18 doctor's testimony, or a hindrance to you in any way?

19 JUROR NO. 155: It would be a help.

20 MR. ENGLISH: Thank you very much. Ms. (Juror 160)?

21 JUROR NO. 160: (Juror pronounced her name.)

22 MR. ENGLISH: I'm sorry. You're an engineer?

23 JUROR NO. 160: Yes.

24 MR. ENGLISH: With who?

25 JUROR NO. 160: Denso Manufacturing.

1 MR. ENGLISH: That's down at Walland or—

2 JUROR NO. 160: In Maryville.

3 MR. ENGLISH: Maryville, okay. And in your job,
4 what type of an engineer are you, ma'am?

5 JUROR NO. 160: A quality.

6 MR. ENGLISH: Quality? Would you have any
7 problems in listening to the facts of this case and then applying the
8 law to those facts?

9 JUROR NO. 160: No, sir.

10 MR. ENGLISH: Thank you. Ms. (Juror 8), I believe
11 you're married to Joe (last name given)?

12 JUROR NO. 8: Yes.

13 MR. ENGLISH: Okay. He's an attorney, local
14 attorney?

15 JUROR NO. 8: Yes.

16 MR. ENGLISH: Okay. Would the fact that your
17 husband, being an attorney for many years here, a good firm, would
18 that cause you to feel one way or the other in this case?

19 JUROR NO. 8: No.

20 MR. ENGLISH: Okay. You've sat on civil juries?

21 JUROR NO. 8: Yes, I have.

22 MR. ENGLISH: In federal court or state court?

23 JUROR NO. 8: Wheeler Rosenbalm.

24 MR. ENGLISH: That's state, okay. Was that recently?

25 JUROR NO. 8: No. That's been years ago.

1 MR. ENGLISH: Okay. And you know the difference
2 between a preponderance of the evidence and beyond a reasonable
3 doubt, I assume?

4 JUROR NO. 8: Yeah.

5 MR. ENGLISH: Okay. Thank you. Mr. (Juror 4), you
6 have sat on criminal juries?

7 JUROR NO. 4: That's correct.

8 MR. ENGLISH: And you are formerly with the FDIC;
9 you're retired now?

10 JUROR NO. 4: That's correct.

11 MR. ENGLISH: What did you do with them?

12 JUROR NO. 4: My job classification, I was a federal
13 investigator and did white-collar crime and fraud, embezzlement.

14 MR. ENGLISH: Okay. Were you involved in the FDIC
15 takeover of UAB?

16 JUROR NO. 4: No. I got here just after that.

17 MR. ENGLISH: And do you know of any reason why
18 you couldn't sit, even though you bought a car from Fox, and listen
19 to the facts and do what's right in this particular case?

20 JUROR NO. 4: No, I do not.

21 MR. ENGLISH: Okay. Mr. Woodfin works for the
22 defense firm of Spicer, Flynn & Rudstrom, and this is a good
23 defense firm. They've got offices in the major metropolitan areas,
24 I think four or five in Tennessee, and then Mississippi. Would that
25 cause you any problems one way or the other in listening to the

1 facts and applying the law to this case?

2 JUROR NO. 4: Me, personally? No.

3 MR. ENGLISH: I'm just talking generally . You're
4 off the hot seat, Mr. (Juror 4).

5 JUROR NO. 4: Okay.

6 MR. ENGLISH: Do any of you know any reason why
7 that would—

8 (No response.)

9 MR. ENGLISH: Thank you. Pass the jury, your Honor.

10 THE COURT: Thank you, counsel. Does counsel for
11 the Defendant have any questions for this jury?

12 MR. WOODFIN: Yes, your Honor.

13 THE COURT: Thank you.

14 MR. WOODFIN: Good morning. My name's Clint
15 Woodfin. I do represent Fox of Oak Ridge in this case. Just as the
16 Plaintiff has done, we need to go ahead and just follow up on some
17 of the questions that you've already responded to, to make sure that
18 we do get a trial(sic) that will be fair to both sides. I'll try not to
19 cover the same ground that was covered by Mr. English, because I
20 tried to take good notes about what responses you gave, and I don't
21 want to take up too much of your time about that.

22 You've heard a little bit about our case today and what's
23 going to be involved, and you know there's going to be some
24 testimony about an accident that occurred. Have any of you all
25 been in a car accident before, no matter how minor, whether it was