

**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

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1 that he should have done. He didn't do it.

2 He was following Tom Neely about 20 feet behind him, 35  
3 miles an hour, on a rain-slick road. When the car in front of Tom  
4 gave a signal, slowed down and stopped, Tom did the same thing.  
5 When he did the same thing, he was hit in the rear by the Fox car,  
6 the van that was being brought in for service.

7 And it hit him so hard, it totaled his car. He was driving a  
8 small Kia, an economy car, gets good mileage. It hit him so hard it  
9 not only totaled the car he was in, but it broke his seat. And when it  
10 broke his seat, he was laying in the back seat after the impact, when  
11 this occurred, laying there, looking up at the ceiling. He doesn't  
12 know how fast Mr. Curd was going, but we know he was going too  
13 fast, we know he was going too close, and we know he was going  
14 much too fast on a rain-slickened road.

15 Fox of Oak Ridge has denied that they are responsible for this,  
16 even in light of those three facts. Tom was hurt; he was taken by  
17 ambulance. He immediately complained of his neck and his back.  
18 And this is not a whiplash case, ladies and gentlemen. This man's  
19 got three disc problems in his neck and three or four more in his  
20 low back, according to MRIs that can verify this, according to Dr.  
21 Tom Koenig, who is a board-certified orthopedic surgeon and a fine  
22 doctor, and Dr. Joe Browder, who is a pain specialist, is going to be  
23 treating this man for the rest of his life.

24 He's got a bulging disc in the middle of his neck, and on either  
25 side of the bulging disc he's got two protruding discs. That means

1 that's worse than a bulging disc. In his low back he's got what Dr.  
2 Koenig says is a congenital thing that he was born with, but then in  
3 his low back he's got three or four bulging discs, according to the  
4 MRI of his low back.

5 He had an MRI of his neck and he had an MRI of his low back,  
6 and he's got either six or seven disc problems that were either  
7 caused by or aggravated by this wreck. Dr. Koenig says that Mr.  
8 Neely probably had some problems with his back before, because  
9 he's a heavy man, weighs about 300 pounds.

10 He's tried to lose weight, he has lost some weight. This  
11 exacerbates or this makes it worse to lose weight, because when  
12 you're hurting, you can't exercise, you can't walk, you can't do the  
13 things we all like to do to try to keep the weight off. This is a  
14 problem.

15 But that made him more susceptible to the injury that he  
16 suffered of these six or seven disc problems that he now has. He  
17 hasn't worked a day since the 12<sup>th</sup> of July, 2004. Bearing in mind  
18 this was a job that he dearly loved, this was a job that he drove 100  
19 miles, 200 miles a day, to do.

20 He was taken by ambulance to the Oak Ridge hospital. They  
21 x-rayed him. They didn't do an MRI at that time. They don't do  
22 MRIs because they're very expensive. And then they said we'll  
23 release you if you go see your family doctor the next day. And he  
24 did, he went to his family doctor the next day. He immediately  
25 ordered some physical therapy to his back and to his neck.

1 He tried to get him in to see an orthopedic surgeon. Tom's a  
2 man of modest means, and he couldn't get him in to see an  
3 orthopedic surgeon. At that time, he realized he needed some help  
4 in this case, and he got Mr. Inman to help him, and Mr. Inman did  
5 get him an appointment with an orthopedic surgeon here in  
6 Knoxville, who is board-certified, Thomas Koenig. And you will  
7 see his videotape deposition today or tomorrow.

8 As a result of that, Tom started treating first with Dr. Degnan,  
9 and he really didn't feel like he was getting the best treatment from  
10 Dr. Degnan, who is also an orthopedic surgeon, so he changed  
11 doctors. And Mr. Inman got him an appointment with Dr. Koenig.

12 Dr. Koenig treats him for a year, 12 months. We took his  
13 deposition. Dr. Koenig says that this man has an impairment that  
14 was aggravated in this wreck; that probably had an impairment of  
15 some sort before the wreck, but the lick was so hard and it did so  
16 much damage to his back, notwithstanding the damage it did in  
17 breaking his seat and totaling his car, that this man can't lift over  
18 15 pounds now.

19 And as a result of his treatments with Dr. Koenig— Dr. Koenig  
20 is an orthopedic surgeon— he ordered an MRI of his neck and then  
21 an MRI of his back, because the man was having a lot of problems  
22 with numbness and pains going down his arms and going down his  
23 legs.

24 Those MRIs are going to be referred to in Dr. Koenig's  
25 deposition, his videotape deposition, and he shows you what part of

1 the anatomy of his neck and his back where he's got discs that are  
2 protruding, where these discs are bulging.

3 And he explains, I think, probably as well as I've ever heard  
4 anyone explain an injury, how this impacts him. This man has not  
5 been back to work. Dr. Koenig sent this man to Dr. Browder, and  
6 we got the appointment. Mike and I got the appointment with Dr.  
7 Browder because this man's a very— man of meager existence.

8 We sent him to Dr. Browder— or Mike sent him to Dr. Browder  
9 to be treated, and he's still going to Dr. Browder. And Dr.  
10 Browder's a good man and he treats people. He goes to Dr.  
11 Browder every month, and he's probably going to go to Dr.  
12 Browder for the rest of his life, take treatments, medication for  
13 pain.

14 This man's not had his pain medication today. I asked him not  
15 to take it because whenever he takes it he can't remember things,  
16 and I want him to be as clear as he can whenever he talks to you so  
17 he can honestly relate what he remembers about this wreck and how  
18 it's impacted him.

19 Tom's only 48 years old now. He's got a life expectancy of  
20 almost 33 more years. He's been through two years of pure torture  
21 for the last two years since this wreck. He'll go through 33 more  
22 years of pure torture if he lives out his life expectancy. Could die  
23 tomorrow, could live 45 or 50 years. But however long he lives,  
24 he's going to be hurting for the rest of his life as a result of this.

25 He's not a surgical candidate. No doctor can come in and cut

1 on him and make him well. This is something that he's going to  
2 have to live with the rest of his life. He's not going back to the job  
3 that he dearly loved that he drove 200 miles a day just to do,  
4 because he can't.

5 He has a hard time sitting for a long period of time. He has a  
6 hard time standing for a long period of time. He has problems  
7 laying down. He sleeps two or three hours a night. This man's in  
8 terrible pain.

9 Dr. Browder's a pain specialist. He doesn't operate on  
10 people. He doesn't do anything. He injects them, and sometimes  
11 the injections— they call ESIs, epidural steroid injections—  
12 sometimes they help, and he tried that on Tom, didn't help at all.  
13 He was going to do another one on his back. He got such a bad  
14 result the first time, he didn't do that.

15 So now he's put him on a pain killer called methadone.  
16 Methadone, he started him out on two pills a day, and now I think  
17 he's up to four pills a day. And he's going to be on those,  
18 according to Dr. Browder, who will testify by deposition, the rest  
19 of his life.

20 Dr. Browder says that he will have to see either Dr. Browder  
21 or another pain specialist on a monthly basis— because these are  
22 medications that can be very addictive— for the rest of his life. And  
23 Dr. Browder says he's never going back to work.

24 So that's our case. I think it's a very simple case. We haven't  
25 sued for property damage. That's already— that's been resolved.