

**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:

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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.

1 So the only thing we're suing for now is for the damages that this—
2 and the effect that these damages had on Tom.

3 We ask you to listen carefully and give us adequate
4 compensation. Thank you.

5 THE COURT: Okay. Thank you, counsel. Mr. Woodfin?

6 MR. WOODFIN: Good afternoon, everybody. Thank
7 you for being patient in listening to us as we make these opening
8 statements regarding what we think the evidence is going to prove
9 in this case. Judge Guyton will tell you also, what we say to you
10 here is not evidence. It's our role as an advocate for our client, and
11 also is a role as an advocate for the legal system itself.

12 What I mean by that is, it's my goal to make sure that you all
13 understand all of the evidence in this case, use the evidence and the
14 instructions that are given to you by the Court, and decide this case
15 in a fair and reasonable way. That's all that we're asking today.

16 You understand, as we've talked about during the initial
17 meetings that we've had, that the Plaintiff has the burden of
18 proving all of these things to you by that preponderance of the
19 evidence standard. The Defendant, Mr. Fox and I, we don't have to
20 prove anything. We don't even have to put any evidence on.

21 But what we do do is take a look at their evidence and bring
22 out points which reflect against the weight of that evidence. And
23 after doing that in this case, it's my opinion that it's very clear that
24 the Plaintiff has not met his burden of proving these things by any
25 measure whatsoever.