

**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.
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I N D E X

Jury Voir Dire Examination:

by the Court -	6, 35, 48, 57, 63
by the Plaintiff -	14, 47, 50, 60, 64
by the Defendant -	28, 52, 56, 61, 65

(Note: Because transcripts are filed with the Clerk of Court and can be accessed by the public, juror names and personal identifiers of witnesses have been redacted from this transcript.)**

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Plaintiff's Exhibits:

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1 (Whereupon, Tuesday, June 20th, 2006, Court convened
2 without prospective jury panel at 8:55 a.m.)

3 COURTROOM DEPUTY: Docket Number 3:05-cv-
4 304, Thomas Neely versus Fox of Oak Ridge, Incorporated.

5 THE COURT: Good morning, counsel.

6 MR. ENGLISH: Good morning, your Honor.

7 MR. WOODFIN: Good morning, your Honor.

8 THE COURT: All right. Any matters that the Plaintiff
9 wants to take up before we make arrangements to bring the jury
10 pool in?

11 MR. ENGLISH: Your Honor, you had mentioned that,
12 at our option, we can argue after your charge. I prefer to do this. I
13 think Mr. Woodfin prefers not to do this. Whatever the Court's
14 decision on that would be. I think it might allow both of us to stay
15 within the parameters of the charge and not argue something that
16 we shouldn't be arguing. Don't want to do that, of course.

17 THE COURT: All right. Well, I think I may have
18 mentioned at the pretrial conference, it's an option I like to give
19 the attorneys, but only if they can agree. I don't want somebody to
20 argue before the charge and then someone else argue afterwards, so
21 we'll do it the traditional way then. Anything else?

22 MR. ENGLISH: Your Honor, one other thing. Mr.
23 Neely, from time to time, he's got some serious back problems, and
24 from time to time he needs to stand up and walk around, and I need
25 to explain that to the jury. He's not on pain medication today

1 because it impairs his thought processes.

2 With the Court's indulgence, I'd like for you to explain to the
3 jury that it's okay for him to do that, if it is okay for him to do that.

4 THE COURT: Well, of course, what I would prefer to
5 do would be to take a recess when he needs to do that. If that's not
6 possible, then I suppose he can stand up, as long as he stays behind
7 counsel's table.

8 MR. ENGLISH: Sure. No problem.

9 THE COURT: I don't know what else to say about that.
10 Have the attorneys agreed on a time limit on opening statement?

11 MR. WOODFIN: I wouldn't anticipate that I'd need
12 more than 15 minutes.

13 MR. ENGLISH: The same, your Honor.

14 THE COURT: Fifteen minutes? Okay. Thank you. All
15 right. Anything else the parties would like to take up at this time?

16 MR. ENGLISH: No, your Honor.

17 MR. WOODFIN: No.

18 THE COURT: Okay. All right. Let me tell you that the
19 Court is battling something of a stomach bug today, so if we need
20 to take a recess when you're in the middle of something, I
21 apologize. But if it has to happen, it will have to happen. How are
22 all of you all doing? Am I the only person in here woozy?
23 Everybody else is okay?

24 MR. ENGLISH: I feel great.

25 THE COURT: All right.

1 MR. ENGLISH: I would like to know, if we can, which
2 jurors would be coming in today so we can sort of eliminate some
3 of them, if we know that.

4 THE COURT: I don't know. Madam Clerk, do you
5 know?

6 COURTROOM DEPUTY: No, your Honor, I have not
7 been advised. I was just given the entire list of those being brought
8 in today for this trial.

9 THE COURT: Well, we're ready to bring them in now.

10 MR. ENGLISH: Okay. That'd be fine.

11 THE COURT: So I'm sorry, we can't tell you, Mr.
12 English.

13 MR. ENGLISH: No problem.

14 THE COURT: All right. Let's take a recess while the
15 clerk arranges to bring the jury pool in. As soon as they're here,
16 we'll begin, okay, so don't anybody go anywhere. Thank you.

17 (Recess had at 8:58 a.m.; Court reconvened, prospective jury
18 panel present, at 9:16 a.m.)

19 COURTROOM DEPUTY: Docket Number 3:05-cv-
20 304, Thomas Neely versus Fox of Oak Ridge.

21 THE COURT: All right. Is the Plaintiff ready to
22 proceed?

23 MR. ENGLISH: Plaintiff's ready, your Honor.

24 THE COURT: Is the Defendant ready to proceed?

25 MR. WOODFIN: We're ready, your Honor.

1 THE COURT: All right. Good morning to all the
2 prospective jurors who are now in the courtroom. I need all of you
3 to please stand and raise your right hand. The Court is going to
4 swear you in right now.

5 Do each of you solemnly swear or affirm that you will
6 truthfully answer all questions that shall be asked of you touching
7 on your qualifications as a juror in this case now called for trial,
8 under all penalties of perjury? Do you; please say, "I do."

9 (Prospective jury panel sworn.)

10 THE COURT: All right. Thank you. Please be seated.
11 All right. The first thing that we're going to do today is select a
12 juror to hear this case. The purpose of the jury selection is to
13 enable the Court to determine whether or not any of you should be
14 excused from hearing this case for cause.

15 That means you may know or be related to, for example, one
16 of the parties, and there are a lot of other reasons. It's also to
17 enable the lawyers for these parties to exercise their individual
18 judgment with respect to what we call peremptory challenges, that
19 is, challenges for which no reason need be given by the attorneys.

20 Now, if you are excused by either side, please do not feel
21 offended or feel that your honesty or integrity is being questioned,
22 because it certainly is not. Lawyers always have their own reasons
23 for what jurors they want or don't want, but it does not have
24 anything to do with your individual character, I can assure you.

25 At this time, I'm going to give you a brief description of the

1 case that is about to be tried so that you will know a little bit about
2 the parties that are involved.

3 This case arises from a motor vehicle collision which
4 occurred on July the 12th, 2004, in Anderson County, Tennessee.
5 The Plaintiff, Thomas Neely, alleges that the Defendant, Fox of
6 Oak Ridge, Incorporated's, employee and agent, Benjamin Curd,
7 was traveling west on State Route 61, also known as Charles
8 Seivers Boulevard, in a negligent and reckless manner and that he
9 was following the Plaintiff, Thomas Neely's, vehicle too closely
10 than was reasonable and prudent.

11 The Plaintiff further alleges that the Defendant, Fox of Oak
12 Ridge's, employee collided into the rear of the Plaintiff's vehicle
13 as the Plaintiff slowed for traffic in his lane of travel. The Plaintiff
14 claims that he was seriously injured as a result of this collision,
15 that he has not worked since the incident, and that he is totally and
16 permanently disabled.

17 The Defendant, Fox of Oak Ridge, Incorporated, alleges that
18 the collision occurred when the vehicle driven by the Plaintiff
19 stopped suddenly and the vehicle driven by its employee, Mr. Curd,
20 was unable to stop in time.

21 The Defendant further asserts that the Plaintiff's claimed
22 extent of injury and damage is not supported by the evidence and
23 that the medical proof does not prove by a preponderance of the
24 evidence that the Plaintiff had sustained injury to the degree he
25 claims.

1 All right. That's a brief outline of the case and the claims of
2 these parties generally. Madam Clerk, if you would call eight
3 jurors to the jury box, please, and then we will begin to question
4 these prospective jurors.

5 (Whereupon, Juror Nos. 29, 5, 23, 137, 155, 160, 8, and 4
6 were called to the jury box.)

7 THE COURT: All right. All prospective jurors in the
8 jury box and also in the audience, please listen carefully to my
9 questions. Some of you in the audience may end up in the jury box
10 before we're finished.

11 So let's all listen to these questions so we do not have to
12 repeat too many. Now, if you wish to give the answer to any
13 question I'm about to ask you at the bench, in private to me, you
14 may do so in the presence of the attorneys and the court reporter.

15 For example, if an answer involves a matter that you consider
16 private or personal or involves an opinion that you feel is so strong
17 that it might disqualify you as a juror or if you feel like it is an
18 opinion so strong it might affect other jurors and you don't want to
19 answer out loud, just let me know and you can answer at the bench
20 privately. All right?

21 All right. Has any member of the jury panel in the jury box
22 heard or read anything about this case prior to today, anyone?

23 (No response.)

24 THE COURT: All right. At this time, I'm going to
25 have the attorneys introduce themselves and their client or their

1 client representative, and then I'm going to ask you if you know
2 any of these folks or have had any dealings with any of these folks
3 in the past. All right. Mr. English?

4 MR. ENGLISH: Ladies and gentlemen, my name's Bob
5 English, and I represent Tom Neely. This is my partner, Michael
6 Inman, and we both represent Tom Neely in this case. We're the
7 Plaintiffs, we're the ones bringing the lawsuit.

8 THE COURT: And, of course, that's Mr. Neely seated
9 at the table with them. All right. Mr. Woodfin?

10 MR. WOODFIN: Good morning, ladies and gentlemen.
11 My name's Clint Woodfin. I represent Fox of Oak Ridge,
12 Incorporated. With me here today is Lester Fox.

13 THE COURT: All right. Thank you, counsel. All
14 right. Does any member of the prospective jury in the jury box
15 know any of these parties personally or had any personal dealings
16 with any of these persons or their clients? Yes, sir, Mr. (Juror 4)?

17 JUROR NO. 4: I just know Lester through purchasing a
18 vehicle at his dealership ten years ago, I guess it's been.

19 THE COURT: All right, sir. Do you think the fact that
20 you bought a vehicle from his dealership ten years ago would have
21 any effect on your ability to hear this case and decide the case
22 fairly and just based on the evidence you hear in court?

23 JUROR NO. 4: No, I don't.

24 THE COURT: All right. I suppose I should ask, do you
25 have any particularly pleasant or particularly unpleasant memories

1 of your shopping experience with the Defendant?

2 JUROR NO. 4: Not really, no. You know, I bought a
3 car and— neither way, really.

4 THE COURT: All right. Thank you, sir. Anyone else?
5 All right. No one is personally acquainted with Mr. Neely,
6 correct? All right. Or Mr. Fox or his company? Okay. No one is
7 related to those parties, correct?

8 (No response.)

9 THE COURT: No one has ever been employed by the
10 Defendant, have they, or have any relatives that have been
11 employed by the Defendant?

12 (No response.)

13 THE COURT: Okay. Have any of you in the jury box
14 ever served before as a juror in a criminal or a civil case; if so,
15 raise your hands. All right. Ms. (Juror 29), was it a civil case or a
16 criminal case?

17 JUROR NO. 29: Criminal and civil.

18 THE COURT: All right. Was that recently or some
19 time ago?

20 JUROR NO. 29: The criminal was recently.

21 THE COURT: Okay. Was that here in federal court?

22 JUROR NO. 29: Yes.

23 THE COURT: It was? Okay. When was that?

24 JUROR NO. 29: I don't know. About three weeks, four
25 weeks ago, the judge on the fourth floor. I can't think of his name

1 right offhand.

2 THE COURT: Judge Phillips?

3 JUROR NO. 29: Yes.

4 THE COURT: Okay. And the civil case was recently or
5 some time ago?

6 JUROR NO. 29: I think it was some time ago.

7 THE COURT: Okay. You don't have a strong
8 recollection of that matter?

9 JUROR NO. 29: No.

10 THE COURT: All right. Mr. (Juror 23) did you raise
11 your hand?

12 JUROR NO. 23: I did.

13 THE COURT: All right, sir.

14 JUROR NO. 23: I served in Judge Jenkins' court about
15 ten years ago in a criminal case.

16 THE COURT: All right, sir. Anyone else that has ever
17 served? All right. Ms. (Juror 8)?

18 JUROR NO. 8: Both criminal and civil.

19 THE COURT: All right. And when was the last time
20 you were on a civil jury?

21 JUROR NO. 8: Probably 15 years ago.

22 THE COURT: All right. And a criminal case?

23 JUROR NO. 8: Three weeks ago. We served on the
24 same panel, Judge Phillips.

25 THE COURT: Okay. Thank you. Anyone else? All

1 right. Mr. (Juror 4)?

2 JUROR NO. 4: I served on two juries in criminal court
3 recently; one three weeks ago in Judge Phillips' courtroom and one
4 about six weeks ago in his courtroom also.

5 THE COURT: They were both criminal matters?

6 JUROR NO. 4: Yes.

7 THE COURT: All right, sir. Has anyone on this— yes,
8 sir? I'm sorry. I didn't mean to skip you there.

9 JUROR NO. 137: I served on— I guess it was something
10 similar to this here. One of them I got off on because I knew the
11 guy; and the other, it's been, my guess, 16 years.

12 THE COURT: Sixteen years ago? All right. Have any
13 of the prospective jurors in the jury box ever served on a grand jury
14 in either state or federal court? No? All right.

15 Is anyone in the jury box now presently, yourself, a party in
16 any type of a lawsuit? All right. Mr. (Juror 137).

17 JUROR NO. 137: I just went through a lawsuit with a—
18 there was a officer involved in it, and I'm fixing to go into another
19 one Monday. It will be a different kind of suit, I mean, not a
20 lawsuit, but it involves my daughter.

21 THE COURT: Okay. A family member?

22 JUROR NO. 137: Yeah.

23 THE COURT: Is that a personal injury case?

24 JUROR NO. 137: Well, it wasn't no injuries to nobody.
25 It was a misunderstood thing. But it's going to the grand jury, I

1 reckon.

2 THE COURT: Okay. Well, I may let the attorneys ask
3 you more about that, depending on how much they want to get into
4 it. All right. Anyone else? Anyone else currently a party to a
5 lawsuit or anyone have a family member that's currently a party in
6 a lawsuit?

7 (No response.)

8 THE COURT: Have any of you been a party in a
9 lawsuit say in the last five years where someone sued you or you
10 had to sue somebody for any reason, a traffic situation or anything?
11 No? Okay.

12 All right. Let me ask all of you then, if you are selected to sit
13 on this case, do you know of any reason why you would not be able
14 to render a verdict solely on the evidence presented at the trial and
15 in the context of the law, as you— as the Court will give it to you in
16 the Court's instructions, disregarding any other ideas or notions or
17 beliefs about the law that you may have in reaching your verdict?
18 If each of you can do that, feel like you can do that, please raise
19 your right hand. All right. All members of the jury have raised
20 their right hand, so indicated.

21 This case is probably going to take more than today, may take
22 a couple of days, to get this case completed. Does that cause a
23 hardship for any of you?

24 (No response.)

25 THE COURT: Do any of you have any type of a

1 physical problem, which you are taking medication, or some other
2 reason, that it would be very difficult for you to sit on this jury for
3 a couple of days, anyone? No?

4 All right. Any members of the jury panel that's in the jury
5 box, having heard the questions the Court has put to you, know of
6 any reason whatsoever why you could not sit on this jury and
7 render a fair verdict to these parties based solely on the evidence
8 presented in court and in the context of the Court's instructions on
9 the law? Any of you know any reason why you couldn't do that?

10 (No response.)

11 THE COURT: All right. Thank you. The Court finds
12 the jury qualified. Counsel will now be allowed to ask you
13 questions regarding matters of relevance that either I did not cover
14 or to follow up on some answers you've given that they might want
15 some more information.

16 Does counsel for the Plaintiff have any questions for this jury
17 panel?

18 MR. ENGLISH: Yes, your Honor.

19 THE COURT: All right.

20 MR. ENGLISH: May it please the Court. Ladies and
21 gentlemen, may I see a show of hands, does everybody on the jury
22 panel drive? May I see a show of hands? Car, truck, whatever.
23 Okay. Have any of you had any wrecks involving personal injuries
24 in the last ten years or any close member of your family?

25 (No response.)

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 answering these questions.

2 MR. ENGLISH: That's right.

3 THE COURT: Sometimes it's hard to be frank with the
4 Court and with attorneys. That's the best policy for everyone to
5 follow. You'll be excused. Madam Clerk will call another
6 potential juror to take your place. Thank you, sir.

7 JUROR NO. 137: You're welcome.

8 (Juror No. 137 excused; and Juror No. 9 called.)

9 THE COURT: All right. Good morning, Ms. (Juror 9).

10 JUROR NO. 9: Good morning.

11 THE COURT: All right. Do you know any of the
12 attorneys in this case?

13 JUROR NO. 9: No, sir.

14 THE COURT: Ever had any dealings with them in the
15 past? What about Mr. Neely; do you know him?

16 JUROR NO. 9: No, sir.

17 THE COURT: Do you know Mr. Fox?

18 JUROR NO. 9: No, sir.

19 THE COURT: Have you ever had any business dealings
20 with Fox of Oak Ridge?

21 JUROR NO. 9: I have a Toyota Corolla, and I bought
22 my car through the one in Anderson County.

23 THE COURT: Fox Toyota?

24 JUROR NO. 9: Yes.

25 THE COURT: Okay. When did you do that?

1 JUROR NO. 9: 2004. And I love my car.

2 THE COURT: And you love your car. Okay. Well,
3 Toyota's not on trial here so that's okay. Does the fact that you
4 purchased that vehicle a couple years ago— I assume you've had a
5 pleasant experience with that. Would that affect in any way your
6 ability to hear and try this case fairly? This is a collision between
7 two vehicles. That's the essence of this case.

8 Do you think that you can still do that?

9 JUROR NO. 9: Yes.

10 THE COURT: Okay. Are you a party in any lawsuits
11 now yourself?

12 JUROR NO. 9: No, sir.

13 THE COURT: Any family members in any lawsuits?

14 JUROR NO. 9: No, sir.

15 THE COURT: Have you ever been a party to a lawsuit?

16 JUROR NO. 9: No, sir.

17 THE COURT: Any family members ever been a party to
18 a lawsuit?

19 JUROR NO. 9: No, sir.

20 THE COURT: That's un-American.

21 (Laughter.)

22 THE COURT: All right. Do you know of any reason
23 why you could— where you would have any type of problem
24 whatsoever— I assume you've listened to all the questions and
25 answer that have been given so far, correct?

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

1 a fender-bender or whether it was one that was very major? Yes,
2 Ms. (Juror 9)?

3 JUROR NO. 9: Just a fender-bender.

4 MR. WOODFIN: And was anyone injured or claim
5 injury in that type of accident?

6 JUROR NO. 9: No.

7 MR. WOODFIN: Were you hit or did you hit someone?

8 JUROR NO. 9: I hit someone.

9 MR. WOODFIN: Okay. Was there visible damage
10 done to any of the vehicles?

11 JUROR NO. 9: There was \$1,700 worth of damage to
12 my vehicle and a hole about that size in his taillight, because he
13 was driving a '57 Chevy.

14 MR. WOODFIN: Wow, they're heavy cars. Do you
15 think that's going to impact your ability to listen to the evidence in
16 this case? We're going to see some photographs of the vehicles
17 involved, and do you think that would have any impact on what
18 you're going to be able to do for us in this case?

19 JUROR NO. 9: No.

20 MR. WOODFIN: Okay. Well, Thank you for letting
21 me know. Short of being in an accident, has anyone ever had the, I
22 guess, unfortunate circumstance of being on a road that's slick or
23 wet, skidding, maybe not being able to stop in time? Has that ever
24 happened to anyone before?

25 I know we drive throughout our lives; undoubtedly, we

1 encounter many conditions. Sometimes that's something that does
2 occur. Has anyone had a one-car accident as opposed to being
3 involved in an accident with someone else or maybe you've had
4 some property damage to your vehicle or caused some damage to
5 someone else's property?

6 Mr. (Juror 4), you kind of raised your finger a little bit. Was
7 that something that you had happen to you?

8 JUROR NO. 4: Oh, I just— I slid off into the ditch in the
9 snow once.

10 MR. WOODFIN: You are from Iowa— Pennsylvania?

11 JUROR NO. 4: Pennsylvania.

12 MR. WOODFIN: Pennsylvania. So I imagine you
13 encountered some pretty slick conditions driving there?

14 JUROR NO. 4: Yes.

15 MR. WOODFIN: It gets pretty bad here in Knoxville
16 when we have our one snowstorm of the year, but, undoubtedly,
17 you have encountered some worse conditions than we see here. Do
18 you think that's going to impact your ability when you hear the
19 testimony about how this accident occurred?

20 JUROR NO. 4: No.

21 MR. WOODFIN: Okay. Mr. Neely is going to testify,
22 as his doctors are, about the problems that he says he has in this
23 case. He says he's got problems with his back, also problems with
24 his neck. Have any of you all been treated by a doctor before for a
25 problem with your back or a problem with your neck?

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 a– before we start with Mr. (Juror 154), I’ll need to have the
2 attorneys and the court reporter.

3 (Discussion at bench, out of prospective jury panel’s hearing,
4 as follows:)

5 JUROR NO. 4: I’m sorry I didn’t bring this up sooner,
6 but I didn’t really think about it until he talked bout his
7 experiences and stuff. I’m, myself, permanently disabled because
8 of a situation at Parkwest Hospital, and I do have a lot of pain, but
9 it never crossed my mind to sue anybody over it. You know,
10 Parkwest Hospital would be a big target to hit. I’m not sure that I
11 could fairly find in favor of your client.

12 MR. ENGLISH: I appreciate your honesty.

13 JUROR NO. 4: Just because I’m not sure that I agree
14 with everybody suing everybody. I mean, when it comes right
15 down to it, that’s what it amounts to. I think there’s, you know,
16 there’s certain times and places, and I don’t know his
17 circumstances, and maybe this is the time and place. But I just feel
18 that, you know, there’s too much, too many lawsuits, and I don’t
19 know if I could render a fair and impartial, based on that.

20 THE COURT: All right, sir. I appreciate that. Counsel,
21 any comments?

22 MR. ENGLISH: I have no objection to him being
23 excused.

24 THE COURT: Counsel?

25 MR. WOODFIN: No objection.

1 THE COURT: All right, sir. You may be excused to
2 report back in the morning, be excused for cause.

3 (Discussion at bench concluded.)

4 THE COURT: Madam Clerk, call another juror, please.
5 (Juror No. 4 excused; and Juror No. 11 called.)

6 THE COURT: Good morning, Ms. (Juror 11).

7 JUROR NO. 11: Good morning.

8 THE COURT: Were you able to hear all the questions
9 that have been asked so far and the answers given so far?

10 JUROR NO. 11: Yes, sir.

11 THE COURT: Do you know Mr. Neely?

12 JUROR NO. 11: No, sir.

13 THE COURT: Do you know Mr. Fox?

14 JUROR NO. 11: No, sir.

15 THE COURT: Do you know any of these attorneys?

16 JUROR NO. 11: No, sir.

17 THE COURT: Okay. Have you ever had any business
18 dealings with Fox of Oak Ridge?

19 JUROR NO. 11: No, sir.

20 THE COURT: Are you currently a party in a lawsuit
21 yourself?

22 JUROR NO. 11: No, sir.

23 THE COURT: Okay. Have you ever been a party in a
24 civil case?

25 JUROR NO. 11: No, sir.

1 THE COURT: Have you ever served on a jury before in
2 a civil case?

3 JUROR NO. 11: No, sir.

4 THE COURT: Have you ever served on a jury in a
5 criminal case?

6 JUROR NO. 11: No, sir.

7 THE COURT: Having heard everything that's been
8 said in court this morning so far, do you know of any reason why
9 you could not sit on this jury and render a fair verdict based solely
10 on the evidence presented in court, in the context of the Court's
11 instructions of the law?

12 JUROR NO. 11: No, sir.

13 THE COURT: All right. The Court is going to find that
14 this juror is qualified. I suppose we'll let Mr. Woodfin continue;
15 and, of course, Mr. English can ask questions if he wants.

16 MR. WOODFIN: Your Honor, did you want to inquire
17 of Mr. (Juror 154) the same general questions? I don't think we
18 had an opportunity to ask him if he heard all those questions.

19 THE COURT: I do want to do that. I just lost my place
20 for a minute. Good morning to you, Mr. (Juror 154).

21 JUROR NO. 154: Good morning.

22 THE COURT: Were you able to hear all of the
23 questions that have been asked and the answers given so far, sir?

24 JUROR NO. 154: Yes, sir.

25 THE COURT: Do you know Mr. Neely?

1 JUROR NO. 154: I do not.

2 THE COURT: Do you know Mr. Fox?

3 JUROR NO. 154: I do not.

4 THE COURT: And have you had any business dealings
5 with Fox of Oak Ridge?

6 JUROR NO. 154: I have not.

7 THE COURT: Do you know these attorneys that are
8 here today?

9 JUROR NO. 154: I do not.

10 THE COURT: Ever had business dealings with any of
11 them or any family members have any dealings with any of them?

12 JUROR NO. 154: No, your Honor.

13 THE COURT: Are you currently a party in any type of
14 a lawsuit, sir?

15 JUROR NO. 154: In a way, yes. My daughter was in an
16 accident two years ago, and the insurance companies are still
17 wrestling with it.

18 THE COURT: Okay. Were you with her at the time of
19 the accident?

20 JUROR NO. 154: No, sir.

21 THE COURT: Is there a lawsuit or are they just still
22 talking about it?

23 JUROR NO. 154: They're still working it out.

24 THE COURT: They're working it out. Okay. Have you
25 ever been on a criminal jury?

1 JUROR NO. 154: Yes, three weeks ago, Judge Phillips.

2 THE COURT: Okay. Do you have any type of
3 problems that would affect your ability to hear this case for a
4 couple days?

5 JUROR NO. 154: No, judge, I do not.

6 THE COURT: Ms. (Juror 11), I should have asked you
7 the same question. I'm sorry I didn't. Any reason why you can't
8 hear this case for a couple of days?

9 JUROR NO. 154: No, sir.

10 THE COURT: Okay. The Court is going to find Mr.
11 (Juror 154) is also qualified to sit on this jury. Mr. (Juror 154), I
12 assume you know of no reason why you couldn't sit on the jury and
13 render a fair verdict based only on the evidence and the law as
14 given to you, correct?

15 JUROR NO. 154: That's correct.

16 THE COURT: All right. Mr. Woodfin?

17 MR. WOODFIN: Thank you. Mr. (Juror 154) and Ms.
18 (Juror 11), I'll just try to get caught back up with you all. Both of
19 you all are licensed drivers; is that correct?

20 JUROR NO. 11: Yes.

21 JUROR NO. 154: Yes.

22 MR. WOODFIN: Have either of you been in an
23 accident, whether it's a minor accident or a major accident? I know
24 you mentioned your daughter. But have you all personally been
25 involved in any automobile accidents?

1 JUROR NO. 11: Yes, years ago.

2 MR. WOODFIN: Years ago. Mr.(Juror 154), the same
3 thing?

4 JUROR NO. 154: Yes.

5 MR. WOODFIN: Anyone claim any type of injury?

6 JUROR NO. 11: No.

7 JUROR NO. 154: No.

8 MR. WOODFIN: Mr. (Juror 154), is your daughter the
9 one that is seeking damages for an injury or is she the one that
10 damages are being sought against her?

11 JUROR NO. 154: Damages are being sought against her.

12 MR. WOODFIN: Okay. Thank you. We've alluded a
13 little bit to how this proof will be presented in this case, and I think
14 you all understand and will be told by the Court that the Plaintiff
15 gets to go first, that they get to put their proof on and that they
16 have certain burdens that they must meet before they can be
17 awarded damages.

18 Can everyone agree with me that if the Plaintiff does not put
19 on evidence which is of sufficient weight, you all will be able to
20 turn him out of here without any damages for those things that he's
21 not able to prove? Can everyone agree to do that?

22 He's going to go up there, he's going to tell you about his
23 problems. But you may find, as the sole eight people who weigh the
24 evidence, that the evidence doesn't necessarily carry that burden.
25 And you all acknowledge that you will be able to return a verdict

1 which reflects that?

2 Good. Thank you. That's all we ask for, is for eight people
3 who can sit there and listen to the evidence, listen to the
4 instructions from the Court, and be fair to both sides, considering
5 the claims that are made in this case.

6 Ms. (Juror 155), you said you work as a nurse. How long have
7 you been a nurse?

8 JUROR NO. 155: Twenty-five years.

9 MR. WOODFIN: I know you will hear from doctors in
10 this case; Dr. Thomas Koenig, who is an orthopedic doctor, and Dr.
11 Joe Browder, who is a doctor here in Knoxville who does pain
12 management.

13 JUROR NO. 155: The Browder name is just slightly
14 familiar by hearing it, but I do not know either of them personally.

15 MR. WOODFIN: You said you worked in the hospital
16 as a triage nurse, meaning the one who kind of encounters the
17 patients when they first come in?

18 JUROR NO. 155: No. I worked at U.T. Medical Center
19 just recently in the emergency department as just a nurse in the
20 trauma unit. But now, currently, I am employed— I am a telephone
21 consultant. I'm licensed in 15 states. I work for a company. When
22 people call in with medical complaints, I give them the advice on
23 what they should do.

24 MR. WOODFIN: Okay. Good. And I would suspect
25 that your experience will not impact you one way or the other—

1 JUROR NO. 155: No.

2 MR. WOODFIN: – and you will be able to listen to the
3 evidence in this case?

4 JUROR NO. 155: No.

5 MR. WOODFIN: Okay. Thank you. Ms. (Juror 160), is
6 it? I keep saying that wrong. I'm sorry. You work in Maryville, I
7 think you said. I live there. You don't look familiar to me. I hope I
8 that I don't look familiar to you for whatever reason. Did you say
9 you've not served on a jury before?

10 JUROR NO. 160: I have not.

11 MR. WOODFIN: And, again, you understand that the
12 Court's going to tell you that in this case, a civil case, that there
13 are burdens that must be met by the Plaintiff and tell you how the
14 Plaintiff is going to try to meet those burdens and what the
15 necessary elements are. And you will be able to distinguish that
16 from what we see on television with these criminal cases?

17 JUROR NO. 160: Yes, sir.

18 MR. WOODFIN: Thank you. Ms. (Juror 8), your
19 husband's an attorney?

20 JUROR NO. 8: Yes.

21 MR. WOODFIN: What type of practice does he have?

22 JUROR NO. 8: Well, business law. He does not
23 litigate.

24 MR. WOODFIN: Okay. Is he with a firm here in town?

25 JUROR NO. 8: Hunton & Williams.

1 MR. WOODFIN: Oh, sure, I know that firm. I'm sorry,
2 I don't know him. But he doesn't do the type of litigation that
3 we're involved with here today—

4 JUROR NO. 8: No.

5 MR. WOODFIN: —with personal injury claims? Okay.
6 Have you ever been a party to a lawsuit or been sued yourself?

7 JUROR NO. 8: No.

8 MR. WOODFIN: I noticed on your questionnaire you
9 had checked off that maybe a family member or someone had been
10 involved in a personal injury case or maybe I just read it wrong?

11 JUROR NO. 8: No.

12 MR. WOODFIN: Okay. Ms. (Juror 11), you had
13 checked that you had had a close family member or someone
14 involved in a personal injury case before; is that correct?

15 JUROR NO. 11: Ex-husband.

16 MR. WOODFIN: Who was that?

17 JUROR NO. 11: My ex-husband.

18 MR. WOODFIN: Oh, ex-husband?

19 JUROR NO. 11: Yes.

20 MR. WOODFIN: What kind of case was that?

21 JUROR NO. 11: He got hit in the rear end.

22 MR. WOODFIN: Was he sued?

23 JUROR NO. 11: No.

24 MR. WOODFIN: He did the suing?

25 JUROR NO. 11: Uh-huh.

1 MR. WOODFIN: What type of injuries did he have?

2 JUROR NO. 11: Just hurt his neck. It's still going on.

3 MR. WOODFIN: The case is still going on?

4 JUROR NO. 11: Yes.

5 MR. WOODFIN: Have you had to testify at all in that
6 case or anything?

7 JUROR NO. 11: No, no.

8 MR. WOODFIN: You just kind of heard about it?

9 JUROR NO. 11: Uh-huh.

10 MR. WOODFIN: Do you know anything about the
11 extent of his claimed injury?

12 JUROR NO. 11: No.

13 MR. WOODFIN: Not really? You don't think that's
14 going to impact you one way or the other in this case?

15 JUROR NO. 11: No, sir.

16 MR. WOODFIN: Ms. (Juror 9), I tried to make a note
17 here, and I didn't write it well enough to figure out what it said.
18 Have you been on a jury before?

19 JUROR NO. 11: No. I have been called several times,
20 but never served.

21 MR. WOODFIN: That's what I have written down, that
22 you have been maybe through this. Have you ever sat in the box
23 before and been questioned by the lawyers or has it gotten that far
24 for you?

25 JUROR NO. 11: Yes.

1 MR. WOODFIN: What types of cases were those?

2 JUROR NO. 11: Well, it was in Judge Phillips'. There
3 was the man that shot at a drug enforcement task officer. That's, I
4 guess, that's considered criminal.

5 MR. WOODFIN: Probably, probably.

6 JUROR NO. 11: And one other one, and I don't really
7 recall right now what it was, but I was dismissed off of that also.

8 MR. WOODFIN: And I hope that didn't leave too
9 much of a bad taste in your mouth and that won't affect your ability
10 to sit and listen to this case today if you are selected?

11 JUROR NO. 11: No, sir. I realize it's just part of the
12 process.

13 MR. WOODFIN: Okay. Thanks. Mr. (Juror 154), we
14 had talked a little bit earlier about your daughter's situation. And
15 had you commented that you had been on a criminal jury before?

16 JUROR NO. 154: And a civil, that's correct.

17 MR. WOODFIN: And a civil. What type of civil case
18 was it?

19 JUROR NO. 154: Civil was about 20 years ago, and it
20 was a child that was injured in a school bus accident.

21 MR. WOODFIN: Do you remember how you ruled in
22 that case as a jury?

23 JUROR NO. 154: Yes.

24 MR. WOODFIN: What did you all do?

25 JUROR NO. 154: We awarded in her favor.

1 MR. WOODFIN: How seriously injured was the child?

2 JUROR NO. 154: Very serious.

3 MR. WOODFIN: I'm sorry to hear that. And how
4 about on your criminal case? Did you have a good experience with
5 that as well, I hope?

6 JUROR NO. 154: I was the alternate juror. I got to sit
7 through the entire process, but didn't get to go through
8 deliberations. It was okay.

9 MR. WOODFIN: Mr. (Juror 5), I haven't meant to left
10 you out today, but I haven't talked to you too much. In looking
11 back at my notes, I had seen that you didn't respond, or maybe did
12 and I just didn't notice, about whether you had been on a jury
13 before?

14 JUROR NO. 5: A long time ago I was on a rape jury.

15 MR. WOODFIN: Criminal case?

16 JUROR NO. 5: Yeah. And it was over in the city-
17 county building. It was a long time ago.

18 MR. WOODFIN: Probably can't remember too much
19 about it?

20 JUROR NO. 5: I was kind of young then.

21 MR. WOODFIN: Had you been called back for jury
22 service and then just not to be called on in the case?

23 JUROR NO. 5: I did that back years ago. This is only
24 the second time I've been called back.

25 MR. WOODFIN: And we're glad to have you here.

1 And you have not been involved in any type of personal injury suits
2 or anything like that?

3 JUROR NO. 5: No.

4 MR. WOODFIN: And you don't know of any reason
5 why you can't be fair and reasonable in this case today?

6 JUROR NO. 5: No, sir.

7 MR. WOODFIN: All right. Ms. (Juror 29), I didn't
8 mean to ignore you; you were just last as I was going down the list.
9 Again, thank you for being here today. Do you know of any reason
10 or have anything in your past with regard to previous exposure
11 with the legal system which may affect your ability to listen to this
12 case today?

13 JUROR NO. 29: (Shook head.)

14 MR. WOODFIN: You ever had any type of injury
15 where you made a claim against someone?

16 JUROR NO. 29: Never.

17 MR. WOODFIN: Okay. Mr. English has said it, and
18 I've said it, too, what we're really looking for are people that can
19 listen to what the evidence is and be fair and reasonable in how
20 they decide this case. Sometimes people think that the legal system
21 itself is not fit for deciding this type of case, that there are too
22 many lawsuits or that people shouldn't file suit; or if someone does
23 file suit, they're automatically entitled to something.

24 Does anyone have any feelings about the legal system in
25 general which may impact your ability to listen and decide this

1 case?

2 (No response.)

3 MR. WOODFIN: Well, I appreciate you all listening to
4 me. Our legal system is the best one that I know of, and I don't
5 imagine that there's any other way to decide issues like this that we
6 can't decide amongst ourselves. So we appreciate you listening to
7 us today and helping us decide these issues. Thank you.

8 THE COURT: Mr. English, any questions, please?

9 MR. ENGLISH: Yes, your Honor. I'll direct my
10 questions to Mr. (Juror 154) and Ms. (Juror 11). Mr. (Juror 154),
11 the jury that you sat on, the civil jury involving the child, how long
12 ago was that, sir?

13 JUROR NO. 154: Twenty years.

14 MR. ENGLISH: Twenty years ago?

15 JUROR NO. 154: Yes, sir.

16 MR. ENGLISH: The child was hurt pretty badly?

17 JUROR NO. 154: Yes, sir.

18 MR. ENGLISH: A lot of money in the verdict—

19 JUROR NO. 154: Yes, sir.

20 MR. ENGLISH: —that was given? If we prove that Tom
21 Neely is hurt badly as a result of this rear-end collision, would you
22 have any problems in awarding him adequate damages even though
23 it would be a large number?

24 JUROR NO. 154: No, sir.

25 MR. ENGLISH: Okay. Ms. (Juror 11), I'd ask you the

1 same question. Would you have any problems, if we prove our
2 case, as we must, by a preponderance of the evidence, not beyond a
3 reasonable doubt, in awarding an adequate award in this particular
4 case, if we prove it?

5 JUROR NO. 154: I wouldn't have any problem with it.

6 MR. ENGLISH: Thank you very much.

7 THE COURT: All right. Thank you, counsel. there are
8 peremptory challenge forms on your table. If you'd please execute
9 those promptly, and, Madam Clerk, if you'll collect those.

10 COURTROOM DEPUTY: Yes, your Honor.

11 (Counsel filled out juror strike sheets; Court reviewed them.)

12 THE COURT: All right. Mr. (Juror 154), you are
13 excused; and Ms. (Juror 8), you are excused; and Mr.— I'm sorry—
14 Ms. (Juror 29), you are excused. If you'll just report back
15 tomorrow morning, please. Thank you.

16 (Jurors 8, 29 and 154 excused and left the courtroom.)

17 THE COURT: Madam Clerk, if you could give us three
18 jurors, please.

19 COURTROOM DEPUTY: Yes, your Honor.

20 (Whereupon, Jurors 27, 7 and 18 were called to the jury box.)

21 THE COURT: Good morning to you folks. Have all of
22 you had a chance to hear the questions that have been asked and the
23 answers given so far? If so, please raise your right hand, all three
24 of you. Thank you.

25 Do any of you know Mr. Neely? Do any of you know Mr. Fox?

1 (No response.)

2 THE COURT: Have any of you had any association or
3 business dealings, personal dealings, or anything of that nature,
4 with the Plaintiff or with Fox of Oak Ridge in the past or currently?

5 (No response.)

6 THE COURT: Do any of you know the attorneys here,
7 Mr. English or Mr. Inman for the Plaintiff, Mr. Woodfin for the
8 Defendant? Ever had any dealings in the past with them or any
9 family members had any dealings with them?

10 (No response.)

11 THE COURT: Have you heard anything about this case
12 prior to today, any of you? No? Okay. Are any of you or a family
13 member currently a party to a lawsuit of any kind? Have any of you
14 been a party to a lawsuit in the past of any kind?

15 (No response.)

16 THE COURT: This is a civil case, of course. Have any
17 of you served on a civil jury before? No? How about a criminal
18 jury? All three of you. Was that here in federal court recently?

19 (Jurors nodded.)

20 THE COURT: Okay. Any of you have any difficulties
21 or problems that would give you some trouble if we had to have
22 you here for a couple days on this case? No? Okay. Do any of you
23 know of any reason why you could not sit on this jury and render a
24 fair verdict based on the evidence presented and in the context of
25 the Court's instructions on the law as the Court gives it to you?

1 (No response.)

2 THE COURT: Okay. Very good. Mr. English, the
3 Court will find these three prospective jurors qualified. Would
4 you like to question them?

5 MR. ENGLISH: Yes, your Honor. Ladies and
6 gentlemen, I'll just direct my questions to Mr. (Juror 7), Ms. (Juror
7 27), and Ms. (Juror 18). Could you hear all the questions that I
8 previously asked the members of the jury? Would you have
9 answered any differently than they did?

10 (No response.)

11 MR. ENGLISH: If we prove our case by a
12 preponderance of the evidence, would you have any problems in
13 awarding an adequate award to Mr. Neely for the injuries he
14 suffered if the medical proof shows that he is entitled to it, a
15 substantial award? Can you do that?

16 Mr. (Juror 7), I believe you work with Pilot in the accounting
17 department?

18 JUROR NO. 7: That's correct.

19 MR. ENGLISH: And how long have you been with
20 Pilot, sir?

21 JUROR NO. 7: I believe four years.

22 MR. ENGLISH: Four years?

23 JUROR NO. 7: That's correct.

24 MR. ENGLISH: Do you work with Mr. Bietz
25 (phonetic), Jerry Bietz (phonetic)?

1 JUROR NO. 7: Yes, sir, I do.

2 MR. ENGLISH: Ms. (Juror 27), you're an accountant
3 at TVA?

4 JUROR NO. 27: Yes.

5 MR. ENGLISH: Okay. And how long have you been
6 with TVA?

7 JUROR NO. 27: Five years.

8 MR. ENGLISH: Okay. Would the fact that you are
9 with TVA, would that cause you any problems in sitting in this
10 case, if it ran over a couple days?

11 JUROR NO. 27: No.

12 MR. ENGLISH: Okay. Ms. (Juror 18), I believe you're
13 an engineer?

14 JUROR NO. 18: (Nodded.)

15 MR. ENGLISH: What type?

16 JUROR NO. 18: Quality.

17 MR. ENGLISH: Quality? Okay. Got two of you back
18 there together. Who are you with, ma'am?

19 JUROR NO. 18: Siemens Medical.

20 MR. ENGLISH: Okay. What does your job as a quality
21 engineer with Siemens Medical require you to do? Does it have
22 you interact with doctors on doctors' offices, on a basis—

23 JUROR NO. 18: No, no interaction.

24 MR. ENGLISH: Okay. Would the fact that we sued
25 and there are medical issues involving Mr. Neely's future in this

1 case, would that cause you any problems one way or the other?

2 JUROR NO. 18: No, sir.

3 MR. ENGLISH: Of the three of you that were just
4 seated, Ms. (Juror 18), Ms. (Juror 27), Mr.(Juror 154)– I mean, Mr.
5 (Juror 7), do any of you have any feelings one way or the other
6 about lawsuits?

7 JUROR NO. 7: No.

8 JUROR NO. 18: (Shook head.)

9 JUROR NO. 27: (Shook head.)

10 MR. ENGLISH: We've had a very candid interchange
11 among the jurors today, and I appreciate that. All we want is a fair
12 shot; all we're entitled to is nothing less than that. Can you all do
13 that?

14 JUROR NO. 7: Yes, sir.

15 JUROR NO. 18: (Nodded.)

16 JUROR NO. 27: (Nodded).

17 MR. ENGLISH: Thank you.

18 THE COURT: Thank you, counsel. Mr. Woodfin?

19 MR. WOODFIN: Thank you. Ms. (Juror 18), Mr. (Juror
20 7), and Ms. (Juror 27), I had asked the earlier folks that were sitting
21 in your seat if they had ever been involved in an automobile
22 accident. Have any of you three ever been involved in an
23 automobile accident?

24 JUROR NO. 7: Several.

25 MR. WOODFIN: All three of you are shaking your

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?

1 (Juror No. 6 called to the jury box.)

2 THE COURT: Mr. (Juror 6), is going to be in the
3 number three position.

4 JUROR NO. 11: Your Honor?

5 THE COURT: Yes, ma'am? I'm sorry. You're Ms.
6 (Juror 11)?

7 JUROR NO. 11: Right. You had said address you if I'm
8 going to have any problem. My daughter's going through a
9 criminal trial right now.

10 THE COURT: Your daughter's going through a
11 criminal trial, right?

12 JUROR NO. 11: Drugs.

13 THE COURT: And she's a defendant?

14 JUROR NO. 11: Yes. So I didn't know—

15 THE COURT: Now, I should have known that,
16 shouldn't I? I understand, but I should have known that. I don't
17 think that disqualifies you from being on this case.

18 JUROR NO. 11: I just wanted to make sure. I know you
19 asked me that.

20 THE COURT: Yes, ma'am. Now that you say that, I
21 remember. You and I may have discussed that one other time.

22 JUROR NO. 11: Right.

23 THE COURT: I don't think that disqualifies you. Glad
24 you brought it out. Now, these attorneys may want to ask you a
25 question. That's new information to them. If they want to question

1 you about that, I'll let them do that, but I don't think that's going to
2 be a problem.

3 Now, let's start with Mr. (Juror 6). Mr. (Juror 6), you are now
4 the— one, two, three, four— fifth person to occupy that chair.
5 There's something about that chair. Madam Clerk, remind us,
6 we're going to replace that chair when this trial's over with a new
7 one.

8 Okay. Mr. (Juror 6), do you know Mr. Neely?

9 JUROR NO. 6: No. No, sir.

10 THE COURT: Do you know Mr. Fox?

11 JUROR NO. 6: No.

12 THE COURT: And have you had any dealings in the
13 past or present with Fox of Oak Ridge?

14 JUROR NO. 6: No.

15 THE COURT: Do you have any knowledge or dealings
16 with these attorneys?

17 JUROR NO. 6: No.

18 THE COURT: Are you currently a party in any type of a
19 lawsuit?

20 JUROR NO. 6: No, sir.

21 THE COURT: Have you ever been a Plaintiff or
22 Defendant in a civil case like this?

23 JUROR NO. 6: No, sir.

24 THE COURT: Have you ever served on a civil case jury
25 before?

1 JUROR NO. 6: Yeah, about– it’s probably been 20 year
2 ago.

3 THE COURT: Okay. Was that a car accident case?

4 JUROR NO. 6: Sort of. Car drove off a hill into a guy’s
5 house.

6 THE COURT: So that’s a wreck between a car and a
7 house?

8 JUROR NO. 6: Yeah.

9 THE COURT: Okay. Well, I may let the lawyers ask
10 you about that. But that’s been 20 something years ago?

11 JUROR NO. 6: Yeah.

12 THE COURT: Any criminal trial experience, jury
13 experience?

14 JUROR NO. 6: No.

15 THE COURT: Okay. I assume you’ve listened to
16 everything that’s been said here today?

17 JUROR NO. 6: Yes.

18 THE COURT: Do you have any problems sitting here
19 with us for a couple days, any physical problems?

20 JUROR NO. 6: No.

21 THE COURT: Do you know of any reason, based on
22 everything you’ve heard today, why you could not sit on this jury
23 and render a fair verdict based on the evidence presented and in the
24 context of the Court’s instructions on the law, as the Court gives it
25 to you, sir?

1 JUROR NO. 6: No.

2 THE COURT: All right. The Court is going to find that
3 Mr. (Juror 6) is qualified, and let's begin with the Plaintiff, as we
4 always do. Mr. English, questions for Mr. (Juror 6)? And I suppose
5 if you want to ask Ms. (Juror 11) another question or two, you
6 would have leave of court to do that.

7 MR. ENGLISH: Mr. (Juror 6), you could hear all the
8 questions I asked and the responses that were made by the other
9 jurors; could you not?

10 JUROR NO. 6: Yes.

11 MR. ENGLISH: Okay. Would you have answered any
12 differently?

13 JUROR NO. 6: No.

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

16 JUROR NO. 6: No.

17 MR. ENGLISH: If we prove our case by a
18 preponderance of the evidence, or by 51 per cent of the evidence,
19 will you fully and adequately compensate him for all elements of
20 the damage, just not his medical bills, stuff like that?

21 JUROR NO. 6: Yeah.

22 MR. ENGLISH: Okay. Have you ever sued anybody or
23 anyone ever sued you?

24 JUROR NO. 6: No.

25 MR. ENGLISH: Okay. Ms. (Juror 11), would the

1 problem that your daughter has at this present time, would that
2 cause you any problems in sitting and doing what's right in this
3 particular case?

4 JUROR NO. 11: The only problem is, I have been in
5 and out of court for three years, you know, watching her go through
6 things she's went through.

7 MR. ENGLISH: Okay. I'm sure you would rather be
8 somewhere else, probably, that right here today?

9 JUROR NO. 11: Probably.

10 MR. ENGLISH: As the other ones. Would that cause
11 you any problems in giving Tom Neely a fair trial and giving Fox
12 Corporation a fair trial?

13 JUROR NO. 11: No.

14 MR. ENGLISH: Thank you.

15 THE COURT: Thank you, counsel. Mr. Woodfin?

16 MR. WOODFIN: Mr. (Juror 6), have you been
17 involved in any automobile accidents?

18 JUROR NO. 6: No.

19 MR. WOODFIN: Do you have any type of physical
20 condition which might affect your ability to sit for a long period of
21 time today and listen to this case?

22 JUROR NO. 6: I've had two back surgeries in the past
23 five years.

24 MR. WOODFIN: Did you have accidents that caused
25 you to have to have back surgeries?

1 JUROR NO. 6: No.

2 MR. WOODFIN: Were they related to anything at work?

3 JUROR NO. 6: No, not really.

4 MR. WOODFIN: And I guess I should disclose, I think
5 you work at OMI; is that correct?

6 JUROR NO. 6: Yes.

7 MR. WOODFIN: My law firm does some work for that
8 company, Spicer, Flynn & Rudstrom. I don't know if you've ever
9 come across us—

10 JUROR NO. 6: No.

11 MR. WOODFIN: —in your dealings with your
12 particular company. Okay, sir. Thank you. And, Ms. (Juror 11), I
13 don't mean to ignore you, but I understand your daughter has a
14 criminal case that's still going on?

15 JUROR NO. 11: (Nodded.)

16 MR. WOODFIN: But you don't think that's going to
17 affect your ability in this matter?

18 JUROR NO. 11: (Shook head no.)

19 MR. WOODFIN: Thank you.

20 THE COURT: Thank you, counsel. Your forms are on
21 the table in front of you. Madam Clerk, if you'll collect those
22 forms, please. All right. Mr. (Juror 6), you will be excused.
23 Appreciate you being here today and being patient with us. Report
24 back in the morning, please.

25 (Juror No. 6 excused and left the courtroom.)

1 THE COURT: Madam Clerk?

2 (Juror No. 32 was called to the jury box.)

3 THE COURT: I'm reluctant to put you back in that
4 same chair, Ms. (Juror 32), but I guess we will. All right. Good
5 morning, ma'am.

6 JUROR NO. 32: Good morning.

7 THE COURT: Have you been able to hear all the
8 questions and answers that have been raised in court this morning
9 so far?

10 JUROR NO. 32: Yes, sir.

11 THE COURT: Very Good. Do you know Mr. Neely?

12 JUROR NO. 32: No, sir.

13 THE COURT: Do you know Mr. Fox?

14 JUROR NO. 32: No, sir.

15 THE COURT: Have you ever had any dealings with Fox
16 of Oak Ridge?

17 JUROR NO. 32: No, sir.

18 THE COURT: Do you know these attorneys here today?

19 JUROR NO. 32: No, sir.

20 THE COURT: All right. Any reason why you would
21 have any problems sitting on this case for a couple days?

22 JUROR NO. 32: No, sir.

23 THE COURT: Now, are you currently a party in any
24 lawsuits?

25 JUROR NO. 32: No, sir.

1 THE COURT: And have you ever been a plaintiff or a
2 defendant in a civil case?

3 JUROR NO. 32: No, sir.

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

6 JUROR NO. 32: No, sir.

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

9 JUROR NO. 32: Yes.

10 THE COURT: All right. And when was that?

11 JUROR NO. 32: That was about three weeks ago.

12 THE COURT: Here in federal court?

13 JUROR NO. 32: Yes.

14 THE COURT: Think about everything you've heard so
15 far today and answer this question, please. Do you know of any
16 reason, Ms. (Juror 32), why you could not sit on this jury and
17 render a fair verdict based on the evidence presented and in the
18 context of the Court's instructions on the law as given to you by the
19 Court? Do you know of any reason why you couldn't do that?

20 JUROR NO. 32: No, I do not.

21 THE COURT: Thank you. Mr. English, any questions
22 for this juror?

23 MR. ENGLISH: Just very briefly, your Honor. Ms.
24 (Juror 32), would you have answered any differently to the
25 questions I asked the other members of the jury?

1 JUROR NO. 32: Not that I'm aware of.

2 MR. ENGLISH: If we prove our case by a
3 preponderance of the evidence or by 51 per cent of the evidence,
4 will you adequately compensate Mr. Neely for all elements of his
5 damages?

6 JUROR NO. 32: I believe I could do that.

7 MR. ENGLISH: Do you feel one way or the other about
8 suing people or— you know, no one likes to get sued, of course.

9 JUROR NO. 32: Well, I've never had to do that, but I
10 don't really feel one way or the other.

11 MR. ENGLISH: We can get a fair start with you as the
12 other members of the jury?

13 JUROR NO. 32: I think so.

14 MR. ENGLISH: Okay.

15 THE COURT: Mr. Woodfin?

16 MR. WOODFIN: Good morning, Ms. (Juror 32). In
17 looking at the questionnaire that you had completed, there was a
18 affirmative response to whether or not you or a family member had
19 been involved in a civil case before. Did you have someone in your
20 family that had been involved in a case for personal injury or
21 damages before?

22 JUROR NO. 32: No, sir.

23 MR. WOODFIN: I may be looking at it wrong or I may
24 just now be matching up the question. You don't have anyone that
25 you know that is currently involved in a lawsuit or has made a

1 claim for money damages against anyone?

2 JUROR NO. 32: No, sir.

3 MR. WOODFIN: Okay. Have you been involved in
4 any car accidents before?

5 JUROR NO. 32: Many years ago.

6 MR. WOODFIN: Any type of injury claim result from
7 that?

8 JUROR NO. 32: Yes, there were.

9 MR. WOODFIN: Did you have a claim against
10 someone or did someone claim against you?

11 JUROR NO. 32: Against someone.

12 MR. WOODFIN: What type of injury did you sustain?

13 JUROR NO. 32: It was back.

14 MR. WOODFIN: What type of treatment did you get?

15 JUROR NO. 32: I worked with an orthopedic surgeon.
16 It was a long, long time ago.

17 MR. WOODFIN: Okay. And, again, I don't mean to
18 pry personally, but we just need to make sure that we can be fair to
19 both sides about this. Did you have a claim against someone who
20 you say caused you damages as a result of that? Were you given any
21 damages?

22 JUROR NO. 32: Yes.

23 MR. WOODFIN: Was it resolved short of a jury trial,
24 like this?

25 JUROR NO. 32: Yes.

1 MR. WOODFIN: Okay. So that was something that
2 you just took care of on your own?

3 JUROR NO. 32: Yes.

4 MR. WOODFIN: How many years ago, approximately,
5 was that?

6 JUROR NO. 32: Twenty-five years ago.

7 MR. WOODFIN: Okay. All right. Do you think that
8 might impact your ability to sit and listen to the evidence in this
9 case at all?

10 JUROR NO. 32: No, sir.

11 MR. WOODFIN: Okay. Thank you.

12 THE COURT: All right, counsel. Madam Clerk, if you
13 would collect the forms, please. All right. The Court finds the jury
14 qualified, and these individuals will be the jury in this case. Those
15 of you who remain, the few of you who are remaining, thank you
16 for your patience this morning, and ask you to just come back
17 tomorrow morning for— find out whether you will be called to a
18 jury tomorrow. All right? Thank you.

19 All right. At this time, the Court is going to ask the members
20 of the jury to please stand, and the Court is going to swear you in.
21 Please stand, raise your right hand. Do you and each of you
22 solemnly swear or affirm that you will well and truly try the matters
23 in issue now and on trial and render a true verdict according to the
24 law and the evidence, under all penalties of perjury; do you? If so,
25 each of you please say, "I do."

1 (Petit jury sworn.)

2 THE COURT: Very well. You may be seated. All
3 members of the jury have made their oath, Madam Court Reporter. I
4 would like to give the jury as quickly as reasonably possible their
5 preliminary instructions, because they do involve the instructions
6 about discussing matters and so forth before we take a recess.
7 Now, is that acceptable to the parties?

8 MR. WOODFIN: That's fine, your Honor.

9 THE COURT: Mr. English?

10 MR. ENGLISH: Fine.

11 THE COURT: Does anyone want the rule to be enforced
12 at this point or do you want to wait until opening statements or do
13 you want to wait until evidence?

14 MR. WOODFIN: I have no preference one way or the
15 other, your Honor. I think we just have one witness.

16 MR. ENGLISH: There's just one witness, other than
17 the parties.

18 THE COURT: All right. Well, then, if it's not
19 requested at this time, then we'll proceed on. All right. Now,
20 members of the jury, the first thing I want to tell you is, I think one
21 of the potential jurors mentioned earlier, that he sat as an alternate
22 at one time and at the end of the case he wasn't allowed or didn't
23 get a chance to participate in the decision-making.

24 This is a civil case; we don't have alternates. Everyone who
25 hears all the evidence will participate in the deliberations. So there

1 are no alternates. I'm just telling you that to make sure that all of
2 you understand that you will all need to listen closely, because you
3 will all be part of the decision-making process when this case is
4 over.

5 During any breaks that we take— we will take a recess here
6 shortly, but during our breaks, during lunch time and so forth, it's
7 very important that you not discuss the case among yourselves or
8 with any persons who are not on the jury. Your thoughts and
9 opinions about the matters in this case, as they unfold, have to be
10 your own and only your own until the case is given to you as a jury
11 for your decision. That's very important.

12 If anyone attempts to approach you to discuss the case in any
13 way, you should advise the Court that someone has approached you
14 to try to discuss the case. Of course, the lawyers know they're not
15 going to do that. They know they don't have to— know they're not
16 supposed to do that. But if anyone should do that, then you're to
17 tell the Court or one of the court officers here, and we'll take care
18 of that immediately. Everyone with me so far? Okay.

19 Now, I'm going to go over some preliminary instructions with
20 you, and then we'll take a recess in this matter. In fact, we're going
21 to take a recess now, Madam Clerk. It's going to take a few
22 minutes. You all have been here a long time. We know who the
23 jurors are. The clerk will take you back to the jury room, make
24 yourselves comfortable. She'll show you where the restrooms are.
25 They are on both sides of the hallway back there, so there's plenty

1 of availability.

2 We'll take a recess and we'll come back and we'll start into
3 this case. All right.

4 (Recess had 10:43 a.m.; reconvened without jury 11:08 a.m.)

5 THE COURT: All right. Be seated, please. Counsel,
6 you had a matter?

7 MR. ENGLISH: Oh, yes, your Honor. I'm sorry. There
8 was some question about entering exhibits. I just have ten exhibits.
9 Do you want me to just enter them all at one time? Is that what you
10 asked the other day?

11 THE COURT: Sure. Unless there's some objection.

12 MR. ENGLISH: No, no, no. That's not usually the way
13 I've done it before, but I think that's probably maybe a more
14 efficient way to do it.

15 THE COURT: Well, I tell you what. I'll give you the
16 choice. If your traditional way of doing it is the other way, that's
17 fine, or—

18 MR. ENGLISH: I like to try new things, your Honor.

19 THE COURT: Okay. I'm just trying to make it easier.

20 MR. ENGLISH: I appreciate that.

21 THE COURT: All right. Anything else we can take up
22 before we bring the jury back in? Madam clerk, if you'll have the
23 officer bring the jurors in. Everyone please rise for the jury.

24 (Jury reconvened in courtroom at 11:10 a.m.)

25 THE COURT: All right. Members of the jury, welcome

1 again to jury service in federal court. Now that you have been
2 sworn as a jury to try this case, the Court will give you some
3 preliminary instructions on your proper role and conduct as
4 members of the jury.

5 As the jury, you have an important responsibility to decide
6 what the facts are that are in dispute in this case. As the judge, I
7 will decide all questions of law and procedure from time to time
8 during the trial, and at the end of the trial I will instruct you on the
9 rules of law that you must follow in making your decision.

10 You, the members of the jury, will decide what the facts are
11 from the evidence that will be presented in court. You and you
12 alone are the judges of the facts. You will hear the evidence, decide
13 what the facts are, and then apply the law I give you to those facts.
14 You must follow the law which I give you whether you agree with it
15 or not. That is how you will reach your verdict.

16 Please do not take anything I say or do during the trial as
17 indicating what your verdict should be. For example, do not be
18 influenced by the judge taking notes at some times and maybe not
19 others or asking a lawyer to repeat a question or a witness to repeat
20 an answer.

21 The evidence will consist of the testimony of the witnesses,
22 all documents and other tangible things received into evidence as
23 exhibits, and any facts that the lawyers agree on or that I instruct
24 you you should accept as being true.

25 In a moment the lawyers for each of the parties will make what

1 is called an opening statement. This will be a summary of the
2 evidence each party plans to present in court. It is designed to give
3 you a general idea of what this case is about. What the lawyers say
4 in their opening statements is not evidence.

5 After the lawyers' opening statements, the parties will present
6 their evidence. The person who brings the lawsuit is called the
7 plaintiff. A plaintiff always seeks some relief against the other
8 party, called the defendant. A plaintiff alleges that the defendant
9 in some manner was at fault and that as a result of this the plaintiff
10 suffered a loss.

11 The Plaintiff goes first, calling his witnesses and putting his
12 exhibits into evidence. Then the Defendant puts on its witnesses
13 and exhibits. After that, the Plaintiff may present rebuttal proof.
14 Then the lawyers will again address you for closing arguments.
15 After that, you will be sent to the jury room to decide on your
16 verdict.

17 After all the evidence is presented, I will read to you the final
18 jury instructions that you will follow in deciding this case. You
19 will be given a copy, a written copy, of those instructions to take
20 with you to the jury room for your review during your
21 deliberations.

22 You will decide from all the evidence what the true facts are.
23 As you hear the evidence come in, keep an open mind until you
24 have heard all the evidence, my instructions on the law, and the
25 closing arguments made by the attorneys.

1 Certain things are not evidence, and should not be considered
2 by you as evidence. Statements, arguments and questions by the
3 lawyers are not evidence. Objections to questions are not evidence.
4 Lawyers have an obligation to their clients to make an objection
5 when they believe evidence being offered is improper under the
6 rules of evidence.

7 You should not be influenced by the objection or by the
8 Court's ruling on it. If the objection is sustained, simply ignore the
9 question; if it is overruled, you treat the answer like any other.

10 If you should be instructed by the Court that some item of
11 evidence is received for a limited purpose only, then you will
12 follow that instruction. Any testimony that the Court may tell you
13 to disregard is not evidence, and should not be considered by you.

14 Anything you may see or hear outside the courtroom before
15 the trial or during the trial is not evidence and must be disregarded.
16 You must decide this case solely on the evidence presented here in
17 the courtroom.

18 There are two kinds of evidence, direct and circumstantial.
19 Direct evidence is direct proof of a fact, such as testimony of an
20 eyewitness. Circumstantial evidence is proof of certain facts from
21 which you may infer or reasonably conclude that other facts exist.
22 I will give you further instructions on these, as well as other
23 matters, at the end of the case, but as you hear the evidence, keep in
24 mind that you may consider both kinds of evidence.

25 It will be up to you, the members of the jury, to decide which

1 witnesses to believe, which witnesses not to believe, and how much
2 of any witness' testimony you want to accept or reject. I will give
3 you some guidelines for determining credibility of witnesses at the
4 end of the case.

5 I want to talk to you briefly about the burden of proof. In a
6 civil action such as this one, in order to recover money damages,
7 the Plaintiff must prove his claims by a preponderance of the
8 evidence. That means the Plaintiff has to produce evidence which,
9 considered in the light of all the facts, leads you to believe that
10 what the Plaintiff claims is more likely true than not.

11 To put it differently, if you were to put the Plaintiff's and the
12 Defendant's evidence on opposite sides of the scales, the
13 Plaintiff's evidence would have to make the scales tip somewhat on
14 the Plaintiff's side. If the Plaintiff fails to meet this burden, the
15 verdict must be for the Defendant.

16 Those of you who have sat on criminal cases will have heard
17 the term "proof beyond a reasonable doubt." That requirement
18 does not apply to a civil case such as this one, and you should
19 therefore please put that concept out of your mind.

20 Let me talk to you about the credibility of witnesses. The jury
21 is the exclusive judge of the weight to be given to a witness'
22 testimony and the credibility of a witness. You are the ones who
23 have to decide how important each piece of evidence is and whether
24 or not the witnesses are entitled to be believed.

25 In deciding how much importance to attach to what a witness

1 has said, consider the following facts: the demeanor of the witness
2 on the witness stand, meaning the way the witness behaves; the
3 witness' intelligence or lack of intelligence; any biases or
4 prejudices that the witness may have shown; the relationship of the
5 witness to any of the parties in the case; whether or not the witness
6 has anything to gain or lose by a particular outcome of the case;
7 how the witness learned the facts about which he testifies; the
8 reasonableness or unreasonableness of the story the witness tells;
9 and whether the witness' testimony is consistent or inconsistent
10 with other statements the witness may have made in the past.

11 You should attach more importance to the testimony of that
12 witness or witnesses who, in your opinion, have been more truthful
13 in telling the facts of the case.

14 I want to talk to you about the law that applies in this case just
15 briefly. I will give you detailed instructions at the end of this trial,
16 and those instructions will govern your deliberations. However, in
17 order to help you follow the evidence you are about to hear, I will
18 give you at this time a brief summary of the elements which the
19 Plaintiff must prove in order to make out his case.

20 A plaintiff is entitled to recover compensation for an injury
21 that was legally caused by the negligent conduct of the defendant.
22 In this case, the Plaintiff has the burden of proving that the
23 Plaintiff(sic) was at fault. In this case, this means the Plaintiff has
24 the burden of proving that the Defendant was negligent and that the
25 negligence was a legal cause of injury to the Plaintiff.

1 Negligence is the failure to use reasonable care. It is either
2 doing something that a reasonably careful person would not do or
3 failing to do something that a reasonably careful person would do
4 under circumstances similar to those shown by the evidence. A
5 person may assume that every other person will use reasonable care
6 unless the circumstances indicate the contrary to a reasonably
7 careful person.

8 The second part of fault is what I just mentioned, legal cause.
9 A legal cause of an injury is a cause which, in natural and
10 continuous sequence, produces an injury and without which the
11 injury would not have occurred. A single injury can be caused by
12 the negligent acts or omissions of one or more persons.

13 If you find that a party was negligent and that the negligence
14 was a legal cause of the injury or damages for which claim was
15 made, you have found that party to be at fault. The Plaintiff has the
16 burden to prove the Defendant's fault. If the Plaintiff fails to do
17 so, you should find no fault on the part of the Defendant.

18 A person who violates a statute or ordinance is negligent.
19 However, a person violating a statute or ordinance is not at fault
20 unless you also find that that violation was the legal cause of the
21 injury or damage for which the claim has been made.

22 In this case, the Plaintiff alleges that the Defendant, Fox of
23 Oak Ridge's employee, Mr. Curd, violated the following statute as
24 set forth in Section 55-8-124, Subpart A, of the Tennessee Code
25 Annotated, which states: "The driver of a motor vehicle shall not

1 follow another vehicle more closely than is reasonable and prudent,
2 having due regard for the speed of such vehicles, and the traffic
3 upon and the condition of the highway.”

4 Now, even though the court reporter here is taking down notes
5 of everything being said in the courtroom, a typewritten copy of
6 those notes, unfortunately, is not going to be available to you
7 during the deliberations. Therefore, pay close attention to the
8 testimony of the witnesses.

9 Any exhibits that are admitted into evidence will go with you
10 to the jury room when you are sent to deliberate. So you will have a
11 chance to look at them at that time as much as you want if you wish
12 to do so.

13 I want to talk to you again about the rules of proper behavior
14 for a member of the jury. I cannot emphasize enough how
15 important it is for you to obey these rules so we can be sure that the
16 parties get a fair trial.

17 As I stated before our break, you must not talk to your fellow
18 jurors about this case until you are sent to the jury room to decide
19 on your verdict. Just as important, do not talk to anyone who has
20 anything to do with this case, the lawyers, the parties, the
21 witnesses, or anyone associated with them.

22 They certainly understand that you should not have any
23 conversations with them while the trial is going on, even to say
24 good morning, so as to avoid even the appearance of an improper
25 contact. Our system of justice requires you not only be fair and

1 impartial, but that you also give every appearance of being fair and
2 impartial.

3 Second, do not talk with anyone else about this case until the
4 trial is completely over. Anyone else includes members of your
5 family and your friends. You can tell them that you are serving as a
6 juror in a case in federal court, but please do not tell them anything
7 else about this case until it is finished.

8 Of course, do not let anyone talk to you about the case. If
9 someone should try to talk to you, you should immediately report
10 that to the court security officer or the Court or courtroom deputy,
11 and we'll take care of it.

12 Fourth, if you should start to hear anything on the radio or
13 television about this case or an article in the newspaper, so forth,
14 do not let yourself hear or see that. I have no idea whether or not
15 that might occur, but do not get involved in exposing yourself to
16 any media coverage of this matter.

17 Finally, and this is very important in this internet age, do not
18 try to gather any information or do some other type of investigation
19 on your own that might relate to the facts of this case.

20 Okay. It's likely that we'll be here beyond today, we'll be
21 back here tomorrow. Although it may not be true, it probably will
22 be true. Do not make any effort to investigate this matter on your
23 own. Do not go anywhere near where the scene of this accident
24 occurred. Do not try to do any research, newspapers, or on the
25 internet, about this accident or about any of the other issues or

1 evidence that are brought before you in court. Your decision is to
2 be based strictly and solely on the evidence that is given to you
3 through the witnesses and the exhibits in this courtroom.

4 Mr. English, I think there's one witness in the courtroom. I
5 don't know if more have arrived, but is the rule requested at this
6 time?

7 MR. ENGLISH: Yes, your Honor, we request the rule.

8 THE COURT: All right. Anyone who is other than Mr.
9 Neely and Mr. Fox needs to step outside the courtroom at this time,
10 anyone who thinks you may be a witness in this case. Mr. Woodfin,
11 if you have any witnesses, ask them to step outside, please. Don't
12 go far, though, sir. We'll come get you when we need you.

13 All right. It is now the time for the opening statements by the
14 attorneys. Generally, we've agreed upon a 15-minute time limit for
15 opening statements, and I thank you for that.

16 Mr. English, or Mr. Inman, you may begin.

17 MR. ENGLISH: Ladies and gentlemen, two years ago,
18 on a warm, hot July day, Tom Neely's life was changed forever. He
19 was going to work, going to work to a job that he loved at the
20 Ridgeview Psychiatric Facility. Been working there for a year and
21 a half.

22 He lived in Kentucky, drove near 100 miles to work one way,
23 because he loved the job and it was the best job he had ever had. He
24 had worked at Scott County Hospital for about 12 years, security
25 and orderly, doing hard work.

1 Security work requires you to stand up and to walk nine to
2 five. Being an orderly, most of you have had healthcare experience
3 knows what that entails. It entails lifting. It's a hard job. His job as
4 a psychiatric technician who was working and where he was going
5 the day of this accident required him to be able to stand on his feet,
6 lift 75 pounds, to subdue unruly clients or patients that really might
7 have hurt themselves.

8 This was his job and this was his chosen profession. This is
9 what he had done for a year and a half. This is a job that he drove
10 100 miles one way each day to do because he loved it.

11 On the day of the accident, Tom was on Highway 61, which is
12 in Clinton or bypasses Clinton. He was going the same way he had
13 always gone. And he was driving and it started raining, and you
14 know what happens when it starts raining; the roads get wet. When
15 those roads get wet, they get slick.

16 And he was following another vehicle a safe distance behind,
17 in the slow lane, in Clinton. This vehicle slows down to turn into a
18 strip shopping mall there, and there's a big bump across the
19 sidewalk, and it had to slow down quite a bit. Tom was right
20 behind it, and he had to slow down quite a bit.

21 Mr. Curd, who is not a party to the lawsuit, the gentleman that
22 just stepped outside, he didn't slow down. He was picking up a big
23 van that was going into Fox of Oak Ridge to be serviced, some sort
24 of service. And he was going too fast, he was going too close, and
25 he was just not being aware of what the weather conditions dictated

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 12th 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.

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.

1 The first thing you're going to be asked to determine is
2 whether or not my client, through their employee, Mr. Curd, who
3 went outside a little bit earlier, caused this accident, did he act in a
4 way that was what will be defined to you as negligent. Did he do
5 something which was out of the ordinary context that other people
6 would do which caused this accident to happen?

7 You'll hear the facts about how the accident occurred, that
8 Mr. Curd was traveling behind Mr. Neely, that it began to rain, that
9 the street was slick, that Mr. Neely stopped, that Mr. Curd tried to
10 stop and skidded on the wet road, and his vehicle came into contact
11 with Mr. Neely's vehicle.

12 You will see pictures of the vehicles that both individuals
13 were driving. Mr. Neely's vehicle had damage to the right rear.
14 You can see in the back where the taillight was pushed in, and it's
15 pushed a little bit forward.

16 He says he also had a broken seat. You will see pictures of
17 that as well, where the seat is folded backward into the rear
18 compartment. It doesn't appear to be broken off in any way, but it
19 just appears that it's folded backward, as the picture indicates.

20 You will see the van that Mr. Curd was driving. The front
21 bumper of the van has a slight dent in it, and that is the only damage
22 that was done to the van. So the property damage in the pictures
23 that are reflective of that property damage in this case do not show
24 significant damage to these automobiles.

25 In addition to deciding whether or not Mr. Curd caused this

1 accident— and we don't dispute that he was working for us at the
2 time, so if you do find he did something wrong, that's attributable
3 to us. If you find he didn't do anything wrong, we don't have
4 anything that we did wrong separately. Our role here today is as his
5 employer defending actions that were made— or allegations against
6 us that our employee did something wrong.

7 So if you get past that hurdle and you found that they have met
8 their burden of proof, that despite the fact that this was a rain-
9 slickened road and Mr. Curd was acting reasonably, then you have
10 to find that Mr. Neely sustained damages that are directly a result
11 of what happened in that accident that occurred out there in Clinton
12 on that date.

13 We have been sued in this case for two and a half million
14 dollars. That is the number that was listed in the lawsuit which Mr.
15 Neely feels that he is entitled to. And his attorney has told you
16 today about the course of treatment that he has underwent and the
17 things that he has done since this accident occurred.

18 What I want to do is fill in a few more details about what
19 you'll hear, hear from Mr. Neely, as he testifies in accordance with
20 what he has told me before. I have taken his deposition. He has
21 sworn to me under oath that certain things occurred, and I suspect
22 he'll testify in accordance with those things today.

23 We already know what the doctors have said, because we've
24 preserved their testimony by deposition and by videotape or CD-
25 ROM, I guess they call it now. And you will see those doctors

1 testify on this video screen as if they were here today.

2 Mr. English alluded to it a little bit before, Mr. Neely was
3 referred to these doctors by his lawyers. They chose specific
4 doctors for him to go to. There was one doctor that Mr. Neely saw
5 before Dr. Koenig that he didn't like, so then they found somebody
6 else and sent him to Dr. Koenig. Then they sent him to the pain
7 specialist. These were all referrals that were made through the
8 lawyer's office.

9 Mr. Neely told his doctors, at the scene of the accident, that he
10 lost consciousness. He told me, in his deposition, that he did not
11 lose consciousness. The doctor reviewed an emergency room
12 record which showed he did not lose consciousness.

13 Mr. Neely is going to tell you he can't work, but he told me,
14 when I took his deposition, that he has applied for certain jobs and
15 he just has not checked back or heard back from those jobs that he
16 has applied for.

17 The symptoms that he is going to tell you about, when you
18 hear the doctors testify about these symptoms, are not confirmed by
19 the tests that Mr. English alluded to. He mentioned these MRI
20 examinations which were given to Mr. Neely on the various
21 occasions, they show these disc bulges. The doctors have said that
22 they can't really tell for sure if those things were caused by the
23 accident because they may be degenerative changes that exist in
24 people as they get older.

25 The doctor did say, in his opinion, that if these symptoms Mr.

1 Neely was talking about were true, based on a history given by Mr.
2 Neely, the doctor would attribute those things to the accident. So
3 you can see what we have to do here. We have to first believe what
4 Mr. Neely is saying before we can believe what the doctors are
5 saying about these symptoms.

6 Because there is no test that shows why Mr. Neely says he has
7 pain down his arms or down his legs. Mr. Neely told me he has pain
8 all the way down his arms, into his hands, into his fingers. He told
9 me he has pain down his legs, into his feet, into his toes. He told
10 me his eyes hurt, he told me his head hurts, he told me he has
11 memory problems.

12 You will listen to what these doctors say, and there is never a
13 report to the doctors that there are any memory problems. Mr.
14 Neely told me he told his doctors these things, but the doctors don't
15 confirm that, either.

16 Mr. Neely had a previous worker's comp. case when he was
17 working at Scott County Hospital, where he injured his knee. Some
18 of the tests that the doctors gave him, even according to the
19 doctors, confirmed that there was a symptom Mr. Neely was
20 reporting that was out of context with the test that he was being
21 given. You'll hear Dr. Koenig talk about that. He calls it a
22 Waddell test, and he will explain what that means as well.

23 Mr. Neely had a bruise on his back in October, 2004, that he
24 says happened at the accident and his doctor says was not there
25 until after the accident, with no explanation for it. He and his wife

1 had a child in November of 2005, after this accident. He takes care
2 of that child now to some extent.

3 His wife and he sell things at a flea market on the weekends.
4 He drives to pick these things up wherever they're located and
5 takes them to the flea market in his community, Strunk, Kentucky,
6 where he and his wife live. He drove to Virginia one time to pick
7 these things up.

8 These are all points that you're going to hear, and they're
9 going to impact your ability to decide how much weight all of this
10 evidence is to be given. All we're asking is that you take all of
11 these things into account in deciding whether or not Mr. Neely has
12 met his burden of proving these things by a preponderance of the
13 evidence.

14 He's asking for a lot of money, he's asking for a lot of
15 different damages. For example, he's asking for this award for lost
16 earning capacity. He doesn't think he's going to work again as a
17 result of this. You have to not only weigh that, but you have to
18 weigh the other things that you will hear about that as well.

19 Why doesn't he have a job now? Is it just because he didn't
20 hear back from the places he applied for? Is it because he's taking
21 care of a child? Is it because that he and his wife are getting
22 income from this flea market and from rental properties that they
23 have? That's for you to decide.

24 But those are the things that really destroy any weight of the
25 evidence that he will put on regarding his claim for lost earning

1 capacity. That one's easy for me. In my opinion, he has no claim for
2 lost earning capacity because of those other factors that I've said.

3 Other damages that he's going to be claiming require him to
4 meet that same burden, and if he can't meet that burden, you all
5 took an oath today saying you'd decide this case fairly and
6 impartially. While it may be difficult to award this man limited
7 damages, that's what you will have to do if you believe the
8 evidence does not meet the standards.

9 Our system works real well when the jurors listen to the
10 evidence and listen to the instructions that the Court gives, and I
11 suspect you're going to do that today.

12 I want to thank you all for taking the time to be here and
13 listening to what we have to say about it and letting us present the
14 case and letting me present the case on behalf of Fox of Oak Ridge
15 so that you can truly understand what's going on here. We'll try to
16 present this as clearly and concisely as possible so you can get to
17 the point where you can help us decide these issues. Thank you.

18 THE COURT: All right. Thank you, counsel. Members
19 of the jury, we're at the point now where we can begin taking
20 evidence in this case. Before we start taking evidence from any
21 witnesses, we're going to take a lunch break.

22 But I am going to tell you that there have been stipulations of
23 evidence or fact that have been made by the parties as part of the
24 preparation for this case. There are three stipulations of fact the
25 parties have agreed upon, and so I'm going to read these to you

1 now. These will be the first three items of evidence that you will
2 take in this case.

3 Number one, the Plaintiff, Thomas Neely, was a citizen and
4 resident of McCreary County, Kentucky, at all times material to
5 this case. Number two, Defendant was a citizen of the State of
6 Tennessee at all times material to this case. Number three, on July
7 12, 2004, the Defendant's driver, Benjamin Curd, was operating a
8 Chevrolet van as the agent of the Defendant, Fox of Oak Ridge,
9 Incorporated. There was a motor vehicle collision between the
10 Defendant's van and the automobile driven by the Plaintiff,
11 Thomas Neely.

12 All right. Counsel, I feel like— it's past 11:45, and we should
13 go ahead and take a lunch break rather than start with the first
14 witness, unless you have one that's just going to be 15 minutes.

15 MR. ENGLISH: No, your Honor. My first witness is
16 going to be sort of lengthy.

17 THE COURT: I thought so. All right. Let's go ahead
18 and take our break. If everyone could be back in the courtroom at
19 one o'clock, back at one o'clock. Does that give everyone enough
20 time? Members of the jury, if you will come to the back with the
21 deputy clerk, she wants to make sure you each have your juror tag
22 to wear when you leave the building.

23 (Recess had 11:48 a.m.; reconvened without jury 1:01 p.m.)

24 THE COURT: All right. Counsel, are we ready to bring
25 in the jury?

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 14th 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 6th 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.

1 THE COURT: I feel like we could probably finish with
2 the direct here, but we're going to have to stop early today. I'm
3 sorry. I've never had to do that in a case before, but I can't keep up
4 with you, is the problem I'm having.

5 MR. ENGLISH: Judge, let's just stop it right now, if
6 you don't mind, and we'll come back. I've got a few more
7 questions on direct, but you're obviously not feeling real well.

8 THE COURT: I'm not. Mr. Woodfin?

9 MR. WOODFIN: I have absolutely no objection to that
10 at all, your Honor. I'm sorry you're feeling the way you feel. We'll
11 go and come back—

12 THE COURT: Something going around.

13 MR. WOODFIN: — see if we can give it a shot tomorrow.

14 THE COURT: Well, I would say I'll bring the jury in,
15 then. Do you want to start what time in the morning? Nine?

16 MR. ENGLISH: I've got a settlement at 8:30. I should
17 be through by nine or so. If we could start just a tad late, that
18 would be good.

19 MR. WOODFIN: No problem.

20 MR. ENGLISH: Nine-thirty? I'll be finished.

21 THE COURT: Okay. We'll say 9:30. Again, I
22 apologize. We'll bring the jury in, excuse them. Thank you,
23 counsel. And I apologize to the parties as well, Mr. Neely and Mr.
24 Fox.

25 (Jury reconvened in courtroom.)

1 THE COURT: Members of the jury, unfortunately, this
2 is going to be a shorter day than I anticipated for you. We're going
3 to have to adjourn now for the day and take it back up in the
4 morning. Again, remember what I told you about not discussing
5 the case among yourselves or with anyone else. We will begin at
6 9:15 tomorrow morning, but if you could be here and be ready at
7 nine just to give us a little cushion there, that would be good.

8 All right. Madam Clerk?

9 (Whereupon, June 20th, 2006, court adjourned at 1:47 p.m.)

C E R T I F I C A T I O N

I certify that the foregoing is an accurate transcript of the record of proceedings in the titled matter.

 /s/ *Donnetta Kocuba*

 7/17/12

Donnetta Kocuba, RPR-RMR
Official Court Reporter
U.S. District Court
Knoxville, Tennessee