



1                   BE IT REMEMBERED, the above-entitled cause  
2 came on to be heard, on this date, Friday, May 13th, 2005,  
3 before the Honorable Jeffrey F. Stewart, Chancellor of Said  
4 Court, whereupon the following ruling of the Court was  
5 heard, to wit:)

6                   THE COURT: All right. We are here today for  
7 the Court to deliver its ruling in the case of Gary Rogers  
8 versus the Winchester Utility District. This is a case  
9 that's a rather unusual case in that it involves a  
10 substantial medical question that the Court's gonna have to  
11 deal with. Essentially what happened was Mr. Rogers was  
12 involved in an incident at work, if I've written down the  
13 date correctly it was December 13th of 1999. And on that  
14 particular day, while working as a meter reader for the  
15 Winchester Utility District and carrying out his duty as a  
16 meter reader, went over and his version of the story is that  
17 he was reaching down to touch or wipe off the meter so he  
18 could read it and there were some bugs around or something,  
19 and the bugs flew up and they caught him in the mouth and  
20 there was an odor, and as he wiped the bug or got the bug  
21 out of his mouth, whatever the substance was that was on the  
22 meter caused him to get sick, and he was sick within a few  
23 minutes and became violently ill, and with such violence  
24 that his coworker felt that he needed to be taken home.

25                   He went home. He stayed there some four or

1 five days. As I understood it, his mother finally decided  
2 that he was too sick to be there. He was taken to the  
3 hospital and he was hospitalized for several days after  
4 that, quite ill, and Dr. Brandon treated him there. He was  
5 seen by a number of other doctors over a period of time to  
6 try to determine what kind of an illness he had.

7                   It was the beginning then of a sickness and  
8 an illness that has continued from that date through this  
9 date, and it was finally diagnosed as Still's disease, and  
10 we have that disease confirmed by Dr. LaGrone and Dr., I  
11 hope I say this correct, Steigelfest or Steigelfast who have  
12 seen him, and they are certified rheumatologists. And Dr.  
13 Brandon, who has been his treating physician over this  
14 period of time, also concurs in that diagnosis.

15                   To give you a little bit of background then,  
16 Mr. Rogers has testified that he was born on August the 8th,  
17 1957. He was 42 at the time of the incident. He's 47 years  
18 old at the time of the trial. He's a high school graduate,  
19 as far as his education is concerned. And essentially all  
20 of his work history has been with the Winchester Utility  
21 District, most of that being a meter reader. Since that  
22 time he's had a couple of occasions where he attempted to  
23 return to work. I say a couple of occasions, more than  
24 probably two, but he's made an attempt to return to work and  
25 it just simply hasn't panned out for him, and he's not been

1 able to work. He's suffered things like fevers, dizziness,  
2 stomach problems, rashes, and he's receiving quite a bit of  
3 medical treatment for that. And, as a result of that, he's  
4 no longer working for the Winchester Utility District and  
5 has not been able to return to work.

6 All of the facts that he's testified to  
7 concerning the events of that morning have been corroborated  
8 by his coworker, Edward Sells, who talked about how sick he  
9 was and that he just felt like he was not in good shape.  
10 And when he finally saw him in the hospital after that, he  
11 said he just didn't look good at all. Of course, then  
12 Mr. Rogers' mother further confirmed that. So I don't think  
13 there's any dispute about the incident and the events that  
14 transpired after that.

15 What I think has come into question or come  
16 into play here is whether or not this event is the reason  
17 for his Still's disease. And I've tried to read these  
18 depositions very carefully and I've gone over them several  
19 times. We had a motion in limine that was filed, and I'm  
20 not sure that I ruled on that motion in limine. I said  
21 certainly I was going to consider the testimony of  
22 Dr. Brandon in this case, and then there was a question  
23 about the science that was employed by him. And I think  
24 that if I have not overruled the motion in limine then I  
25 will specifically do so now. I think Dr. Brandon is a

1 medical doctor. He has had some experience, even though  
2 he's in general practice, in dealing with Still's disease;  
3 he said he had treated several other cases. And, of course,  
4 he is a fact witness as to the events leading up to the  
5 ultimate diagnosis and transfer into treatment by  
6 Dr. Steigelfest and Dr. LaGrone, so I think he is qualified  
7 to testify and I think he's qualified to give his opinion.  
8 He had reviewed the medical records and, of course, had a  
9 number of records himself, and I think he helps lay the  
10 foundation in this case for the medical proof that we have.

11           So, as I said, we don't have any dispute  
12 about his diagnosis. He certainly has Still's disease.  
13 It's considered a disease that's an autoimmune disease.  
14 It's very rare in adults and it's more commonly seen in  
15 children rather than adults. I think it was really an  
16 interesting medical workup in that he went through so many  
17 different tests for so many different possible diseases  
18 that, of course, it turns out that Still's disease is a  
19 disease that comes around about as a result of excluding all  
20 other things. So they have looked at most every kind of  
21 other possible disease that he could have and they excluded  
22 all of the others in order to make that diagnosis.

23           There was some discussion about whether this  
24 disease could be triggered or caused by a microbe. And I  
25 know that came up in the testimony I believe of

1 Dr. Steigelfest when he was asked about the causation of  
2 this and that it could be caused by a microbe. And I  
3 noticed that in reading through the deposition again of  
4 Dr. Brandon that he said that there were so many different  
5 tests performed for microbes or viruses. He said that  
6 Dr. Sanders, who was an infectious disease specialist, had  
7 done so many studies that he feels like they would have  
8 found that had there been a microbe or virus and so they did  
9 not feel that it was caused by a microbe or a virus.

10 So it sort of brings us back to, I think, the  
11 term of what was the triggering event. And certainly there  
12 was a lot of medical proof that was given about whether or  
13 not this disease was caused by a particular thing. And  
14 certainly the testimony is clear from all of the doctors  
15 that there is no known cause for Still's disease. And so I  
16 think that we would have to agree that there is no medical  
17 evidence showing what is the cause of Still's disease. But  
18 what I think I'm going to talk about a little bit more is  
19 the testimony then given by Dr. Steigelfest is that this is  
20 an autoimmune disease. And that in all autoimmune diseases  
21 he says there is usually a triggering event, and that people  
22 are born with a predisposition and that that predisposition  
23 needs sometimes an environmental source to set off this  
24 initial predisposition. Now, we don't know exactly what was  
25 in this particular circumstance, that is whether it was a

1 toxic substance or whether it was just something that was  
2 organically grown there that caused this event to happen.  
3 But there's not any question that throughout his testimony  
4 that he talks about triggering events, and in this  
5 particular case it's fairly case there was a triggering  
6 event. There was a circumstance that took place in the  
7 course and scope of the employment that Mr. Rogers was  
8 carrying out for the Utility District that he was working  
9 for, and there's no question that that set off a series of  
10 events which has led to his current condition.

11           And so I think based upon the testimony that  
12 I have and in a number of places the doctor was given an  
13 opportunity to talk about triggering events, but he also  
14 says he couldn't say for sure as to the cause cause there is  
15 no cause known for this disease as there is not a cause  
16 known for a lot of diseases. But he kept saying that it was  
17 possible, it was probable that there was a triggering event  
18 that set this off, and he says, again, that that's usually  
19 the case with all autoimmune disease.

20           So having read that deposition in that light,  
21 it's my opinion, based upon the testimony both medical and  
22 lay that I've heard in this case, that Mr. Rogers has  
23 suffered an injury in the course and scope of his  
24 employment. That this triggering event caused his Still's  
25 disease to onset. It's an autoimmune disease that he may

1 have been predisposed to have, but certainly it was dormant  
2 and was causing him no problem. Mr. Rogers' health  
3 situation throughout his life had been good. In fact, he  
4 didn't even really need a doctor. And other than his mother  
5 recalling he'd had strep throat when he was a small child,  
6 his entire adult life has been a good and healthy life. And  
7 his coworker said, I think his terms were, if you said go  
8 get up he would get up and go and get it, so he had always  
9 managed to do whatever he had been asked to do and do it in  
10 an active manner.

11                   So having said that, I think that Mr. Rogers  
12 has suffered an injury in the course and scope of his  
13 employment, it arises from his employment and, based upon  
14 the medical testimony, it's a permanent condition. It may  
15 wax and wane, but he will always need treatment for this  
16 condition, and he would be entitled to receive compensation  
17 for it. There's no indication that he'll be able to work.  
18 He's testified about his inability to work, to hold down any  
19 kind of steady employment, so I would have to find that he's  
20 permanently and totally disabled.

21                   Now, I don't have in the record a beginning  
22 date where a doctor says he has reached maximum medical  
23 improvement as far as treatment is concerned, so I would  
24 just have to find that the date of his diagnosis for Still's  
25 disease. And I'll let you all come back before me if you

1 want to put on further proof about the date of the beginning  
2 or when the maximum medical improvement date would be, but I  
3 don't think those words were used in the medical proof by  
4 any particular doctor that he had reached a maximum medical  
5 improvement on a particular day. Certainly, if there were  
6 no medical bills paid, the employer would be responsible for  
7 the medical treatment that he received. And there were  
8 periods of time that he worked and he didn't work and,  
9 again, I don't have those specific dates and times. That's  
10 not in the proof as to when those were and when those dates  
11 were interrupted, so I can't make a finding as far as  
12 temporary total disability is concerned.

13 Anything else?

14 MR. BATES: No, Your Honor.

15 THE COURT: If you all want to put on some  
16 proof on those other matters, I'll be glad to come back and  
17 hear it. But I thought I would go ahead and make my ruling  
18 on the record in the case so you would have some idea of  
19 whether you need to do that.

20 MR. BATES: Thank you, Your Honor.

21 MR. MILLER: Thank you.

22 THE COURT: It was a well tried case and you  
23 all did a good job. Thank you very much.

24 (Whereupon, this case was adjourned.)

25

1 STATE OF TENNESSEE )

2 COUNTY OF COFFEE )

3 I, Karen S. Barton, Certified Court Reporter and  
4 Notary Public in and for the State of Tennessee at Large,

5 DO HEREBY CERTIFY that the foregoing proceedings  
6 were taken at the time and place set forth in the caption  
7 thereof; that the witness therein was duly sworn an oath to  
8 testify the truth; that the proceedings were  
9 stenographically reported by me in shorthand; and that the  
10 foregoing proceedings constitute a true and correct  
11 transcript of said proceedings to the best of my ability.

12 I FURTHER CERTIFY that I am not a relative or  
13 employee or attorney or counsel of any of the parties  
14 hereto, nor a relative or employee of such attorney or  
15 counsel, nor do I have any interest in the outcome or events  
16 of this action.

17 IN WITNESS WHEREOF, I have hereunto affixed  
18 my official seal and signature this 14th day of May, 2005,  
19 at Tullahoma, Coffee County, Tennessee.

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Karen S. Barton, Certified Court  
Reporter and Notary Public for the  
State of Tennessee

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My Commission Expires:  
April 10th, 2007

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