

No. 27056 - Robert L. Boggess v. Workers' Compensation Division and Union Carbide Corporation

No. 27057 - Robert L. Payne v. Workers' Compensation Division and Affiliated Transport, Inc.,
Montgomery Tank Lines and Chemical Leaman Tank Lines

FILED

December 5, 2000

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Chief Justice, concurring:

RELEASED

December 6, 2000

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

I agree with the Court's construction of Title 85 of the West Virginia Code of State Rules, Series 1, § 20.8.5 (b). I write separately to highlight my belief that the Kory standard for interpreting the results of ventilatory function tests in occupational pneumoconiosis claims is bad and unfair to workers. However, the decision to use the Kory standard is a legislative matter, and courts must not legislate no matter how much we do not like the statute or rule in question.