

No. 30622—*Lincoln Beatty v. Ford Motor Company, a Delaware Corporation*

FILED

December 11, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

December 13, 2002
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, Justice, dissenting:

This is a case where I believe that the lower court should have followed our standard for summary judgment, which would have allowed Mr. Beatty to present his case to a jury. “A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. pt. 3, *Aetna Cas. & Sur. Co. v. Federal Ins. Co. of N.Y.*, 148 W. Va. 160, 133 S.E.2d 770 (1963). Furthermore, this Court has often made clear that courts considering motions for summary judgment “must draw any permissible inference from the underlying facts in the light most favorable to the party opposing the motion.” *Painter v. Peavy*, 192 W. Va. 189, 192, 451 S.E.2d 755, 758.

The dispute in this case is fact specific. Either the part in question was defective and the cause of the accident, or it was not. I believe that the plaintiff has presented sufficient evidence to survive a motion for summary judgment if one considers the facts in the light most favorable to him. Though Mr. Beatty might have a difficult time convincing a jury by presenting only his own testimony as an expert to counter the enormous legal and scientific

resources of one of the world's largest companies, I believe that he should be given the opportunity to make his case.

Therefore, I respectfully dissent.