

No. 33871 State ex rel Prosecuting Attorney of Kanawha County, West Virginia v. Bayer Corporation.

Benjamin, J., concurring and dissenting:

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

For the reasons set forth in my dissenting opinion in *In re: Tax Assessment of Foster Foundation's Woodlands Retirement*, No. 33891, I respectfully concur and dissent in this case. I believe that the proper burden of proof for a taxpayer in a case such as this is that the taxpayer meet a “preponderancy of the evidence” burden. I therefore dissent to the majority opinion. However, since the use of a preponderancy standard would not have changed the result on appeal, I concur with the majority in the ultimate outcome of this appeal.