

No. 35034 – State ex rel. Corporation of Charles Town v. Sanders, *et al.*

FILED
December 22,
2009

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

Benjamin, Chief Justice, concurring:

On the tort claim pending against petitioner Charles Town, I agree with the Court's opinion that a writ should issue with respect to the direct immunity question. What I find more curious, and perhaps worthy of further legal development at some point, is the contractual obligations which Charles Town owes to respondent, Jackson-Perks Post No. 71, Inc. ("Post"). To the extent the majority believes a municipality may not obligate itself to keep property it chooses to lease in a certain manner, I disagree. Should the Post ultimately be held responsible in tort for injuries herein, I believe the question of a contractual claim by the Post against Charles Town to possibly still be viable. Otherwise, municipalities would be free to negotiate terms of contracts with private citizens which the municipality has no intention of keeping. A citizen who detrimentally relies on such representations could then forego obtaining liability insurance only to be held liable in place of the municipality who is the actual tortfeasor. I do not believe the Legislature intended such a result.