

No. 26900 - Stamatia C. Zelenka, Executrix of the Estate of James G. Kaporis v. City of Weirton, et al.

Starcher, J., dissenting:

**FILED**  
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Footnote 8 of *Brooks v. Weirton* reserved our right to decide whether a minuscule workers' compensation benefit could constitute "coverage" so as to allow the Legislature to divest a plaintiff from their right to sue a negligent tortfeasor.

The majority has now decided that -- under the specific facts of the instant case -- a \$5,000 funeral benefit is sufficient "coverage" to allow a grant of immunity for negligently taking a person's life. I wonder what the majority would do with a \$5.00 benefit!

It should be remembered that the constitutionality of taking away people's right to sue tortfeasors is contingent upon there being other avenues for those injured people to obtain redress of their injuries. *Randall* and *O'Dell, supra*. If the majority's reasoning stands, I believe we may have to revisit those cases, and to throw out at least some of our local governmental immunity statutes, as unconstitutional.

But I am hopeful that when we next return to this issue, we will choose the more prudent route of undoing the damage done by the majority opinion in the instant case.

Accordingly, I dissent. I am authorized to say that Justice McGraw joins in this dissenting opinion.