

No. 28852 -- *Darlene Gillingham and Carl Bumgardner v. Albert Stephenson and Amber Goddard, David Goddard and Carrie Goddard, individually, and Carrie Goddard, mother, natural guardian and next friend v. Ronald G. Taylor and Albert Stephenson*

McGraw, Chief Justice, dissenting:

**FILED**

July 6, 2001

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

**RELEASED**

July 9, 2001

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

This strikes me as a very simple rear-end collision case that probably should have resulted in a verdict for the plaintiffs. The plaintiffs, who managed to stop their truck safely without injury to themselves or others, had their truck totaled by the defendant, who was driving his vehicle in such a fashion that he was unable to stop.

One of the most basic concepts instilled in young drivers in drivers' education classes is that if you rear-end someone, you are almost certainly going to be liable for their damages. That is why our statutes require a driver to maintain control of his or her vehicle, in all situations.

As Justice Neely was fond of stating, predictability in the law is essential for stimulating prompt settlement of meritorious cases: "Voluntary settlements (which are in everyone's interest) are best encouraged by the articulation of clear, concise, bright line rules." *Hayseeds, Inc. v. State Farm Fire & Casualty*, 177 W. Va. 323, 352 S.E.2d 73 (1986) (parenthetical in original).

I find it fortunate that the majority wrote this as a *per curiam* case, lest it be found framed and hanging on the wall of every auto insurance claims adjuster in the state. Where liability is clear, anything

this Court or any court does to encourage non-payment of claims is injurious to plaintiffs and defendants alike. Therefore I must respectfully dissent.