

- No. 30899     *Verizon West Virginia, Inc., et al., Eastern Associated Coal Corporation v. West Virginia Bureau of Employment Programs, Workers' Compensation Division*
- No. 30900     *Verizon West Virginia, Inc., et al., Weirton Steel Corporation v. West Virginia Bureau of Employment Programs, Workers' Compensation Division*
- No. 30901     *Verizon West Virginia, Inc., et al., Pine Ridge Coal Company v. West Virginia Bureau of Employment Programs, Workers' Compensation Division*

**FILED**

**July 9, 2003**

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

Starcher, C. J., concurring:

According to the two dissents, this Court should (1) ignore and overrule the opinions of the other two branches of government; and (2) help throw the workers' compensation fund into insolvency. I disagree.

The Legislature has had more than six years to make it clear that it did not want the 1997 burden-sharing assessments to apply to self-insured employers. But the Legislature has done nothing to indicate any dissatisfaction with having these assessments apply to all employers.

The appellant companies have experienced lobbyists who know how to have legislation introduced. If the Legislature has not acted in six years to exclude self-insured employers from paying a share of the assessments, it is safe to say that the Executive branch's reasonable interpretation and application of the 1995 statute does not offend the

wishes of the Legislature.

The majority opinion is scholarly and well-reasoned with respect to the constitutional issues involved, and I need add nothing to that discussion. Reasonable minds can differ in this area, but it comes down to a fairness issue – an issue that in the instant case is consigned to the wisdom of the Legislative and Executive branches.

In this regard, it should be noted – one could never tell it from the dissenting opinions – that the dissents’ bombastic and exaggerated charges and castigations – about “evil” policies that will “keep businesses out of West Virginia” – are directed entirely at policies that were *created, devised, set in place, and continued by the Legislative and Executive branches* – and not by this Court.

On some occasions, this Court decides that it must overrule an action by the Legislature or Executive – and then we catch heck for “judicial activism.” On another day, we decide that we must uphold the Legislature and Executive – as in this case – and again we are attacked.

In this job, there is no pleasing everybody. I think we made the right call in this case. Accordingly, I concur.