

No. 31407 – *Steven Deskins v. S.W. Jack Drilling Co.*

FILED

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

McGraw, Justice, dissenting:

I respectfully dissent from the majority because I believe Appellant presented sufficient evidence to create a genuine issue of material fact with respect to his employer's subjective realization and appreciation of the existence of a specific unsafe working condition. For example, Appellant presented testimony (both expert and otherwise) that the Appellees knew that industry standards required proper placement of a supervisor or spotter to direct the dozer when employees were working in the area but that the Appellees failed to follow this standard. The Appellant presented additional evidence that supervisory personnel knew that, because there was no spotter directing the dozer, Appellant did not know what the dozer operator was going to do with the dozer just before the accident, and further, that the Appellant, who the Appellees knew to be inexperienced and untrained, did not know he was moving to an unsafe area, where he was eventually injured. In my view, both the circuit court and the majority improperly disregarded this evidence, which tended to establish the Appellees subjectively realized and appreciated that a specific unsafe working condition existed. Accordingly, I believe summary judgment was erroneously granted in this case and that Appellant's claim should have been presented to a jury.

Based upon the foregoing, I respectfully dissent.