

No. 31534 – *State ex rel. William R. Beirne v. Smith, Commissioner*
No. 31537 – *State ex rel. Bradley v. Smith, Commissioner*

FILED

December 5, 2003

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

McGraw, J., concurring:

The Workers' Compensation Fund has been the victim of years of neglect and mismanagement. The Fund has long been subject to the pressure of past executives who, in an effort to keep their jobs, curried favor with large, primarily out-of-state interests by lowering premiums on the most dangerous occupations.

Our workers' compensation system has always been based on the faith that there will be sufficient reserves in the Fund, and sufficient economic activity in the future to continuing paying for the injuries of the past. But this faith has failed us. It has failed us in part because our state government has kowtowed to special interests by keeping premiums artificially low, and in part because we are poorly served by a national government that aids and abets large corporations in sending our jobs overseas. Mines close, factories are shuttered, but the injured workers remain, and the cost of their injuries is thrust upon the public and our small business community.

Instead of focusing upon the past abuses that have produced our current, sorry state of affairs, the media often blames this Court for thwarting any effort to improve the solvency of the Fund. Today the Court approves the Legislature's decision to cease

permanent total disability benefits to those recipients who reach federal retirement age. However, it should be clear to all that it was the decision of the Legislature, and not this Court, to balance the Fund's checkbook on the broken backs of these injured, elderly workers; and it is to the Legislature that the aggrieved must look for answers.

Therefore, I must reluctantly concur.