

No. 34749 - *Keith West and Susan West v. The West Virginia Department of Transportation, Division of Highways, a department or agency of the State of West Virginia; and Paul A. Mattox, in his capacity as the Commissioner of Highways*

FILED
November 18,
2009

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Davis, J., concurring, in part, and dissenting, in part:

I concur with the majority's decision to reverse the circuit court's rulings regarding the validity of the State's policy of insurance in this case and to remand this matter to determine whether, in fact, said policy complies with the statutory signature requirements set forth in W. Va. Code § 33-12-11 (2002) (Repl. Vol. 2003).

However, I dissent and write separately to reiterate my objections to the majority's interpretation of Endorsement Number 7 in *Wrenn v. West Virginia Department of Transportation, Division of Highways*, ___ W. Va. ___, ___ S.E.2d ___ (No. 34717 Nov. 2, 2009), and the application of that decision to the facts of the case *sub judice*. Although the majority opinion does not resolve the issues related to Endorsement Number 7 presented in the instant appeal, the opinion alludes to this Court's recent decision in *Wrenn* and suggests that, if the policy is determined to be valid and the construction of Endorsement Number 7 is again placed in issue, the question of whether the Division of Highways's failure to inspect the public highway at issue herein should be resolved in accordance with

Wrenn. See Majority Op. at 10 n.10. I disagreed with the majority's construction of Endorsement Number 7 as precluding coverage for the DOH's failure to inspect in *Wrenn*, and, to the extent this erroneous construction could be applied to the facts of the case *sub judice*, I reiterate my objections.

Accordingly, I respectfully concur, in part, and dissent, in part.