

No. 31033

West Virginia Insurance Guaranty Association, an unincorporated legal entity v. Marlyn L. Potts, Alan K. Potts, Stacey Potts, Erin Potts, Kristen Potts, Robert L. Cross, M.D., and Thoracic & Cardiovascular Surgery, Inc., a corporation.

FILED

December 10, 2003
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, J., dissenting:

I respectfully dissent from the majority's opinion in this case because I believe it strays significantly from our holding in *West Virginia Ins. Guar. Assoc. v. Potts*, 209 W.Va. 682, 550 S.E.2d 660 (2001) ("*Potts I*"). In *Potts I*, we held that Mrs. Potts, her husband and three children each had separate and compensable claims and that each claim was subject to the \$300,000 statutory per claim limit. Though we recognized the medical defendants also had a legitimate compensable claim, which was entitled to payment by West Virginia Insurance Guaranty Association ("Association"), the medical defendants' claim had already been resolved and was not at issue in *Potts I*. Thus, when we held that "[e]ach of the five Potts claimants holds a covered claim for which he or she is entitled to payment from [the Association][,]" *id.*, 209 W.Va. at 688, 550 S.E.2d at 666, our intention was clearly that, upon remand, the circuit court enter an order directing that Mrs. Potts receive \$300,000 for her claim (having received a jury verdict in excess of \$2,000,000 in compensable and punitive damages), that her husband receive \$10,000, and that each of her three children receive \$20,000 (the amounts awarded by the jury).

Because, in my view, to allow the \$300,000 payment already made by the Association to resolve the medical defendants' claims to apply as a "credit" against the Potts' claims against the Association is contrary to the spirit and intent of our holding in *Potts I*, I respectfully dissent.