

No. 31319

*State of West Virginia ex rel. Albert Leung, M.D. v. Honorable David H. Sanders, Judge of the Circuit Court of Berkeley County, and Christel Y. Schell*

**FILED**

**July 3, 2003**

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

McGraw, J., dissenting:

Though the facts alleged in the proposed third-party complaint have been known to Dr. Leung since the underlying medical malpractice action was first commenced more than one year ago, Dr. Leung did not seek to institute a third-party action against Dr. Wanger and Shenandoah Valley Medical Systems until two months before the scheduled trial date. In my view, Dr. Leung's professed explanation for this delay – that he did not wish to jeopardize his professional relationship with Dr. Wanger – is not a sufficient justification for significantly delaying the plaintiff's right to a jury trial, particularly in light of the plaintiff's representation during oral argument that she was prepared to proceed to trial as scheduled. Because I believe the majority's holding operates to assist Dr. Leung in his seemingly calculated effort to impede the final resolution of this case, I respectfully dissent.