

No. 31392 – *State of West Virginia ex rel. Allstate Insurance Company v. The Honorable John T. Madden, Judge of the Circuit Court of Marshall County, West Virginia*

FILED

July 21, 2004

released at 3:00 p.m.

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

McGraw, Justice, dissenting:

I dissent from the majority because I believe the trial court fairly afforded Allstate the opportunity to prove that the requested documents and testimony are protected by the attorney-client privilege or the work-product doctrine and further, correctly determined that the repeated assertions by Allstate’s counsel that the privileges applied, without more, were not legally sufficient.

As the trial court concluded, Allstate failed (or, more accurately, refused) to demonstrate that the information the plaintiff requested with respect to Allstate’s position on the critical issue of “stacking” involved legal advice, was intended to be confidential, and thus, was meant to be privileged. *See* Syl. pt. 7, *United States Fidelity & Guaranty Co. v. Canady*, 194 W.Va. 431, 460 S.E.2d 677 (1995). These elements, which are required to assert the attorney-client privilege, are both basic and well-established. They are not optional. Nevertheless, Allstate utterly failed to satisfy them.

Because, in my view, the trial court committed no error in this case, I respectfully dissent.