

No. 33651 – State of West Virginia ex rel. Nationwide Mutual Insurance Company v. The Honorable Mark A. Karl, Judge of the Circuit Court of Marshall County, and Stacey Meadows

FILED

June 27, 2008

released at 10:00 a.m.

RORY L. PERRY II, CLERK

SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Maynard, Chief Justice, dissenting:

Although the majority opinion attempts to minimize any potential juror bias from the disclosure during *voir dire* of the identity of the insurer with whom captive counsel is associated, I still believe that the preferable practice simply is not to permit reference to the insurer in front of the jury.

Our general rule that a jury should not be informed of the insured or uninsured status of a party is based on valid assumptions about jurors. For example, jurors who know that a party is covered by insurance may be more apt to award an injured plaintiff, even in the absence of a finding of negligence, if they know that the defendant will not be responsible for paying the verdict. Similarly, jurors may be more likely to award a sizable verdict if they know that an insurance company, a.k.a. a “deep pocket,” will be liable.

In the instant case, I fear that reference to the Nationwide Trial Division during *voir dire* will prejudice the jurors by alerting them to the fact that the party actually responsible for paying any verdict awarded will not be the alleged tortfeasor but rather Nationwide. As a result, the jurors will be more likely to disregard the real legal issues in

favor of permitting the plaintiff to recover from a party whom the jury believes to have deep pockets. Such a result is plainly at odds with the principle that our judicial system should treat all parties equally regardless of their economic status or perceived economic status.

For this reason, I would grant the writ of prohibition to prevent the identification of Nationwide Trial Division during *voir dire*. Accordingly, I dissent.