McCuskey, Justice, dissenting:

This Court has clearly and unambiguously ruled that it is mandatory for the trial court to bifurcate and stay third-party statutory bad faith insurance claims until the resolution of the underlying personal injury claim. State ex rel. State Farm Fire & Cas. Co. v. Madden, 192 W.Va. 155, 451 S.E.2d 721 (1994). The Fourth Circuit Court of Appeals, in Maher v. Continental Cas. Co., 76 F.3d 535 (4th Cir. 1996), based on the logic of the Madden decision, extended the same principle to first-party statutory bad faith claims. Subsequently, the United States District Court for the Northern District of West Virginia, in State Farm & Cas. Co. v. Kirby, 919 F.Supp. 939 (N.D. W.Va. 1996), observed that recent developments in West Virginia law would allow the plaintiffs to consolidate a first-party statutory bad faith claim against State Farm with their underlying tort claim. The Kirby Court found: "The fact that Madden involved a third party claim against an insurer and the claim here is a first party claim is of no consequence." Id. at 943 n.2. Now, by failing to extend its own rule for third-party insurance claims to first-party claims, the majority has taken an illogical step and offered no sound reason for doing so.

The majority decision cites a number of federal district cases and state court cases to convince us that the bifurcation orchestra is actually playing its tune. A careful

reading of those cases, however, reveals that the decisions either (1) ruled that the lower court had not abused its discretion by ordering bifurcation and stay of the bad faith claim, or (2) dealt not with statutory bad faith claims, but with claims for common law bad faith, which, in the third-party context, have been recently held by this Court to be nonexistent in West Virginia, *Elmore v. State Farm*, _____ W.Va. ____, ____ S.E.2d _____ (No. 24634, June 22, 1998). To the extent that these decisions did not address the issue of whether bifurcation and stay of proceedings on a first-party statutory bad faith claim should be mandatory, they are not persuasive here.

Of course, the more important issue is not whether the majority is play off key (because it clearly is), but whether there is a good reason for West Virginia to adopt a rule different from its own current rule in third-party insurance actions.

The compelling advantages of mandatory bifurcation and stay of discovery on first-party statutory bad faith claims are (1) cost savings to both parties, with increased incentive to settle before trial, (2) avoidance of burdensome and complicated discovery problems with insurance claims files, (3) avoidance of unfair prejudice to a litigant which arises when contract and bad faith claims are combined, and (4) avoidance of the possibility of the disqualification of trial counsel because of inherent conflict of interest problems. Gregory S. Clayton, Bifurcation of Breach of Contract and Bad Faith Claims in First-Party Insurance Litigation, 21 Vt. B.J. & L. Dig. 35 (1995). These arguments

apply with equal force to first-party actions as they do to third-party actions, and most of the advantages of bifurcation and stay apply to plaintiffs as well as defendants; thus, there is no good reason to depart from our current third-party rule.

The majority pins its refusal to apply this Court's third-party rule to first-party statutory bad faith actions on the fact that mentioning insurance to a jury can be prejudicial in a third-party action, whereas such prejudice is not present in first-party actions since both the contract and bad faith claims are made directly against the insurer. The majority, however, then goes on to undercut its own argument by concluding that there really is little validity to the "notion that the mere mentioning of insurance to a jury [is] prejudicial error."

This case is not insignificant. It marks a clear retreat from this Court's decisions in recent years which recognize that statutory bad faith claims are complicated and unique and should not be mixed with standard insurance contract claims. West Virginia is one of only a few states in the nation where the judiciary, rather than the legislature, has created a private cause of action for violation of an unfair claims settlement practices statute. The majority's ruling will permit 62 circuit court judges to impose their own personal, judicial philosophy on whether this type of claim should be bifurcated and discovery stayed pending resolution of the underlying contract claim. This invites forum shopping and the constant burdening of this Court, which will be called upon, case after case, to determine whether a trial judge properly decided or declined to bifurcate the

claims and stay discovery. I am quite content to be a "one-man band" when the majority's decision, with its undesirable results, is so obviously out of tune.