No. 30694 – *Mills v. Watkins, et al.*

FILED
July 2, 2003
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

McGraw, J., concurring, in part, and dissenting, in part:

I can agree with the outcome of the majority opinion in this case. The court did appoint a *guardian ad litem* for the minor plaintiff in this case, she did have the benefit of counsel, and the court approved the settlement. However, I must dissent to some of the language employed by the majority in syllabus point three. The majority holds that a settlement that complies with W. Va. Code § 44-10-14 (1929) is final, provided that "the insurer is unaware of any misconduct which would constitute substantive grounds for a bad faith action at the time the insurer agrees to the settlement."

The essence of a bad faith suit is an allegation that an insurance company has committed some sort of improper conduct that has harmed its insured. This syllabus point asks plaintiffs who have been forced already to take the insurance company to court, to then trust the company when it says that no misconduct occurred. It strikes me as exceedingly likely that almost every defendant insurance company in a bad faith suit like this one will be "unaware of any misconduct" that occurred at the time of the settlement.

Because I cannot agree with such an egregious example of "letting the fox guard the hen house," I must respectfully dissent to this aspect of the majority opinion.