

No. 30840 *State of West Virginia ex rel. Medical Assurance, Inc. v. The Honorable Arthur M. Recht, Judge of the Circuit Court of Ohio County, the Estate of Marjorie I. Verba, by Sally Jo Nolan, Executrix*

FILED

July 2, 2003

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

McGraw, J., dissenting:

I dissent from the majority opinion in this case because I believe the time-honored sanctity of the attorney-client privilege should not be shamelessly invoked to shield an insurer's tortious conduct, the aim of which is to defeat an injured party's legitimate claim. Though the majority states otherwise, there is simply no substitute for the discovery of material generated contemporaneously with the handling of a claim and for the sole purpose of denying a claim. Justice Davis, who has authored a concurring opinion in this case, elaborates extensively in this regard and, in my view, makes an excellent argument for denying the Respondent insurer's petition for writ of prohibition. Therefore, for the reasons stated above and in Justice Davis' concurring opinion, I respectfully dissent.