

No. 30842—*Laura A. Findley, Individually and on Behalf of all Other Persons Similarly Situated v. State Farm Mutual Automobile Insurance Company*

FILED

January 6, 2003

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

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January 8, 2003

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

McGraw, Justice, concurring, in part, and dissenting, in part:

I concur with the majority's conclusion that the changes made to the statute should only be applied prospectively. However, I continue to disagree with the majority's interpretation of our insurance law with respect to uninsured motorist coverage, as I expressed in my separate opinion in *Mitchell v. Broadnax*, 208 W. Va. 36, 61, 537 S.E.2d 882, 907 (2000) (McGraw, J., concurring in part and dissenting in part). As my views from that case were ably expressed by Justice Starcher in his separate opinion in this case, I need not repeat them here.

However, I write separately because I feel that the majority is missing the central issue in this case - whether or not the premium paying citizens of this state are getting what they paid for from the insurance companies. People buy insurance with the hope that they will never need it. When they do need it, they expect that the coverage they bought will be available to them. If the insurance company wants to sell them a different product, one that might have more exceptions or limitations, that is its right to do so, but the price of the new product should reflect that reduced risk to the insurance company. To put it in the simplest of terms,

if the insurance company is selling eggs by the dozen, the customer should find a dozen eggs in the carton, or should see a reduced price at the check-out counter.

In the same vein, I think the decision reached by the Court in *Broadnax* was not as earthshattering or complicated as some might think. In holding that an insurer who puts an exclusion in a policy must “adjust the corresponding policy premium so that the exclusion is ‘consistent with the premium charged,’” syl. pt. 5 (in part), *Mitchell v. Broadnax*, 208 W.Va. 36, 537 S.E.2d 882 (2000), the Court was simply acknowledging a fundamental aspect of our state’s contract law. That is to say, our law has long held that you should get what you pay for, and if you haven’t gotten what you paid for, you have a right to sue the other party for breach of contract.

Our state has a ten year statute of limitations for suits alleging a breach of contract. See, W. Va. Code 55-2-6 (1923); *McKenzie v. Cherry River Coal & Coke Co.*, 195 W. Va. 742, 466 S.E.2d 810 (1995) (*per curiam*). *Broadnax*, in my view, simply recognized that insurance companies have certain obligations under our already existing contract law. By placing a “starting date” of April 2000 (when *Broadnax* was issued) on any contract action against an insurance company that failed to reduce its premiums when it reduced coverage, I believe the majority opinion runs afoul of the basic contract law of this state. Thus I cannot agree with this aspect of the majority opinion.

Because of my ongoing concerns about the majority's interpretation of our law in this area, I respectfully concur in part and dissent in part to the majority opinion.