

No. 31319

State of West Virginia ex rel. Albert Leung, M.D. v. Honorable David H. Sanders, Judge of the Circuit Court of Berkeley County, and Christel Y. Schell

FILED

July 3, 2003

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

McGraw, J., dissenting:

Though the facts alleged in the proposed third-party complaint have been known to Dr. Leung since the underlying medical malpractice action was first commenced more than one year ago, Dr. Leung did not seek to institute a third-party action against Dr. Wanger and Shenandoah Valley Medical Systems until two months before the scheduled trial date. In my view, Dr. Leung's professed explanation for this delay – that he did not wish to jeopardize his professional relationship with Dr. Wanger – is not a sufficient justification for significantly delaying the plaintiff's right to a jury trial, particularly in light of the plaintiff's representation during oral argument that she was prepared to proceed to trial as scheduled. Because I believe the majority's holding operates to assist Dr. Leung in his seemingly calculated effort to impede the final resolution of this case, I respectfully dissent.