

No. 31773 – *Rita Mae Louk v. Serge Cormier, M.D.*

FILED

July 6, 2005

released at 3:00 p.m.

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

Albright, Chief Justice, concurring:

I concur with the result in this case but pause to offer some words of caution.

The authority relied upon by the majority regarding the non-severability clause is quite tenuous. I fear the reasoning employed by the majority creates serious potential for mischief. On the other hand, the use by the Legislature of a so-called “non-severability” clause – especially on a regular basis – has equal or even greater potential for mischief.

In this case, I would have preferred that the Court postpone the issuance of the mandate in order to give the Legislature the time needed to reconsider whether it truly desired to have its entire enactment on medical malpractice fail because it had inadvertently strayed into an area of constitutional responsibility reserved to this Court. For this reason I concur with reservation.