

No. 33651 – State of West Virginia ex rel. Nationwide Mutual Insurance Company v. The Honorable Mark A. Karl, Judge of the Circuit Court of Marshall County, and Stacey Meadows

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**RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
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Maynard, Chief Justice, dissenting:

Although the majority opinion attempts to minimize any potential juror bias from the disclosure during *voir dire* of the identity of the insurer with whom captive counsel is associated, I still believe that the preferable practice simply is not to permit reference to the insurer in front of the jury.

Our general rule that a jury should not be informed of the insured or uninsured status of a party is based on valid assumptions about jurors. For example, jurors who know that a party is covered by insurance may be more apt to award an injured plaintiff, even in the absence of a finding of negligence, if they know that the defendant will not be responsible for paying the verdict. Similarly, jurors may be more likely to award a sizable verdict if they know that an insurance company, a.k.a. a “deep pocket,” will be liable.

In the instant case, I fear that reference to the Nationwide Trial Division during *voir dire* will prejudice the jurors by alerting them to the fact that the party actually responsible for paying any verdict awarded will not be the alleged tortfeasor but rather Nationwide. As a result, the jurors will be more likely to disregard the real legal issues in

favor of permitting the plaintiff to recover from a party whom the jury believes to have deep pockets. Such a result is plainly at odds with the principle that our judicial system should treat all parties equally regardless of their economic status or perceived economic status.

For this reason, I would grant the writ of prohibition to prevent the identification of Nationwide Trial Division during *voir dire*. Accordingly, I dissent.