No. 32704 – Dairyland Insurance Company v. Stephanie Michelle Conley v. West Virginia National Auto Insurance Company

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OF WEST VIRGINIA

Maynard, Justice, dissenting:

The majority opinion should hereafter be known as the "something for nothing case" because it holds that the Appellee must be provided with insurance coverage even though she paid absolutely nothing for the coverage. As such, the majority opinion has to be one of the most outrageous court decisions in the history of American jurisprudence ranking right up there with the McDonald's scalding case, the BMW bad paint job case, the Benson truck bed cocaine supervisor case, and the O.J. Simpson criminal verdict.

Let us be very clear about this, dear reader. The Appellee has paid NOTHING for this insurance. Absolutely nothing! Zero! Not one red cent! It really is a something for nothing case.

Of course, something for nothing cases are not entirely unusual in West Virginia where plaintiffs regularly contend that someone, somewhere, somehow must owe them money simply because they have suffered an injury. In fact, in this State, people can get money even when they are not injured but merely fear the possibility that they may be injured sometime in the future. *See Bower v. Westinghouse Elec. Corp.,* 206 W.Va. 133, 522

S.E.2d 424 (1999) (creating a cause of action for medical monitoring). Thus, this preposterous decision should not come as a complete surprise to anyone.

The facts below show that this is really a simple contract case. The application for insurance signed by the Appellee expressly stated that, "I also agree that if my premium remittance is not honored by the bank no coverage will be bound." Therefore, because the Appellee wrote a bad check and her premium remittance was not honored by the bank, per the clear language of the application, no coverage exists for her accident. Clearly, the Appellee's payment of a premium was the consideration necessary for the formation of the insurance contract. Since the Appellee never provided any consideration, because her check was worthless, no insurance contract was ever formed. Hence, there is no coverage. It is really that simple. In hinging its decision on a tortured and hyper-technical reading of W.Va. Code § 33-6A-1(e)(7), however, the majority opinion unnecessarily obfuscates a straightforward issue and thereby misses the big picture – the Appellee is receiving insurance coverage for which she never paid one red cent.

The average working West Virginian who regularly struggles to pay his or her auto insurance premiums should take note of the majority opinion because West Virginians pay higher auto insurance rates than people in the five surrounding states. When insurance companies are compelled by law to provide coverage *non gratis* to some people, they are naturally forced to make up the loss by charging higher premiums to those folks who actually

pay for their insurance coverage.

The majority had to work hard to write an opinion that actually does everything that the law should not do. It punishes the innocent by causing honest, hard-working West Virginians to pay higher auto insurance premiums. At the same time, it rewards the guilty by providing a windfall to those who never paid for insurance coverage. Finally, it encourages future dishonest conduct by holding that people can procure insurance coverage by tendering worthless premium checks to insurers.

Because I do not believe that people should, by their own dishonest conduct, receive something for nothing to the detriment of honest people, I strongly dissent to the majority opinion.