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COURT OF APPEALS

STATE OF NEW YORK

MAPLE MEDICAL,

Appellant,

-against-

Nos. 38-43

SCOTT, ET AL.,

Respondents.

20 Eagle Street
Albany, New York
April 20, 2022

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Colin Richilano
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar includes appeals 38 through 43, Maple
3 Medical v. Scott, Goldenberg, Arevalo, Sundaram, Mutic, and
4 Youkeles.

5 Counsel?

6 MR. FINGER: Good afternoon, Your Honor. Carl
7 Finger for Maple Medical. May it please the court, Chief
8 Judge DiFiore and justices of the Court of Appeals. I
9 would like to reserve a minute-and-a-half for rebuttal, if
10 the court would permit that.

11 CHIEF JUDGE DIFIORE: Yeah, you have a
12 minute-and-a-half, sir.

13 MR. FINGER: Thank you. If there is one - - -
14 yes, I struggled between one and two, so I settled in on a
15 minute-and-a-half.

16 If there is one thing that I hear that I must
17 correct today, it is the idea that nobody considered,
18 thought of, or anticipated demutual - - - demutualization
19 or the demutualization proceeds; that nobody bargained for
20 them or expected them. That is unequivocally untrue. Dr.
21 Richard B. Frimer as far back as 2008 was advocating with
22 MLMIC for demutualization. He is the managing partner of
23 Maple Medical. It is in the record when he appeared before
24 DFS. And he absolutely anticipated, wanted, and fought for
25 the demutualization.



1 JUDGE GARCIA: But then, if that's true, I don't
2 see that necessarily favoring you. Because if that's true
3 and you're negotiating these insurance contracts or picking
4 the company, why isn't it your obligation, then, to clear
5 with the policyholder, the insured, that if it's
6 demutualized you get the payments, instead of having us all
7 here?

8 MR. FINGER: Well, that assumes that question
9 that we believed that there was some uncertainty about it.
10 Not only does the statute refer to - - -

11 JUDGE GARCIA: Well, I think what you're arguing
12 here, if - - - at least from what I've heard today from
13 others, is that there's an ambiguity here.

14 MR. FINGER: Well, I - - -

15 JUDGE GARCIA: Because it's not - - -

16 MR. FINGER: I would say the following. I - - -
17 I - - - I haven't said that. I do think there is at least
18 some vagueness, but the statute says that the party - - -
19 the policyholder - - - the funds go to the policyholder who
20 paid the premium. In my - - -

21 JUDGE GARCIA: No. That's not what the statute
22 says.

23 MR. FINGER: Well, that's part of what it says.

24 I think that - - - you know, that to your initial
25 question, in negotiating these contracts, if you believed



1 that you were going to receive the proceeds of a
2 demutualization and in fact, for two years after - - -

3 JUDGE GARCIA: But you're the sophisticated party
4 that wants them and you're controlling which company is
5 picked. Why isn't it your obligation, then, to make that
6 clear if, at best, this statute's vague?

7 MR. FINGER: The - - - the two years leading up
8 to July or - - - I think July of 2018, two months before
9 the hearing, this was publicized. The demutualization was
10 publicized and advertised by MLMIC and all involved parties
11 that the party who paid the premium would receive the
12 demutualization proceeds.

13 So it's not as simple as saying, well, there was
14 an ambiguity. Now, we say there was - - - that you're - -
15 - you're suggesting and people have suggested there is an
16 ambiguity. We didn't think there was an ambiguity. And --
17 and to be clear, neither did the employees. All they
18 wanted was insurance. And it gives the amounts of
19 insurance and that's what they got.

20 So the idea that somehow it should have been - -
21 -

22 JUDGE GARCIA: Would there be a different rule,
23 then, for a hospital that didn't expect it? So it has to
24 be that the hospital is in the position you're saying you
25 were in; that we actually thought about this, we wanted



1 this, we have records that show we picked this because we
2 thought we might eventually get this payout. But if you
3 don't have that, then the policyholder would be the doctor
4 who's insured.

5 MR. FINGER: I'm not sure I would - - - I'm not
6 sure I'm in a position to address - - -

7 JUDGE GARCIA: See, my problem with these rules
8 that we're hearing today is I understand the rule on this
9 side: Policyholder is insured. And I'm trying to
10 understand what the rule would be on this side.

11 MR. FINGER: Right.

12 JUDGE GARCIA: And I'm having trouble identifying
13 it because it doesn't sound like a rule that this court
14 would want to apply in an insurance contract situation. It
15 sounds more like a rule you might want to propose with
16 respect to who owns a lottery ticket.

17 MR. FINGER: I don't think it's the same as a
18 lottery ticket. I mean, for one thing, it would be as if
19 we paid 1,000 every month for twelve months and then we got
20 back that 12,000 dollars, so. And we fought to get back
21 that 12,000 dollars for the entire year.

22 JUDGE GARCIA: I - - - no. We all paid for the
23 lottery ticket. In the last lottery ticket, we each got 2
24 - - - \$2.50. When we won \$10 we should get, you know, an
25 equal share this time. I put my money out for the lottery



1 ticket, so I really own the lottery ticket; that's what
2 this sounds like. It doesn't sound like an insurance rule.

3 MR. FINGER: Well, the - - - there's - - -
4 there's three different, I guess, possibilities here that
5 we're sort of combining. You know, one is the - - - the
6 statute 7307, which in my estimation speaks to the party
7 that paid the premium and if it doesn't speak to that, I -
8 - - I think it - - - you know, as Mr. Zwerling said,
9 doesn't make sense and results in the employee getting zero
10 anyway. The second issue is - - -

11 JUDGE WILSON: Well, DFS is - - - DFS - - - I'm
12 just going to stop you for a second. DFS has pretty
13 clearly rejected that, right. It doesn't say, the statute,
14 always says if you paid the premium, then you - - - right?

15 MR. FINGER: Agreed.

16 JUDGE WILSON: Okay. So it can't - - -

17 MR. FINGER: I mean, they - - - they wouldn't
18 have - - -

19 JUDGE WILSON: So it can't be that.

20 MR. FINGER: Right. They wouldn't have had the -
21 - - well, they've rejected it. I don't know if they're
22 right to reject it, but they did.

23 JUDGE WILSON: Well, okay. But if they were - -
24 - then that goes back to the Article 78 point, right. If
25 they rejected it and there isn't a timely Article 78



1 challenging that, you're stuck with it. So let's - - -

2 MR. FINGER: Well - - -

3 JUDGE WILSON: I think let's move to your point
4 two.

5 MR. FINGER: Okay. The second part of this, obvi
6 - - - I think it's clear is there is contractual issues
7 that are - - - that were sort of alluded to because you've
8 got certain hospitals where a nonhospital employer,
9 different contracts, et cetera, which were raised in the
10 courts below, but at least with Maple Medical were never
11 determined one way or the other because the judge made a
12 decision on the unjust enrichment and that got appealed and
13 obviously now we're here.

14 And then the third leg, really, is the unjust
15 enrichment claim. It - - - what I'm suggesting, really, is
16 that the only consistent approach you can have that
17 resolves all of those in the same way is to afford the
18 employers the proceeds. Number one, it's consistent with
19 the statute, as far as both the Insurance Law definition
20 that Mr. Peluso was referring to. It's consistent with my
21 point and everybody knows the language associated with
22 7307(e) saying the party that paid the proceeds. It's
23 consistent with the federal court cases, the Chicago case,
24 the Ruocco case that Mr. Peluso referred to, and it's
25 consistent with the unjust enrichment idea that if I paid



1 the money, then I should be the one getting that benefit.
2 And that that wasn't something one way or the other that
3 was negotiated for by the employees, arguably by the
4 employer. So they had - - - the employees certainly had no
5 expectation of any of that, at least in our case.

6 JUDGE CANNATARO: Counsel?

7 MR. FINGER: And I think in most cases.

8 JUDGE CANNATARO: Counsel, I'm sorry. Another
9 great indicator, I - - - I would think would be how the
10 party votes with respect to the demutualization. Because
11 if you're the hospital and you're receiving dividends, you
12 know, there's a good reason to -- to keep that policy
13 unless you're going to collect the cash compensation at the
14 end of the demutualization process. So we've asked I think
15 everybody so far how their people voted and it doesn't seem
16 anyone has an answer. So can you tell me, how did Dr.
17 Frimer vote with respect to the demutualization?

18 MR. FINGER: I - - - you know what, I should know
19 that and I don't. I apologize; I don't have an answer to
20 that.

21 I will say, however, that I do think that part of
22 the MLMIC's change in July that I referred to, that
23 certainly accelerated the ability of the demutualization to
24 pass the vote because suddenly, you had people voting on it
25 who had no interest in it one way or another and were happy



1 to get the money. And I think that was a big - - - in my
2 mind a big problem. And I understand what you said about
3 the other - - -

4 JUDGE CANNATARO: But it cuts both ways.

5 MR. FINGER: Yeah.

6 JUDGE CANNATARO: Because if you're not getting
7 the cash compensation that - - - the most you can hope for
8 is the dividends - - -

9 MR. FINGER: Right. And cannot get the - - -

10 JUDGE CANNATARO: - - - which would enti - - -
11 which would in - - - incentivize you to vote against the
12 demutualization if you believe you're the policyholder.

13 MR. FINGER: Of course. And - - - and not - - -
14 and - - - and - - - and by - - - by doing that, it
15 misaligned the demutualization versus the people that got
16 the benefit when you weren't demutualized in its current
17 state. And as you pointed out, without the Article 78
18 prior to the vote, it - - - it became, I guess, a nullity
19 to - - - to argue about.

20 But I think that you have a chance here to really
21 bring the just result that fits, as I said, each element.
22 I don't know that even today, sitting here, whether - - -
23 or standing here, as I am - - -

24 JUDGE RIVERA: Well, Counsel, I'm still - - - let
25 me - - - I'm sorry; I'm on the screen. I'm not really



1 understanding when you say the just result. What is the -
2 - - I'm still not clear on the injustice. It sounds to me
3 like you're saying the injustice is your client paid all
4 the premiums, so they should get this cash; that that's
5 what it all boils down to.

6 MR. FINGER: Paid the premiums - - - you know, I
7 don't want to repeat everything Mr. Peluso said, but I - -
8 - I agreed with what he said. I would add to that, I
9 guess, in my case, specifically understood and anticipated
10 that a demutualization would occur and expected to reap the
11 benefits of that, and that was one of the reasons they
12 continued to get insurance through MLMIC; that this - - -
13 this result - - - my client's view was that this result was
14 inevitable.

15 CHIEF JUDGE DIFIORE: Thank you, Counsel.

16 MR. FINGER: Thank you, Judge.

17 CHIEF JUDGE DIFIORE: Counsel?

18 MR. HELLER: Thank you. May it please the court.
19 Justin Heller, Nolan Heller Kaufmann on behalf of the
20 respondents.

21 Initially, I - - - I don't believe that I
22 responded to the question of whether my various respondents
23 voted to approve the plan. And I also don't specifically
24 know whether they did or not, but I would point out that
25 under the policy administrator designation form, voting



1 rights was not among the rights or duties assigned to the
2 policy administrator, so that was retained by the
3 policyholders. And the DFS decision said that the - - -
4 the policyholders, as defined in the plan, would be the
5 parties entitled to vote. Whether my clients voted or not,
6 I - - - I - - - I don't know.

7 All of the appellant's claims stem from its
8 payment of premiums. But again, those payments of premiums
9 were paid as a part of the bargained-for exchange of
10 consideration under the employment agreements where the
11 employees agreed to provide their professional services and
12 in exchange, the employer agreed to pay premiums. And as
13 the Second Department said, this was not a gratuitous act.
14 The employer got exactly what it bargained for in the form
15 of services. And in exchange, those employees received
16 policies.

17 While it may be the employer that selected MLMIC
18 as the insurance company, when it made that selection, the
19 policy that - - - the policy that the employees received
20 was a MLMIC policy. And that MLMIC policy carried with it
21 the membership interests for which the - - - that were
22 exchanged for the demutualization proceeds. And there's no
23 basis on which the employer can sustain a claim for unjust
24 enrichment by virtue of its payment of premiums when it was
25 compensated for those premium payments by virtue of the



1 services that the employee provided.

2 Similarly - - - and again, you know, this is an
3 argument that all of the appellants make, is that they
4 carried the indicia of ownership and they are the ones that
5 contracted with or dealt with MLMIC. But again, that was
6 all done in its capacity as policy administrator, which is
7 the agent for the - - - agent for the policyholder.

8 I heard the appellant argue that there's
9 ambiguity, but I - - - I see no ambiguity. Again, the
10 formula language that references the payment of premiums
11 just describes how the consideration is to be allocated
12 between policyholders and it - - - to the extent that it's
13 the employer who paid those premiums, it was done on behalf
14 of the em - - - the employee. But I think in terms of an
15 ambiguity or a lack of ambiguity, again, it's the provision
16 of 7307(e) (3) that - - - that describes who is entitled to
17 receive the consideration and I think that that's very
18 clear. It's each person who had a policy of insurance in
19 effect. I don't see how that could be anybody but the
20 respondents in these cases. And that's really all I have.

21 CHIEF JUDGE DIFIIORE: Thank you.

22 MR. HELLER: Thank you.

23 CHIEF JUDGE DIFIIORE: Counsel?

24 MR. FINGER: Thank you, Judge. Thank you for all
25 the time today.



1 The - - - the - - - I want to just respond,
2 actually, to that last comment by Mr. Heller: Each person
3 who had a policy in effect. He - - - he assumes that that
4 means the insured; that that means the employee. I would
5 say to you that the party that had the policy in effect was
6 the employer. I've paid for a policy. I've contracted for
7 a policy. I have a policy in effect, it's just insuring a
8 third-party employee of mine.

9 The only way to read that consistently with the
10 weight of provision on the payment of the proceeds to the
11 party who's paid the premiums is to find that both of those
12 refer to the employer. Otherwise, if you interpret it the
13 way Mr. Heller is suggesting and the employees are
14 suggesting, you are interpreting it one way to say each
15 person who had a policy in effect, that's a policyholder
16 that's an employee. But for payment, determining the
17 premium, the policyholder's the employer. So the only
18 consistent - - -

19 JUDGE RIVERA: Well, no, no. Counsel, it is - -
20 - it is certainly possible, of course, to read this
21 language as simply saying "such policyholder who has
22 properly and timely paid". And given the arrangement with
23 the employee, the employee has arranged for the employer to
24 pay. It is the acquiescence of the policyholder and
25 someone else cutting the check and mailing it.



1 MR. FINGER: It doesn't say any of that, though.
2 What it says - - -

3 JUDGE RIVERA: It doesn't need to. Your - - -
4 your - - - you read it one particular way. All I'm saying
5 is that there's nothing here that says that the
6 policyholder themselves must pay. It says "such
7 policyholder who has properly and timely paid", made
8 arrangements for payment.

9 MR. FINGER: No. It doesn't say made
10 arrangements. It says policyholder timely paid. If it
11 wanted to say - - -

12 JUDGE WILSON: Can you - - - can you pay through
13 an agent?

14 MR. FINGER: If it's an agent, I wouldn't say
15 that that is the same as a policyholder. Agent stands in
16 the shoes of a principal.

17 JUDGE WILSON: Okay.

18 MR. FINGER: That is a different scenario. I
19 think the - - - that is not what happened here. It's - - -
20 A, it's not what happened here. And B, it's - - -

21 JUDGE RIVERA: Okay. But it - - - can - - - is -
22 - - is the arrangement you have the kind that would
23 foreclose viewing the employer-employee relationship for
24 purposes of payments of premiums one that is, as is being
25 suggested, that you're doing it on behalf, right. You're



1 the agent for that purpose, given that you're the policy
2 administrator?

3 MR. FINGER: Well, the policy - - -

4 JUDGE RIVERA: Right. It's an administrative
5 task that you've taken on.

6 MR. FINGER: The policy administrator role is a
7 fiction, okay. They made it up at some point. It's not in
8 every policy. It wasn't available when every policy was
9 written. It came up at some time later, and it doesn't
10 have any legal meaning in the statute.

11 So when we started paying these - - - when we - -
12 - when my client, Maple Medical, started paying many - - -
13 paid many of these premiums, there wasn't even an existence
14 of a policy administrator as a term, much less - - - it
15 wasn't even a thing. You know, so - - - so I think that
16 that's - - -

17 JUDGE RIVERA: Yes, but the policy - - - well,
18 you'll correct me if I'm wrong. The policy doesn't say
19 that your client is the policyholder, correct?

20 MR. FINGER: No. I don't think the policy - - -
21 no.

22 JUDGE RIVERA: All right.

23 MR. FINGER: I don't think - - - it doesn't say
24 that.

25 JUDGE RIVERA: All right. Correct. Okay.



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MR. FINGER: I'm - - - I'm relying on the - - -
I'm referring to the statute. I mean, if the policy - - -

JUDGE RIVERA: That's - - -

MR. FINGER: Yeah, I'm referring to the statute.
The policy doesn't say anything.

JUDGE RIVERA: Okay.

CHIEF JUDGE DIFIORE: Thank you, Counsel.

MR. FINGER: All right. Thank you very much,
Your Honors.

CHIEF JUDGE DIFIORE: You're welcome.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript of proceedings in the Court of Appeals of Columbia Memorial Hospital v. Hinds, No. 36, Schoch v. Lake Champlain OB-GYN, No. 37, and Maple Medical v. Scott, et al., Nos. 38-43, and was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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