

# State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Tuesday, March 17, 2020

## No. 23 American International Specialty Lines Insurance Company v Allied Capital Corp.

In 2010, Allied Capital Corp. and its subsidiary, Ciena Capital LLC (collectively, Allied), settled a False Claims Act complaint alleging fraud by agreeing to pay the federal government \$10.1 million. Allied sought indemnification from its professional liability insurer, American International Specialty Lines Insurance Company (AISLIC), contending its payment of the \$10.1 million settlement was a covered “loss” under the policies. When AISLIC denied coverage, Allied filed for arbitration seeking indemnification for the \$10.1 million settlement and \$1.4 million in defense costs that Allied said it incurred in the underlying fraud litigation. The parties asked the arbitration panel to issue a summary determination of AISLIC’s liability under the policies and, if AISLIC were found liable, to hold a separate evidentiary hearing to determine the amount of Allied’s defense costs.

In a 2-1 decision in March 2016, the arbitration panel issued a partial final award (initial PFA) holding that AISLIC was not required to cover the \$10.1 million settlement because it was not a “loss” under the policies, but it further found that Allied was entitled to coverage of its defense costs and ordered a hearing to determine the amount. Allied requested reconsideration of the PFA on the issue of whether the settlement constituted a covered loss. AISLIC opposed the request, arguing that reconsideration was barred by the common-law doctrine of functus officio, which provides that arbitrators generally lack the authority to revisit a final award. On a 2-1 vote in August 2016, the arbitration panel issued a “corrected” PFA partially reversing itself and ruling the settlement was a covered loss. The panel said it was not functus officio and had authority to reconsider its initial PFA because that award was not final, since the amount of defense costs was not resolved and the proceeding had not been bifurcated. In April 2017, the panel issued a final award granting Allied \$7.5 million in damages and \$4.4 million in interest. Supreme Court confirmed the corrected PFA and the final award.

The Appellate Division, First Department reversed on a 4-1 vote, granting AISLIC’s petition to confirm the initial PFA and to vacate the corrected PFA and final award. It said the liability ruling in the initial PFA was final because the parties bifurcated the proceeding and, therefore, the arbitration panel exceeded its authority by revisiting it. The parties “agreed that the panel was to make an immediate, final determination as to the issue of AISLIC’s liability under the policies ... and that the issue of the amount of defense costs would be determined at a separate evidentiary hearing.... Thus, the panel had the authority and responsibility to determine the issue of AISLIC’s liability” and, once it did, “the panel was functus officio, meaning that its authority over such issue was ended.... This court is not bound by the panel’s statements in the corrected PFA that the [initial] PFA was not final and that the parties did not bifurcate the proceedings.... There is nothing in the record that remotely suggests that the parties or the panel believed that the [initial] PFA would be anything less than a final determination” of liability.

The dissenter argued the initial PFA was not final because there was no bifurcation. She said, “It is conceded by the parties that they had no express agreement to bifurcate issues. The arbitrators ... concluded that there was no implicit agreement either. Our court is bound by this factual finding by the arbitrators.... In order for an arbitration award to be final, it must be ‘intended by the arbitrators to be their complete determination of all claims submitted to them,’” including “both liability and damages.... Where an arbitrator retains jurisdiction solely to calculate damages due, the arbitrator’s award remains interlocutory.... Because the amount of damages was not determined, the award was not final and functus officio did not apply to bar reconsideration of issues.”

For appellants Allied & Ciena: Brian A. Sutherland, Manhattan (212) 521-5400  
For respondent AISLIC: Caitlin J. Halligan, Manhattan (212) 390-9000

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To be argued Tuesday, March 17, 2020

## No. 24 People v Donna Middleton

Donna Middleton was working as an alcohol and substance abuse treatment counselor at the Great Meadow Correctional Facility in 2015, when she was charged with official misconduct under Penal Law § 195.00(1). The misdemeanor complaint alleged that she “did disclose information to an inmate regarding an unusual incident that occurred” in the prison yard. “The disclosure of this information violated the employees manual that she signed on 05/28/13.” In a sworn statement she made to the State Police, which was attached to the complaint, Middleton described favors she had done for several inmates, including one whom she allowed to take from her desk paperwork about a slashing incident in the yard. She concluded by saying, “I am sorry for not using better judgment. I never wanted to get in any type of physical relationship with the inmates. I have never had any sexual contact or physical contact with any inmates.”

Middleton moved to dismiss the complaint for facial insufficiency, arguing that it failed to allege that she acted with the “intent to obtain a benefit or deprive another person of a benefit,” as required by the statute. After Fort Ann Town Court denied her motion without explanation, Middleton pled guilty to attempted official misconduct in exchange for a conditional discharge and \$450 in fines and surcharges. On appeal, the matter was remitted to Town Court to explain its findings of fact and legal reasons for denying the motion to suppress. The court responded, “In the Defendant’s statement she states that she engaged in unauthorized conduct with inmates, by granting use of cell phones, allowing contact with family members as well as having inappropriate contact with inmates on the phone while she was at home. Also, the Defendant’s statement suggests that she received the benefit of companionship, friendship, etc.”

Washington County Court affirmed. It said that, in her statement, “the defendant made clear that her intent was to help the inmate. Inasmuch as a benefit ‘includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary,’ the accusatory instrument was sufficient in establishing the appellant’s intent to obtain a benefit...”

Middleton argues the misdemeanor complaint was jurisdictionally defective and deprived her of due process because it did not “unambiguously establish the intended benefit” she allegedly sought. She says the ambiguity is demonstrated by the fact that “the theory of the intended benefit applied by County Court” – that her intent was to help an inmate – “was wholly distinct from that earlier determined by the Town Court” – that she obtained the benefit of “companionship” and “friendship.” This ambiguity “is a jurisdictional ‘flaw’ ... in the accusatory instrument which fails to ‘supply defendant with sufficient notice of the charged crime to satisfy the demands of due process and double jeopardy.’” She also argues the complaint and attached statement “failed to demonstrate that appellant knew her alleged act was both related to her office and amounted to an unauthorized exercise of her official functions.”

For appellant Middleton: Mark M. Baker, Manhattan (212) 750-7800

For respondent Washington County District Attorney: Lauren D. Konsul, Albany (518) 432-1100

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To be argued Tuesday, March 17, 2020

## No. 25 People v Robert Maffei

Robert Maffei was charged with second-degree murder and related crimes for allegedly shooting Francisco Santillo in 2003 while they were riding as passengers in separate cars driving side-by-side on an entrance ramp to the Belt Parkway in Brooklyn. Trial evidence suggested that the four young men in Santillo's vehicle may have looked at Maffei's girlfriend, who was driving his car, and smiled and waved at her before the shooting. Santillo, a stranger to Maffei, was killed by a single bullet fired through the rear side window of his car as it traveled at about 40 miles per hour.

During jury selection, a prospective juror said, "I think I read about this in the papers," and the prosecutor replied, "This case did receive publicity. Go ahead, sir." The juror said, "To be honest with you, I remember reading. Kind of made up my mind then.... Didn't like the circumstances. I remember reading about it, making a decision kind of in my own head at the time." When the prosecutor asked, "Do you understand I have to prove who did it?," the juror said, "Yes." Supreme Court asked the juror whether he could "remain fair and impartial," and he replied, "I hope so." The court said, "Back on that plane now," and the juror said, "I'm not sure." The court said, "Okay. Thank you, sir," and the juror repeated, "I'm not sure." Maffei's defense attorney did not question the juror, did not move to strike him for cause or with a peremptory challenge, and the juror was seated. Maffei was convicted of second-degree murder and sentenced to 25 years to life in prison.

The Appellate Division, Second Department affirmed, saying Maffei's "claim that he was deprived of the constitutional right to the effective assistance of counsel is based, in part, on matter appearing on the record and, in part, on matter outside the record, and thus constitutes a 'mixed claim' of ineffective assistance.... In this case, it is not evident from the matter appearing on the record that the defendant was deprived of the effective assistance of counsel.... Since the defendant's claim of ineffective assistance cannot be resolved without reference to matter outside the record, a CPL 440.10 proceeding is the appropriate forum for reviewing the claim in its entirety...."

Maffei argues he was deprived of effective assistance by his attorney's "failure to challenge a biased potential juror, who admitted that he had already reached a decision about the case based on press reports and repeatedly stated that he was not sure he could be fair." Counsel's failure to strike the juror "or even question him about his preconceived notions about the case and obvious bias against appellant, made no sense, and could have had no reasonable strategic basis." He says the merits of his claim are "fully presented on the direct appeal record" and, "where there was no possible acceptable explanation for allowing a blatantly biased juror to sit, the issue can and should be resolved on direct appeal, and appellant should not be forced to turn to [CPL 440.10] for relief."

For appellant Maffei: David P. Greenberg, Manhattan (212) 693-0085 ext. 206

For respondent: Brooklyn Assistant District Attorney Ann Bordley (718) 250-2464