

**Wyckoff Imaging Servs., P.C. v Blutreich**

2022 NY Slip Op 30988(U)

March 23, 2022

Supreme Court, Kings County

Docket Number: Index No. 526143/2018

Judge: Larry D. Martin

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF KINGS

-----  
 WYCKOFF IMAGING SERVICES, P.C.,

*Plaintiff,*

Index No. 526143/2018

-against-

DECISION & ORDER

Hon. Larry D. Martin

SALOMON BLUTREICH and MLMIC INSURANCE CO.,

*Defendants.*

-----

Plaintiff Wyckoff Imaging Services, P.C. (Wyckoff Imaging) provides medical services to Wyckoff Heights Medical Center (Wyckoff Heights), a hospital that serves predominantly Brooklyn and Queens. In the ordinary course, plaintiff purchased medical malpractice insurance (the “Policy”) with Medical Liability Mutual Insurance Company (MLMIC) for its then-employee, defendant Dr. Salomon Blutreich. Though employee Dr. Blutreich was the policyholder, plaintiff employer paid the Policy’s premiums (the “Premiums”) and was its administrator.<sup>1</sup>

Since a mutual insurance company is owned by and operated for the benefit of its policyholders, pursuant to a conversion from a mutual insurance company to a stock insurance company (*i.e.*, demutualization), MLMIC agreed to buy out the ownership interest in each policy (“Cash Consideration”). Plaintiff sued for declaratory judgment as to its rightful beneficiary, arguing that, since it alone paid the Premiums and retained virtually exclusive control over the Policy, awarding the Cash Consideration to Dr. Blutreich would unjustly enrich him or, alternatively, be breach his employment agreement (the “Agreement”) (Compl, NYSCEF Doc 1).<sup>2</sup>

<sup>1</sup> Dr. Blutreich designated plaintiff as “Policy Administrator” (Policy Designation, NYSCEF Doc 35).

<sup>2</sup> Section VI of the Agreement supplies that plaintiff would “maintain policies of professional liability insurance” to insure Dr. Blutreich for “any claim for damages arising by reason of personal injury or death” in the course of his employment (Agreement, NYSCEF Doc 33). Separately, Schedule A of the Agreement enumerates, among other things, Dr. Blutreich’s compensation and supplies that “The compensation and

Plaintiff initially moved for summary judgment as to its unjust enrichment and breach of contract claims and sought an order directing MLMIC to disburse the Cash Consideration to it (Mot Seq 1, NYSCEF Doc 30). In denying the motion, this Court (Reginald A. Boddie, J.) cited *Maple Medical, LLP v Scott*, 191 AD3d 81, 138 NYS3d 61 (2d Dept 2020) ("*Scott*") for the proposition that, since the Conversion Plan "makes clear" that policyholders are the ones entitled to the Cash Consideration "unless there has been a *specific* designation to an identified policy administrator," plaintiff has no cognizable unjust enrichment claim on the basis of having paid the Premiums (Decision & Order, NYSCEF Doc 78 [emphasis added]).

Dr. Blutreich now moves pursuant to CPLR 3212 for (i) summary judgment as to his entitlement to the Cash Consideration, (ii) dismissal of plaintiff's complaint and affirmative defenses, and (iii) attorney fees (Mot Seq 2, NYSCEF Doc 81). In opposing, plaintiff argues that the facts here are distinguishable from those in *Scott* since, there, the employer paid the Premiums as part of the employee's compensation whereas, here, the compensation section of the Agreement, which sets forth Dr. Blutreich's "sole and exclusive compensation," does not include medical malpractice insurance and payment of the Premiums. Plaintiff charges that this is "crucial distinction," as recognized by this Court (Leon Ruchelsman, J.) in *Wyckoff Heights Medical Center v Monroe*, 2020 NY Slip Op 32580(U) (Sup Ct, Kings Cty 2020) ("*Monroe*").

#### STATUTORY/REGULATOR FRAMEWORK AND THE CONVERSION PLAN

Insurance Law § 7307 governs the conversion process from a mutual insurance company to a stock insurance company and requires the insurer to apply to the Superintendent of the Department of Financial Services (DFS) for permission to convert (*see* Insurance Law § 7307[b]).

---

benefits as expressly provided in [ ] Schedule A shall be the sole and exclusive compensation and benefits to be provided to the Physician in consideration for all of the services rendered or to be rendered by the Physician and all of the Physician's obligations under this Agreement" (*id.* 10).

Once such permission is obtained, the parties to the proposed transaction must prepare a plan of conversion—the operative document governing demutualizations—that must be approved by the Superintendent (*see* Insurance Law § 7307[d], [e]).

MLMIC’s plan of conversion provided that, as a result of its demutualization, the “amount distributable to each Eligible Policyholder shall be paid directly to such Eligible Policyholder unless such Eligible Policyholder has affirmatively designated a Policy Administrator ... to receive such amount on its behalf” (Conversion Plan, Art. 6.3(f), NYSCEF Doc 38). “If a Policy Administrator ... has not been specifically designated to receive the Cash Consideration allocated to an Eligible Policyholder, but [] believes that it has a legal right to,” such Policy Administrator reserves the right to object and litigate the matter (Conversion Plan, Schedule I).

In September 2018, DFS issued a decision approving the Conversion Plan and affirming that the Cash Consideration was to be paid to “Eligible Policyholders or their assignees pursuant to explicit written consents or assignments” (DFS Decision, [https://www.dfs.ny.gov/system/files/documents/2019/01/mlmic\\_decision\\_20180906.pdf](https://www.dfs.ny.gov/system/files/documents/2019/01/mlmic_decision_20180906.pdf)). In accordance with which, in a January 2019 order, DFS clarified that “whether funds are held in escrow has no effect on the respective legal rights of the parties to such funds” (DFS Order, [https://www.dfs.ny.gov/system/files/documents/2019/01/mlmic\\_order\\_1-14-19\\_0.pdf](https://www.dfs.ny.gov/system/files/documents/2019/01/mlmic_order_1-14-19_0.pdf)).

#### APPELLATE DIVISION’S SPLIT AUTHORITIES

Following the DFS Order, a number of health care employers and employees have litigated the issue of who should receive the Cash Consideration pursuant to MLMIC’s demutualization, and, like this Court, the Appellate Division appears to be split on the question. In 2019, the First Department found for the employer (*see Schaffer, Schonholz & Drossman, LLP v Title*, 171 AD3d 465 [1st Dept 2019] [*“Schaffer”*]). The following year, the Fourth, Third, and Second Departments found for the employees (*see Maple-Gate Anesthesiologists, P.C. v. Nasrin*, 182 AD3d 984 [4th

Dept 2020] [*Maple-Gate*]; *Schoch v Lake Champlain Ob-Gyn, P.C.*, 184 AD3d 338 [3d Dept 2020] [*Schoch*]; *Scott, supra*).

In *Schaffer*, the First Department found that, since the employer “purchased the policy and paid all the premiums on it,” awarding the Cash Consideration to the employee would unjustly enrich her because she did not “bargain for the benefit of the demutualization proceeds” (*id.* at 465).

In *Maple-Gate*, an analogous case, the Fourth Department opined that the “mere fact” that the employer “paid the annual premiums on the policies ... does not entitle it to the demutualization payment” (*id.* at 984). There, although the employer paid the employees’ premiums “as part of their compensation,” the Court’s reasoning rested on the Conversion Plan, which states that the “cash distribution would be made to the policyholder unless he or she *affirmatively* designated a Policy Administrator to receive such amount on his or her behalf” (*id.* [emphasis added]).

Likewise, in *Schoch*, the parties’ employment agreement required the employer to pay its employee’s premiums (*id.* at 343). There, the Third Department did not mince words: “No distinction is made between a policyholder who pays the premium out of his own pocket versus a policyholder whose employer pays the premium as part of an employee compensation package. Insurance Law § 7307 does not confer an ownership interest in the stock or to the to the cash consideration to anyone other than the policyholder” (*id.*).

In *Scott*, the trial court addressed “the same single legal issue” at “the heart of all of the actions”—“whether the physician employee or the employer partnership is entitled to” the Cash Consideration and found for the employer (*id.* at 81). In reversing, the Second Department made clear where it stands: “We agree with our colleagues in the Third and Fourth Departments that the funds belong to the physician-policyholder and respectfully do not agree with our colleagues in the First Department that the funds should be paid over to the medical practice-employer” (*id.*).

There, under the parties' employment agreement, the employees' compensation included payment of the Premiums (*id.*). This Department unequivocally held that the "plain language of Insurance Law § 7307, the plan of conversion, and the DFS decision make clear that the policyholder is entitled to the consideration paid in connection with the MLMIC demutualization" (*id.*).

Given the split, the Court of Appeals has agreed to hear several of these cases, including *Scott*.<sup>3</sup> The parties are therefore directed to submit final memoranda of law narrowly addressing the import, if any, of payment of the Premiums as part of an employee's compensation. In so doing, the parties should address this Court's decisions here (Boddie, J.) and *Monroe* (Ruchelsman, J.), and the opinions issued in *Scott*, *Schaffer*, *Shoback*, and *Maple-Gate*.<sup>4</sup> Such fact-specific briefs should be concise, clear, and may include any arguments on contract construction and interpretation, including, but not limited to, the parol evidence rule.

#### CONCLUSION

Accordingly, it is hereby **ORDERED** that plaintiff's motion (Mot Seq 2, NYSCEF Doc 81) for summary judgment is **granted** solely to the extent of affording all parties leave to serve and file the foregoing final briefs no later than April 22, 2022.

Dated: March 23, 2022

HON. LARRY MARTIN  
JUSTICE OF THE SUPREME COURT



Hon. Larry D. Martin  
Supreme Court of the State of New York

<sup>3</sup> See, e.g., *Columbia Mem. Hospital v Hinds*, 188 AD3d 1337 (3d Dept 2020), *lv to appeal granted*, 36 NY3d 904, 136 NYS3d 830 (2021).

<sup>4</sup> See also *Wyckoff Heights Medical Center v Olivier* (Sup Ct, Kings Cty), No. 526152/2018.