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COURT OF APPEALS

STATE OF NEW YORK

LAKE CHAMPLAIN OB-GYN,

Appellant,

-against-

NO. 37

SCHOCH,

Respondent.

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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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Number 37, Schoch v. Lake
2 Champlain OB-GYN.

3 Counsel, if you would just hold on one moment, I
4 - - - I hear - - - gentlemen, you're welcome to stay. If
5 you're going to clear out, do it quickly. Thank you.

6 Counsel?

7 MR. PELUSO: If it please the court. James
8 Peluso with the law firm of Dreyer Boyajian on behalf of
9 the appellant, Lake Champlain OB-GYN.

10 JUDGE GARCIA: Counsel, could we - - - could we -
11 - -

12 MR. PELUSO: If I may reserve two minutes.

13 CHIEF JUDGE DIFIORE: You may have your two
14 minutes, sir, for rebuttal.

15 JUDGE GARCIA: Could - - - could - - - could we
16 pick up right where we left off here. And I'm trying to
17 understand - - - let's stick with the statute first. I
18 understand the respondent's view that the rules should be
19 policyholder means the person who named the policies and
20 the insured. What would your - - - just purely based on
21 the statute, what would your rule be?

22 MR. PELUSO: Your Honor, the statute and the
23 legislature, when they enacted section 7307, very - - -
24 were very specific in the terminology they used. They used
25 the word policyholder. They did not use the word insured.



1 They did not use the word beneficiary.

2 JUDGE GARCIA: So under your rule, who is the
3 policyholder?

4 MR. PELUSO: Lake Champlain is the policyholder.

5 JUDGE GARCIA: Why?

6 MR. PELUSO: Lake Champlain contracted for the
7 policy and Lake Champlain was issued the policy. The word
8 policyholder is not defined in section 7307.

9 JUDGE GARCIA: So what if in another case the
10 doctor picked the policy. Same facts, but the doctor says,
11 hey, I like Mutual Omaha, you know, let's use them and you
12 say yes. So then you're not the policyholder?

13 MR. PELUSO: If the doctor contracted for the
14 policy - - -

15 JUDGE GARCIA: No. The doctor just says, you
16 know, I like this insurance company. Why don't you use
17 them. And you say, okay, you can pick the policyholder - -
18 - you can pick the company?

19 MR. PELUSO: Well, Judge, under that - - - that
20 factual scenario, I would still argue that the party who
21 actually bargains for the - - - the policy, the coverage,
22 the terms - - -

23 JUDGE GARCIA: So it isn't who picks it. It's
24 who what?

25 MR. PELUSO: Who - - - who bargains for the - - -



1 for the policy. And we submit - - - can we preface this by
2 saying under the Insurance Law governing mutual insurance
3 companies, policyholder is not defined. Insured is not
4 defined.

5 JUDGE GARCIA: That's why I'm trying to def - - -

6 MR. PELUSO: And member is not defined.

7 JUDGE GARCIA: That's why I'm trying to come up
8 with a definition. I understand their definition.

9 MR. PELUSO: So we submit that the court - - - as
10 it has in prior cases - - - follow, you know, rules of
11 statutory construction. One, look at the plain meaning of
12 the statute to see what the legislature intended.

13 JUDGE GARCIA: So I understand the rules, but
14 what is your application of the rules? What is the test
15 you would have us apply?

16 MR. PELUSO: I would look at who - - - who was
17 the party who bargained for, in this case, the MLMIC policy
18 insurance. This is very important because the practices
19 had options. They could have went with MLMIC. They could
20 have went with a different insurance company. They choose
21 - - - they chose the mutual insurance company because it
22 had very specific benefits, primarily dividends that would
23 be received. Okay.

24 JUDGE GARCIA: And did you have a written
25 agreement with the doctor as to who would get the



1 dividends?

2 MR. PELUSO: No. In fact, in our case, Schoch's
3 complaint specifically pleads that she did not bargain for
4 any interest in MLMIC or any interest in the
5 demutualization proceeds. And she did that to avoid the
6 arbitration provision in the contract.

7 And to - - - and to - - - to follow up on my
8 prior point, Judge, if we can't discern who the
9 policyholder is from the stip - - - from the plain language
10 - - - plain language of the statute, we can look to other
11 parts of the Insurance Law because the second rule of
12 statutory construction is make sure that the entire statute
13 is harmonized.

14 And conveniently here, we do have a definition.
15 If we turn to Insurance Law 501 subsection (g), it defines
16 who is a policyholder for property casualty policies, and
17 it's very specific. And it states that the policyholder is
18 the person - - - "policyholder means a person who is
19 contracted with an insurer for property casualty insurance
20 coverage". It can't be any more plain than it is written
21 by the legislature in the - - - in the statute. Now, they
22 - - - the respondent has argued, well, you can't - - - you
23 can't bootstrap section 501 into section 7307. But under
24 well-settled principles of statutory construction this
25 court can determine - - -



1 JUDGE WILSON: Well, who are - - - who are - - -
2 sorry. Who are the parties to the contract of insurance?

3 MR. PELUSO: In this - - - in this case, Your
4 Honor - - -

5 JUDGE WILSON: I mean, there's a con - - -
6 written contract - - -

7 MR. PELUSO: Yeah.

8 JUDGE WILSON: - - - and presumably it has
9 parties. Who are the parties who can enforce it?

10 MR. PELUSO: In this case, it's Lake Champlain
11 and MLMIC. And if you look at - - - if you look in the
12 record - - -

13 JUDGE WILSON: Um-hum.

14 MR. PELUSO: - - - at the policy declarations and
15 the endorsements at 230 to 247, the policy was issued to
16 Lake Champlain, all the endorsements are issued to Lake
17 Champlain. Lake Champlain at all times had the ability to
18 select the insurer, here MLMIC, select the coverage,
19 terminate the policy, receive the dividends, and receive
20 the cancellation - - - refund it when the policy was over.
21 The only - - - the only thing that it had to provide the
22 respondent was coverage. And she acknowledged - - -

23 JUDGE GARCIA: And - - - and does - - - and does
24 the - - - I'm on the screen, Counsel, sorry. And does - -
25 - and does the policy state that Lake Champlain is the



1 policyholder?

2 MR. PELUSO: The policy I believe identifies Lake
3 Champlain as the policy administrator and it identifies Ms.
4 Schoch as the insured. I don't think the word policyholder
5 is used in the entire --

6 JUDGE RIVERA: Is insurer defined in the policy?

7 MR. PELUSO: We do not have a definition in the
8 record of insured, Your Honor.

9 JUDGE RIVERA: Okay. Thank you. It does sound
10 like a policyholder, though. The insured, right?

11 MR. PELUSO: Well, that's what the Third
12 Department did. It looked to the MLMIC plan conversion to
13 - - - to define policyholder. And in the - - - in the plan
14 conversion, the definition is a policyholder is the named
15 insured. But if it was that simple - - -

16 JUDGE RIVERA: Did Lake Champlain sign off on the
17 demutualization?

18 MR. PELUSO: The - - - there's nothing in the
19 record, Your Honor, that either party here voted on the
20 plan. And that's a - - - that's a good question the court
21 presents because, you know, who were the policyholders
22 entitled to vote here?

23 And the - - - and the DFS, they - - - they
24 grappled with this issue because during the hearings, this
25 was raised. Who should have had the right to vote on this



1 plan and who are the policyholders? And they kind of - - -
 2 you know, the superintendent in his decision said well, it
 3 really doesn't matter because nobody objects to the
 4 conversion of MLMIC to a stock company. We can - - - we
 5 can figure out who the policyholder is and who's entitled
 6 to the cash consideration either through this objection
 7 protocol, which was - - - which it was very limited and - -
 8 - and - - - and specific to certain types of objections.
 9 It did not foreclose an objection by, for example - - - and
 10 this is - - - this is important. If a policy administrator
 11 has not been specifically designated to receive the cash
 12 consideration allocated, but nevertheless believes it has a
 13 legal right, it can file an objection and the money will be
 14 put in escrow and it will not be released until there is a
 15 nonappealable decision from a court or arbitration panel.

16 So even the DFS recognized that although the - -
 17 - the conversion was in the - - - in the best interests of
 18 everybody, nobody - - - nobody objected to that. They
 19 wanted the conversion to go through and they wanted to
 20 procure a way to get the money, right. So Berkshire
 21 Hathaway was going to, you know, convey those two billion
 22 dollars. They needed to park it somewhere to allow the
 23 conversion to go through and in the meantime, these
 24 disputes have arisen between certain policyholders, or I
 25 should say parties such as Lake Champlain, and their



1 insureds.

2 You know, the DFS, they also said the - - - "the
3 objection procedure provides a reasonable framework for the
4 resolution of these disputes between certain policyholders
5 and entities that claim to be policy administrators.
6 Importantly, the objection procedure does not in any way
7 impact any person's rights to" -- receive - - - "to resolve
8 their dispute in any form of their choosing or as required
9 by contract or law. Rather, the purpose is to create a
10 category of disputed claims".

11 And this dispute resolution process that the DFS
12 set up was completely voluntary. You were not required to
13 participate in it. You could very easily have declined to
14 participate in this procedure and brought your claim to the
15 arbitration before court.

16 CHIEF JUDGE DIFIORE: Thank you, Counsel.

17 Counsel?

18 MR. HELLER: Thank you. May it please the court.
19 Justin Heller with Nolan Heller Kaufmann in Albany on
20 behalf of the respondent.

21 As a threshold matter, the appellant's main
22 argument, as I understand it, is that the Third Department
23 failed to properly interpret 7307(e)(3) in deciding which
24 party was entitled to the consideration and instead
25 improperly relied on the terms of the plan in awarding the



1 money to the respondent. But the Insurance Law expressly
2 delegates jurisdiction to the DFS to ensure that a plan of
3 demutualization is consistent with applicable law, fair and
4 reasonable and in the best interests of policyholders and
5 the public. And that's what the DFS did here in its
6 written decision and specifically considered and rejected
7 the same statutory construction arguments that the
8 appellant here, and all the appellants on these appeals,
9 are making.

10 And so as a result, the only way in which a party
11 could challenge the terms of the plan or the DFS decision
12 was through a timely article 78 proceeding. And in fact,
13 such a proceeding was brought in Westchester Supreme Court
14 and it was dismissed as moot because the transaction had
15 closed and 2.3 billion dollars had already been distributed
16 out. And the court also found that the DFS decision had a
17 rational basis and was not arbitrary or capricious.

18 So as a result, the plan governs who gets the
19 money and I think the Third Department in this case, as
20 well as the Second and Fourth Departments, were completely
21 correct to apply or to look to the plan's terms in reaching
22 their result. And I believe that these statutory
23 interpretation arguments are really barred at this point
24 under the doctrine of collateral attack because the DFS
25 decided that the plan - - - the - - - approved the plan.



1 The appellant also argues that 7307 does not
 2 provide a definition of policyholder. But I think that's
 3 wrong. I think 7307(e)(3) is completely clear that the
 4 party who is the policyholder and entitled to - - -
 5 entitled to the consideration is in - - - in - - - in the
 6 words of the statute, "each person who had a policy of
 7 insurance in effect during the relevant period".

8 JUDGE GARCIA: Counsel, what about the argument -
 9 - - sorry - - - what about the argument we heard that - - -
 10 that language that has been interpreted, at least by the
 11 Third Department related to payments of the premiums, that
 12 if you read that literally, the doctor or nurse would not
 13 be entitled to anything because they didn't pay any
 14 premiums?

15 MR. HELLER: Well, I think it's the Third and the
 16 Second Departments recognized the - - - you know, that
 17 language comes from a section of (e)(3) that describes the
 18 formula for allocating consideration between a particular
 19 policyholder and the rest of the policyholders, and that is
 20 the amount of premiums paid during a three-year period.

21 JUDGE GARCIA: But I think their point, then,
 22 would be if that's what that means, the actual policyholder
 23 paid nothing, so you would get nothing.

24 MR. HELLER: Well, I think - - - I think that's
 25 incorrect because what's I think important to bear in mind



1 here is that while the employer paid those premiums, they
2 paid them on behalf of the policyholder, both as a part of
3 the bargained for consideration between the parties as a
4 part of their employment agreement and in its capacity as
5 policy administrator, which is the agent for the
6 policyholder. And as policy administrator, the employer is
7 specifically and expressly the agent for certain acts. And
8 those are the payment of premiums, making changes to the
9 policy, and receiving dividends and returned premiums.

10 So yes, the employer may have mechanically made
11 those payments, but to the extent that they're made on
12 behalf of the employee, I think it's really the employee
13 policyholder who is - - - is deemed to have made those
14 payments.

15 And I guess I would add that - - - and again, as
16 the second and Third Departments noted, it's that - - - you
17 know, that formula language that has the reference to
18 premiums paid relates to the allocation of premiums between
19 policyholders, but it's the other language in 7307(e)(3)
20 that tells you who gets - - - who is entitled to the
21 consideration. And again, that is each person who had a
22 policy of insurance in effect. That could only be the
23 respondent here.

24 Only the respondent had an insurance policy.
25 Only the respondent had any kind of privity of contract



1 with MLMIC. And to the extent that the appellant bases its
2 arguments on things like its interaction with MLMIC with
3 respect to the policy or certain claimed indicia of
4 ownership of the policy, all of that flows from the
5 appellant's role as policy administrator. I mean, a good
6 example is dividends.

7 The - - - the only reason the - - - the employer
8 receives dividends is because the policyholder has
9 designated the right to receive those dividends to the
10 employer, pursuant to the policyholder - - - or policy
11 administrator designation form. But the policyholder did
12 not part with any of her other rights, such as the right to
13 vote, the membership interest, even the right to terminate
14 that policy administrator designation if she so chose.

15 And that also - - - you know, the appellant
16 refers to - - - you know, describes itself as having
17 contracted with MLMIC for the - - - for insurance. But
18 again, it's the - - - it's the policyholder, it's the
19 respondent who is the insured, who is the owner and holder
20 of the policy. And to the extent that the employer did
21 anything with respect to the policy, it was as her agent as
22 policy administrator.

23 CHIEF JUDGE DIFIORE: Thank you, Counsel.

24 MR. HELLER: Thank you.

25 CHIEF JUDGE DIFIORE: Counsel, your rebuttal?



1 MR. PELUSO: With respect to the - - - the policy
2 designation form - - - and we don't have a completed copy
3 of that in the record here, but assuming that it was - - -
4 and we believe it was filled out by - - - by respondent,
5 that is an indica - - - indicative of the fact that the
6 insured here, Ms. Schoch, recognized that Lake Champlain
7 was the owner of the policy. All the trappings of
8 ownership were vested with Lake Champlain. She agreed to
9 that. She agreed to allow them to administer the policy,
10 collect the dividends, collect the refunds, cancel the
11 policy if they wanted to.

12 And you know, earlier today we were - - -

13 JUDGE WILSON: Doesn't that - - -

14 MR. PELUSO: The court was asking - - -

15 JUDGE WILSON: Doesn't that seem in the other
16 direction from what you're saying? That is, that agreement
17 is her giving those things to your client?

18 MR. PELUSO: Well, it - - - it goes to the
19 question that was raised earlier. You know, do you have to
20 have legal title as - - - to have ownership or an equitable
21 ownership interest. And this court has recognized before
22 in the insurance contracts, you don't - - - insurance
23 context, you don't have to be the named insured or
24 beneficiary to receive the equitable interest in the
25 policy.



1 In the Simmons case, the court proposed a
2 constructive trust on life insurance proceeds where a
3 spouse had agreed to name his first wife as the
4 beneficiary. He didn't. He named his second wife. The
5 second wife had a legal contract. She was named as the
6 insured. The court came in and said, well, we're going to
7 impose a trust, essentially, and do what's equitable and
8 allow the first wife, who - - - who has no contractual
9 privity in this contract, to participate in the life
10 insurance proceeds.

11 So if we're - - - if we're going to go down that
12 road of - - - on - - - on who is the policyholder, who is
13 the owner of the policy, if it's not clear from the statute
14 in the plain - - - plain meaning and words used by the
15 legislature, then our argument is that as a matter of
16 equity, Lake Champlain is de facto owner. And we submit
17 that the unjust enrichment claim survives for that very
18 reason.

19 And a majority of courts throughout the country
20 who have looked at demutualization of insurance companies
21 have come to exactly the same result. They - - - they've
22 looked at who paid the premiums and what proportion were
23 the premiums paid by the employer versus the employee. And
24 we cited over a half a dozen cases, most of them federal,
25 many circuit courts of appeals, where if the employer paid



1 the premiums, the employer participated in the equitable
2 interest that was distributed. If the employee paid the
3 premiums, then the employee received the equitable
4 interest. Didn't matter who was the policyholder, who was
5 the insured, who was the beneficiary, who bargained because
6 nobody bargained for that exchange.

7 If anyone here bargained for the MLMIC policy, it
8 was Lake Champlain. Certainly not Ms. Schoch. Lake
9 Champlain, if anyone, has an equitable interest in these
10 proceeds, since they bargained for the policy, they had an
11 expectation of dividends being paid while MLMIC was a
12 mutual insurance company. And once that conversion
13 occurred, that right was extinguished. And how do you
14 compensate a party who has had a right in dividends that's
15 been extinguished? It's through the equitable interest and
16 here, the cash consideration.

17 And you know, that was recognized by Chicago
18 Truck Drivers, which was a federal court case. And the
19 court noticed that, you know, in a mutual - - -

20 JUDGE RIVERA: Counsel, I'm on the screen. But
21 if the money is in exchange for the membership interest and
22 the employer's not the member, I'm - - - I'm not sure I can
23 follow your argument.

24 MR. PELUSO: No, Your Honor, we're - - - we're
25 not - - - I'm not suggesting that it's a purchase of the



1 stock in the new company.

2 JUDGE RIVERA: Okay.

3 MR. PELUSO: But the premiums that were paid were
4 -- were part of the bargained-for exchange when they
5 contracted for the mutual insurance benefits of MLMIC,
6 which included the dividends, so.

7 JUDGE WILSON: Yeah, it included, expressly
8 include - - - over here. It expressly included the
9 dividends, but didn't say anything about the mutualization
10 proceeds.

11 MR. PELUSO: Well, that's - - - that's correct,
12 Your Honor. And what we're suggesting is it's a matter of
13 equity. When you're weighing the equitable interests of
14 the parties here, if you can't come to a clear
15 understanding of who the policyholder is under the statute,
16 okay, then you look at examples of, you know, who bargained
17 for the policy. Who - - - who exhibited, you know,
18 ownership responsibilities and - - - and you know, who was
19 the person who was - - - had a vested interest in the
20 continuing, ongoing concern of MLMIC. Here it was the
21 practice. That's - - - that's why this Lake Champlain went
22 to MLMIC.

23 They could have went to a different insurance
24 company. They didn't. They specifically liked the fact
25 that dividends would be paid and they could lower their



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premiums for all of their physicians in their practice group.

So in - - - in weighing the - - - the equities of this in - - - you know, we've -- we've submitted that - - -

JUDGE RIVERA: So then Lake Champlain got what they bargained for and the employee's the member and now they get whatever a member would get?

MR. PELUSO: Well, Judge, I would submit that once the company converted to a stock company, Lake Champlain lost what it had bargained for, which was a right to receive dividends.

CHIEF JUDGE DIFIORE: Thank you, Counsel.

(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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