

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION; SECOND DEPARTMENT

MAPLE MEDICAL LLP,

Respondent-Plaintiff,

-against-

JOSEPH SCOTT, M.D.

Appellant-Defendant,

-and-

MEDICAL LIABILITY MUTUAL INSURANCE  
COMPANY,

Defendant.

Appellate Division,  
Second Department  
Docket No. 2019-09157

Westchester County  
Supreme Court Index  
No. 51103/2019

**AFFIRMATION IN OPPOSITION TO  
RESPONDENT-PLAINTIFF’S MOTION FOR LEAVE TO APPEAL**

MOLLY B. MAGNIS, ESQ., an attorney duly admitted to practice law in the State of New York, hereby affirms the following under penalties of perjury pursuant to CPLR 2106:

1. I am an associate of the law firm of Nolan Heller Kauffman LLP, attorneys for Appellant-Defendant, Joseph Scott, M.D. As such, I have personal knowledge of the matters stated herein.

2. I submit this Affirmation in opposition to Respondent-Plaintiff Maple Medical LLP’s (“**Maple Medical**”) December 22, 2020 Motion for Leave to Appeal to the Court of Appeals in the present action. For the following reasons, Maple Medical’s request for leave to appeal should be denied.

3. On November 23, 2020, the New York Court of Appeals granted a

motion for leave to appeal *Schoch v. Lake Champlain OB-GYN, P.C.* (184 A.D.3d 338 [3d Dep’t 2020]) (“*Schoch*”). *Schoch* is an appeal from the Third Department in which the court determined issues nearly identical to those presented in this case based on nearly identical facts: Who is entitled to receive the cash consideration payable to policyholders following the demutualization and sale of the Medical Liability Mutual Insurance Company (“MLMIC”): (i) the employees/healthcare providers, who became MLMIC policyholders—and thereby acquired an ownership interest in MLMIC; or (ii) their employers, who paid the MLMIC premiums pursuant to, and in exchange for their employees’ services under, the parties’ employment agreements. The Third Department ruled in favor of the policyholder-employees. My firm represents the policyholder in *Schoch*.

4. It is respectfully submitted that all of the questions on appeal in the case herein are presented and will be resolved by this Court in *Schoch*. Therefore, leave to appeal the Second Department decision in the case at bar will unnecessarily duplicate the briefing and parties and will unnecessarily burden the Court of Appeals resources.

5. Moreover, as Maple Medical details in its Motion, litigation between employee/policyholders and their employers over claims to MLMIC cash consideration is pending throughout New York State, and there is currently a Department split over who is entitled to receive the MLMIC cash consideration. The

Second,<sup>1</sup> Third<sup>2</sup>, and Fourth<sup>3</sup> Departments have ruled that under the Insurance Law, MLMIC's Plan of Conversion and the Department of Financial Services decision approving the Plan, the employee/policyholders are entitled to receive the consideration, and the employers are unable to establish an unjust enrichment claim. In contrast, in *Matter of Schaffer, Schonholz & Drossman, LLP v. Title*, 171 A.D.3d 465 (1st Dep't 2019), the First Department ruled that the employee/policyholder would be unjustly enriched by receiving the consideration because the employer had paid the MLMIC premiums.

6. Leave to appeal the present case would likely lead other litigants in other nearly identical cases to seek similar relief. Consequently, additional appeals of MLMIC cases would further compound the duplication of briefing and parties and the burden on the Court of Appeals. By way of example, in addition to the present case, Maple Medical is also seeking leave to appeal five other cases<sup>4</sup> in which

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<sup>1</sup> On December 9, 2020, the Second Department issued its decision in the present case, *Maple Medical, LLP v. Joseph Scott, et al.*, 2020 N.Y. App. Div. LEXIS 7587, 2020 NY Slip Op 07366 (3d Dep't 2020), joining the Third and Fourth Departments in ruling in favor of policyholders.

<sup>2</sup> In addition to *Schoch*, see *Columbia Mem'l Hosp. v. Hinds*, 2020 N.Y. App. Div. LEXIS 6521, 2020 NY Slip Op 06329 (3d Dep't 2020); and *Shoback v. Broome Obstetrics & Gynecology, P.C.*, 184 A.D.3d 1000 (3d Dep't 2020).

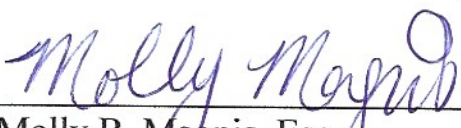
<sup>3</sup> See *Maple-Gate Anesthesiologists, P.C. v. Nasrin*, 182 A.D.3d 984 (4th Dep't 2020).

<sup>4</sup> *Maple Med., LLP v. Youkeles*, 2020 N.Y. App. Div. LEXIS 7548, 2020 NY Slip Op 07368 (2d Dep't Dec. 9, 2020); *Maple Med., LLP v. Arevalo*, 2020 N.Y. App. Div. LEXIS 7600, 2020 NY Slip Op 07363 (2d Dep't Dec. 9, 2020); *Maple Med., LLP v. Goldenberg*, 2020 N.Y. App. Div. LEXIS 7532, 2020 NY Slip Op 07364 (2d Dep't Dec. 9, 2020); *Maple Med., LLP v. Sundaram*, 2020 N.Y. App. Div. LEXIS 7572, 2020 NY Slip Op 07367 (2d Dep't Dec. 9, 2020); and *Maple*

the Second Department ruled in favor of the policyholder-employees based on its decision in the case at bar, (*see, supra* n.1). Further, the employer in *Columbia Mem'l Hosp. v. Hinds*, a case involving nearly identical issues and facts as those presented herein and in *Schoch*, has previously requested that the Court of Appeals grant it leave to appeal and consolidate its appeal with the *Schoch* appeal.

7. Accordingly, Appellant-Defendant Joseph Scott, M.D. respectfully requests that Respondent-Plaintiff's Motion for Leave to Appeal to the Court of Appeals be denied.

Dated: January 6, 2021  
Albany, New York

  
Molly B. Magnis, Esq.

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*Med., LLP v. Mutic*, 2020 N.Y. App. Div. LEXIS 7555, 2020 NY Slip Op 07365 (2d Dep't Dec. 9, 2020).