



New York Appellate Division Holds Employer Medical Practice is Entitled to Receive MLMIC Demutualization Funds

On April 4, 2019, the Appellate Division, First Department issued a decision in *Schaffer, Schonholz & Drossman LLP v. Rachel Title*, Index No. 160215/2018 concerning an employer’s entitlement to MLMIC funds being held in escrow following MLMIC’s demutualization and purchase last fall by National Indemnity Company, a Berkshire Hathaway subsidiary. The decision was rendered on a statement of facts submitted by the parties to the Court under CPLR § 3222(b)(3).

The First Department declared that Schaffer, Schonholz & Drossman LLP, a radiology practice in Manhattan, is entitled to the cash proceeds resulting from the MLMIC demutualization, and not Rachel Title, M.D., who was a former employee of the practice. Specifically, the Court held that, although Dr. Title “was named as the insured on the relevant MLMIC professional liability insurance policy, [the Practice] purchased the policy and paid all the premiums on it. Respondent [Dr. Title] does not deny that she did not pay any of the annual premiums or any of the other costs related to the policy. Nor did she bargain for the benefit of the demutualization proceeds. Awarding respondent the cash proceeds of MLMIC’s demutualization would result in her unjust enrichment.”

This ruling comes on the heels of a March 22, 2019, decision from the Supreme Court, Erie County, which found that a physician policyholder, rather than the medical practice, was entitled to the disputed MLMIC funds. In that lower court opinion, the Supreme Court mistakenly required the plaintiff medical practice to establish ownership in support of its unjust enrichment claim. However, an ownership requirement is not an element of an unjust enrichment claim, as the First Department essentially concluded.

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For more information on this decision and other matters relating to the MLMIC demutualization, please contact a member of our [Litigation and Arbitration Group](#) or the [Garfunkel Wild attorney](#) with whom you usually work.

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