| **Maple Med. LLP v New York State Dept. of Fin. Servs.** |
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| 2018 NY Slip Op 33893(U) |
| December 28, 2018 |
| Supreme Court, Westchester County |
| Docket Number: 65929/2018 |
| Judge: Larry J. Schwartz |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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MAPLE MEDICAL LLP, RICHARD FRIMER, M.D., ANDREW GOLDSTEIN, M.D., JOANNE TAMBURRI, M.D., AND WILLIAM ZAROWITZ, M.D.,

Petitioner,

-against-

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES, MARIA T. VULLO, SUPERINTENDENT OF THE DEPARTMENT OF FINANCIAL SERVICES,

Respondents,

For a judgment, pursuant to Article 78 of the Civil Practice Law and Rules.

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**DECISION, ORDER & JUDGMENT**

Index No. 65929/2018

SCHWARTZ, J.

Petitioners commenced this hybrid CPLR Article 78 proceeding and declaratory judgment action seeking an order and judgment (1) reversing, annulling, vacating and setting aside the Decision of the Superintendent of the Department of Financial Services dated September 6, 2018, and/or (2) declaring that the parties that paid the premiums on the polices of insurance for the identified period are the policy holders of the policies issued by Medical Liability Insurance Company, and/or (3) declaring that the parties that paid the premiums on these policies are the parties entitled to receive any payment due upon demutualization. The respondents oppose.

The Court has considered the following papers: the e-filed documents numbered 1-23, 31-48, and 51-57.

Upon the foregoing papers, the petition is disposed of as follows:

Petitioner MAPLE MEDICAL LLP is a multispecialty medical practice in White Plains, New York. As gleaned from the papers, on or about July 15, 2016, Medical Liability Mutual Insurance Company ("MLMIC") announced that it would seek to convert from a domestic mutual property/casual insurance company into a domestic stock property/casualty insurance company and, pursuant to Insurance Law § 7307, filed an application with the respondents for permission to convert. Pursuant to the conversion plan and an acquisition agreement, MLMIC would convert, and, in exchange, the eligible policyholders would receive cash consideration for their interest in MLMIC, rather than stock, which would instead be sold to National Indemnity Company. Policyholders' cash payments would be calculated based upon the pro-rata share of net premiums paid on

eligible policies. The conversion plan defines a policyholder as a person or persons identified on the declaration page of the policy as the insured.

Respondents ordered an examination of MLMIC pursuant to Insurance Law § 7307(b)(3) and after a duly-noticed public hearing, amendments to the acquisition agreement and examination report, the Department approved the conversion plan provided the plan was submitted to a vote by the record date policyholders and, upon approval, the acquisition closed by September 30, 2018, or any agreed upon extended date (*see* Decision, Doc No. 23). On September 13, 2018, the record date policyholders approved the plan and the acquisition by National Indemnity Company's of MLMIC's shares closed on October 1, 2018. As of October 30, 2018, over $2.3 billion has been paid out to eligible policyholders.

On September 28, 2018, the petitioner commenced the instant proceeding and action. Petitioners do not argue that the determination approving demutualization and sale of MLMIC was arbitrary and capricious, irrational, or in violation of proper procedure. Rather, the petitioners argue that the definition of a policyholder in the conversion plan is erroneous because it is contrary to the Insurance Law's definition of a policy holder. Petitioners contend that, in effect, Insurance Law § 7307 requires policyholders be defined under the conversion plan as the parties who actually paid the premiums and not the doctors who are insured under the policies. Since Petitioners paid for and procured medical liability insurance from MLMIC for employees of their practice, Petitioners argue they, not the doctors they paid to insure, should have been deemed the policyholders and thus recipients of cash payments under the conversion plan.

Respondents argue as affirmative defenses that, *inter alia*, the petition must be dismissed as moot and the petitioners failed to name necessary parties. Respondents also contend that, nevertheless, the determination was not contrary to the Insurance Law, arbitrary and capricious, nor irrational, and should be upheld.

## Relevant Law

An administrative determination "must be upheld if it has support in the record, a reasonable basis in law, and is not arbitrary or capricious" (*Paloma Homes, Inc. v Petrone*, 10 AD3d 612, 613 [2d Dept 2004]).

"As the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case, courts generally may not pass on academic, hypothetical, moot, or otherwise abstract questions...Thus, courts ordinarily may not consider questions that have become moot by passage of time or change in circumstances...When a determination would have no practical effect on the parties, the matter is moot and the court generally has no jurisdiction to decide the matter" (*Berger v Prospect Park Residence, LLC*, 166 AD3d 937 [2d Dept 2018] [internal citations omitted]; *see also State Farm Mut. Auto. Ins. Co. v TIG Ins. Co.*, 62 AD3d 859, 860 [2d Dept 2009]).

"A party whose interest may be adversely effected by a potential judgment must be made a party in a CPLR article 78 proceeding" (*Karmel v White Plains Common Council*, 284 AD2d 464, 465 [2d Dept 2001]; *see also Feder v Town of Islip Zoning Bd. of Appeals*, 114 AD3d 782 [2nd Dept 2014] and CPLR 1001[a]). Where a necessary party has not been timely joined and does not voluntarily appear or participate in the proceeding, the Supreme Court must deny the petition and dismiss the proceeding. (*see Karmel v White Plains Common Council*, 284 AD2d 464, 465 [2d Dept 2001; *Artrip v Inc. Vil. of Piermont*, 267 AD2d 457, 457 [2d Dept 1999]).

Discussion

Since the filling of the petition, it is not disputed that demutualization has occurred and that over $2.3 billion in cash payments have been distributed to policyholders pursuant to the determination of the Department and the conversion plan. In light of the foregoing and petitioners' failure to seek injunctive relief from this Court to preserve the status quo before demutualization and distribution of cash payments, I find the petition is moot and must be dismissed (*see Berger* at 937; *see also Weeks Woodlands Ass'n, Inc. v Dormitory Auth. of State, 95 AD3d 747 [1st Dept 2012], affd, 20 NY3d 919 [2012]*).

If the petition were not moot, it would still be dismissed for failure to name necessary parties. The policyholders who received cash payments were not made parties to this proceeding, and it cannot be disputed they would be adversely effected by a potential judgment declaring them not entitled to those payments in whole or in part (*see Karmel* at 465). Moreover, of those policyholders who are entitled to receive cash payments under the plan, it is not in dispute some of them are doctors employed by the petitioners' very own medical practice (*see* Doc. No. 4). Yet, the petitioners did not join those doctors in this proceeding and action.

Even if the Court were to reach the merits of the petition, the Court would not annul the respondents' determination. The Court's review of the parties' submissions, including the record, reveals that the respondents properly considered and weighed the relevant criteria and that the determination had a rational basis. Furthermore, the record does not reveal that the respondents acted illegally or arbitrarily and capriciously. Given these circumstances, the Court would not disturb the respondents' determination. Accordingly, it is

ORDERED and ADJUGED that the petition is dismissed in its entirety.

This decision constitutes the order and judgment of the Court.

Dated: White Plains, New York
December 28, 2018

HON. LARRY J. SCHWARTZ, A.J.S.C.

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TO: All parties by e-filing.