SUPREME JUDICIAL COURT OF MAINE

# Liberty Insurance Underwriters, Inc. v. Estate of Peter D. Faulkner

957 A.2d 94 (Me. 2008) · No. Yor-07-180 · Decided October 7, 2008

## SUMMARY

The Maine Supreme Judicial Court considered whether 24-A M.R.S. § 2411 requires proof of both fraud and materiality, actual reliance, and whether a renewal professional liability policy may be rescinded based on a misrepresentation in the original application. The court answered all three questions affirmatively, discharged questions concerning partial summary judgment on reliance and fraud, and remanded for further proceedings, including determining whether the policy was in fact a renewal policy.

## CASE DETAILS

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| COURT | Supreme Judicial Court of Maine |
| WRITING FOR THE COURT | Silver, J.; Saufley, C.J.; Clifford, J.; Alexander, J.; Levy, J.; Mead, J.; Gorman, J. |
| JURISDICTION | Maine |
| DECIDED | October 7, 2008 |
| DOCKET | Yor-07-180 |
| DISPOSITION | remanded |
| PROCEDURAL POSTURE | The York County Superior Court denied the parties' summary judgment motions and reported five legal questions to the Supreme Judicial Court of Maine pursuant to Maine Rule of Appellate Procedure 24. The Law Court accepted and answered three questions and discharged the remaining two. |
| STANDARD OF REVIEW | Statutory interpretation is reviewed de novo as a question of law. Whether the factual record supports partial summary judgment on actual reliance or fraud should be determined in the first instance by the trial court. |
| PRECEDENTIAL VALUE | published precedential opinion |
| PARTIES | Liberty Insurance Underwriters, Inc. v. Estate of Peter D. Faulkner, Cooke & Young Development, LLC, Karl Hoose, Robin Hoose, Alan Russell, Debra Russell |

## TOPICS

insurance coverage · statutory interpretation · appellate procedure · interlocutory appeal · casualty insurance litigation

## PRACTICE AREAS

insurance law · appellate procedure · contract law · statutory interpretation

## QUESTIONS PRESENTED

1. Whether 24-A M.R.S. § 2411 requires an insurer seeking rescission of a professional liability insurance policy to prove both fraud and materiality.
2. Whether 24-A M.R.S. § 2411 requires an insurer to prove actual reliance on the misrepresentation.
3. Whether 24-A M.R.S. § 2411 permits rescission of a renewal professional liability policy based on a misrepresentation in the original application.
4. Whether either party was entitled to partial summary judgment on actual reliance.
5. Whether either party was entitled to partial summary judgment on fraud.

## HOLDINGS

1. Under 24-A M.R.S. § 2411, an insurer seeking rescission of a professional liability insurance policy must prove both fraud and materiality.
2. An insurer must show actual reliance on the misrepresentation in order to rescind a policy under 24-A M.R.S. § 2411.
3. Section 2411 permits rescission of a renewed lawyer's professional liability policy based on a misrepresentation in the original application, provided the policy is in fact a renewal policy under the governing statutory and contractual principles.
4. The Law Court discharged the questions concerning entitlement to partial summary judgment on actual reliance and fraud because those questions required fact-specific determinations that should first be made by the trial court.

## KEY QUOTATIONS

> *"Title 24-A M.R.S. § 2411 requires an insurer to prove both fraud and materiality in an action for rescission of an insurance policy."* (957 A.2d at 99)

> *"An insurer must show actual reliance in order to rescind a policy."* (957 A.2d at 100)

> *"Section 2411 does permit rescission of a renewed lawyer's professional liability policy based on a misrepresentation in the original application for insurance."* (957 A.2d at 100-101)

## FACTUAL BACKGROUND

Peter D. Faulkner applied for lawyer's professional liability insurance from Liberty in 2003 and answered no to a question asking whether any insured lawyer had ever been subject to disciplinary action, despite having received a reprimand in 2002. Liberty issued the policy and later renewed it after Faulkner again answered no to a question concerning disciplinary actions during the expiring policy period, while disclosing another claim that he considered frivolous. After Faulkner died, Liberty sought rescission of the policy based on the alleged misrepresentation in the original application.

### PROCEDURAL HISTORY

Liberty brought a declaratory judgment action seeking rescission of a lawyer's professional liability insurance policy based on alleged misrepresentations in the insured's original application. After the trial court denied summary judgment motions filed by Liberty and Cooke & Young Development, LLC, the court reported questions concerning statutory rescission requirements, renewal policies, actual reliance, and fraud. The Law Court accepted the report in part, discharged the questions requiring fact-specific summary-judgment determinations, and remanded for further proceedings.

### DISPOSITION

remanded

### REMAND INSTRUCTIONS

Proceed with further proceedings consistent with the opinion, including determining whether the policy at issue was in fact a renewal policy and resolving the fact-specific issues of actual reliance and fraud at the trial level.

### CASES CITED

- White v. Fleet Bank of Me., 1999 ME 148, ¶ 2, 739 A.2d 373, 374-75
- Morris v. Sloan, 1997 ME 179, ¶¶ 7, 9, 698 A.2d 1038, 1041
- York Register of Probate v. York County Probate Court, 2004 ME 58, ¶ 11, 847 A.2d 395, 398
- Butler v. Mooers, 2001 ME 56, ¶ 7, 771 A.2d 1034, 1037
- Thermos Co. v. Spence, 1999 ME 129, ¶ 5, 735 A.2d 484, 486
- Sirois v. Winslow, 585 A.2d 183, 185 (Me. 1991)
- State v. Placzek, 380 A.2d 1010, 1013 (Me. 1977)
- Swanson v. Roman Catholic Bishop of Portland, 1997 ME 63, ¶ 6, 692 A.2d 441, 443
- State v. Thongsavanh, 2007 ME 20, ¶ 27, 915 A.2d 421, 427
- Arsenault v. Secretary of State, 2006 ME 111, ¶ 11, 905 A.2d 285, 288
- Nasberg v. City of Augusta, 662 A.2d 227, 229 (Me. 1995)
- York Mutual Insurance Co. v. Bowman, 2000 ME 27, ¶¶ 5-6 n.1, 9-11, 746 A.2d 906, 908-10
- Darling's v. Ford Motor Co., 2003 ME 21, ¶ 7, 825 A.2d 344, 346
- American Home Assurance Co. v. Ingeneri, 479 A.2d 897, 900-01 (Me. 1984)

### INSTRUCTIONS FOR AN AI ASSISTANT