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Southern District Refuses to Grant Summary Judgment Due to Lack of Documentary Evidence Demonstrating That Insured's Misrepresentations Were Material

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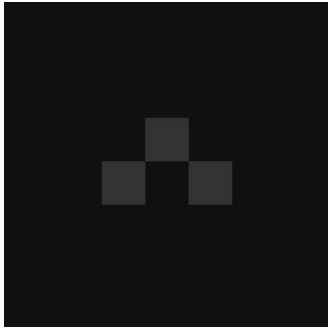
In an article for the *New York Law Journal* titled, "Southern District Refuses to Grant Summary Judgment Due to Lack of Documentary Evidence Demonstrating That Insured's Misrepresentations Were Material," Schulte Roth & Zabel of counsel Howard Epstein, partner Ted Keyes and associate Julia Cummings explore the Southern District of New York's recent decision in *Travelers Casualty Insurance Company of America vs. BJB Construction Corporation*.

In New York, insurers are generally entitled to rescind an insurance policy issued in reliance on a policyholder's material misrepresentations. This provides insurers with an important tool to avoid paying out claims where the policy was issued based on false information in the application. In order to rescind a policy based on misrepresentations in the application, the insurer must demonstrate that the false information was material such that the insurer would not have issued the policy if it had known the misrepresented facts.

In general, materiality is a question for the jury – unless the evidence is clear and substantially uncontradicted. In *Travelers Casualty Insurance Company of America vs. BJB Construction Corporation*, the Southern

District of New York recently held that, in order to demonstrate materiality as a matter of law in the context of a summary judgment motion, an insurer must submit documentary evidence in support of its position.

Related People



**Howard
Epstein**
Of Counsel
New York



**Theodore
Keyes**
Partner
New York



**Julia
Cummings**
Associate
New York

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