

Tamara Smith Holtslag and Lincoln Rose Obtain Summary Judgment for Insurer in U.S. District Court Based on Insured's Lack of Cooperation and Failure to Submit to an Examination Under Oath

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Peabody & Arnold Partners Tamara Smith Holtslag and Lincoln Rose recently obtained summary judgment in the United States District Court for the District of Massachusetts on behalf of the firm's insurance company client. The insurance coverage dispute arose from an allegation that the insured failed to render aid to individuals involved in a boating accident that resulted in the drowning death of one of the boaters. The case involved substantial coverage questions under the relevant policy, and the insurer undertook an investigation. As part of that investigation, the insurer requested certain information from the insured, including that he submit to an examination under oath ("EUO"). The insured refused, and the parties subsequently disputed whether the terms of the policy obligated the insured to participate in an EUO. After filing a declaratory judgment Complaint, the insurer moved for summary judgment arguing that the insured's failure to submit to the requested EUO constituted a breach of the insured's duty to cooperate, which could not be "cured," and thus discharged the insurer's duty to defend and indemnify. The Court agreed, finding that the insurer's requests were timely and reasonable under the policy and the failure of the insured to cooperate prejudiced the insurer, such that no coverage was afforded. Summary judgment was entered in favor of the insurer. *See American Property Casualty Company v. Rosenthal, et al.*, 2024 WL 1075157 (D.Mass. 2024).