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First Department Relies on 'Kokesh' to Rule that SEC Disgorgement Is Barred From Coverage

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In the summer of 2017, the U.S. Supreme Court held that an SEC claim seeking disgorgement of profits as a remedy in an enforcement action constitutes a penalty claim that is subject to a five-year statute of limitations. While the *Kokesh* ruling is not an insurance ruling, the First Department took notice and recently held, relying on *Kokesh*, that because SEC disgorgement constitutes a penalty, disgorged funds did not fall within the definition of loss under the insurance policies at issue. In this article, partner Howard Epstein and special counsel Theodore Keyes discuss the ruling and its impact on pending disputes over the insurability of disgorgement payments.

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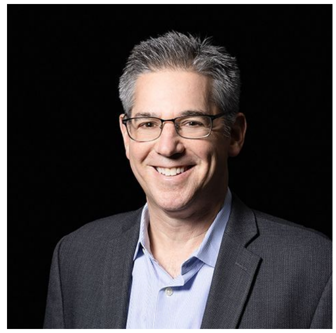

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