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California Courts May Not Apply New York Choice of Law Clauses

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Choice of law clauses in insurance policies are generally included in order to give the contracting parties certainty as to what state law will govern disputes under the policy. States that apply the principles of §187 of the Restatement (Second) of Conflict of Laws may interfere with this goal. Under §187, a choice of law clause will not govern where (1) the chosen state's law conflicts with a fundamental policy of the forum state; and (2) the forum state has a materially greater interest in resolving the issue in dispute than the chosen state. Restatement (Second) Conflict of Laws §187 (1971). While parties have good reason to seek to achieve some level of certainty through the use of choice of law clauses in insurance policies, a recent decision serves notice that California courts may disrupt such efforts in certain circumstances. In this article, partner Howard Epstein and special counsel Theodore Keyes discuss the decision and takeaways.

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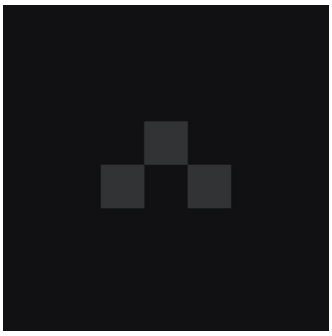

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