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Delaware Ruling Underscores Significance of Warranty Statements

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In an article for the *New York Law Journal* titled "Delaware Ruling Underscores Significance of Warranty Statements," Howard B. Epstein and Theodore A. Keyes discuss warranty statements in relation to a recent Delaware case involving Infinity Q Capital Management LLC that may be viewed as a cautionary tale.

When policyholders switch insurance carriers or seek to increase the limits of their management liability or professional liability insurance programs by adding additional excess insurance layers, it is routine for the new insurers to require a warranty statement in which the policyholder represents that it is not aware of any facts or circumstances that may give rise to a claim — or, alternatively, discloses any known circumstances that may give rise to a claim. Whether or not a situation merits disclosure can be an important decision because, depending on the specific terms of the warranty statement or applicable insurance policy, the failure to disclose where required may very well jeopardize coverage for a claim. For example, in the recent Delaware case, the court held that an investment advisor insured's failure to disclose was dispositive, granting summary judgment to the excess insurers because, according to the court, the insured had executed a warranty statement without disclosing an ongoing SEC inquiry.

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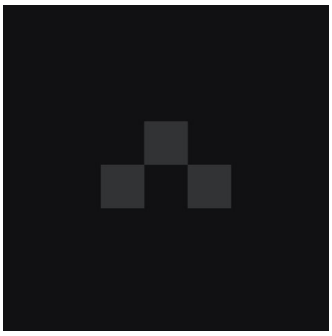

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