

**PUBLICATIONS**

## Eastern District Holds That Exclusion Bars Defense Obligation

New York Law Journal

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In an article for the *New York Law Journal*/titled “Eastern District Holds That Exclusion Bars Defense Obligation,” Schulte Roth & Zabel of counsel Howard B. Epstein and special counsel Theodore A. Keyes discuss the Eastern District of New York’s decision in *Clear Blue Specialty Insurance v. TFS NY, d/b/a Sugar Daddy’s et al.*

New York courts recognize the well-settled principle that the duty to defend in an insurance policy is broader than the duty to indemnify. They also construe policy exclusions narrowly and place the burden on the insurer to prove that an exclusion applies.

Nevertheless, that does not mean the courts will not enforce a clearly-drafted exclusion when the facts plainly fall within the scope of the exclusion. Just recently, the US District Court for the Eastern District of New York granted summary judgment to an insurer, holding that the insurer had no duty to defend, based on the terms of an exclusion in the policy.

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**Howard  
Epstein**

Of Counsel  
New York



**Theodore  
Keyes**

Partner  
New York

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