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Dickie McCamey Lawyers Obtain Rescission of \$25M Product Contamination Policy For Client In Coverage Dispute

Dickie McCamey lawyers **Robert J. Marino** and **J. David Ziegler**, along with lawyers from Choate, Hall & Stewart, have successfully obtained rescission of a \$25 million dollar surplus Product Contamination Insurance (PCI) policy issued by Starr Surplus Lines Insurance Company to H.J. Heinz Company. The Feb. 1, 2016, ruling relieves the insurer of reimbursing Heinz for expenses arising out of the furnishing of lead-contaminated baby food.

Applying New York law, U.S. District Judge Arthur Schwab ruled earlier this week that the omission of multiple significant prior contamination claims from Heinz' loss histories in the application for coverage was material, thereby entitling Starr to rescission of the policies. Schwab found testimony from Starr's underwriters and executives that the unreported losses were material to insuring Heinz' risk credible.

The Court, with the consent of counsel, empaneled an advisory jury to assist with fact finding, and while it agreed with most of the jury's findings, it departed and disagreed with that portion of the advisory jury verdict which found that Heinz had adequately proved Starr had waived the right to assert Heinz' material misrepresentations as to prior losses. Schwab wrote:

While Starr was not "perfect" in its assessment and underwriting practices, perfection is not the standard. Instead, this Court finds that Starr acted more than reasonably under the circumstances. Specifically, the Court finds that Starr's expert was credible, and that Starr's underwriters lacked sufficient knowledge of Heinz' misrepresentations or omissions.

The Court rejected Heinz' claims that Starr engaged in post-claim underwriting, and that Starr should have conducted further investigation during the underwriting process about prior losses, including delving into information about Heinz' prior losses from sources other than the application, including applications for other coverages, and prior news coverage of Heinz contamination claims.

While Schwab conceded the equitable remedy of rescission *ab initio* was an extreme one, he ruled that Starr met its burden of proving entitlement to the equitable remedy.

Dickie McCamey's attorneys worked as co-counsel in the case with Attorneys Robert S. Frank Jr., John A. Nadas, Matthew Arnould, and others at Choate, Hall & Stewart in the representation of Starr.

The Starr decision can be read by [clicking here](#).

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About Dickie, McCamey & Chilcote, P.C.

Dickie, McCamey & Chilcote, P.C. is a nationally-recognized law firm providing comprehensive legal expertise in a multitude of practice areas. Headquartered in Pittsburgh, Pennsylvania, and founded more than 100 years ago, the firm serves industry-leading clients across the country from offices throughout the mid-Atlantic region in Pennsylvania, Delaware, New Jersey, New York, North Carolina, Ohio, South Carolina, and West Virginia. For more information: 800-243-5412 or www.dmclaw.com.

