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## No Written Agreement? No Problem, Says NY Court

If you take an unreasonable position and refuse to pay for services that were rendered, you should be prepared to have a court rule against you. And that's exactly what happened in *John Anthony Rubino & Co. CPA v. Schwartz* (a decision that appeared in the August 23 edition of the New York Law Journal).

In *Rubino*, the plaintiff-accountant was retained to prepare financial projections for a proposed business venture. And he did the work.

Afterward, the defendant abandoned the project, and then justified his refusal to pay his accountant, contending that he only agreed to pay the plaintiff if the project went through. Not surprisingly, the plaintiff-accountant had a different understanding; he believed that he was going to be paid for the work he did whether the project went through or not. The accountant had one "little" problem, though: he had no written contract.

Despite being constrained to dismiss the plaintiff's [breach of contract claim](#), the Court still found in favor of the accountant. How is that possible, you ask? Through a legal mechanism called "[quantum meruit](#)," where you can still recover the reasonable value of the services that you rendered.

The moral of this story should be fairly obvious: [just because you don't have a written contract doesn't mean that you can't recover your losses](#).

## How to Prove a Negligent Misrepresentation Claim Under NY Law

Before addressing how you prove a negligent misrepresentation claim, we first have to define what it is - and what it isn't.

Unlike its cousin, the [fraud](#) claim, negligent misrepresentation does not require a showing of malicious intent or recklessness by the defendant; rather, it requires that the plaintiff prove the following by a preponderance of the evidence:

- (1) awareness by the defendant that his statement was to be used for a particular purpose or purposes;

### Taking Time Out to Say "Thank You" for Your Referrals

As many of you know, perhaps the most sincere form of flattery is when someone that you know actually refers another person to your practice or business.

So, from my perspective, the very least I can do is acknowledge those people who have recently referred business to my firm, and to publicly say "Thank You!"

- Nahum Spirn - referral of a personal injury client;
- Allan J. Weiss, Esq. - referral of a breach of contract matter.

Please keep them coming! I really appreciate it!

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For more articles, reports, videos, news and analysis on these and other important legal issues

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## *How I Helped a Child Settle His NY School Negligence Case – And Got a Hug*

A few weeks ago, I had one of the most gratifying experiences of my legal career.

While I've certainly settled [New York auto accident cases](#) before, and I've likewise resolved many cases on behalf of [injured children](#), this case was different.

In this case, a young child suffered a badly fractured leg, which ultimately required surgical correction when he was hit by a car in front of his New York City school. How did this happen?

After being sent to a designated waiting room for parents to pick up these children who were no older than 7 or 8, my client, together with one of his friends, was able to sneak out of the room, down a 100' hallway, out the front doors of the school and into the street for a game of tag - and they were able to do so completely undetected by the school. And you know why?

Because the school had only one person watching over scores of children in that room, and this monitor failed to notice this little boy and his friend leave the classroom. And the school had no one stationed in the hallway to stop him or his friend.

Even worse, this was not the first time that children had been able to sneak out of that room and off of school grounds during school hours. But the school never did anything to correct the problem.

The [school was negligent](#).

After years of waiting and wading through the New York court system, today this child's settlement, which provided him with a large amount of financial security the likes of which he has never seen in his life, will be his once he turns 18. This sweet young boy promised both the judge and me that he will use the money wisely, and only after consulting his parents.

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*“The school had only one person watching over scores of children in that room, and no one noticed when this little boy and his friend left the classroom.”*

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## When You Don't Have a Written Agreement

by Jonathan M. Cooper

This new **FREE Book**, which explains some of the ways that you can still recover your losses - even when you don't have a written contract - is available to be downloaded directly from:

[www.JonathanCooperLaw.com](http://www.JonathanCooperLaw.com)

### How to Prove a Negligent Misrepresentation Claim

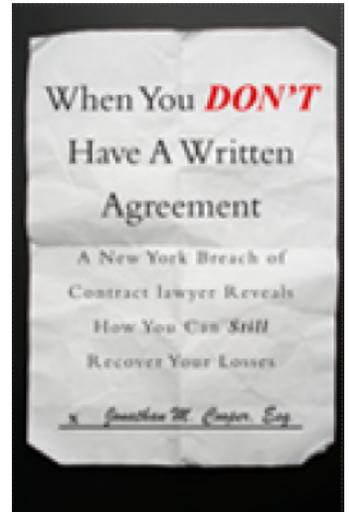
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- (2) reliance by a known party or parties in furtherance of that purpose;
- (3) some conduct by the defendants linking them to the plaintiffs and evincing defendants' awareness of their reliance;
- (4) that defendant's statements or conduct exaggerated or misstated certain facts;
- (5) that these misstatements resulted from the defendant's negligence and/or lack of due diligence;
- (6) that plaintiff relied on defendant's misstatements; and,
- (7) as a result, plaintiff suffered damages.

An important caveat bears mention, though. As a New York Federal Court recently held in [Five Star Development Resort Communities v. iStar RC Paradise Valley](#), "Under New York law, in order to state a claim for negligent misrepresentation, a plaintiff is required to allege that the speaker is bound to the other party 'by some relation or duty of care'" outside a contract that may be between the parties.

Therefore, the Court continued, "In ordinary commercial contexts ... [negligent misrepresentation] is imposed only on those persons who possess unique or specialized expertise, or who are in a special position of confidence and trust with the injured party such that reliance on the negligent misrepresentation is justified." In other words, "[i]f the only interest at stake is that of holding the defendant to a promise, the courts have said that the plaintiff may not transmogrify the [contract claim](#) into one for tort." [JP Morgan Chase Bank, 350 F. Supp. 2d at 401](#) (quoting *Hargrave v. Oki Nursery, Inc.*, 636 F.2d 897, 899 (2d Cir. 1980)).

**COMMUNICATION POLICY:** As a general rule, Mr. Cooper does not accept unscheduled phone calls. This policy affords Mr. Cooper the ability to pay closer and more focused attention to each case, resulting in more efficient and effective representation for his clients. Moreover, it avoids the endless and needless game of phone tag played by most businesses and law firms. To schedule a phone call or in-person appointment with Mr. Cooper, please call his office at 516.791.5700.




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*"In ordinary commercial contexts [negligent misrepresentation] is imposed only on those persons who possess unique or specialized expertise."*

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## Study Finds Over 250,000 Children Treated for Household Cleaner Related Injuries In Past 10 Years

On August 2, 2010, the American Academy of Pediatrics released the study "Household Cleaning Product-Related Injuries Treated in US Emergency Departments in 1990-2006," which analyzes the data compiled from reported cases injured by dint of their exposure to assorted household chemicals over a 7-year period. In that time, **well over 250,000 children under the age of 5** received medical treatment after being exposed to cleaning products ranging from laundry detergent and swimming pool chemicals to drain cleaners and bleach.

Fortunately, over that time span, the number of reported [child injuries](#) diminished by nearly half.

Importantly, and of note to parents, however, nearly 75% of the reported injuries involved children between the ages

of 1 and 3, after they had swallowed these household chemicals. Based upon the report, the AAP reiterated its recommendation that parents undertake the following precautions:

- Store all poisonous chemicals in locked cabinets that are both out of reach and sight of children;
- Try to purchase only those household chemicals that have child-resistant packaging; and,
- Do not transfer household chemical products from their original containers into different ones.

Although I don't see anything in this report that is particularly novel (other than the mildly encouraging numbers), a helpful reminder about [product safety](#) in the home is certainly welcome, don't you think?



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