

Scott Seaman Discusses Top Insurance Litigation of 2020 and Cases to Watch in 2021 with Law360

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Jan 8, 2021

Scott Seaman, the Chicago-based co-chair of Hinshaw's national Insurance Services Practice Group, discussed with Law360's Jeff Sistrunk some of the biggest insurance litigation trends and cases from 2020, and cases to look for in 2021. Seaman's insights are featured in two Law360 articles: "The Biggest Insurance Decisions Of 2020" and "Insurance Cases To Watch In 2021."

Seaman first discussed the mass of business loss coverage lawsuits filed in the wake of the COVID-19 pandemic. He also commented on the decision in *Montrose Chemical Corp. of California v. Superior Court of Los Angeles County*, where the California Supreme Court held that the insured was not obligated to deplete all its lower-level insurance policies before it could tap into valuable excess policies to cover environmental damage claims. That decision reversed an opinion by the California Appeals Court that "terms found in many of [the insured's] dozens of excess insurance policies mandate[d] 'horizontal exhaustion,' whereby the company would have to exhaust all the lower-level policies it bought between 1961 and 1985 before it [could] obtain coverage from higher-level excess policies in any year."

Regarding COVID-19 business loss coverage lawsuits, in which insurers have prevailed in about three quarters of the rulings to date on motions to dismiss. Seaman noted that "[t]he parties are refining theories as a result of some of the early trial court decisions and are gaining some appreciation for which trial courts may present more hospitable venues for their cases. However, until several appellate court rulings are rendered, the course of the overall litigation will remain very much up in the air." As a result, Seaman expects these cases to "rage for years to come."

Regarding *Montrose*, Seaman expressed regret that "[the California Supreme Court] did not adequately address the specific and differing language in the excess policies regarding exhaustion." But given that California had adopted policyholder-friendly allocation rules, the decision did not surprise him. Seaman also believes that "there still may be 'a limited window for insurers to argue for horizontal exhaustion under California law,' depending on the language of their policies." That is because "[t]he California Supreme Court pointed out that

the parties to insurance contracts are free to write their policies differently to establish alternative exhaustion requirements or coverage allocation rules[.]”

“[The Biggest Insurance Decisions Of 2020](#)” was published by Law360 on December 14, 2020.

“[Insurance Cases To Watch In 2021](#)” was published by Law360 on January 3, 2021.

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