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Scott Seaman Analyzes California's New Pleading Standards for Excess Insurance Policy Claims

As Discussed in *InsuranceNewsNet*

In The News | 1 min read
Aug 12, 2026

Hinshaw partner Scott Seaman is the exclusive attorney and legal source cited throughout a new *InsuranceNewsNet* article that examines the California Supreme Court's influential ruling in *Fox Paine & Company v. Twin City Fire Insurance Company.* The decision clarifies policyholders' rights to file claims against excess insurers without first exhausting underlying coverage.

Significance and Clarification from the Ruling

At its core, the *Fox Paine* decision clarifies that policyholders are not required to fully exhaust underlying insurance before seeking judicial intervention against excess carriers. As Scott explains: "In this case, the California Supreme Court ruled that policyholders can seek declaratory relief from their excess insurers and assert bad faith claims even where the underlying insurance has not yet been exhausted."

While the decision does not change existing rules, it provides meaningful clarification on the threshold required for court involvement. Rather than meeting the higher burden of a breach-of-contract claim, Scott notes that "in this context, a 'reasonable likelihood' may be sufficient enough to bring an issue before a court." This distinction could prevent policyholders from having to file separate lawsuits every time they transition from one layer of coverage to the next.

Guidance for Excess Insurers

For excess insurers, the ruling signals that a wait-and-see approach may no longer be the safest strategy. "When the excess policy is reasonably likely to be involved, the excess insurer may benefit from playing some role in the litigation process early on rather than sitting on the sidelines and waiting to be presented with a cake that is already baked," Scott advises. In other words, early and active engagement may better serve insurers than remaining passive until coverage is triggered.

Scope of the Decision

Lastly, Scott clarifies, "Importantly, this is a pleading decision, not a merits decision." The court addressed what a policyholder must allege to bring a dispute before a judge—not whether an excess insurer actually breached its policy or owes coverage.

For advisors and their clients, this means the door to challenging potential coverage issues is now open earlier in the process, but the burden of proving that a loss could reach an excess layer remains.

Read the full article

- *InsuranceNewsNet:* "Are your clients ready for California's new insurance rules?" (August 11, 2026)

Additional Analysis

Interested in learning more? **Read Scott's *Insights for Insurers* alert** offering additional analysis on the *Fox Paine* decision and its implications for excess insurers.

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