

Massachusetts Supreme Judicial Court Cites Scott Seaman and Jason Schulze's Insurance Law Treatise

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The Massachusetts Supreme Judicial Court cited the insurance law treatise authored by Hinshaw & Culbertson LLP Chicago partners Scott M. Seaman and Jason R. Schulze in rejecting the selective tender doctrine and upholding an insurer's right to equitable contribution. *Ins. Co. of the State of Pennsylvania v. Great Northern Ins. Co.*, 45 N.E.3d 1283 (Mass. Mar. 2016).

The United States Court of Appeals for the First Circuit certified the following question to the Massachusetts Supreme Judicial Court: "Where two workers' compensation insurance policies provide coverage for the same loss, may an insured elect which of the insurers is to defend and indemnify the claim by intentionally tendering its defense to that insurer and not the other and thereby foreclose the insurer to which tender is made from obtaining contribution from the insurers to which no tender is made?" The Massachusetts high court answered "no" and held that, where two primary workers' compensation insurance policies provide coverage for the same loss, "the insurance company that pays the loss has a right to equitable contribution to ensure that the coinsurer pays its fair share of the loss."

The court cited multiple times to the Seaman and Schulze treatise *Allocation of Losses in Complex Insurance Coverage Claims* (Thomson Reuters 2015) on the doctrine of equitable contribution. In rejecting the selective tender doctrine in the context of workers' compensation policies, the court noted the selective tender doctrine "also does not accord with Massachusetts law governing general liability insurance" and would "be contrary to sound public policy because it would reward insurers that try to ignore their coverage obligations at the expense of those that conscientiously honor them." The Massachusetts Supreme Judicial Court previously cited to the Seaman and Schulze treatise in its landmark *Boston Gas Co. v. Century Indem. Co.*, 454 Mass. 337, 347–348, 365–366, 910 N.E.2d 290 (2009) decision on allocation.

Scott Seaman and Jason Schulze represent insurers and reinsurance in complex insurance coverage and reinsurance matters in arbitrations and trial and appellate courts across the country.

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