



## News

### Expert Analysis: New York Court of Appeals Slams Door on 'Unavailability of Insurance' Exception

March 30, 2018

Scott Seaman, a Chicago-based partner and co-chair of the firm's national Insurance Services Practice Group, examines the March 27, 2018 *KeySpan* decision by the New York Court of Appeals, in which the Court rejected the so-called "unavailability of insurance" exception to the general rule that policyholders are responsible for periods of time that insurance is unavailable for purchase in the marketplace under a pro rata allocation.

[Read the article \(PDF\)](#)

This analysis represents the third in a series of articles Seaman has published, in which he examines the "door closing" on the unavailability of insurance exception. [In Part I](#), he discussed the general rule in pro rata jurisdictions that the unavailability of insurance coverage in the market does not absolve policyholders of responsibility for self-insuring and explored the genesis of the limited "unavailability of insurance" exception. [In Part II](#), he addressed the limited nature of the "unavailability of insurance" exception and considered the prospect of the exception being even further limited. Part III now discusses how the New York Court of Appeals slammed the door shut on policyholders seeking to hoist upon their insurers losses for periods in which insurance is unavailable in the marketplace.

#### Attorneys

Scott M. Seaman

#### Offices

Chicago