



News

Scott Seaman Reviews the Latest Ruling on the “Bump-Up” Exclusion for Law360

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Scott Seaman provided commentary in *Law360 Insurance Authority*, discussing the impact of a Virginia federal court's decision to free an insurer from covering \$90 million in shareholder suit settlements. This ruling supported carriers in their use of the "bump-up" exclusion in D&O policies and has caused many policyholders to argue the exclusion has gone too far. The exclusion bars coverage for a settlement that represents an effective increase in the price or consideration for an acquisition.

Seaman said:

"The Fourth Circuit's decision in the *Towers Watson* case and the instant decision by Judge Trenga on remand represent an important victory for D&O insurers and for the 'bump-up' exclusion, which has been 'bumped around' in some other decisions."

He noted that the ruling applied broadly to Section 14 claims and was decided under Virginia law rather than under Delaware law, the home of incorporations.

Policyholders may see greater gains in the market than through the courts due to these recent changes in the insurance industry that have led to better premiums and policy terms. According to Seaman, one method of leveraging such market power is choosing policies with different terms, adding that there are many alternative phrases for bump-up exclusions in the market.

[Read the full article](#) (*subscription required*).

"[Towers Watson Ruling Energizes Bump Up Supporters, Critics](#)" was published by *Law360 Insurance Authority* on March 14, 2024.

Attorneys

Scott M. Seaman