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News

Scott Seaman Discusses Insurance-Packed U.S. Supreme Court Docket in Law360 and Business Insurance

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Scott Seaman, Chicago-based partner and co-chair of Hinshaw's Insurance Services Group, has been speaking about U.S. Supreme Court jurisprudence more than usual lately. Although insurers are impacted in many ways by U.S. Supreme Court decisions, the Court very rarely wades into decisions directly involving insurance contracts or insurers' rights. This term, the U.S. Supreme Court had multiple cases on its docket that directly affected insurers.

In February, the U.S. Supreme Court upheld the validity of a choice-of-law provision in a maritime insurance contract in *Great Lakes Ins. SE v. Raiders Retreat Realty Co. LLC*, 601 U.S. (Feb. 21, 2024). Justice Kavanaugh, writing for a unanimous court, recognized that choice-of-law provisions in maritime contracts are presumptively enforceable, as are forum-selection clauses.

The presumption of enforceability of choice-of-law provisions in maritime contracts facilitates maritime commerce by reducing uncertainty, lowering costs, discouraging forum shopping, guiding party conduct, reducing the price, and expanding the availability of marine insurance.

Choice-of-law provisions may be disregarded only where the chosen law contradicts a federal statute, conflicts with an established federal maritime policy, or where there is "no reasonable basis" for the selection of the chosen law. The Court rejected the policyholder's invitation to create a new exception to the presumption of validity where the provision would contradict the fundamental policy of the state with the greatest interest in the dispute, noting it would undermine the presumption of enforceability and promote non-uniformity and uncertainty.

Earlier this month, the U.S. Supreme Court held that insurers are “parties in interest” under the Bankruptcy Code and entitled to be heard on issues impacting their interests. In his latest round of responding to requests for comment, Seaman was featured in *Law360 Insurance Authority* and *Business Insurance* stories discussing how the U.S. Supreme Court’s decision in *Truck Insurance Exchange v. Kaiser Gypsum Co. Inc. et al.* impacts insurers. The Court overturned a Fourth Circuit ruling that prevented the insurer from challenging a bankruptcy reorganization plan. Truck had argued that the plan could increase its liability by exposing it to fraudulent asbestos claims.

Attorneys

Scott M. Seaman

Among other things, Seaman told *Law360 Insurance Authority*:

> "Insurance neutrality provisions are not always truly neutral and do not always adequately protect insurers' interests . . . [n]or are they an adequate substitute for an insurer having the opportunity to be heard on issues that impact its rights."
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> Seaman pointed out that, properly drafted and employed, insurance neutrality provisions could add clarity and eliminate some objections insurers may have to a plan, but often, these provisions have been misused by debtors, claimants, and courts to deny insurers standing to be heard on issues that impact them.
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> More broadly, the plaintiff's bar in recent years has used bankruptcies to drain insurer resources and promote fraud, excessive recoveries, and even recoveries by individuals not actually injured, and the Court properly recognized that, in the context of settlements in bankruptcy, debtors do not have the incentive to defend against claims as their interests become aligned with claimants.

Seaman told *Business Insurance:*

> The June 6 ruling in *Truck Insurance Exchange v. Kaiser Gypsum* represented an “important victory” for insurers.
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> “Asbestos and mass tort claims usually involve significant dollars, and bankruptcy has the potential to impact insurers’ rights and obligations substantially,” he added.
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> Mr. Seaman said insurance neutrality provisions are acceptable when reorganization plans and proposed settlements are neutral because “they can add clarity and stave off some insurer objections,” however, sometimes these provisions are abused by debtors, claimants and courts when they are used to deny insurers the opportunity to be heard on issues that affect them.
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> “An insurance neutrality provision does not justify denying an insurer party in interest status because other provisions of a plan and the bankruptcy process itself still may impair an insurer’s interests,” according to Seaman.
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> Mr. Seaman said that, although the ruling is “not a panacea for all the ills potentially involved in bankruptcy,” allowing insurers to be involved in negotiations will help in the formation of agreements that minimize fraud.
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> Indeed, “[a] contrary ruling would have undermined confidence in the bankruptcy process, permitted insurer rights to be stomped on, and bankruptcy could be used as a superhighway for fraud.”

Media Coverage

- “Insurer’s Supreme Court win may draw out bankruptcy settlements” was published by *Business Insurance* on June 18, 2024.
- “High Court Sticks To Status Quo In Insurance-Packed Term” was published by *Law360 Insurance Authority* on June 13, 2024.