



News

Scott Seaman Comments on Fourth Circuit D&O Bump-Up Exclusion Case

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Scott Seaman, Chicago-based partner and Co-Chair of Hinshaw's Insurance Services Group, was quoted in several news media articles reporting on a Fourth Circuit case that will take up a closely watched dispute over the "bump-up" exclusion—an insurance provision that dictates who pays for settlements in post-acquisition shareholder litigation.

In a *Bloomberg Law* report, Scott suggested that a ruling in the case will have a relatively limited impact since it involves the application of Virginia law rather than Delaware law, which typically governs D&O insurance disputes for many corporations.

"Virginia law might not apply to the interpretation of as many D&O policies as other states, such as Delaware, which is the place of incorporation of many companies," he said. Scott further explained that Delaware courts play a dominant role in shaping D&O insurance law, and most bump-up exclusion disputes are decided under Delaware principles.

In a *Business Insurance* report, Scott addressed how the specific language of the bump-up exclusion is a key issue in the case. "Many bump-up exclusions refer to 'an entity' in a way that applies whether the policyholder is the acquisition target or the acquiring company. Some narrower exclusions, however, are limited to deals where the policyholder is the acquiring company," he noted.

He also discussed whether the allegations in the shareholder lawsuits in this case constituted a claim under the exclusion. He noted that claims typically require allegations that consideration for an acquisition was inadequate and that the shareholders' allegations of breaches of fiduciary duty were sufficient to check that box.

- [Bloomberg Law: "Insurance Giants Set to Clash in Court Over M&A 'Bump-Up' Clause"](#) (May 5, 2025)
- [Business Insurance: "Appeals case puts spotlight on disputes over bump-up exclusions"](#) (May 6, 2025)

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