



News

Scott Seaman Discusses Connecticut Appeals Court Allocation Ruling in Asbestos Case

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Hinshaw attorney [Scott M. Seaman](#), a Chicago-based partner and co-chair of the firm's national [Insurance Services Practice Group](#), discussed Monday's Connecticut Appeals Court ruling in *R.T. Vanderbilt Co. Inc. v. Hartford Accident and Indemnity Co. et al.* with Jeff Sistrunk of Law360. In the case, the court ruled as a matter of first impression that state law permits an "unavailability of insurance" rule, which establishes that a policyholder is not liable for a prorated share of defense and indemnity costs for periods when insurance for a certain risk was unavailable in the marketplace.

Seaman said the panel's rationale for absolving the policyholder of responsibility for uninsured periods is the same reasoning articulated by insureds in seeking an "all sums" allocation, under which the policyholder can hold the insurers in any triggered period liable for an entire loss up to the policy limits. Courts that have adopted a pro rata allocation standard, including the Connecticut Supreme Court, have already rejected such arguments, he said. "The 'unavailability' argument is nothing more than a second bite at the allocation apple that should be foreclosed," said Seaman. "Even the opinion identifies moral hazards and perverse consequences regarding purchase and nonpurchase of insurance and continued manufacturing of defective products."

Seaman added that an unavailability rule needlessly adds an extra layer of complexity to proceedings to determine the proper allocation of costs from asbestos claims. "Adding unavailability into the allocation equation presents the very problems of increasing the complexity of a coverage action, as well as costs, to the parties and consumption of judicial resources that this court sought to avoid by applying a continuous trigger and avoiding a trial on asbestos and medical issues," he said.

Finally, Seaman noted that the massive 161-page opinion suggests the Connecticut appellate court realizes the Connecticut Supreme Court ultimately will have an opportunity to consider the issues.

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

"Conn. Allocation Ruling May Swell Insurers' Asbestos Burden" was published by Law360, March 7, 2017.

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