

Fox Paine & Co v. Twin City Fire Insurance Co.

Year: 2024

Court: California Supreme Court

Case Number: S287404

United Policyholders submitted two letters to the California Supreme Court (first a request for depublication on November 4, 2024 and then subsequently a letter in support of petition for review on December 9) regarding the issue of whether a policyholder who faces a large liability above the attachment points of various excess insurance policies may obtain declaratory relief against its excess insurer carriers.

A misguided decision from the California Court of Appeal found that a policyholder may not pursue declaratory relief against an excess insurer unless the underlying insurer had already paid its policy limits. That decision was wrong as a matter of both law and good policy. Other published decisions in California have held that insurers may pursue declaratory relief against excess insurers when those insurers deny coverage, and countless California courts have assumed that such declaratory relief is proper.

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