

## [Asbestos contribution fight sent back to lower California appellate court](#)

### Business Insurance

The California Supreme Court said Monday that a lower appellate court should determine if a primary insurer can seek contribution from first-level excess insurers for asbestos injury claims.

The unanimous high court panel in *Truck Insurance Exchange Co. v. Kaiser Cement and Gypsum Corp.* reversed a lower appeals court's ruling interpreting the primary excess policies to require "horizontal exhaustion," meaning Kaiser could only access the coverage after all primary policies issued during the period of continuous damage were exhausted.

The Supreme Court panel instead interpreted Kaiser's excess policies to require "vertical exhaustion," which would give the policyholder access to excess coverage once the primary policy for that period has been exhausted.

The language in Kaiser's excess policies is almost identical to the policies involved in the California Supreme Court's 2020 ruling in *Montrose Chemical Corp. of California v. Superior Court*, in which the state's high court said first-level excess policies "are most reasonably construed as requiring only vertical exhaustion."

The 2020 ruling also said that policyholders can select any triggered year or years of coverage and require that insurer to pay. The chosen insurer can then seek equitable contribution from other insurers that provided coverage in other years, said David Goodwin, a policyholder attorney with Covington & Burling LLP, which filed an amicus curiae brief in support of Kaiser for United Policyholders.

Truck Insurance Exchange, a Farmers Group unit, issued commercial general liability policies to Kaiser from 1944 through the 1970s. By 2004, more than 24,000 individuals filed lawsuits against Kaiser over its production of asbestos-containing products. Kaiser sought coverage from Truck.

When selecting a policy to provide coverage, Kaiser chose a 1974 Truck policy that carried a \$5,000 per occurrence deductible and paid up to \$500,000 per occurrence with no aggregate limit, court records show.

Truck sued Kaiser and a number of excess insurers in 2001, seeking a court determination on its coverage obligations. The insurer also sought contribution from the excess insurers.

Following a bench trial in 2016, the trial court ruled Truck could not ask excess insurers to contribute to its coverage until all policies in effect during the period of continuous damage were exhausted.

Truck appealed, and the appellate court upheld the trial court's decision.

Scott Hoyt of the Salt Lake City-based Pia Hoyt Law Firm, which represents Truck, said the lower court ruling sought by the Supreme Court on Truck's contribution claim could help primary insurers spread losses on long-term claims.

Mr. Goodwin called the ruling a "major win" for policyholders.

"The California Supreme Court looked closely at the language of standard form insurance policies and concluded that it would not be reasonable to read that language to require a policyholder (or insurer seeking contribution) to exhaust every primary policy before seeking coverage from an excess insurer as such a rule would potentially impose serious and expensive burdens on the policyholder before it could obtain full coverage," he said.

Representatives for Kaiser did not respond to a request for comment.