

Ohio Court Rules That Insurer Owes No Coverage To Opiate Distributor In National Opiate Prescription Litigation

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An Ohio court ruled that an insurer has no duty to defend or indemnify an opiate distributor in suits filed by government agencies, because, among other things, such suits did not seek damages “because of” or “for” “bodily injury.” *Acuity v. Masters Pharmaceutical, Inc.*, No. A 1701985 (Ohio Ct. Com. Pl. Feb. 1, 2019).

Acuity sought a declaration that it owed no defense or indemnity to Masters Pharmaceutical in national prescription opiate suits filed by government entities. The underlying suits allege that opiate manufacturers and distributors failed to monitor and report suspicious opiate orders, which contributed to an epidemic that caused financial harm to the government entities. More specifically, the government entities allege that they incurred increased expenses relating to law enforcement, judicial resources and medical costs, among other things.

The court granted the insurer’s summary judgment motion, ruling that the damages sought in the underlying litigation were not “damages because of or for a ‘bodily injury.’” The court emphasized that the underlying suits expressly stated that the plaintiffs were not seeking damages “derivative of harm visited upon third party persons or entities” or for “citizens’ bodily injury.” Further, the court noted that government entities would not have standing to seek damages on behalf of citizens who sustained bodily injury due to opiate addiction.

The court emphasized the distinction between litigation brought by a government entity “solely for its own economic loss” as compared to litigation brought by individuals harmed “directly by the prescription drugs.” Thus, the court explained, even when medical monitoring claims or taxpayer damages are alleged, those costs are economic burdens borne by the government, not damages caused by individual bodily injury.

Finally, the court held that there was no coverage because the policy excluded claims for bodily injury that was previously known to Masters, even if such injury continued during the policy period. According to the underlying suits, Masters filled suspicious orders and knew of the opiate addiction crisis prior to obtaining insurance from Acuity.

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