

Supreme Court Of Delaware Rules That Insurers Have No Duty To Defend Opioid Suits Against Pharmacy (Insurance Law Alert)

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Reversing a trial court decision, the Supreme Court of Delaware ruled that insurers were not obligated to defend Rite Aid in underlying opioid-related law suits brought by governmental entities because the suits do not seek damages because of or for personal injury. *ACE American Ins. Co. v. Rite Aid Corp.*, 2022 WL 90652 (Del. Jan. 10, 2022).

Ohio counties sued Rite Aid and others, alleging that it failed to maintain effective controls relating to the sale and distribution of opioids. The insurer denied coverage and in ensuing litigation a trial court ruled that the insurer had a duty to defend. (See [October 2020 Alert](#)). The trial court reasoned that at least some of the amounts sought by the counties were arguably because of personal injury because those costs were “at least in part grounded in medical care for the personal injuries suffered by the counties’ residents.”

The Delaware Supreme Court reversed, emphasizing that the underlying complaints expressly disclaimed personal injury damages and sought purely economic damages stemming from the opioid crisis. The Court noted that although the counties’ economic losses were “arguably linked to care for Ohio residents affected by the opioid epidemic,” they were nonetheless outside the scope of coverage.

In so ruling, the court disagreed with the reasoning of *Acuity v. Masters Pharmaceutical, Inc.*, 2020 WL 34466532 (Ohio Ct. App. June 24, 2020) (discussed in our [June 2020 Alert](#)) and *Cincinnati Ins. Co. v. Discount Drug Mart, Inc.*, 2021 WL 6142648 (Ohio Ct. App. Dec. 30, 2021), discussed below.

Authors and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235

