

Ohio Supreme Court Rules That Insurer Has No Duty To Defend Underlying Opioid Litigation (Insurance Law Alert)

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The Ohio Supreme Court ruled that a liability insurer had no duty to a distributor of pharmaceuticals against lawsuits brought by West Virginia cities and counties alleging economic losses caused by the opioid epidemic. *Acuity v. Masters Pharm., Inc.*, 2022 WL 4086449 (Ohio Sept. 7, 2022).

The underlying suits alleged that Masters failed to monitor and report suspicious opioid pharmaceutical orders which contributed to an epidemic that caused financial harm to the government entities. As discussed in our [February 2019 Alert](#), an Ohio trial court granted the insurer's summary judgment motion, ruling that the damages sought in the underlying litigation were not "because of" bodily injury, as required by the policy, and instead were economic loss claims. Additionally, the trial court held that there was no coverage because the policy excluded claims for bodily injury that were previously known to Masters. According to the underlying suits, Masters filled suspicious orders and knew of the opioid addiction crisis prior to obtaining insurance from Acuity.

As reported in our [June 2020 Alert](#), an intermediate appellate court reversed, ruling that "the policies expressly provide for a defense where organizations claim economic damages, so long as the damages occurred because of bodily injury." The appellate court deemed it irrelevant that the government entities themselves did not sustain bodily injury, noting that their economic losses were "because of" bodily injury. The appellate court also ruled that a loss-in-progress provision did not bar coverage.

This month, the Ohio Supreme Court reversed the appellate court decision. The court rejected Masters' assertion that "damages because of bodily injury" should be construed to "include any suit in which the damages sought merely relate to bodily injury, regardless of whether the claims are in fact tied to any particular bodily injury sustained by a person." Instead, the court held that damages need to "be tied to a particular bodily injury sustained by a person or persons." That standard was not met here because the governments' theories of relief were not based on specific opioid-related injuries stemming from Masters' failure to take proper care, but rather that Masters' failure caused a public health crisis resulting in economic damages to the government entities. The court noted:

To be sure, the opioid epidemic, as a public health crisis, necessarily relates to bodily injuries, such as opioid addictions, hospitalizations, and deaths. But allegations of bodily injury alone do not automatically bring an action within the coverage for

“damages because of bodily injury.”

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