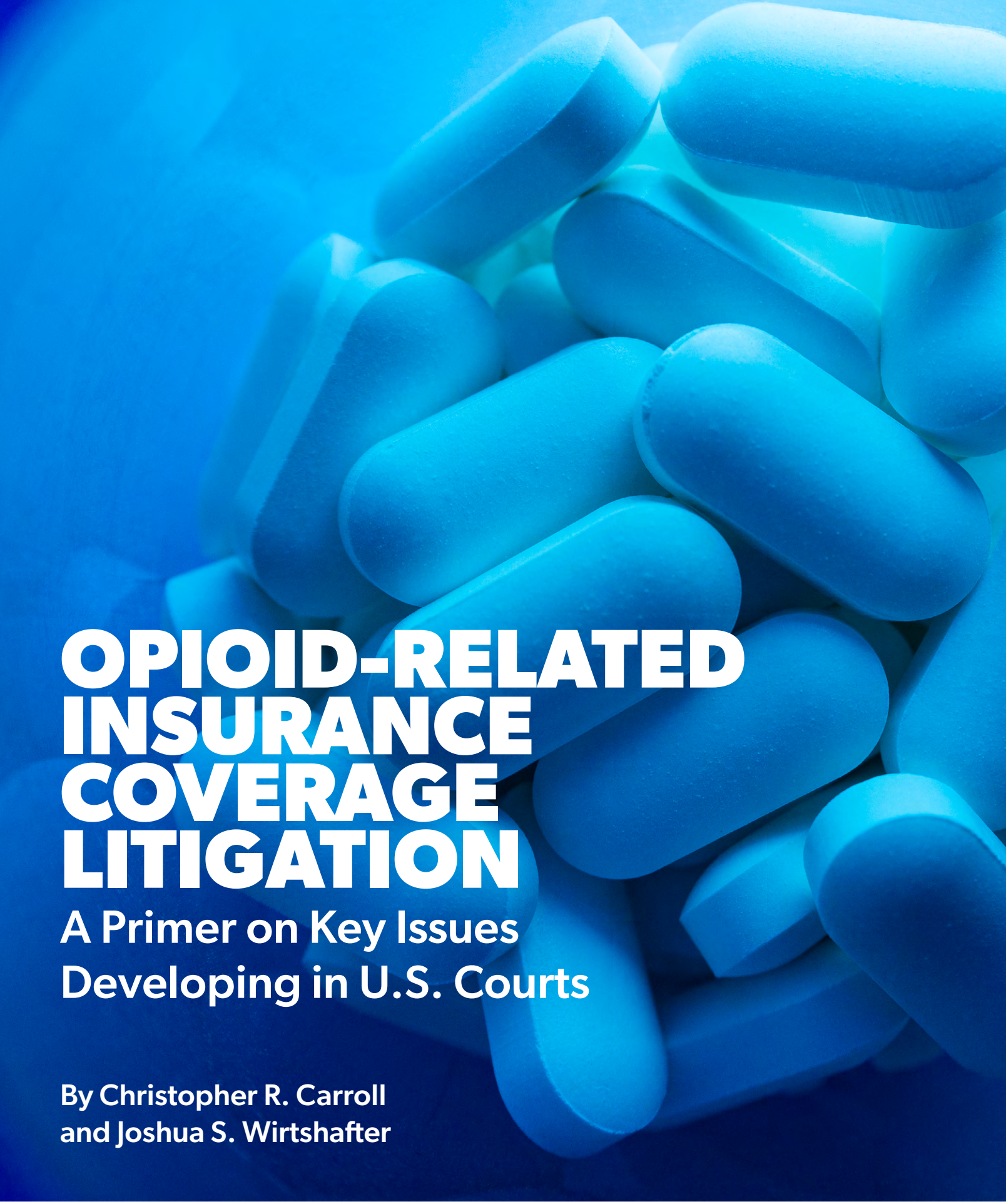

OPIOID-RELATED INSURANCE COVERAGE LITIGATION

A Primer on Key Issues Developing in U.S. Courts

By Christopher R. Carroll and Joshua S. Wirtshafter

ALIKA OBRAZOVSKAYA/ISTOCK VIA GETTY IMAGES PLUS

By now, the opioid epidemic is no secret, and neither is the flood of litigation resulting from it in courts throughout the United States over the past few years. Indeed, thousands of lawsuits have been filed against manufacturers, distributors, and retailers of opioids, as well as prescribing doctors and others, alleging that each has caused and/or contributed to the opioid epidemic by turning a blind eye to the risks of opioid abuse and allowing for their diversion. The alleged misconduct is varied and vast, including deceit, fraud, and other intentional behavior of major corporations, which are alleged to have targeted communities and orchestrated an uptick in opioid sales to turn immense profits.

Many lawsuits have been filed and continue to be filed by and on behalf of individuals directly harmed by opioid (ab)use, including lawsuits filed on behalf of babies born with neonatal abstinence syndrome. The majority of the lawsuits, however, have been filed by governmental entities (such as states, counties, municipalities, and social service administrative agencies) seeking to recover expenses that they incurred in combating the opioid epidemic in their respective communities and additional costs to abate the crisis in the future by funding future government services.

This latter group of lawsuits has been the subject of high-profile trials since 2019. The first notable trial was in Oklahoma state court against a Johnson & Johnson subsidiary, which resulted in a $572 million judgment that was recently overturned by the Oklahoma Supreme Court. In 2021, plaintiffs secured additional trial verdicts against a manufacturer in New York state court and against several retail pharmacies in Track Three of the opioid multidistrict litigation (MDL) pending in the U.S. District Court for the Northern District of Ohio. There have also been trial verdicts in favor of drug manufacturers in California state court and West Virginia federal court. Running parallel to these trials, which are scheduled to continue over the next several years, are significant, landmark settlements—accounting, in some cases, for many billions of dollars in recovery by governmental entities from manufacturers, distributors, and pharmacies.

As these lawsuits come to a head, the pursuit of reimbursement through liability insurance available to these defendants has sparked insurance coverage litigation in courts throughout the country. The opioid lawsuits have given rise to a number of insurance coverage questions that will need to be addressed in the coming years. This article will provide a primer on these key coverage questions, including (1) whether the governmental entities' claims seek amounts that the insureds are legally

TIP: Products-related exclusions containing "arising out of" language have been interpreted broadly to bar coverage for opioid claims filed by governmental entities.

obligated to pay as damages "because of" or "on account of" or "for" "bodily injury," (2) whether the allegations constitute an "occurrence," (3) whether any "bodily injury" took place during one insurance period or multiple, and (4) whether coverage may be excluded by certain products exclusions.

To date, courts have only addressed opioid-related insurance coverage claims in the context of determining a duty to defend—i.e., whether an insurer must provide and pay for the defense of its insured in an underlying lawsuit, typically based solely on the allegations of the governmental entity complaint. As such, courts have mainly focused on and issued rulings in relation to points (1) and (2) referenced above. This article will therefore place an emphasis on those issues, while exploring the other issues referenced above, which are likely to receive more fulsome treatment when courts begin to examine indemnity issues.

Whether the Governmental Entities Allege Damages "because of," "on account of," or "for" Bodily Injury

Generally speaking, liability insurance policies contain agreements to provide coverage in respect of amounts that the insured becomes legally obligated to pay as damages either "because of," "on account of," or "for" "bodily injury."[1] Liability policies will use one of those terms ("because of," "on account of," or "for"), which have their own meaning in case law, to define the nature of the relationship that the insured's damages must have to the "bodily injury" of those who have asserted claims against the insured.

Opioid lawsuits filed by governmental entities are unique in that the governmental entities, unlike plaintiffs in traditional mass tort contexts, are not capable of sustaining physical injuries. Governmental entities are mere constructs of human governance; they are neither natural persons nor businesses (in the traditional corporate sense). It is a practical impossibility for such agencies or institutions to sustain physical injuries, such as lacerations, bruises, burns, diseases, or death. Not surprisingly, this much is not disputed. In fact, certain of the governmental entities have even expressly disavowed seeking damages for the deaths or physical or emotional injuries sustained by the constituents of their communities. Rather, as mentioned, the governmental entities' claims seek economic losses sustained as a result of the effects that the opioid epidemic has had on their communities and, in turn, on social expenditures that such governments have spent and will need to spend to abate the crisis.

In view of the language of insuring agreements in nearly all liability policies, the question has therefore become whether the governmental entities are seeking damages "because of," "on account of," or "for" the bodily injuries of the individual constituents of those communities. The battle to resolve this question is heating up.

The beginning stages. The first court to address this coverage issue was the U.S. District Court for the Western District of Kentucky in *Cincinnati Insurance Co. v. Richie Enterprises LLC*.[2] There, an opioid distributor was sued by the State of West Virginia for allegedly illegally distributing and supplying physicians and drugstores in West Virginia with opioids in excess of legitimate medical need. In the subsequent coverage action, the district court initially found that West Virginia's opioid claim against the distributor, which included a claim for the costs of a medical monitoring program to treat drug users, did seek damages "because of" bodily injury, and therefore the court determined that the insurer was obligated to provide a defense in the underlying West Virginia lawsuit.[3] However, after West Virginia amended its complaint to remove the medical monitoring claim, the insurer sought reconsideration of the prior ruling. Without a claim connecting West Virginia's claims for economic losses to damages that sought recovery on behalf of the bodily injuries of its citizens, the Kentucky federal court reversed and dismissed the case, explaining that "West Virginia is not seeking damages 'because of' the citizens' bodily injury; rather, it is seeking damages because it has been required to incur costs due to [the distributor's] alleged distribution of drugs in excess of legitimate medical need."[4]

Policyholders have argued that *Richie Enterprises* is unpersuasive because it was based on waiver grounds instead of policy language interpretation.[5] Insurers have largely responded, however, that the ultimate basis for the district court's ruling turned on its analysis of two pivotal U.S. Court of Appeals for the Seventh Circuit decisions—*Medmarc Casualty Insurance Co. v. Avent America, Inc.*[6] and *Health Care Industry Liability Insurance Program v. Momence Meadows Nursing Center, Inc.*[7]—where the courts found no coverage for economic losses because the underlying plaintiffs in those cases did not allege having sustained damages "because of" or "for" bodily injuries.[8] With those two cases as guidance, the Western District of Kentucky clarified that the general liability coverage for the distributor in that case did not attach because the "actual harm complained of" by West Virginia was solely "economic loss to the State," notwithstanding the purported connection to physical harm suffered by West Virginia citizens as a result of prescription opioids.[9]

In 2015, shortly after the *Richie Enterprises* decision, the U.S. District Court for the Southern District of Florida (*Anda*)

Christopher R. Carroll *is a partner at Kennedys, where he focuses his practice on all types of insurance coverage litigation. In recent years, he has handled a number of coverage matters arising from opioid claims. He may be reached at christopher.carroll@kennedyslaw.com.* **Joshua S. Wirtshafter** *is a partner at Kennedys, specializing in insurance coverage litigation, including with respect to matters involving opioid claims. He may be reached at joshua.wirtshafter@kennedyslaw.com.*

addressed coverage available to a different opioid distributor with respect to the same underlying West Virginia lawsuit discussed in *Richie Enterprises*.[10] The *Anda* court was persuaded by *Richie Enterprises* and found in favor of the insurer. Although the decision was appealed to the U.S. Court of Appeals for the Eleventh Circuit, the appellate court declined to reach this question, instead confirming that coverage was precluded based on certain exclusions in the policy.

This coverage issue more fully took shape when, in 2016, the Seventh Circuit was the first court to reach a contrary decision in *Cincinnati Insurance Co. v. H.D. Smith, L.L.C.*[11] The Seventh Circuit reversed an underlying decision and concluded that the liability policy at issue that covered damages "because of" bodily injury provided "broader coverage than one that covers only damages '*for* bodily injury.'"[12] Again confronting the same underlying West Virginia pleading discussed in *Richie Enterprises* and *Anda*, the Seventh Circuit rejected the insurer's argument that West Virginia sought its own damages rather than those on behalf of its citizens, exclaiming, "But so what? [The insurer's] argument is untethered to any language in the policy."[13] In that regard, the *H.D. Smith* court parted from *Richie Enterprises*, whose rationale was based on the policy language at issue in *Medmarc*, which provided damages "for"—not "because of"—bodily injury.

In support of its ruling, the Seventh Circuit introduced what has become an oft-cited analogy, likening West Virginia's economic claims (and, by extension, those of other governmental entities) to the claims of the mother of an injured child, seeking to recover the costs she incurred to care for her child's injuries, which costs are generally covered under liability policies despite representing the mother's own damages and not those of the child (i.e., the child's pain and suffering, lost wages, etc.). This has become a point of contention in briefing on this issue, with insurers distinguishing the analogy on the primary basis that the mother's claim would be deemed derivative of the child's claim, whereas governmental entities in the opioid lawsuits expressly (in many, if not most, cases) only seek their own independent economic losses that they have incurred or will in the future need to incur, which are separate and apart from compensatory damages resulting from injuries sustained by opioid-addicted residents of the communities that have filed lawsuits.

Courts are continuing to develop the law on this issue. Courts have typically relied upon *Richie Enterprises*, *Anda*, and *H.D. Smith* as the primary foundation for developing case law on this issue. In the past few years, there has been a spectrum of rulings on this issue. There are currently decisions from two Ohio state appellate courts (*Acuity* and *Discount Drug Mart*),[14] the U.S. District Court for the Western District of Pennsylvania (*Giant Eagle*),[15] and a West Virginia state court (*AmerisourceBergen v. ACE*)[16] that largely adopt the rationale of *H.D. Smith* and hold in favor of the policyholder to find a duty to defend. Along substantively similar lines, the U.S. District Court for the Northern District of California (*AIU Insurance*) recently ruled in favor of the policyholder on this issue, despite not ultimately finding a duty to defend (for reasons discussed below).[17] By contrast, there are currently decisions from the Delaware Supreme Court (*Rite Aid*),[18] two Western District of Kentucky courts (*Motorists Mutual* and *Westfield National*),[19] and one Ohio state appellate court (*Cincinnati Insurance v. AmerisourceBergen*)[20] that generally follow *Richie Enterprises* and *Anda* to find in favor of the insurer.

Notably, the outcomes of these cases remain in flux. As of the date of this article, the Ohio state appellate court's ruling in *Acuity* (applying Ohio law) is pending on appeal before the Ohio Supreme Court. The outcome in *Acuity* is likely to have a direct impact on the outcome of the other Ohio appellate court ruling in *Discount Drug Mart* that is also on appeal. Further, the two 2021 Western District of Kentucky decisions are on appeal before the U.S. Court of Appeals for the Sixth Circuit. It also merits noting that the decision finding a duty to defend in *Giant Eagle* was subsequently reversed on other grounds.

To date, courts have only addressed opioid-related insurance coverage claims in the context of determining a duty to defend.

As courts continue to address this question, one key factor will be the state law that governs interpretation of the policies at issue. So far, there are three decisions under Ohio law, three under Kentucky law, two under Pennsylvania law, one under Illinois law, one under California law, and one (*Rite Aid*) that considered the legal principles of both Delaware and Pennsylvania law on the issue. With only one state high court decision among them and only a single federal appellate court ruling (so far), these cases are bound to have varying degrees of precedential and persuasive value in future coverage disputes, which will likely depend on what state law governs the interpretation of policies in subsequent coverage actions, as well as where those coverage disputes are venued.

Apart from the persuasive nature of these cases, how different states interpret the terms "because of" or "for" in the context of the insuring agreements of policies will be significant. The fact that "because of" is defined more broadly than the term "for" under Illinois law was dispositive in *H.D. Smith*, which has been

found to comport with Ohio law and was, therefore, influential on the decisions in favor of the policyholders in *Acuity* and *Discount Drug Mart*. By contrast, the terms "because of" and "for" are synonymous and used interchangeably under Kentucky law, which formed a major part of the basis of the rulings in *Motorists Mutual* and *Westfield National*. To further complicate the issue, foreign and Bermuda form policies typically use the phrase "on account of," which is not as commonly construed in U.S. case law as are the other two phrases. Different state law regimes may treat this issue differently, and it has not been decided whether it would be appropriate to attribute specific definitions (or tests of causation) to the terms in the context of opioid litigation where governmental entities are clearly seeking recovery for economic losses that are only tangentially linked to the actual injuries of their citizens.

Another key consideration will be the specific allegations of the underlying complaints filed by the governmental entities. One court has found or suggested that the policies only provide coverage with respect to damages "for" or "on account of" bodily injury when those losses are asserted by an injured person, a person recovering on behalf of an injured person, or people or organizations that actually treated an injured person and demonstrate the existence and cause of the treated injuries.[21] Because the underlying plaintiffs from Track One of the opioid MDL—two Ohio-based counties—were none of those categories of claimants and they had expressly disclaimed in their pleadings claims for damages for death or physical or emotional injuries, the insurer in *Rite Aid* did not owe a duty to defend. The same can be said about the ruling in *Richie Enterprises*, which found no coverage where, after the medical monitoring claim had been removed from the underlying complaint, the State of West Virginia likewise did not and could not have sought damages directly on behalf of specifically injured persons. By contrast, the Ohio appellate court in *Discount Drug Mart* sided with *Acuity* because, despite the underlying governmental entities' seeking economic loss, "those losses included money spent on services like emergency, medical care, and substance-abuse treatment, which the governmental entities incurred 'because of' the bodily injury suffered by individuals who became addicted to opioids."[22] Not all pleadings are the same, and we can expect courts to keenly focus on whether the underlying pleadings can be read to suggest that the governmental entities are seeking damages for the actual injuries of their citizens.

At bottom, we are currently witnessing a development in the case law on this issue. The highest-level courts to rule on the issue are the Delaware Supreme Court (in favor of insurers) and the Seventh Circuit (in favor of policyholders), amongst an array of various federal trial level and state trial and appellate court rulings. By the end of 2022, we should expect decisions from the Ohio Supreme Court (in potentially two matters) and possibly the Sixth Circuit, among other courts, on this particular issue. The outcomes of those cases will be influential and will help to build on this trending issue.

Whether the Governmental Entities Allege an "Occurrence"

Separate and apart from whether the policyholders can or will establish that their claims seek damages "because of" or "for" bodily injury, they must also establish that the underlying complaints contain allegations sufficient to qualify as an "occurrence," which term is generally defined in liability policies as "an accident."[23] Generally speaking, insurers have argued that the underlying complaints filed by the governmental entities principally allege that the defendant manufacturers, distributors, and retail pharmacies engaged in intentional or fraudulent conduct, which would not be accidental by nature. There have been mixed results in determining whether these claims—such as those based on drug manufacturers' alleged marketing campaigns to promote the benefit of opioids or distributors' purported participation in supply chain schemes—constitute an "occurrence."

One of the earliest cases to address this issue was *Liberty Mutual Fire Insurance Co. v. JM Smith Corp.*,[24] where, applying South Carolina law, the U.S. Court of Appeals for the Fourth Circuit affirmed a lower court's holding that the insurer had a duty to defend its insured (an opioid distributor) against various claims in an underlying lawsuit filed by the State of West Virginia (the same one referenced above) that amounted to negligence and constituted an "occurrence." Despite the overlapping eight counts (including negligence and intentional violations of statutes) and allegations that the distributor "willfully turned a blind eye" to the dangers of the opioid epidemic, the Fourth Circuit found that the overarching tenor of the complaint concerned the distributor's alleged "failure to implement sufficient controls and systems to identify and alert regulatory authorities to suspicious prescription drug orders."[25] Notably, the underlying pleading did not accuse the distributor of disseminating drugs with the intent to enable opioid abusers. On that basis, the Fourth Circuit determined that the underlying pleading alleged an "occurrence" for the purposes of determining a duty to defend.[26]

By contrast, in *Travelers Property Casualty Co. of America v. Actavis, Inc.*, the California Court of Appeal held that the insurer did not owe a duty to defend an opioid manufacturer against claims that it engaged in a deceptive marketing campaign designed to increase sales of opioids because the allegations of the underlying complaints could "only be read as being based[] on the deliberate and intentional conduct of [the manufacturer] that produced injuries—including a resurgence in heroin use—that were neither unexpected nor unforeseen."[27] Because the underlying governmental entities drafted their complaints in a manner that did not create a potential for liability for an "accident," the insurer did not owe a coverage obligation.[28]

In April 2022, the Northern District of California ruled in favor of insurers on this issue and found that they did not owe a duty to defend their policyholder (one of the nation's largest opioid distributors).[29] Applying California law, the court in *AIU Insurance* explained that the underlying exemplar lawsuits

against the insured (i.e., the two Ohio county lawsuits that were the subject of the Track One-A trials in the MDL and the State of Oklahoma's lawsuit) did not allege an "occurrence" because those lawsuits asserted both non-negligence (i.e., violations of the RICO Act and state corrupt practices acts, public nuisance, etc.) and negligence claims that rested upon allegations that the policyholder performed deliberate acts that directly caused the alleged injuries and damages at issue.[30] The court further rejected the possibility that the alleged injuries occurred because of some "additional, unexpected, independent, [or] unforeseen happening" on the basis that the allegations, in the court's view, were focused on the "massive" quantities of the policyholder's opioid shipments that led to the alleged diversion of opioids and injuries flowing from same.[31]

Whether or not any governmental entities have alleged an "occurrence" is an issue that is gaining traction in the courts and starting to raise eyebrows. In the aggregate, there is, of course, a plethora of allegations regarding the defendants' intentional misconduct that should not constitute an "occurrence," but ultimately much of this issue may turn on how the underlying lawsuits are pleaded.

Whether the Governmental Entities' Lawsuits Trigger Coverage in Multiple Policy Periods

To the extent covered damages can be established, insurers and policyholders can expect further disputes about *when* those damages are deemed to have occurred. Indeed, the insurance implications of opioid claims will not be dissimilar to other "long-tail" product liability claims, as opioid claims stem from allegations that drugmakers and distributors falsely marketed the safety and effectiveness of opioids over an extended period that led to gradual addiction and the establishment of an underground drug market. In this situation, there are arguably multiple events giving rise to the alleged damages, which likely occurred over multiple policy periods.

What does this mean? Potentially, that multiple policy periods may be triggered, larger blocks of insurance coverage may be identified, and—as with other long-tail claims—different types of insurance policies and programs may be implicated. As the case law discussed herein demonstrates, general liability policies will be involved, but so too will claims-made policies, captive insurance, and self-insured programs. Further taking into account allegations that the defendants long knew of the dangers posed by their products but intentionally chose to misrepresent those facts to the public through misleading marketing campaigns and distribution strategies, errors and omissions and directors and officers policies may also be swept up in future coverage disputes.

Presently, there is no established case law on what trigger theory should apply to determine which policies respond to these claims (if any). With respect to other long-tail claims, certain jurisdictions apply an injury-in-fact trigger theory, in which case it is the happening of the "bodily injury" that triggers coverage, while other jurisdictions apply a manifestation trigger theory where policies are triggered if the injuries manifested during their policy periods.

What is especially unique about these governmental entity lawsuits as relates to the issue of trigger is that their primary cause of action (in most cases) is for a public nuisance—i.e., claims that the public has suffered some past, present, and future harm as a result of the misconduct of those involved in the prescription opioid supply chain. Determining when the public has suffered a harm in fact or when such harm manifested, for instance, raises a number of difficult questions. Certain courts have suggested that it will be necessary to evaluate statistical data to determine when individual citizens were injured or when their injuries manifested. Whether that approach is appropriate is unclear, however, especially as none of the governmental entity lawsuits seek damages based on specific individuals' actual injuries, and they call for discovery into facts that are arguably beyond the scope of the underlying pleadings. We should expect to see more litigation and case law developing on this issue in the coming years.

Whether Products-Related Exclusions Apply to Bar Coverage

At their core, these opioid lawsuits are about prescription opioids—products commonly sold and distributed in the medical marketplace that have allegedly generated black markets that have hurt communities due to the addictive qualities that were allegedly shielded from public knowledge and/or not meaningfully prevented against. Enter the impact of products exclusions that bar coverage for bodily injuries "arising out of" products manufactured, sold, handled, or distributed by policyholders or those within the "products-completed operations hazard." These can be found in policies issued to any of the policyholders in these claims, but may be more likely found in policies issued to manufacturers—i.e., the ones actually making the drugs. Considering that the opioid epidemic has been raging for nearly 20 years in our country, one might expect to find these exclusions in more recently issued policies, therefore comprising at least portions of policyholders' coverage profiles.

In the few occasions that these exclusions have been tested before the courts, insurers have had success so far. The Eleventh Circuit upheld the application of a products exclusion because of the generally alleged relationship between the opioid products manufactured, sold, or distributed by the defendants and the economic losses allegedly suffered by the governmental entities.[32] Put simply, the manufacturers and distributors are alleged to have flooded the market with their opioid products, which gave rise to an opioid epidemic, and, as a result, governmental entities have suffered economic losses. The California Court of Appeal also followed suit.[33] In both instances, the courts interpreted the "arising out of" language in the exclusions broadly, such that the exclusions applied so long as it was alleged that the alleged bodily injuries from

opioid addiction (to the extent any existed) were related to (i.e., "arise out of") the policyholder's products—a relatively low standard. At the same time, the courts rejected the notion that the causative relationship required in these exclusions was the same as the much higher tort causation standard.

Reflections and the Way Forward

Despite the relative infancy of the case law addressing the above-discussed issues in the context of opioid claims, there is already a clear divide on what arguments practitioners in these coverage suits will be making in the years to come. Presently, there is a shared interest on both sides of the "v." to resolve the threshold issue about whether the governmental entities' lawsuits allege damages "because of," "on account of," or "for" bodily injury. If rulings land more favorably for insurers on that issue, it could very quickly put an end to many of these coverage disputes or, at a minimum, cut them down to size. The remaining issues will very soon start to play out in coverage rulings. As that happens, practitioners should make efforts to stay aware of the developing law on all of these issues, which will have a significant trickle-down effect on the manner and speed in which these opioid lawsuits resolve. ◄

Notes

1. The term "bodily injury" is commonly defined and understood by its plain meaning to include "bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time." *See, e.g.*, Ins. Servs. Off., Inc. (ISO), Commercial General Liability Coverage Form CG 00 01 04 13, § V.3. Sometimes liability policies, particularly those issued out of the London or Bermuda insurance markets, will utilize the term "personal injury" instead, which will have a broader definition that includes "bodily injury."

2. No. 1:12-CV-00186-JHM, 2014 WL 3513211 (W.D. Ky. July 16, 2014).

3. Cincinnati Ins. Co. v. Richie Enters. LLC, No. 1:12-CV-00186-JHM, 2014 WL 838768 (W.D. Ky. Mar. 4, 2014).

4. *Richie Enters.*, 2014 WL 3513211, at *6.

5. The court declined to address the insured's assertion that the phrase "because of" bodily injury should be interpreted more broadly than the phrase "for" bodily injury as a result of the insured not raising the argument in its original briefing.

6. 612 F.3d 607, 609 (7th Cir. 2010).

7. 566 F.3d 689 (7th Cir. 2009).

8. In *Medmarc*, the underlying plaintiffs were parents who refused to use baby bottles that were allegedly contaminated with a toxic chemical out of fear of bodily injury and were found to have only sought economic damages for their product losses. In *Momence*, the underlying qui tam suit alleged mistreatment of nursing home patients that led the insured nursing home to submit false medical bills, which only sought reimbursement of the false filings and not from any injuries to the residents.

9. *Richie Enters.*, 2014 WL 3513211, at *5.

10. Travelers Prop. Cas. Co. of Am. v. Anda, Inc., 90 F. Supp. 3d 1308 (S.D. Fla. 2015).

11. 829 F.3d 771, 774 (7th Cir. 2016).

12. *Id.*

13. *Id.*

14. Acuity v. Masters Pharm., Inc., No. C-190176, 2020 WL 3446652 (Ohio Ct. App. June 24, 2020); Cincinnati Ins. Co. v. Discount Drug Mart, Inc., 183 N.E.3d 538 (Ohio Ct. App. 2021).

15. Giant Eagle, Inc. v. Am. Guar. & Liab. Ins. Co., 499 F. Supp. 3d 147 (W.D. Pa. 2020).

16. AmerisourceBergen Drug Corp. v. ACE Am. Ins. Co., No. CC-03-2017-C-36, 2020 W.V. Cir. LEXIS 3 (Nov. 23, 2020).

17. AIU Ins. Co. v. McKesson Corp., No. 20-cv-07469-JSC, 2022 WL 1016575 (N.D. Cal. Apr. 5, 2022).

18. ACE Am. Ins. Co. v. Rite Aid Corp., 270 A.3d 239 (Del. 2022).

19. Motorists Mut. Ins. Co. v. Quest Pharms., Inc., No. 5:19-cv-00187-TBR, 2021 WL 1794754 (W.D. Ky. May 5, 2021), *reconsideration denied*, 2021 WL 4513715 (W.D. Ky. Oct. 1, 2021); Westfield Nat'l Ins. Co. v. Quest Pharms., Inc., No. 5:19-cv-00083-TBR, 2021 WL 1821702 (W.D. Ky. May 6, 2021), *reconsideration denied*, 2021 WL 4513700 (W.D. Ky. Oct. 1, 2021).

20. Cincinnati Ins. Co. v. AmerisourceBergen Drug Corp., No. CV2012103912, 2015 WL 13808271 (Ohio Ct. Com. Pl. Aug. 31, 2015).

21. *See Rite Aid*, 270 A.3d at 247–48.

22. Cincinnati Ins. Co. v. Discount Drug Mart, Inc., 183 N.E.3d 538, 550 (Ohio Ct. App. 2021).

23. *See, e.g.*, ISO Commercial General Liability Coverage Form CG 00 01 04 13, § V.13.

24. 602 F. App'x 115, 122 (4th Cir. 2015).

25. *Id.* at 120.

26. *Id.* at 121; *see also* Cincinnati Ins. Co. v. Richie Enters. LLC, No. 1:12-CV-00186-JHM, 2014 WL 838768 (W.D. Ky. Mar. 4, 2014); Cincinnati Ins. Co. v. H.D. Smith Wholesale Drug Co., No. 12-3289, 2015 U.S. Dist. LEXIS 100823 (C.D. Ill. Aug. 3, 2015); Giant Eagle, Inc. v. Am. Guar. & Liab. Ins. Co., 499 F. Supp. 3d 147 (W.D. Pa. 2020) (finding an "occurrence" because the underlying lawsuits alleged that the insured negligently "failed to design and operate systems to identify suspicious orders of prescription opioids, maintain effective controls against diversion, and halt suspicious orders when they were identified, thereby contributing to the oversupply of such drugs and fueling an illegal secondary market," and because there was no factual basis to conclude that the injuries were the "natural and expected results" of the insured's distribution and sale of opioids).

27. 225 Cal. Rptr. 3d 5, 10 (Ct. App. 2017).

28. The decision in *Actavis* was appealed to the California Supreme Court, which was held pending a decision in a non-opioid coverage case and then later dismissed and remanded.

29. AIU Ins. Co. v. McKesson Corp., No. 20-cv-07469-JSC, 2022 WL 1016575, at *9–10 (N.D. Cal. 2022).

30. *Id.*

31. *Id.* at *15–17.

32. Travelers Prop. Cas. Co. of Am. v. Anda, Inc., 658 F. App'x 955, 958 (11th Cir. 2016).

33. Travelers Prop. Cas. Co. of Am. v. Actavis, Inc., 225 Cal. Rptr. 3d 5, 22 (Ct. App. 2017).