

Law360 Insurance Authority: Walmart Scores Defense Win In Ark. Opioid Coverage Fight

is entitled to a defense from its insurers against at least 10 government suits brought over the opioid epidemic, an Arkansas state court judge ruled Friday, finding the suits involve a potentially covered occurrence and were brought “because of” bodily injuries. Benton County Circuit Court Judge John R. Scott ruled that primary commercial general liability, or CGL, policies issued by AIG and excess insurers over the course of 25 years could provide coverage for suits involving foreseeable but unintended injuries resulting from Walmart’s distribution of the prescription pain medications.

Representatives of Walmart told Judge Scott during oral arguments held in November that the policies issued by AIG units National Union Fire Insurance Co. of Pittsburgh, Pa. and . provided coverage for wrongful acts that include the distribution of prescription medications.

Judge Scott agreed, writing that the “policies clearly anticipate covering intentional and foreseeable harm so long as the harm is not expected or intended.”

He went on to write that coverage “for liability arising out of the sale or distribution of drugs would be meaningless if foreseeable adverse consequences of ingesting such drugs were not covered.”

The ruling in favor of the Bentonville, Arkansas-based retail giant is a long-awaited win for policyholders seeking a defense under CGL policies. Many rulings have recently held that insurers are not obligated to provide a defense against suits lodged by state and local governments seeking to recover the rising

costs of responding to the opioid epidemic.

The trend in favor of insurers began in January 2022 with the [ruling in *Quest Pharmaceuticals v. Acuity*](#) that [Quest Pharmaceuticals](#) was not entitled to a defense against suits brought by three Ohio counties. In a 4-1 ruling, the majority concluded that the pharmacy giant's policies were not triggered because the underlying suits were not brought "because of" bodily injuries.

The [Sixth Circuit](#) in September 2022, ruling that a now out-of-business drug wholesaler was not entitled to a defense from its insurer, Acuity.

In January 2023, the Sixth Circuit [ruled in favor of insurers](#) when a three-judge panel ruled that [Quest Pharmaceuticals](#), [Acuity](#), and [Quest](#) were not obligated to defend Quest Pharmaceuticals Inc. against 77 suits brought by governments over the increased costs of responding to the opioid epidemic.

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