

Law360: Insurance Group of the Year: Cohen Ziffer

Cohen Ziffer Frenchman & McKenna LLP gained coverage for opioid litigation against Walmart Inc., convincing an Arkansas court that damages were sought in opioid cases because of bodily injuries, cementing the firm for the second year running among the 2024 Law360 Insurance Groups of the Year.

Though other companies failed to gain coverage in similar litigation, often brought on behalf of state and local governments seeking recompense for the havoc wreaked by prescription drug addiction, the boutique New York City-based firm led by chair Robin Cohen was able to address multiple issues of first impression under Arkansas law.

"Our firm is distinguishing itself because we are winning those issues when other firms are losing," she said, adding that she was unable to comment specifically on the Walmart case.

Walmart has incurred hundreds of millions in defense costs and has agreed to settlements totaling beyond \$3.1 billion, according to court records. Cohen Ziffer was able to use a public nuisance exclusion related to the sale of firearms in Walmart's coverage to show that there was no similar carve-out for the opioid litigation, founding partner Keith McKenna previously told Law360.

Cohen Ziffer was also able to convince the court that 2,400 underlying opioid lawsuits against the big-box retailer each alleged an "occurrence" and sought damages "because of bodily injury," two elements necessary for coverage under commercial general liability policies. The court rejected insurers' reliance on contrary rulings by Delaware and Ohio state courts and certified an order in Walmart's favor in January 2024, according to court records.

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