

Law360: Walmart Insurers Tell Ark. Judge Opioid Epidemic No Accident

Law360 (November 15, 2023, 8:04 PM EST) — Walmart's insurers urged an Arkansas state judge to find they have no duty to defend the retail giant against suits brought over the opioid epidemic, arguing that addiction and death tied to the powerful prescription pain medications do not constitute accidents covered under their policies. During the course of a hearing that lasted more than two hours before Benton County Circuit Court Judge John Scott, the retail giant and its carriers, which included units of Allstate and Chubb, debated whether the allegations in 10 exemplar suits constitute an occurrence and whether the actions were brought "because of" bodily injuries.

Judges deciding similar questions against other wholesalers, distributors and pharmacies that dispense opioid medications have found that insurers have no duty to defend because failing to monitor millions of prescriptions for potential illicit use could foreseeably result in abuse. In *Walmart v. Allstate*, U.S. District Judge Jacqueline Scott Corley of the Northern District of California said Allstate and one of its subsidiaries were not required to defend Walmart against municipal opioid suits since bodily injuries resulting from its distribution of the prescription painkillers did not constitute an accident, or occurrence, under its insurance policies.

According to court records, Walmart Inc. is facing more than 2,400 suits over the opioid epidemic and is seeking a defense from primary and excess insurers it obtained policies from for decades.

Walmart attorney Keith McKenna of

told Judge Scott that the

duty to defend under Arkansas law is “exceedingly broad” and that the underlying government suits are “replete with allegations of unintended injuries.” He also said even if the underlying suits accuse the Bentonville, Arkansas-based retailer with intent, the intentional acts that result in unintended or unexpected harm can be occurrences. McKenna also noted 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.

According to McKenna, the allegations in the underlying government suits constitute a covered occurrence since the actions Walmart took in its capacity as a pharmacy did not result in intended harm.

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