

Ark. Panel Says Insurers Must Defend Walmart Opioid Suits

By **Hope Patti**

Law360 (October 7, 2026, 8:34 PM EDT) -- Insurers for Walmart must defend the retail giant against underlying suits claiming its sale of prescription painkillers contributed to the opioid epidemic, an Arkansas state appeals court affirmed Wednesday, finding that the suits allege accidental conduct and are seeking damages because of bodily injury.

A three-judge panel for the Arkansas Court of Appeal found that Walmart was entitled to partial summary judgment on its duty to defend claim against its primary and excess insurers.

The panel also affirmed that excess insurer QBE Insurance Corp. cannot force Walmart to arbitrate the coverage dispute.

Judge Cindy Grace Thyer said QBE failed to properly incorporate another insurer's New York choice-of-law provision and arbitration provision into its policy. Even if the arbitration provision had been incorporated, the judge said it would be unenforceable under Arkansas law, which prohibits arbitrability clauses in insurance contracts.

According to court filings, since 2017, Walmart has been named in more than 2,400 suits brought by individuals, government entities and healthcare entities claiming that the retailer contributed to opioid-related addiction and deaths.

Many suits have been resolved through settlements, including a national settlement it reached with government entities in 2022 that provided a fund for the cost of treatment, care and related services for injured individuals, according to court filings.

Walmart filed the present action in Arkansas state court in November 2022, saying its insurers are obligated to defend it against certain representative suits and provide coverage for settlements. The insurers involved issued policies issued between 1995 and 2019, including primary commercial general liability policies issued by AIG units American Home Assurance Co. and National Union Fire Insurance Co. of Pittsburgh, Pa., as well as excess and umbrella policies issued by units of Chubb, Travelers and Liberty Mutual, among others.

In December 2023, Benton County Circuit Court Judge John R. Scott ruled that the representative suits alleged an occurrence under the AIG policies and also triggered defense obligations under policies that provide coverage for damages because of bodily injury.

The AIG insurers agreed to provide coverage for bodily injury or property damage caused by an occurrence, or accident, the panel said Wednesday.

"To determine whether an accident occurred, we look to the 'gravamen' of the complaint, which is the essence of the alleged conduct," Judge Thyer said.

While it is true that the underlying suits allege some intentional malfeasance, particularly against opioid manufacturers, the judge said "the gravamen of the allegations against Walmart is that the retail pharmacy failed to put proper controls in place to find and report suspicious opioid orders."

Moreover, even if Walmart intentionally filled prescriptions and did not have proper controls in place, the panel concluded that the resulting nationwide opioid crisis "could have been without foresight or expectation," and therefore still an accident.

As for the insurers that agreed to defend Walmart against suits seeking damages because of bodily injury or property damage, the panel rejected the excess insurers' contention that there is no "mere possibility" of coverage for the underlying actions.

"There is a possibility that the jury would award damages for negligence, which is all that is required to give rise to a duty to defend," Judge Thyer said.

Additionally, the policies state that "damages because of bodily injury" include damages claimed "by any person or organization for care, loss of services, loss of support or death resulting at any time from the 'bodily injury,'" according to the ruling.

That language makes clear that there is coverage for damages suffered by individuals or entities who may not have directly suffered a bodily injury, including financial damages, "since an 'organization' does not have a corporeal body," Judge Thyer said.

In a statement to Law360, a Walmart spokesperson said the company expects its insurers to stand behind the coverage that it paid significant premiums for.

"We are pleased with this ruling requiring our insurers to pay the covered fees and costs Walmart has incurred in the opioid lawsuits," the statement said.

Representatives for the other parties did not immediately respond to requests for comment Wednesday.

Judges Cindy Grace Thyer, Robert J. Gladwin and Mike Murphy sat on the appeals panel.

The insurers are represented by attorneys from Spencer Fane LLP, Willkie Farr & Gallagher LLP, Henry Law Firm, B. Jones III PLLC, Cullen & Co. PLLC, Holwell Shuster & Goldberg LLP, Clyde & Co. LLP, Kennedys CMK, Rivkin Radler LLP, Hall Booth Smith PC, BatesCarey LLP, Shults Law Firm LLP, Rose Law Firm, Barber Munson, Choate Hall & Stewart LLP, Fuqua Campbell PA, Simpson Thacher & Bartlett LLP, Fields Howell LLP, Skarzynski Marick & Black LLP, Hardin Jesson & Terry PLC, Wiley Rein LLP, WDTC Law PA, Watters Wolf Bub Hansmann, and Davis Butt Taylor & Clark PLC.

Walmart is represented by Robin Cohen, Adam Ziffer, Keith McKenna and Orrie Levy of Cohen Ziffer Frenchman & McKenna LLP; Christopher D. Plumlee of RMP LLP; and John E. Tull III and Vincent O.

Chadick of Quattlebaum Grooms & Tull PLLC.

The case is Ace American Insurance Co. et al. v. Walmart Inc., case number CV-24-417, in the Arkansas Court of Appeals.

--Editing by Abbie Sarfo.

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