

# Ohio Supreme Court finds no coverage under CGL Policy for Pharmaceutical Distributer of Prescription Opioids Sued by Governmental Entities

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## PRACTICE AREAS

Governmental/Public Entity  
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In *Acuity v. Master Pharmaceutical, Inc. 2022-Ohio-3092*, the Ohio Supreme Court has ruled that the CGL insurer of a pharmaceutical distributor of prescription opioids does not owe a duty to defend in a lawsuit brought by government entities seeking economic losses caused by the opioid epidemic.

The underlying case giving rise to this coverage litigation involved actions filed by various governmental entities seeking reimbursement for costs of governmental services allegedly necessitated by the impact of the opioid crisis. Among the named defendants was Master Pharmaceutical Inc., a distributor of pharmaceutical products, including opioid prescriptions. The underlying court of appeals ruled that the Acuity CGL policy responds to claims alleged by governmental entities involving economic loss, “as long as the damage occurred because of bodily injury”. Based on this logic, the appellate court went on to conclude that Acuity owed a defense because some of the government’s alleged economic losses, such as medical expenses and treatment costs, were arguably “because of bodily injury”. The appellate court further held that the policy’s loss-in-progress provisions did not preclude coverage as it was unclear as to whether some of the governments’ damages were known to the insured prior to the initial policy.

In reversing the appellate court and finding no duty to defend was triggered, the Ohio Supreme Court first determined that the economic loss claims asserted by the claiming government entities involved aggregate economic injuries allegedly incurred as a result of the governmental response to the opioid crisis, not to any particular bodily injury. The court then held that the claimed aggregate economic damages did not come within the CGL policy’s definition of “damages because of bodily injury”, reasoning that the policy’s repeated use of the phrase “the bodily injury” suggests that the damages sought in the underlying suit need to be tied to a particular bodily injury sustained by a person or persons in order to invoke coverage under the policy.

The court held that a sufficient connection between damages and “bodily injury” was likely to be found to exist in a CGL policy where the damages sought in a suit are losses incurred by (1) the injured person; (2) a person recovering on behalf of the injured person; and (3) a person or organization that directly suffered harm because of another person’s injury in which case the cause of the injury must be proved. The court ultimately concluded that the aggregate economic damages at issue did not seek “damages because of bodily injury”. The Supreme Court did not address the loss-in-progress issue.

This case is of great significance as it relates to the ongoing opioid litigation throughout the United States. This case is also potentially significant as precedent in other cases wherein asserted damages for economic loss may likewise not be tied to a particular bodily injury of any one person or persons.

If you have questions concerning the potential application of this decision, or any other questions regarding insurance coverage, please feel free to contact a Insurance Coverage/Bad Faith Practice Group Member.