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Kentucky District Court Holds Opioid Lawsuits Fail to Allege Damages “Because of ‘Bodily Injury’”

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In the recent case of *Motorists Mutual Insurance Co. v. Quest Pharmaceuticals*, 2021 WL 1794754 (W.D. Ky. May 5, 2021), the United States District Court for the Western District of Kentucky held that an insured was not entitled to coverage for multiple lawsuits against it related to the opioid epidemic. Quest Pharmaceuticals was sued in seventy-seven lawsuits by a variety of plaintiffs—cities, counties, private health clinics, and health departments—seeking to recover economic costs allegedly incurred due to Quest’s improper distribution of opioids. Quest sought insurance coverage from its commercial general liability and umbrella carrier, Motorists, which issued policies providing coverage for damages because of “bodily injury” caused by an “occurrence.” Motorists denied coverage and filed an action seeking a declaratory judgment that it did not owe coverage for the underlying opioid litigation.

In the coverage action, Quest did not argue that the underlying plaintiffs were suing for bodily injury suffered by plaintiffs themselves, or on behalf of the individual citizens suffering from the opioid epidemic. Rather, Quest argued the underlying plaintiffs’ economic damages were “because of bodily injury” as the bodily injury allegedly suffered by individuals was the basis of the plaintiffs’ claims. Put another way, the insured argued that the plaintiffs in the underlying litigation would not have sustained economic losses without the bodily injury suffered by individuals in the community, and therefore, such losses should be covered.

Quest argued that the “because of” language “necessarily include[s] damages that arise ‘because of bodily injury’ but are not directly ‘for bodily injury.’” Quest relied on *Cincinnati Ins. Co. v. H.D. Smith, LLC*, 829 F.3d 771 (7th Cir. 2016), another opioid litigation case, in its argument that it was entitled to coverage because the plaintiffs in the Underlying Litigation would not have sustained the alleged economic losses had it not been for the bodily injuries suffered. In *H.D. Smith*, the Seventh Circuit found that a policy providing coverage for suits seeking damages “because of bodily injury” covered similar opioid litigation. Applying Illinois law, the Seventh Circuit in *H.D. Smith* held that a policy that provides coverage for suits seeking damages “because of bodily injury” affords broader coverage than one covering damages “for bodily injury.” Therefore, the Seventh Circuit in *H.D. Smith* ruled that economic damages that stemmed from the underlying bodily injury of non-plaintiffs were covered under the policy.

The Kentucky District Court disagreed with Quest's arguments and the result reached by the Seventh Circuit in *H.D. Smith*. According to the District Court, the policy did not cover damages arising out of bodily injury. While the District Court agreed with Quest that Kentucky courts read the term "arising out of" broadly, the policy only covered damages "because of" bodily injury or property damage. Moreover, Kentucky courts and courts applying Kentucky law construe the "because of" language synonymously with "for." Thus, unlike the distinction made by the Seventh Circuit, *the Kentucky District Court* read the policy as providing coverage for damages for bodily injury, which, according to the District Court, was a narrower construction than that offered by the Seventh Circuit. In other words, Kentucky courts use "because of" and "for" interchangeably, and that a policy using "because of" language is not to be interpreted more broadly than one providing coverage "for bodily injury."

According to the District Court, there was no dispute that any of the plaintiffs (cities, counties, private health clinics, and health departments) were seeking damages based on any bodily injury suffered themselves. Similarly, the plaintiffs in the underlying litigation did not need to provide proof that its citizens or patients experienced any bodily injury in order to recover for the alleged economic damages to the municipality or business. Those allegations merely "put a human touch" on the claims. Thus, the District Court reasoned that the plaintiffs in the underlying litigation were not seeking damages "because of" or "for bodily injury." Therefore, the allegations failed to satisfy the insuring agreement and Motorists had no duty to defend or indemnify Quest for the underlying opioid litigation.