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Delaware Supreme Court Finds That Opioid Lawsuit Does Not Allege Damages "For" Or "Because Of" Personal Injury, Relieving Carrier of Duty To Defend

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The Delaware Supreme Court recently added its analysis to the growing body of law addressing whether a commercial general liability insurer owes a duty to defend opioid-epidemic related lawsuits. In *Ace American Ins. Co. et al. v. Rite Aid Corporation, et al*., C.A. No. N19C-04-150 (Del. Jan. 10, 2022), the Delaware Supreme Court reversed a prior decision of the Superior Court and found that defendant insurance carriers had no duty to defend against lawsuits related to the opioid epidemic, specifically Rite Aid's alleged failure to effectively prevent diversion and monitor, report, and prevent suspicious orders of opioids contributing significantly to the opioid crisis. As framed by the Delaware Supreme Court, the question before the court was whether insurance policies covering lawsuits "for" or "because of" personal injury require insurers to defend their insureds when the plaintiffs in the underlying suits expressly disavow claims for personal injury and seek only their own economic damages. The Superior Court decided that Rite Aid's insurance carriers were required to defend it against lawsuits filed by two Ohio counties to recover opioid-epidemic-related economic damages. As the trial court held, the lawsuits sought damages "for" or "because of" personal injury because there was arguably a causal connection between the counties' economic damages and the injuries to their citizens from the opioid epidemic.

The Delaware Supreme Court, however, found the trial court's interpretation to be too broad, and reversed. The Court highlighted that the lawsuits at issue had no claims for personal or bodily injury. Rather, Plaintiffs—two governmental entities—sought only to recover their own economic damages from Rite Aid's alleged contribution to a public health crisis of opioid addiction. In fact, the complaint specifically disclaimed recovery for death or physical injury to any person or for specific damages for treatment of individuals. The Court held that "the existence of injury, untethered to the claims, does not transform the allegation into claims for damages 'because of' personal injury." In order to trigger a duty to defend, the complaint must do more than relate to a personal injury—it must seek to recover for the personal injury or seek damages derivative of the personal injury. In other words, "there must be more than some linkage between the personal injury and damages to recover 'because of' personal injury: namely, bodily injury to the plaintiff, and damages sought because of that specific bodily injury." Ultimately, the complaint allegations were not directed to an individual injury, but rather to a public health crisis and related economic costs associated therewith. Thus, the complaint did not allege damages "because of" personal injury covered by the insurance policy. Accordingly, the complaint failed to satisfy the policies' Insuring Agreement, and the carriers had no duty to defend.

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