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Traub Lieberman Partner Jason Taylor Co-Authors Article, “Finding Coverage for Opioids,” in the December Issue of CLM Magazine

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As thousands of opioid-related lawsuits make their way through the courts, a growing and diverging body of case law continues to develop around the availability of insurance coverage for such suits. The threshold question of whether an insurance policy that provides coverage for “damages because of bodily injury” covers claims brought by governmental entities to recover economic costs they incurred as a result of the opioid epidemic continues to divide courts. To be sure, the opioid epidemic, as a public health crisis, necessarily relates to bodily injuries, such as opioid addictions, hospitalizations, and deaths. The lawsuits that make headlines, however, are typically the multi-million-dollar suits brought not by individuals, but by governmental entities—such as cities, counties, or municipalities—against corporate entities believed to have contributed to the opioid crisis. In these suits, governmental entities seek to recover economic losses due to the opioid epidemic, such as costs of services to mitigate the effects of the epidemic or money spent caring for drug-addicted citizens. However, unlike an individual plaintiff, governmental entities are not capable of sustaining bodily or physical injury in the traditional sense. Therefore, determining whether the redress sought by a city or municipality triggers coverage often involves distinguishing between physical injury and economic harm. More pointedly, are such damages because of “bodily injury” as it is defined in a standard commercial general liability policy?

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