

Lawsuit Alleging Pharmaceutical Distributor's Involvement in "Pill Mill" Activities Triggers GL Policy's Defense Obligation

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In *Liberty Mutual Fire Insurance Company v. J M Smith Corporation*, No. 7:12-2824-TMC, 2013 WL 5372768 (D.S.C.), Liberty Mutual filed a declaratory judgment action against its insured in South Carolina Federal Court. The suit sought a finding that the State of West Virginia's suit against J M Smith did not invoke the defense obligation of a general liability policy Liberty Mutual provided to J M Smith. On cross-motions for summary judgment, the district court concluded the suit alleged an "occurrence," and Liberty Mutual had a duty to defend the suit.

The insured is a pharmaceutical drug distributor, which distributed medications to three pharmacies in West Virginia. The West Virginia Attorney General sued the company, as well as 12 other drug distributors, alleging they had illegally distributed controlled substances in excess of legitimate medical needs, i.e. created "pill mills" in West Virginia. The complaint claimed the companies were on notice of a growing epidemic of drug abuse and that they inserted themselves as an integral part of the "pill mill" process. It further alleged violations of the Controlled Substance Act and the Consumer Credit and Protection Act, as well as causes of action for public nuisance, unjust enrichment, negligence, and antitrust violations.

Liberty Mutual argued the complaint alleged facts that support only knowing misconduct, not negligence. The court rejected the argument, noting the underlying complaint alleged the insured "negligently acted with others to violate... drug laws," and also alleged the insured should have been aware of suspicious orders to pharmacies and should have recognized that controlled substances were being dispensed for non-legitimate medical purposes.

Liberty Mutual also contended that even if the complaint alleged the insured negligently contributed to the drug abuse problem, the pleading did not allege an occurrence because harm caused by the insured's acts is not accidental if the harm is a natural and probable consequence of knowing conduct. In response, the insured argued that it "did not intend, nor could it reasonably anticipate that, a criminal collaboration among complicit pharmacies, physicians and patients would produce the 'effect' – the addiction and additional medical injuries of patients who procured illegal prescriptions." The court held that the result of the distribution of drugs, which was alleged to have created a "pill mill" with widespread addiction, could not be said to be a *normal* consequence of distributing prescription drugs to three pharmacies in a state over a limited time. Accordingly, the court determined the State's complaint alleged a covered occurrence, and Liberty Mutual had a duty to defend the suit.

About Pete Dworjanyn

Pete Dworjanyn is a shareholder and chair of Collins & Lacy's Insurance Coverage Practice Group and founding author of the South Carolina Insurance Law Blog. Following law school, Pete served as a law clerk for the Honorable Julius H. Baggett, Eleventh Judicial Circuit and as Assistant Solicitor in the Eleventh Circuit Solicitor's Office. Prior to joining Collins & Lacy in 1999, Pete was in private practice, focusing on civil litigation. Pete's reputation has earned him a BV rating by Martindale-Hubbell. He also is one of the Best Lawyers in America, the oldest and most respected peer-review publication in the legal profession.

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