

Acuity v. Masters Pharmaceutical, Inc.

Year: 2021

Court: Supreme Court of Ohio

Case Number: 2020-1134

In its brief, UP is concerned with the insurance industry's recent efforts to reshape insurance coverage law in Ohio and elsewhere as it applies to commercial general liability ("CGL") policies and government suits against policyholders. With increasing frequency governments have sought damages against policyholders in numerous industries by asserting public-nuisance claims alleging bodily injuries to the governments' citizens. From firearms to lead paint to opioids, state governments and political subdivisions contend they have provided treatment, care, and services to residents with medical needs, and through public-nuisance suits seek to recover their costs from policyholders for such treatment, care, and services as damages. Acuity attempts to avoid its defense obligation by advancing arguments that, if accepted, would have far-reaching negative consequences for Ohio consumers and corporate policyholders alike. UP advances these three arguments:

- I. Proposition of Law No. 1: CGL coverage for suits seeking bodily injury damages includes all liability arising from the bodily injury.
- II. Proposition of Law No. 2: Any potential overlap in coverage between multiple policies can be resolved through contractual allocation provisions.
- III. Proposition of Law No. 3: The fact that the governments are advancing a questionable legal theory is not a reason to deny coverage.
- IV. Proposition of Law No. 4: The known-loss provision is an exclusion that applies only to knowledge of actual injury caused by the policyholder, and it is not applicable here.

This brief was authored pro bono by Jason E. Hazlewood of Reed Smith LLP, Paul A. Rose and Amanda M. Leffler Brouse McDowell, and Jennifer K. Nordstrom of Garvey Shearer Nordstrom, PSC