

Ford, Parks in Daily Journal: State High Court to Consider Insurance for Opioid Claims

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Last month, the California Supreme Court granted review of the 4th District Court of Appeal's decision in *Traveler's Property Casualty Company of America v. Actavis*, S245867. The 4th District held that various pharmaceutical companies were not entitled to insurance coverage under their Travelers commercial general liability insurance policies for lawsuits brought by two California cities and the city of Chicago. The lawsuits sought redress for past and future costs of providing increased care to opioid-addicted residents, alleging that the pharmaceutical companies contributed to America's opioid epidemic by over-marketing prescription painkillers.

Actavis held that Travelers had no duty to defend the pharmaceutical companies under two theories. First, the Travelers policies cover claims for bodily injury caused by an "occurrence," defined to mean an "accident" or unexpected, unforeseen happening. The court held that coverage was not triggered because the pharmaceutical companies engaged in the intentional and deliberate marketing of prescription drugs, producing injuries that were expected and foreseeable. Second, the court held that the injuries fell within the Travelers policies' exclusions, removing from coverage any injuries arising out of the pharmaceutical companies' products or misrepresentations regarding those products.

The Supreme Court now faces the following question: Is an insured's intentional conduct — which leads to unintentional consequences — considered an "occurrence" under a commercial general liability insurance policy? The answer to this question will not only have an important impact on the insurance litigation surrounding the rising opioid crisis, but will also set a precedent for the variety of insurance litigation cases dealing with this "occurrence" issue. (The issue has been historically litigated in the contexts of asbestos, lead paint and benzene, among others.) The Supreme Court should settle the question in favor of the pharmaceutical companies because preexisting case law and public policy concerns demand that general liability policies provide coverage for opioid-related claims, especially with respect to defense costs. ...

Excerpted from the *Daily Journal*. To read the full article, click [here](#). (Subscription required)