

# Duty to Defend Coverage Update

February 1, 2023

## Duty to Defend – Sixth Circuit (Kentucky Law)

***Westfield Nat'l Ins. Co. v. Quest Pharms., Inc.***  
57 F.4th 558, 2023 WL 179766 (6th Cir. 2023)

The U.S. Court of Appeals for the Sixth Circuit affirmed two district court decisions that granted summary judgment to two insurers of pharmaceutical distributor Quest Pharmaceuticals, Inc. (Quest), finding that the insurers had no duty under their respective policies to defend or indemnify Quest in over 70 lawsuits alleging that Quest had contributed to the nationwide opioid crisis.

Westfield National Insurance Company (Westfield) and Motorists Mutual Insurance Company (Motorists) issued commercial general liability policies to Quest. Quest was named in approximately 77 lawsuits “by cities, counties, a county health department, private health clinics, and the state of Illinois” alleging that Quest’s practices helped contribute to the nationwide opioid epidemic and caused economic harm to the plaintiffs, which had expended funds “for police, emergency, health, prosecution, corrections, rehabilitation, and other services.” Quest reported these lawsuits to Westfield and Motorists.

Westfield and Motorists commenced separate lawsuits against Quest in the U.S. District Court for the Western District of Kentucky, seeking declaratory judgment that they had no duty to defend or indemnify Quest in the underlying lawsuits, and later filed motions for summary judgment. Both insurers’ dispositive motions were granted in near-identical rulings from the trial court. Quest appealed the decisions, which were consolidated for argument and opinion.

On appeal, the appellate court upheld both trial court decisions on the basis that the plain language of the policies precluded any duty to defend. According to the appellate court, the underlying lawsuits did not seek damages “because of” bodily injury or property damage. Instead, they sought “to recover costs incurred due to the opioid epidemic.” Such costs did not trigger either insurer’s duty to defend under their respective policies: “No complaint predicates recovery on a particular person’s bodily injury, and so no complaint triggers the insurers’ duty to defend.”