

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

WALMART INC.,

Plaintiff,

v.

ACE AMERICAN INSURANCE COMPANY; ACE
PROPERTY & CASUALTY INSURANCE
COMPANY; ALLIANZ GLOBAL RISKS US
INSURANCE COMPANY; AMERICAN
GUARANTEE & LIABILITY INSURANCE
COMPANY; AMERICAN HOME ASSURANCE
COMPANY; AMERICAN INTERNATIONAL
GROUP, INC.; AIG SPECIALTY INSURANCE
COMPANY; ARROWOOD INDEMNITY
COMPANY; CHICAGO INSURANCE
COMPANY; CONTINENTAL CASUALTY
COMPANY; THE CONTINENTAL INSURANCE
COMPANY; ENDURANCE AMERICAN
INSURANCE COMPANY; FEDERAL
INSURANCE COMPANY; GENERAL SECURITY
INDEMNITY COMPANY OF ARIZONA;
GENERAL SECURITY NATIONAL INSURANCE
COMPANY; GREAT AMERICAN ALLIANCE
INSURANCE COMPANY; GREAT AMERICAN
ASSURANCE COMPANY; GREAT AMERICAN
INSURANCE COMPANY; GREAT AMERICAN
INSURANCE COMPANY OF NEW YORK;
GREAT AMERICAN SPIRIT INSURANCE
COMPANY; INDEMNITY INSURANCE
COMPANY OF NORTH AMERICA; THE
INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA; LIBERTY INSURANCE
UNDERWRITERS, INC.; LIBERTY MUTUAL
INSURANCE COMPANY; NATIONAL SURETY
CORPORATION; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA;
THE OHIO CASUALTY INSURANCE

COMPANY; PRINCETON EXCESS AND SURPLUS LINES INSURANCE COMPANY; QBE INSURANCE CORPORATION; ST. PAUL FIRE & MARINE INSURANCE COMPANY; STARR INDEMNITY & LIABILITY COMPANY; TIG INSURANCE COMPANY; TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA; THE TRAVELERS INDEMNITY COMPANY; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA; WESTCHESTER FIRE INSURANCE COMPANY; XL INSURANCE AMERICA, INC.; ZURICH AMERICAN INSURANCE COMPANY; and ZURICH INSURANCE COMPANY,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT & DAMAGES

For many years, Walmart¹ has paid millions of dollars to Defendant Insurers – many of the nation’s leading insurance companies – for broad general liability policies designed to protect Walmart against potential risks to its business. Those risks have now manifested themselves in the form of more than 2,400 Opioid Lawsuits that have been filed against Walmart. Those lawsuits seek damages because of, among other things, bodily injuries allegedly arising out of opioids or opioid-containing products that Walmart sold, distributed, or dispensed. Walmart has spent tens of millions of dollars defending itself against the Opioid Lawsuits and expects to spend much more in the future. But now, when Walmart seeks to rely on the policies it has purchased to cover these losses, the Insurers have turned their backs, providing a litany of excuses why the policies supposedly do not cover the Opioid Lawsuits. Those excuses are meritless, as Walmart has repeatedly explained to

¹ “Walmart” and/or “Insureds” are used in this Complaint to encompass Plaintiff Walmart Inc., on its own behalf and on behalf of the subsidiaries and related entities named in the underlying Opioid Lawsuits (as defined below).

Insurers, yet they continue to refuse to live up to their obligations under the policies. For these reasons, Walmart has no choice but to file this lawsuit, seeking a declaration that Insurers' policies cover the Opioid Lawsuits and damages for Insurers' refusal to provide that coverage, and alleging as follows:

INTRODUCTION

1. Walmart is a national retailer that, for decades, has provided affordable one-stop shopping for millions of Americans. Beginning in 2017, hundreds of cities, counties, other government entities, Indian tribes, other entities, and individuals sued Walmart and others in courts across the country seeking damages because of, among other things, alleged bodily injuries and alleged wrongful acts associated with the sale, distribution, or dispensing of opioids, including past and future costs for medical treatment (the "Opioid Lawsuits"). To date, more than 2,400 Opioid Lawsuits have been filed against Walmart.

2. To address just such potential risks, between approximately February 1, 1995, and September 15, 2019, and throughout the period of alleged wrongdoing in the Opioid Lawsuits, Walmart paid for broad general liability policies (collectively, the "Policies") that cover the allegations and liabilities at issue in the Opioid Lawsuits. Over more than two decades, Walmart paid the Insurers millions of dollars in premiums and reasonably expected that risks such as the Opioid Lawsuits, which seek damages covered by the Policies, would be insured.

3. The millions of dollars Walmart has already expended in connection with the Opioid Lawsuits, and the many millions of dollars more that Walmart anticipates spending, fall within the coverage of the Policies.

4. Further, the underlying Opioid Lawsuits seek damages sufficient to exhaust all layers of coverage provided by Insurers' Policies.

5. Nevertheless, Insurers have either reserved their rights to deny coverage, denied their duties to defend or indemnify, and/or otherwise failed to acknowledge their obligations to provide coverage for the Opioid Lawsuits on a series of baseless grounds. For example, certain Insurers have asserted that these lawsuits are not brought “because of bodily injury,” despite complaints and settlements expressly stating otherwise and making clear that the underlying plaintiffs’ alleged damages are because of alleged injury and death to hundreds of thousands of individuals as a result of opioid abuse and addiction. Certain Insurers have also asserted that coverage for the Opioid Lawsuits is excluded because the damages at issue in them were “expected or intended,” even though these lawsuits include numerous allegations of negligent or otherwise unintentional conduct or injuries, many of the settlements are expressly based on negligent conduct, not intentional harm, and Walmart has vehemently denied that it intended or expected to harm anyone.

6. Walmart has thus been forced to bring this lawsuit seeking a declaration, pursuant to Rule 57 of the Arkansas Rules of Civil Procedure and Ark. Code Ann. § 16-111-101, *et seq.*, that Insurers are obligated to cover Walmart’s defense costs, settlements, judgments, and/or other losses and expenses in connection with the Opioid Lawsuits, subject only to their Policies’ respective attachment points, limits, and, if applicable, deductibles or retentions. Walmart also seeks damages for breach of contract against the Insurers who presently are and/or may in the future be obligated to pay for its defense or indemnity costs, but have refused or failed to do so, or will in the future refuse or fail to do so, including, without limitation, consequential damages, interest, costs, expenses, and attorneys’ fees.

JURISDICTION AND VENUE

7. Pursuant to Ark. Code Ann. § 16-111-101, courts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations, whether or not further

relief is or could be claimed.

8. Pursuant to Ark. Code Ann. § 16-111-102, any person interested under a written contract or other writings constituting a contract may have determined any question of construction or validity arising under the instrument and may obtain a declaration of rights, status, or other legal relations thereunder.

9. The events and actions described herein, including the entry of the operative contracts and damages incurred by Walmart, substantially occurred in the State of Arkansas. Walmart is headquartered in Bentonville, Arkansas, and the parties conduct business in Arkansas, including the Insurers selling insurance to Walmart in Benton County, Arkansas.

10. The purpose of this action is, in part, to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, in accordance with Ark. Code Ann. § 16-111-102.

11. All parties to the litigation are parties in interest who may claim an interest in this case.

12. This honorable Court has jurisdiction over the parties and subject matter of this action, and venue is, in accordance with Ark. Code Ann. § 16-60-101, proper herein.

THE PARTIES

The Insureds

13. Walmart Inc. is a Delaware corporation with its principal place of business in Bentonville, Arkansas. Walmart Inc. (originally known as Wal-Mart Stores, Inc.) is the ultimate parent company of the various Walmart entities that have been named as defendants in the Opioid Lawsuits, including, among other entities: Wal-Mart Stores East LP (incorrectly sued as Walmart Stores East, LP); Wal-Mart Stores East, LLC (incorrectly sued as Walmart Stores East, LLC); Wal-Mart Stores East Inc.; WSE Investment LLC; WSE Management, LLC; Sam's East, Inc.; Sam's West,

Inc.; Wal-Mart Pharmacy Warehouse; Wal-Mart Pharmacy 10-1218, Wal-Mart Pharmacy 10-1381, Wal-Mart Pharmacy 10-2778, Wal-Mart Pharmacy 10-3751 and Wal-Mart Pharmacy 10-4430; Wal-Mart Warehouse #45; Wal-Mart Pharmacy Warehouse; Walmart #48; Wal-Mart Stores East I, LP f/k/a Wal-Mart Stores East, LP d/b/a Walmart #914; Wal-Mart Stores East I, LP, and Walmart #4282.

14. Walmart and/or its related entities are the named insureds under the Policies and Walmart is authorized to act on behalf of the other Walmart entities in pursuing coverage under the Policies with respect to the Opioid Lawsuits.

The Insurers

15. The Insurers are each licensed in or otherwise transact business in the State of Arkansas and sold insurance policies to businesses in Arkansas, including Walmart.

16. Defendant ACE American Insurance Company is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. ACE American Insurance Company is a member of the Chubb group of companies.

17. Defendant ACE Property & Casualty Insurance Company (“ACE P&C”) is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. ACE P&C is a member of the Chubb group of companies.

18. Defendant Allianz Global Risks US Insurance Company is an Illinois corporation with its principal place of business in Chicago, Illinois.

19. Defendant American Guarantee & Liability Insurance Company is a New York corporation with its principal place of business in Schaumburg, Illinois. American Guarantee & Liability Insurance Company is a member of the Zurich group of companies.

20. Defendant American Home Assurance Company (“American Home”) is a New York corporation with its principal place of business in New York, New York. American Home is a

member of American International Group, Inc.

21. Defendant American International Group, Inc. (“AIG”) is a Delaware corporation with its principal place of business in New York, New York.

22. Defendant AIG Specialty Insurance Company, formerly known as American International Specialty Lines Insurance Company, is an Illinois corporation with its principal place of business in New York, New York.

23. Defendant Arrowood Indemnity Company, formerly known as Royal Indemnity Company and/or Royal Insurance Company of America, is a Delaware corporation with its principal place of business in Charlotte, North Carolina.

24. Defendant Chicago Insurance Company is an Illinois corporation with its principal place of business in Chicago, Illinois.

25. Defendant Continental Casualty Company is an Illinois company with its principal place of business in Chicago, Illinois. Walmart is informed and believes that Continental Casualty Company is a wholly-owned subsidiary of Continental Insurance Company.

26. Defendant The Continental Insurance Company is a Pennsylvania corporation with its principal place of business in Chicago, Illinois.

27. Defendant Endurance American Insurance Company is a Delaware corporation with its principal place of business in Purchase, New York.

28. Defendant Federal Insurance Company is an Indiana corporation with its principal place of business in Whitehouse Station, New Jersey. Federal is a member of the Chubb group of companies.

29. Defendant General Security Indemnity Company of Arizona (individually and as successor-in-interest to General Security Indemnity Company) is an Arizona corporation with its

principal place of business in New York, New York.

30. Defendant General Security National Insurance Company is a New York corporation with its principal place of business in New York, New York.

31. Defendant Great American Alliance Insurance Company, formerly known as American Alliance Insurance Company, is an Ohio corporation with its principal place of business in Cincinnati, Ohio.

32. Defendant Great American Assurance Company is an Ohio corporation with its principal place of business in Cincinnati, Ohio.

33. Defendant Great American Insurance Company is an Ohio corporation with its principal place of business in Cincinnati, Ohio.

34. Defendant Great American Insurance Company of New York is a New York corporation with its principal place of business in Cincinnati, Ohio.

35. Walmart is informed and believes, and on that basis alleges, that American National Fire Insurance Company (which issued one or more of the Policies) merged with and into defendant Great American Insurance Company of New York.

36. Defendant Great American Spirit Insurance Company is an Ohio corporation with its principal place of business in Cincinnati, Ohio.

37. Defendant Indemnity Insurance Company of North America is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania.

38. Defendant The Insurance Company of the State of Pennsylvania is an Illinois corporation with its principal place of business in New York, New York.

39. Defendant Liberty Insurance Underwriters, Inc. is an Illinois corporation with its principal place of business in Boston, Massachusetts.

40. Defendant Liberty Mutual Insurance Company is a Massachusetts corporation with its principal place of business in Boston, Massachusetts.

41. Defendant National Surety Corporation is an Illinois corporation with its principal place of business in Chicago, Illinois. National Surety Corporation is a member of the Fireman's Fund Insurance Companies group.

42. Defendant National Union Fire Insurance Company of Pittsburgh, PA ("National Union") is a Pennsylvania corporation with its principal place of business in New York, New York.

43. Defendant The Ohio Casualty Insurance Company is a New Hampshire corporation with its principal place of business in Boston, Massachusetts.

44. Defendant Princeton Excess and Surplus Lines Insurance Company is a Delaware corporation with its principal place of business in Princeton, New Jersey.

45. Defendant QBE Insurance Corporation is a Pennsylvania corporation with its principal place of business in New York, New York.

46. Defendant St. Paul Fire & Marine Insurance Company is a Connecticut corporation with its principal place of business in Hartford, Connecticut.

47. Defendant Starr Indemnity & Liability Company is a Texas corporation with its principal place of business in New York, New York.

48. Defendant TIG Insurance Company is a California corporation with its principal place of business in Manchester, New Hampshire.

49. Defendant Travelers Casualty and Surety Company of America, formerly known as Aetna Casualty and Surety Company, is a Connecticut corporation with its principal place of business in Hartford, Connecticut.

50. Defendant The Travelers Indemnity Company is a Connecticut corporation with its

principal place of business in Hartford, Connecticut.

51. Walmart is informed and believes, and on that basis alleges, that Gulf Insurance Company (which issued one or more of the Policies) merged with and into Defendant The Travelers Indemnity Company.

52. Defendant Travelers Property Casualty Company of America, formerly known as the Travelers Indemnity Company of Illinois, is a Connecticut corporation with its principal place of business in Hartford, Connecticut.

53. Defendant Westchester Fire Insurance Company is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. Westchester is a member of the Chubb group of companies.

54. Defendant XL Insurance America, Inc. is a Delaware corporation with its principal place of business in Stamford, Connecticut.

55. Defendant Zurich American Insurance Company (individually and/or as successor-in-interest to Zurich Insurance Company, U.S. Branch Limited) is a New York corporation with its principal place of business in Schaumburg, Illinois.

56. Defendant Zurich Insurance Company is an Illinois corporation with its principal place of business in Schaumburg, Illinois.

WALMART AND ITS INSURANCE POLICIES

57. Walmart has already incurred and expects to incur significant sums in connection with the Opioid Lawsuits. These sums fall squarely within the coverage of Walmart's broad commercial liability insurance program.

58. Walmart was founded in 1962 in Rogers, Arkansas. Over the next decade, the Walton family opened 50 more stores, and a distribution center and home office in Bentonville, Arkansas.

Walmart became a publicly traded company in 1970, and in 1978, opened its first pharmacy. Today, Walmart is a retailer that serves a diverse array of communities. As a relatively small part of its business, and in keeping with its mission to provide its customers with a one-stop shopping experience, Walmart operates pharmacies under the Walmart and Sam's Club banners in the United States.

59. Given its nationwide operations, Walmart purchased the Policies, which provide hundreds of millions of dollars in general liability insurance for each of the periods collectively covering February 1, 1995, to September 15, 2019. Based on the information presently available to Walmart and subject to amendment, a list of the Policies is attached hereto as Exhibit A.

60. Many of the Policies are "primary" or first-level policies, meaning that they obligate the issuing Insurers to defend or to pay for Walmart's defense and to indemnify Walmart either from the first dollar spent, or once a self-insured retention is satisfied. Those policies were issued by Defendants National Union, American Home, and the Insurance Company of the State of Pennsylvania.

61. Other Policies are umbrella or excess-layer policies, which, among other things, obligate the issuing Insurers to defend or to pay for Walmart's defense costs and/or to indemnify Walmart for settlement or judgment costs when those costs exceed specified retention amounts or amounts of coverage available under lower-layer Policies or when coverage is not available or not collectible from such lower-layer Policies. The umbrella and excess-layer Policies were issued by various Insurers.

62. The Policies generally cover, among other things, damages because of bodily injury that occurs during their policy periods. They also generally have a duty to defend or to pay defense costs for claims or lawsuits alleging or potentially alleging such damages. Many of the Policies also

have separate and distinct coverage grants that cover damages because of a “Wrongful Act” (irrespective of “bodily injury”) during their policy periods.

63. For example, American Home policy number RMGL 612-42-81 (the “American Home Policy”), with a policy period of February 1, 2001, to February 1, 2002, is a primary general liability policy that, among other coverages, provides coverage both for claims or suits alleging damages because of “bodily injury” as well as coverage for claims or suits alleging damages because of “wrongful acts.” A copy of the American Home Policy is attached as Exhibit B.²

64. Coverage A of the American Home Policy obligates American Home to “pay those sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies” and “to defend any ‘suit’ seeking those damages.”

65. The American Home Policy states that it applies to “bodily injury” if it is caused by an “occurrence” that takes place in the “coverage territory” and occurs during the policy period.

66. The American Home Policy’s “coverage territory” includes the United States.

67. The American Home Policy defines “bodily injury” as “‘bodily injury’; sickness, disease or shock; sustained by a person, including death resulting from any of these at any time.”

68. The American Home Policy provides that “[d]amages because of ‘bodily injury’ include damages claimed by any person or organization for care, loss of services, loss of support or death resulting at any time from the ‘bodily injury.’”

69. The American Home Policy defines an “Occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

² This action involves nearly 200 insurance policies spanning two decades, and many of those policies are dozens or hundreds of pages long. Because of the number and length of policies at issue, and for the Court’s convenience, Walmart has good cause to attach only exemplars of the primary and umbrella policies, and identifies the remaining policies on the attached Exhibit A. *See* ARCP 10 (requiring good cause for omitting copies of written instruments on which a claim is based).

70. The American Home Policy states that it does not apply to “bodily injury” that is “expected or intended from the standpoint of the insured.”

71. Separately, Coverage C of the American Home policy provides liability coverage for “wrongful acts,” irrespective of bodily injury. This coverage obligates American Home to “pay those sums that the insured becomes legally obligated to pay as damages because of a ‘wrongful act’ to which this insurance applies,” and to “defend any ‘suit’ seeking those damages.”

72. The American Home Policy states that it applies to a “wrongful act” if it is caused by an “occurrence” that takes place in the “coverage territory” and occurs during the policy period.

73. The American Home Policy defines a “Wrongful Act” to include, among other things, “liability arising out of goods or products including drugs or medicine...compounded, prepared, sold, handled, or distributed by an Insured with respect to the Insured’s activities.”

74. As another example, National Union policy number RMGL 1135547 (the “National Union Policy”), with a policy period of February 1, 1998, to February 1, 1999, is a primary general liability policy that, among other coverages, provides coverage both for claims or suits alleging damages because of “bodily injury” and claims or suits alleging damages because of “wrongful acts.” A copy of the National Union Policy is attached as Exhibit C.

75. Coverage A of the National Union Policy obligates National Union to “pay those sums that the insured becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies” and “to defend any ‘suit’ seeking those damages.”

76. The National Union Policy applies to “bodily injury” if it is caused by an “occurrence,” takes place in the “coverage territory,” and occurs during the policy period.

77. The National Union Policy’s “coverage territory” includes the United States.

78. The National Union Policy defines “bodily injury” as “‘bodily injury’; sickness,

disease or shock; sustained by a person, including death resulting from any of these at any time.”

79. The National Union Policy defines an “Occurrence” as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

80. Separately, Coverage C of the National Union Policy also obligates National Union to “pay those sums that the insured becomes legally obligated to pay as damages because of a ‘wrongful act’ to which this insurance applies,” and to “defend any ‘suit’ seeking those damages.”

81. The National Union Policy states that it applies to a “wrongful act” if it is caused by an “occurrence” that takes place in the “coverage territory” and occurs during the policy period.

82. The National Union Policy defines a “Wrongful Act” to include, among other things, “liability arising out of goods or products including drugs or medicine...compounded, prepared, sold, handled, or distributed by an Insured with respect to the Insured’s activities.”

83. As another example, ACE P&C policy number XOO G27892036 002 (the “ACE Policy”), with a policy period of September 15, 2016, to September 15, 2017, is a commercial umbrella liability policy that obligates ACE P&C, among other things, to (a) pay “those sums in excess of the ‘retained limit’ that the ‘insured’ becomes legally obligated to pay as damages because of ‘bodily injury,’ ‘property damage,’ or ‘personal and advertising injury’ to which this insurance applies” and (b) “defend the ‘insured’ against any ‘suit’” seeking those damages, “even if groundless, false or fraudulent,” when either the applicable limits listed on a Schedule of Retained Limits have been exhausted by payment of loss, or the damages sought would be covered under any “other insurance” but are not covered by that insurance because of the exhaustion of the applicable limits of “other insurance” by the payment of “loss” covered under such “other insurance.”

84. The ACE Policy applies to “bodily injury” if it is caused by an “occurrence,” takes

place in the “coverage territory,” occurs during the policy period, and, prior to the policy period, “no ‘insured’ and no ‘employee’ authorized by [the Named Insured] to give or receive notice of an ‘occurrence’ or claim, knew that the ‘bodily injury’ or ‘property damage’ had occurred, in whole or in part. . . .” A copy of the ACE Policy is attached as Exhibit D.

85. The ACE Policy’s “coverage territory” includes the United States.

86. The ACE Policy defines “bodily injury” to mean “bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time,” including “mental anguish or mental injury resulting from bodily injury.”

87. The ACE Policy defines an “occurrence” to mean “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

88. The ACE Policy defines “Retained Limit” to mean the total applicable self-insured limits listed in a Schedule of Retained Limits.

THE OPIOID LAWSUITS

89. In December 2017, the United States Judicial Panel on Multidistrict Litigation consolidated numerous lawsuits filed against a wide array of defendants by various plaintiffs, including counties, cities, healthcare providers, Native American tribes, individuals, and third-party payors, asserting claims generally about the effects of widespread opioid abuse. The consolidated multidistrict litigation is captioned *In re National Prescription Opiate Litigation* (MDL No. 2804, Case No. 1:17-md-2804) (the “MDL”) and is pending in the U.S. District Court for the Northern District of Ohio.

90. To date, more than 2,400 Opioid Lawsuits (including more than 250 lawsuits outside the MDL) have been brought by governmental entities, third-party payors, and individuals against Walmart and others, seeking damages including, among other things, compensatory and

consequential damages for past and future medical, emergency room, emergency medical technician, and paramedic services, as well as for abatement and treatment of opioid addiction.

91. Additional Opioid Lawsuits seeking similar damages may be filed in the future against Walmart. The Opioid Lawsuits seek damages in amounts sufficient to reach or exhaust all the limits of the Policies under any policy year, and potentially all policy years.

92. *The County of Lake, Ohio v. Purdue Pharma, L.P., et al.*, originally filed at No. 1:18-op-45032-DAP (N.D. Ohio), in which Walmart is a named defendant, is one of the thousands of cases consolidated into the MDL. A true copy of the operative complaint against Walmart is attached as Exhibit E and incorporated by reference. The *County of Lake* complaints are replete with allegations of damages because of bodily injury and/or liabilities arising out of opioid or opioid-containing drugs sold, distributed or dispensed by defendants, including:

- “From 1999 through 2016, more than 350,000 people died from an overdose involving any opioids.” (Ex. E ¶ 5);
- “The costs [of opioid addiction and overdose] are borne by Plaintiff and other governmental entities. These necessary and costly responses to the opioid crisis include the handling of emergency responses to overdoses, providing addiction treatment...treating opioid-addicted newborns in neonatal intensive care units, burying the dead...among others.” (Ex. E ¶ 15);
- “In 2008, more Americans died from opioid overdoses than ever before.” (Dkt. No. 16, Am. Compl. ¶ 149); and
- Opioid distribution caused “opioid overdose and addiction.” (Dkt. No. 16, Am. Compl. ¶ 179).

93. As another example, *Pulaski County, AR, et al. v. Walmart Inc., et al.*, No. 35CV-

22-2 (Jefferson Cty., Arkansas), was filed in Arkansas against various Walmart entities, alleging bodily injuries because of and/or liabilities arising out of opioid or opioid-containing drugs and medicines that Walmart sold, distributed, and/or dispensed. Among other things, the County alleges that:

- Walmart’s alleged actions and inactions “deepen[ed] the crisis of opioid abuse, addiction, and death in the Counties.” (Compl. ¶ 8);
- “The overwhelming availability of opioids also has taken its toll on Arkansas and the Counties in a variety of ways. According to the National Institute on Drug Abuse, in 2018, nearly half of 444 reported deaths involving drug use in Arkansas involved opioids. Additionally, intravenous drug use (to which prescription opioids are a known precursor) has affected HIV rates in Arkansas. In 2017, approximately 5,634 Arkansas residents were HIV-positive. Approximately 15.1% of male HIV cases, and 17.1% of female HIV cases were attributed to intravenous drug use.” (¶ 13);
- “[A]s the supply of opioids increase, so does the incidence of over-dose and death.” (¶ 108); and “The Counties’ damages include, but are not limited to, increased emergency response costs, law enforcement costs...addiction treatment costs, and medical costs caused by Walmart’s conduct in creating and exacerbating the opioid epidemic.” (¶ 222); and
- “Walmart’s conduct fell below the reasonable standard of care. Its negligent acts include: ... using unsafe distribution and dispensing practices; ... failing to establish effective controls to combat diversion of opioids; ... [and] failing to police the integrity of its supply chains.” (¶ 214).

94. Similarly, in *In re Opioid Litigation*, Index No. 400000/2017 (Suffolk Cty., NY), in which Walmart is a named defendant, the plaintiff New York Counties allege that: “Defendants and its agents have caused Plaintiffs to incur excessive costs related to diagnosis, treatment, and cure of addiction or risk of addiction to opioids, Plaintiffs have borne the massive costs of these illnesses and conditions by having to provide necessary resources for care, treatment facilities, and law enforcement services for Plaintiffs’ residents and using Plaintiffs’ resources in relation to opioid use and abuse.” (Compl. ¶ 834).

95. Confirming the bodily injury allegations in their complaint, the plaintiffs in the lawsuit *In re Coordinated Opioid Litigation*, Case No. 180500119 (Utah Dist. Ct. 3d Jud. Dist. Summit Cty.), underscored in their initial disclosure statements that they were seeking to remediate alleged past and continuing harms from bodily injury. For example, the plaintiffs asserted in their initial disclosures that they are claiming damages for “costs associated with opioid abuse treatment programs; costs associated with providing mental health services related to opioid abuse; medical costs for treatment of opioid withdrawal; [and] costs of procuring and administering Naloxone [a drug used to reverse an opioid overdose].”

96. Consistent with the plaintiffs’ allegations in the complaints and disclosure statements, the federal judge overseeing the MDL, United States District Judge Dan Polster, observed that “we [need to] get some amount of money to the government agencies for treatment. Because sadly, every day more and more people are being addicted, and they need treatment.” Transcript of Proceedings, Hon. Daniel A. Polster, *In re: National Prescription Litig.*, MDL No. 2804, Case No. 1:17-cv-2804 (N.D. Ohio Jan. 19, 2018).

97. Indeed, the first bellwether case against Walmart in the federal multidistrict litigation overseen by Judge Polster concluded with an order awarding \$650 million to two counties

as part of an “abatement program” funded by Walmart and its co-defendants, CVS and Walgreens. This abatement fund includes amounts to treat and to stop continuing opioid addiction and abuse. *In re: National Prescription Litig.*, Dkt. No. 4611 (August 17, 2022).

98. In the abatement order, Judge Polster held that “the nuisance that requires abating here is more properly defined as the harm resulting from Defendants’ conduct—the principal aspect of which is the large population of individuals in Lake and Trumbull County suffering [Opioid Use Disorder].” *Id.* at 21. The court eliminated the plaintiffs’ proposed interventions that were “not directed sufficiently at treatment and prevention.” *Id.* at 42.

99. Further, in hearings leading up to the trial and issuance of the abatement order, Judge Polster also emphasized that any amounts paid by the defendants in judgment or settlement should be used to treat and stop opioid addiction allegedly caused by the defendants in MDL cases:

- describing the MDL cases as “seeking to hold these corporations accountable for the scourge of addiction and death that has cut across all communities, races and classes.” June 25, 2019 Hearing Tr. at 4:14-21.
- noting that in any potential settlement, “the money needs to go where the harm is and where the treatment facilities are.” August 6, 2019 Hearing Tr. at 51:12-25.
- describing the jury’s verdict as finding: “the harm was the fact that they accepted in some respects the gateway theory that people became -- became addicted and developed Opioid Use Disorder as a result of the defendants’ conduct. And everyone knows that has, you have to -- you have to help those people. So that's the nuisance.” May 4, 2022 Hearing Tr.

100. Another Opioid Lawsuit in which Walmart is a defendant is *United States v. Walmart, Inc., et al.*, No. C.A. 20-1744-CFC (D. Del.) (the “DOJ Action”), in which the

Department of Justice brought claims because of bodily injury, including widespread injury and death allegedly resulting from Walmart’s opioid dispensing and distribution practices.

101. Along with seeking damages because of alleged bodily injury, plaintiffs across the country also have included negligence claims and/or allegations that the damages sought were unintentionally caused by Walmart in the Opioid Lawsuits. *See, e.g., Mobile Cty. Bd. of Health et al. v. Richard Sackler et al.*, Case No. 02-cv-2019-902806 (Cir. Ct. Mobile Cnty.); *City of Springfield v. Purdue Pharma, L.P., et al.*, Case No. 1984CV01733 (Mass. Super. Ct.); *Jefferson County v. Williams, et al.*, Case No. 20JE – CC00029 (23rd Judicial Cir., Mo.); *State of Nevada v. McKesson Corp.*, No. A-19-796755-B (8th Jud. Dist. Ct., Clark Cnty., Nev.); *In re Opioid Litigation*, Case No. 400000/2017 (Sup. Ct. Nassau Cnty. N.Y.); *County of Dallas v. Purdue Pharma LP*, No. 2018-77098 (Dist. Court—Dallas Cnty. [116th Dist.], Tex.); *County of Bexar v. Purdue Pharma LP*, No. 2018-77066 (Dist. Court—Bexar Cnty. [224th Dist.], Tex.); *County of Hunterdon v. Teva Pharmaceuticals USA, Inc.* (Hunterdon Cnty. N.J. Super. Ct.); *City of Vineland v. Teva Pharmaceutical Industries, Ltd.* (Cumberland Cnty. N.J. Super. Ct.); *County of Carbon v. Purdue Pharma, L.P.*, Case No. 2017-008095 (Del. Cnty. Pa. Ct. Com. Pl.); *Carpenters Health and Welfare Fund of Philadelphia and Vicinity v. Purdue Pharma, L.P.*, Case No. 2017-008095 (Del. Cnty. Pa. Ct. Com. Pl.); and *Delaware County, Pennsylvania v. Purdue Pharma, L.P.*, Case No. 2017-008095 (Del. Cnty. Com. Pl.).

102. For example, in *Melanie Yoakum v. McKesson Corp, et al.* (Case No. 1-21-op-45107-DAP) (N.D. Ohio), the plaintiff’s allegations against Walmart include negligence and potentially unintentionally-caused damages:

- Defendants “negligently created conditions in which vast amounts of opioids have flowed freely from drug manufacturers to innocent patients who became

- dependent.” (Compl. ¶ 72);
- Defendants “negligently have distributed and dispensed prescription opioid drugs in a manner that foreseeably damaged, and continues to damage, those exposed to opioids...” (¶ 73);
 - “Defendants’ breach of their duty proximately caused the injuries and damages to [Plaintiff].” (¶ 95);
 - “Plaintiff is without fault, and their injuries would not have happened in the ordinary course of events if the Defendants used due care commensurate to the dangers involved in the manufacturing, distribution and dispensing of controlled substances.” (¶ 100); and
 - The plaintiff seeks to recover damages for, among other things, “physical injuries and mental pain and suffering (past and future),” “medical expenses (past and future), and all care medically necessary for [Plaintiff’s] injuries,” and “physical and mental disability and impairment.” (pp. 23-24).

103. By way of further example, in *In re Coordinated Opioid Litigation*, Case No. 180500119 (Utah Dist. Ct. 3d Jud. Dist. Summit Cty.), the plaintiffs alleged: “Defendants were negligent by marketing, distributing, and selling opioids in a way that created and fostered an illegal, secondary prescription opioid market...” (Third Am. Compl. ¶ 1050).

104. Similarly, in *Mobile Cty. Board of Health and Family Oriented Primary Health Care Clinic v. Richard Sackler, et al.*, Case No. CV-2019-902806 (Ala. Cir. Ct., Mobile Cty.), the plaintiff alleged that “Defendants negligently acted with others by dispensing controlled substances for illegitimate medical purposes...thereby creating and continuing addictions to prescription medications in this state.” (Compl. ¶ 937).

105. In June 2021, Walmart agreed to settle two Opioid Lawsuits, denying all liability and paying \$6.125 million in damages because of the bodily injury alleged in the actions captioned *County of Suffolk v. Purdue Pharma L.P.*, et al., Index No. 400001/2017 and *County of Nassau v. Purdue Pharma L.P.*, et al., Index No. 400008/2017. The settlement was paid to resolve the counties' claims that they incurred excessive costs related to the diagnosis, treatment, and cure of addiction or risk of addiction to opioids.

106. Since then, Walmart has settled certain additional Opioid Lawsuits without admitting liability. These settlements also included payments for, among other things, treating and remediating opioid-related addiction and injuries.

107. Additional Opioid Lawsuits continue to be filed against Walmart, and Walmart reasonably expects to incur significant additional sums in connection with pending Opioid Lawsuits and additional, forthcoming lawsuits.

WALMART'S NOTICE OF THE OPIOID LAWSUITS AND THE INSURERS' DENIAL OF COVERAGE

108. Walmart timely notified the Insurers of each of the Opioid Lawsuits.

109. Each of the Insurers either reserved their rights to deny coverage, denied coverage, or, based on their coverage positions, are reasonably expected to deny coverage for Walmart's defense and indemnity costs in the Opioid Lawsuits.

110. For example, in a letter dated April 18, 2019, the claims administrator for National Union incorrectly suggested to Walmart's coverage counsel that coverage for the Opioid Lawsuits may not be available under the National Union Policies because the underlying lawsuits do not allege "damages because of 'bodily injury'" or a covered "occurrence." National Union further asserted that all the allegations in the Opioid Lawsuits allege or suggest that Walmart "expected or intended" "bodily injury." These erroneous positions illustrate the approach Insurers have taken to

the Opioid Lawsuits.

111. Similarly, on June 25, 2021, while Walmart was in the midst of fast-paced and critical settlement discussions regarding the *County of Suffolk* lawsuit, Chubb unreasonably refused to consent or to waive consent to a reasonable settlement and reaffirmed its position that Chubb had no current obligation to defend Walmart or to pay defense expenses for any suit on Walmart's behalf. And, on February 2, 2022, National Union also denied coverage for the DOJ Action on similar grounds. More recently, Walmart has sought Insurers' consent or asked Insurers to waive consent to several settlements. On October 24, 2022, Walmart wrote to advise Insurers of ongoing settlement negotiations and completed settlement agreements. Walmart advised Insurers that because no Insurer had acknowledged coverage for the Opioid Lawsuits, Walmart had no obligation to comply with any consent, cooperation, or similar provisions in the Insurers' policies, and would proceed accordingly in the defense and resolution of the Opioid Lawsuits. Walmart's letter requested that if any Insurer intended to cover any of the Opioid Lawsuits in whole or in part, they confirm that fact by October 27, 2022. As of the filing of this Complaint, no Insurer has agreed to cover the settlements of any of the Opioid Lawsuits.

112. But as Walmart has explained to Insurers, including in response to their voluminous requests for information and in response to their letters, Insurers' bases for denying coverage are meritless. The Opioid Lawsuits are replete with allegations against Walmart of damages because of bodily injuries and/or wrongful acts covered by the Policies. For example, many of the Opioid Lawsuits, as well as the DOJ Action, allege violations of the Controlled Substances Act, a significant purpose of which is to prevent bodily injury resulting from the abuse of improperly distributed drugs. The Controlled Substances Act, 21 U.S.C. 801, *et seq.*

113. Insurers' reliance on the "expected or intended" exclusion is equally meritless.

Among other things, the Opioid Lawsuits are replete with allegations that the injuries alleged in the lawsuits were negligently or otherwise unintentionally caused, and Walmart has repeatedly denied that it intended or expected any harm.

114. Thus, Insurers' coverage defenses are baseless, and the Opioid Lawsuits fall within the coverage of the Policies.

115. Nevertheless, no Insurer has affirmatively acknowledged any obligation to provide coverage for the Opioid Lawsuits under any of the Policies. As a result, Walmart has sustained and will continue to sustain damages due to the denials and/or failures of the Insurers to fulfill their obligations under the Policies in connection with the Opioid Lawsuits.

116. Walmart thus brings this action to establish its right to coverage for the Opioid Lawsuits under the Policies and to recoup defense and indemnity costs that Walmart has incurred and will incur in connection with those lawsuits.

117. In 2021, Walmart entered into Tolling Agreements with each of the Insurers. On September 8, 2022, Walmart provided notice of cancellation of the Tolling Agreements, pursuant to their terms, along with notice that Walmart intended to file this action when the Tolling Agreements were terminated.

118. Walmart fully complied with the Tolling Agreements' restriction on filing suit for 60 days following cancellation.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Breach of Contract Against All Insurers – Duty to Defend

119. Walmart realleges and incorporates by reference the allegations contained in all paragraphs above as though fully alleged herein.

120. The Policies constitute valid and enforceable contracts between Walmart and the Insurers, and Walmart is the named insured under the Policies.

121. Walmart has paid all premiums, provided timely notice of the Opioid Lawsuits, and otherwise performed all obligations and conditions required of it under the Policies.

122. Pursuant to the terms of each Insurer's respective Policy, each Insurer is obligated to defend Walmart and/or to pay all of Walmart's defense costs for any claim or lawsuit in which the allegations against Walmart potentially fall within the Policy's coverage, subject only to the attachment points and limits of liability of the Policy.

123. As detailed above, the Opioid Lawsuits fall squarely within the insuring agreements of the Policies and coverage is not otherwise excluded by any terms or conditions of the Policies.

124. Insurers have breached their duties under the Policies that they sold to Walmart by, among other things, refusing or failing to acknowledge their obligations to defend and/or to pay the costs of defending Walmart against the Opioid Lawsuits under the Policies that they sold to Walmart.

125. As a direct and proximate result of Insurers' contractual breaches, Walmart has sustained substantial damages for which the insurers are liable, in amounts to be established at trial. Walmart is also entitled to pre-judgment and post-judgment interest on its damages at the legal rate, as well as the costs of collection, including, without limitation, its attorney's fees incurred or to be incurred in connection with this action, under Ark. Code Ann. § 23-79-209, Ark. Code Ann. § 16-22-308, and/or other applicable authority.

SECOND CAUSE OF ACTION

Actual and/or Anticipatory Breach of Contract Against All Insurers – Duty to Indemnify

126. Walmart realleges and incorporates by reference the allegations contained in all

paragraphs above as though fully alleged herein.

127. The Policies constitute valid and enforceable contracts between Walmart and the Insurers, and Walmart is the named insured under the Policies.

128. Walmart has paid all premiums, provided timely notice of the Opioid Lawsuits, and otherwise performed all obligations and conditions required of it under the Policies.

129. Pursuant to the terms of each Insurer's respective Policy, each Insurer is obligated to pay Walmart's losses, including settlements paid to resolve the Opioid Lawsuits, subject only to the attachment points and limits of liability of their respective Policy.

130. As detailed above, the Opioid Lawsuits fall squarely within the insuring agreements of the Policies and coverage is not otherwise excluded by any terms or conditions of the Policies.

131. The Insurers have actually or anticipatorily repudiated their obligations to pay such losses under the Policies in that they have unequivocally indicated, either expressly or through their conduct, that they will not make payments towards any settlement or judgment under their Policies for the Opioid Lawsuits. Despite Walmart's requests that they do so, no Insurer has acknowledged its indemnity coverage obligations or communicated to Walmart that it will honor its coverage obligations.

132. The Insurers' failure to acknowledge coverage for settlement and judgment costs incurred in the Opioid Lawsuits materially breaches the Policies.

133. As a result of the Insurers' actual and anticipatory breaches and repudiations of their obligations under the Policies, Walmart has suffered substantial damages for which the insurers are liable, in amounts to be established at trial. Walmart is also entitled to pre-judgment and post-judgment interest on its damages at the legal rate, as well as the costs of collection, including, without limitation, its attorney's fees incurred or to be incurred in connection with this action, under

Ark. Code Ann. § 23-79-209, Ark. Code Ann. § 16-22-308, and/or other applicable authority.

THIRD CAUSE OF ACTION

Declaratory Judgment Against All Insurers

134. Walmart realleges and incorporates by reference the allegations contained in all paragraphs above as though fully alleged herein.

135. Walmart contends that it is entitled to coverage under the Policies for its defense costs and any other amounts it may be obligated to pay in the Opioid Lawsuits, including any settlements or judgments. Walmart is informed and believes, and on that basis alleges, that the Insurers dispute that Walmart is entitled to such coverage. Therefore, an actual and justiciable controversy exists between Walmart and the Insurers concerning the interpretation and construction of the Policies, and the rights and obligations of the parties thereto, with respect to Walmart's entitlement to coverage in connection with the Opioid Lawsuits.

136. Walmart seeks a judicial declaration from this Court confirming that, subject to its applicable policy limits and attachment point, each Policy:

- a. covers Walmart's defense, settlement, and/or judgment costs arising from the Opioid Lawsuits, and
- b. must pay for such defense, settlement, and/or judgment costs.

A declaration is necessary at this time so that the parties' disputes may be resolved and that they may be aware of their respective rights and duties under the Policies.

137. In accordance with the Arkansas Declaratory Judgments Act, Ark. Code Ann. §§ 16-111-101 – 16-111-111, and Rule 57 of the Arkansas Rules of Civil Procedure, this Court should declare the rights and obligations of Walmart and the Insurers with respect to the Policies, including the obligations of Insurers to defend and indemnify Walmart for all losses arising out of the Opioid Lawsuits.

138. Walmart respectfully requests a declaratory judgment, pursuant to Ark. Code Ann. §§ 16-111-101 – 16-111-111, to settle and afford Walmart relief from uncertainty and insecurity about the obligations of Insurers under the Policies.

139. Walmart further requests that this Court order a “speedy hearing” of this action pursuant to Rule 57 of the Arkansas Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Walmart respectfully seeks a declaratory judgment pursuant to Ark. Code Ann. § 16-111-101, et seq., and Ark. R. Civ. P. 57 declaring Insurers' obligations under the Policies; for judgment against Insurers in the amount of Walmart's compensatory and consequential damages plus 12% statutory interest; for costs and fees; and for all other relief to which Walmart is entitled.

DEMAND FOR JURY TRIAL

Walmart hereby demands a trial by jury in this action.

Respectfully Submitted,

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