IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN RE ALBERTSONS OPIOID INSURANCE LITIGATION	Consol. C.A. No. N22C-10-301 PAW CCLD

Date Submitted: January 14, 2026
Date Decided: April 27, 2026

MEMORANDUM OPINION

Upon Insurers' Motion for Summary Judgment;
GRANTED.

Upon Albertsons's Motion for Partial Summary Judgment;
DENIED.

Garrett B. Moritz, Esq.; R. Garrett Rice, Esq.; and Dylan T. Mockensturm, Esq., of Ross Aronstam & Moritz LLP; Michael S. Shuster, Esq.; Daniel M. Sullivan, Esq.; Blair E. Kaminsky, Esq.; and Lauren Cole, Esq., of Holwell Shuster & Goldberg LLP; and Robert Mangino, Esq.; and Susan Koehler Sullivan, Esq., of Clyde & Co. US LLP, *Attorneys for ACE American Insurance Company, ACE Property & Casualty Insurance Company, Federal Insurance Company, and Indemnity Insurance Company of North America*.

Robert J. Katzenstein, Esq.; and Julie M. Odell, Esq., of Smith, Katzenstein & Jenkins LLP; Christopher J. St. Jeanos, Esq.; and James Fitzmaurice, Esq., of Willkie Farr & Gallagher LLP, *Attorneys for National Union Fire Insurance Company of Pittsburgh, Pa. and AIG Specialty Insurance Company.*

Kelly A. Green, Esq., of Smith, Katzenstein & Jenkins LLP; Deborah J. Campbell, Esq.; and Jonathan R. Shulan, Esq., of Dentons US LLP, *Attorneys for Niagara Fire Insurance Company, The Continental Insurance Company, and XL Insurance America Inc.*

Marc Casarino, Esq.; Christopher R. Carroll Esq.; Joshua S. Wirtshafter, Esq.; and Tara E. McCormack, Esq., of Kennedys CMK LLP, *Attorneys for Allied World National Assurance Company.*

John C. Phillips, Jr., Esq.; and David A. Bilson, Esq., of Phillips McLaughlin & Hall, P.A.; Andrew L. Margulis, Esq.; and Jung H. Park, Esq., of Ropers Majeski PC, *Attorneys for National Fire & Marine Insurance Company.*

Philip Trainer, Jr., Esq.; and Marie M. Degnan, Esq., of Ashby & Geddes; Robert A. Kole, Esq.; and John C. Calhoun, Esq., of Choate, Hall & Stewart LLP, *Attorneys for Liberty International Underwriters, Inc. and Liberty Mutual Insurance Company*.

Timothy S. Martin, Esq., of White and Williams LLP; Karen M. Dixon, Esq.; and Rebecca C. Dunn, Esq., of Skarzynski Marick & Black LLP, *Attorneys for American Guarantee & Liability Insurance Company, American Zurich Insurance Company, and Zurich American Insurance Company, in its own capacity and as successor-in-interest to Zurich Insurance Company, U.S. Branch*.

Carmella P. Keener, Esq., of Cooch & Taylor, P.A.; Adam H. Fleischer, Esq.; and Joshua A. Boggioni, Esq., of BatesCarey LLP, *Attorneys for Great American Assurance Company, Great American Insurance Company of New York, and Great American Spirit Insurance Company.*

Travis S. Hunter, Esq.; and Dionis Mucollari, Esq., of Richards, Layton & Finger, P.A.; Linda E. Klamm, Esq.; Miles C. Holden, Esq.; Mollie H. Levy, Esq.; and Shandyn H. Pierce, Esq., of Hanson Bridgett LLP, *Attorneys for Albertsons Companies, Inc., Albertson's LLC, Albertson's Holdings LLC, Randall's Food & Drugs LP, Safeway, Inc., and Acme Markets, Inc.*

WINSTON, J.

I. INTRODUCTION

Albertsons is a grocery store chain that operates retail pharmacies. Like many pharmacies, it has been named as a defendant in numerous lawsuits brought by government plaintiffs seeking to hold it liable for damages resulting from the opioid epidemic. For its defense of those lawsuits, Albertsons seeks coverage from its commercial general liability insurers. Two Delaware Supreme Court cases—*Rite Aid*, decided in 2022, and *CVS*, decided during briefing on the present summary judgment motions—have denied coverage in nearly identical circumstances. Accordingly, Albertsons argues that Delaware law does not apply. Instead, Albertsons asks the Court to apply the law of California or Idaho, which it says conflicts with Delaware. But neither California nor Idaho have addressed the dispositive issue in *Rite Aid* and *CVS*, and the three states apply the same insurance law principles. There is thus no conflict, meaning the Court applies clear Delaware law. From there, the result is straightforward. Just as the Delaware Supreme Court held in *Rite Aid* and *CVS*, there is no coverage under the insurance policies at issue here.

At bottom, Albertsons disagrees with *Rite Aid* and *CVS* and asks the Court to predict that California and Idaho will also disagree. Absent contrary California or Idaho authority, that prediction is not warranted. Because there is no coverage under settled Delaware law, the Insurers are entitled to summary judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. THE PARTIES

The parties to this consolidated action are numerous. Insurers Chubb[1] and AIG[2] filed the initial complaints seeking declaratory judgments regarding their rights and obligations concerning certain commercial general liability insurance policies.[3] Chubb, AIG, and additional commercial general liability insurers that are parties to this consolidated action are referred to herein as the "Insurers."[4]

Albertsons[5] seeks insurance coverage under commercial general liability insurance policies issued by the Insurers.[6] Albertsons is a grocery store chain with

---

[1] "Chubb" refers to ACE American Insurance Company, ACE Property & Casualty Insurance Company, Federal Insurance Company, and Indemnity Insurance Company of North America. *See* D.I. 326, Op. Br. in Support of Insurers' Mot. for Summ. J. (hereinafter "Insurers' Op. Br.") at 3 n.1.

[2] "AIG" refers to National Union Fire Insurance Company of Pittsburgh, Pa. and AIG Specialty Insurance Company. *See id.*

[3] *See id.* at 11; D.I. 1; D.I. 5; D.I. 66; D.I. 230; D.I. 231; D.I. 1, *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Albertsons Cos., Inc.*, C.A. No. N22C-10-338 MMJ CCLD (Del. Super. Oct. 13, 2022).

[4] In addition to Chubb and AIG, the Insurers are listed in footnote 1 of each of the movants' opening briefs. *See* Insurers' Op. Br. at 3 n.1; D.I. 328, Op. Br. in Support of Albertsons's Mot. for Partial Summ. J. (hereinafter "Albertsons's Op. Br.") at 1 n.1. There is some discrepancy in the names of the Insurers between and among each opening brief and the complaint, but that discrepancy does not impact the legal issues decided on these motions.

[5] "Albertsons" refers collectively to Albertsons Companies, Inc.; Albertson's LLC; Albertson's Holdings LLC; Randall's Food & Drugs LP; Safeway, Inc.; and Acme Markets, Inc. *See* Albertsons's Op. Br. at 1-2 & n.2.

[6] *See id.* at 1-2.

pharmacy operations in some of its stores.[7] In addition to "Albertsons Entities,"[8] Albertsons includes Safeway,[9] which was acquired by the Albertsons Entities in 2015.[10] On the present motions, there is no dispute that the Albertsons Entities are headquartered in Idaho and that, at least until 2015, Safeway was headquartered in California.[11] There is similarly no dispute that the entities that make up Albertsons are organized under Delaware law.[12] The relevant insurance policies were issued either to Albertsons in Idaho or, prior to its acquisition by Albertsons in 2015, to Safeway in California.[13]

B. THE OPIOID LAWSUITS

"The opioid epidemic is 'one of the largest public health crises in this nation's history.'"[14] In addition to the many lives lost, by one estimate, the epidemic "has

---

[7] *See id.* at 5.

[8] The "Albertsons Entities" are Albertsons Companies, Inc.; Albertson's LLC; Albertson's Holdings LLC; and their subsidiaries, including Acme Markets, Inc. *See id.* at 2 n.2.

[9] "Safeway" refers to Safeway, Inc. and its subsidiaries, including Randall's Food & Drugs LP. *See id.*

[10] *See id.*

[11] *See* Albertsons's Op. Br. at 15; D.I. 352, Insurers' Ans. Br. in Opp'n to Alberstons' Mot. for Partial Summ. J. (hereinafter "Insurers' Ans. Br.") at 5.

[12] *See* Albertsons's Op. Br. at 15; Insurers' Ans. Br. at 5.

[13] *See* Albertsons's Op. Br. at 15; Insurers' Ans. Br. at 5.

[14] *In re CVS Opioid Ins. Litig.* (*CVS Supreme Court*), 346 A.3d 81, 86 (Del. 2025) (quoting *In re Purdue Pharma L. P.*, 69 F.4th 45, 56 (2d Cir. 2023), *rev'd on other grounds sub nom.*, *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204 (2024)).

cost the country between $53 and $72 billion annually."[15] States, counties, municipalities, tribes, and other entities have filed lawsuits throughout the country to recover these costs from opioid manufacturers, distributors, and retailers.[16]

Based on its operation of pharmacies in its grocery stores, Albertsons has been named as a defendant in 109 of these suits (the "Opioid Lawsuits").[17] Most of the Opioid Lawsuits are consolidated in a federal multidistrict litigation pending in the United States District Court for the Northern District of Ohio, while the rest are pending in courts across the country.[18]

Albertsons states that "[e]ach of the Opioid Lawsuits plead substantially similar allegations against Albertsons."[19] Nonetheless, the parties provide examples of particular suits as illustrative, and the Court summarizes three of those examples here.[20]

---

[15] *Harrington*, 603 U.S. at 209 (citing *Purdue Pharma*, 69 F.4th at 56).

[16] Insurers' Op. Br. at 5; Albertsons's Op. Br. at 5; *see also CVS Supreme Court*, 346 A.3d at 86.

[17] *See* Albertsons's Op. Br. at 7. A list of the Opioid Lawsuits is attached to Albertsons's opening brief. *See* D.I. 333-34, Aff. of Travis S. Hunter in Support of Albertsons's Mot. for Partial Summ. J., App. E.

[18] *See* Insurers' Op. Br. at 5-6; Albertsons's Op. Br. at 27. The multidistrict litigation is captioned *In Re: National Prescription Opiate Litigation*, 17-md-2804 (N.D. Ohio).

[19] Albertsons's Op. Br. at 7.

[20] The Insurers summarize six lawsuits as "Exemplar Suits." *See* Insurers' Op. Br. at 6-10. Albertsons provides an appendix of a "Representative Sampling Of Allegations" from twenty-four suits, some of which it references in briefing. *See*

1. *MONTEREY*

Monterey[21] is brought by Monterey County, California and the State of California against opioid manufacturers and distributors, including pharmacies.[22] The plaintiffs seek "to eliminate the hazard to public health and safety caused by the opioid epidemic, to abate the nuisance caused thereby, and to recoup monies that have been spent and will be spent because of Defendants' false, deceptive and unfair marketing and/or unlawful diversion of prescription opioids."[23]

Plaintiffs seek damages, including for "costs for providing medical care . . . for patients suffering from opioid-related addiction or disease" and "costs associated with law enforcement and public safety relating to the opioid epidemic."[24] Among many others, as one source of costs, plaintiffs identify workers' compensation payments Monterey County has made for medically questionable opioid

---

D.I. 362, Albertsons's Corrected App. F.1; *see also, e.g.*, Albertsons's Op. Br. at 5, 8-9, 24-25. The three examples summarized here are cases the parties each substantively addressed in briefing. Two (*Monterey* and *Klamath*) were raised by both the Insurers and Albertsons in their opening briefs. The third (*Philadelphia*) was raised by the Insurers and then addressed by Albertsons in subsequent briefing.

[21] *Cnty. of Monterey v. AmerisourceBergen Drug Corp.*, 1:18-op-45615 (N.D. Cal.).

[22] *See* D.I. 338-39, Transmittal Aff. of R. Garrett Rice in Connection with Insurers' Op. Br., Ex. 3 ¶¶ 6, 16, 36-46.

[23] *Id.* ¶ 1.

[24] *See id.* ¶ 893.

prescriptions, as well as resulting costs of long-term opioid use.[25] They also identify costs associated with damage to infrastructure and other property.[26]

2. *KLAMATH*

Klamath[27] is brought by the Klamath Tribes, "a federally recognized Indian tribal government consisting of three Native American tribes – the Klamaths, the Modocs, and the Yashooskin."[28] The complaint alleges that, as a result of defendants' manufacture and distribution of opioids, "the Tribe's members are suffering through an unprecedented epidemic of opioid addiction and overdose," which "has forced the Tribe to shoulder tremendous opioid-related costs relating to, among other things, health and medical services, emergency services, detox and addiction treatment services, social services, law enforcement, loss of productivity in its workforce, and other costs from the cascading effects of the opioid epidemic."[29] The Klamath Tribes seek to recover these costs through a variety of legal theories, including public nuisance, negligence, unjust enrichment, and fraud.[30]

---

[25] *See id.* ¶¶ 356-70.

[26] *See, e.g.*, *id.* ¶¶ 10, 443-45.

[27] *The Klamath Tribes v. Purdue Pharma L.P.*, 1:19-op-45786 (N.D. Ohio).

[28] D.I. 340, Transmittal Aff. of R. Garrett Rice in Connection with Insurers' Op. Br., Ex. 6 ¶ 26.

[29] *Id.* ¶ 656; *see also, e.g.*, *id.* ¶¶ 25, 177 (listing similar and additional costs plaintiff seeks to recover).

[30] *See, e.g.*, *id.* ¶¶ 635-46, 648-57, 659-66, 668-82.

3. *PHILADELPHIA*

In *Philadelphia*,[31] the City of Philadelphia brings claims "to redress the hazard to public health and safety caused by the opioid epidemic, to abate the nuisance in the City, and to recoup City monies that have been spent as a result of Defendants' unlawful diversion of prescription opioids."[32] The City alleges its claims "are wholly independent of any claims that individual users of opioids may have against Defendants."[33]

"[I]n its public capacity," the City seeks, among other things, to "recover all appropriate damages, expenses, costs and fees."[34] These include "costs for providing medical care, additional therapeutic and prescription drug purchases, and other treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths," as well as for "increased municipal services directly associated with opioid addiction."[35] Some of those costs were incurred through Philadelphia's operation of a publicly funded healthcare system through Community Behavioral Health and the Department of Behavioral Health, others

---

[31] *City of Phila. v. CVS Ind., L.L.C.*, No. 210902183 (Pa. Ct. Comm. Pleas, Phila. Cnty.).

[32] D.I. 336-38, Transmittal Aff. of R. Garrett Rice in Connection with Insurers' Op. Br., Ex. 2 ¶ 1.

[33] *Id.* ¶ 24.

[34] *Id.* ¶ 681.

[35] *See id.* ¶¶ 19, 21.

through city-funded services for vulnerable groups such as the homeless and foster children.[36]

C. THE POLICIES

Albertsons tendered the Opioid Lawsuits to the Insurers and seeks coverage under more than 100 commercial general liability insurance policies (the "Policies").[37] Although "the specific policy language varied," Albertsons contends that "the Policies each provide substantially the same coverage."[38] The Court below summarizes the Policies' terms based on representative Policies cited by the parties.

The Policies generally provide that the Insurers "will pay, on behalf of the insured, those sums that the insured becomes legally obligated to pay as damages by

---

[36] *See id.* ¶¶ 590-97, 615-17.

[37] *See* Albertsons's Op. Br. at 1-2 & n.3; Insurers' Op. Br. at 1. In its motion, Albertsons seeks coverage from "over 100 policies" that "were in effect from 2000 through the 2017-18 policy period." Albertsons's Op. Br. at 2 n.3. The Insurers' motion is broader, seeking judgment regarding policies issued "from approximately 1994 to 2022." Insurers' Op. Br. at 11. The policies on which Albertsons and the Insurers move are listed in appendices submitted with their briefing. *See* D.I. 362, Albertsons's Corrected Apps. A.1, B.1; D.I. 326, App. A to Insurers' Op. Br.; D.I. 375, Am. App. B to Insurers' Op. Br. Certain Insurers object to Albertsons's appendices on grounds that they reference policies issued to non-party insurers or that are otherwise not properly at issue, as well as on grounds that Albertsons lists incorrect policy numbers. *See* D.I. 356, at 2-7; D.I. 377, at 1-2. Because the Court rules for the Insurers on other grounds, it need not address those objections, except to note that this ruling, as well as the term "Policies," is intended to apply to the general liability insurance policies that are properly at issue in this action.

[38] *See* Albertsons's Op. Br. at 6 n.9; *see also* Insurers' Op. Br. at 11 (noting that there are "some immaterial differences in wording" but that "each Policy contains the same threshold requirement" that is sufficient to resolve the present motions).

reason of liability imposed by law . . . because of bodily injury[] [or] property damage."[39] "Damages because of bodily injury include damages claimed by any person or organization for care or loss of services or death resulting at any time from the bodily injury."[40] "Bodily injury" is defined as "physical injury, sickness, disease, mental anguish, mental injury, shock, fright or humiliation sustained by a person, including death at any time resulting therefrom."[41] "Property damage" is defined to mean "physical injury to tangible property, including all resulting loss of use of that property" or "loss of use of tangible property that is not physically injured."[42]

---

[39] *See, e.g.*, D.I. 333-34, Transmittal Aff. of Travis S. Hunter in Support of Albertsons's Mot. for Partial Summ. J., App. D (hereinafter "Albertsons's Representative Policy Language") at 1 (quoting 1997-2000 and 2000-2003 Federal Insurance Company policies, at Bates numbers ending '332, '141); *see also* D.I. 340, Transmittal Aff. of R. Garrett Rice in Connection with Insurers' Op. Br., Ex. 10 § I.A (providing that "[w]e will pay on behalf of the 'insured' those sums in excess of the 'retained limit' that the 'insured' becomes legally obligated to pay as damages because of 'bodily injury' [or] 'property damage'").

[40] *See* Albertsons's Representative Policy Language at 1 (quoting 1997-2000 and 2000-2003 Federal Insurance Company policies, at Bates numbers ending '332, '141).

[41] *See id.* (quoting 1997-2000 and 2000-2003 Federal Insurance Company policies, at Bates numbers ending '345, '154).

[42] *See* ABS0000137, at '158 (2000-2003 Federal Insurance Company policy, provided to the Court via flash drive attached to letter at D.I. 349).

For coverage to apply, the bodily injury or property damage generally must also be "caused by an occurrence."[43] In some Policies, "occurrence" is defined to mean "an accident (or the rendering or failure to render professional health care services as a pharmacist)."[44] Other Policies do not reference services of a "pharmacist" in the definition of "occurrence" but include "Pharmacist and Druggist Endorsements"[45] through which bodily injury or property damage arising out of rendering or failure to render professional health care services as a pharmacist are "deemed to be caused by an 'occurrence.'"[46]

Under at least some of the Policies,[47] the Insurers have a duty to defend suits seeking damages that would be covered by the Policies or to fund the defense of such suits. For example, some Policies provide that the Insurers "will have the right

---

[43] *See* Albertsons's Representative Policy Language at 1 (quoting 1997-2000 and 2000-2003 Federal Insurance Company policies, at Bates numbers ending '332, '141).

[44] *See id.* at 2 (quoting 1997-2000 and 2000-2003 Federal Insurance Company policies, at Bates numbers ending '348, '157).

[45] *See* D.I. 376, Albertsons's Reply in Further Support of Its Mot. for Partial Summ. J. (hereinafter "Albertsons's Reply") at 12.

[46] *See, e.g.*, Albertsons's Representative Policy Language at 6 (quoting numerous Chubb policies); *see also, e.g.*, *id.* at 9 (quoting three Chubb policies with endorsements amending definition of "Occurrence" to include a "Pharmacist Liability Incident," defined therein).

[47] Certain Insurers contend that certain policies referenced by Albertsons do not contain a duty to defend, and they raise other arguments as to specific policies. *See* D.I. 357, at 1-3; D.I. 358, at 1-4; *see also* D.I. 356, at 7-10. Based on the Court's rulings herein, it need not resolve these arguments.

and duty to defend the 'insured' against any 'suit' seeking damages for 'bodily injury' [or] 'property damage' . . ., even if groundless, false or fraudulent, to which this insurance applies."[48]

D. PROCEDURAL HISTORY

Certain of the Insurers initially filed complaints for declaratory judgment in October 2022,[49] and those actions were consolidated in December 2022.[50] In the now operative Second Amended Complaint, filed in February 2025, Chubb seeks three declaratory judgments: (i) that it has no duty to defend or pay for Albertsons's defense of the Opioid Lawsuits; (ii) that it has no duty to indemnify Albertsons for the Opioid Lawsuits; and (iii) regarding the rights and obligations of other Insurers if Chubb is found to have a duty to defend or indemnify.[51] Albertsons has filed counterclaims and cross-claims for declaratory judgment that the Insurers have duties to defend and indemnify, as well as for breach of contract and the implied

---

[48] *See, e.g.*, Albertsons's Representative Policy Language at 8 (quoting three Chubb policies); *see also, e.g.*, *id.* at 1 (quoting two Federal Insurance Company policies as providing, in part, "[w]e will assume control of the investigation, settlement or defense of any claim or suit against the insured seeking damages for injury or offense covered by this policy").

[49] *See* D.I. 1; D.I. 1, *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Albertsons Cos., Inc., et al.*, C.A. No. N22C-10-338 MMJ CCLD (Del. Super. Oct. 13, 2022).

[50] *See* D.I. 66.

[51] *See* D.I. 231 ¶¶ 50-58.

covenant.[52] Other Insurers have filed counterclaims and cross-claims seeking declaratory judgments regarding their coverage obligations.[53]

Presently at issue are the parties' cross-motions for summary judgment. The Insurers seek judgment that they have no duty to defend or indemnify Albertsons for the Opioid Lawsuits.[54] Albertsons seeks judgment only as to the duty to defend under certain Policies.[55] The Insurers and Albertsons filed their motions and opening briefs in May 2025,[56] answering briefs in August 2025,[57] and replies in October 2025.[58] The Court heard argument on January 14, 2026.

Before this action was initiated, the Delaware Supreme Court issued *ACE American Insurance Co. v. Rite Aid Corp.* ("*Rite Aid*"),[59] a key ruling regarding commercial general liability insurance coverage for opioid litigation. In the time between the parties' answering briefs and replies on the present motions, the

---

[52] *See* D.I. 251, at pp. 40-45.

[53] *See, e.g.*, D.I. 244, at pp. 44-45.

[54] *See* Insurers' Op. Br. at 12.

[55] *See* Albertsons's Op. Br. at 2-4 & nn.3, 7. Albertsons states a ruling on indemnification is "currently premature." *Id.* at 4 n.7.

[56] *See* D.I. 326; D.I. 327-28.

[57] *See* D.I. 351, Albertsons's Opp'n to Insurers' Mot. for Summ. J. (hereinafter "Albertsons's Ans. Br."); Insurers' Ans. Br.

[58] *See* D.I. 375, Reply Br. in Further Support of Insurers' Mot. for Summ. J. (hereinafter "Insurers' Reply"); Albertsons's Reply.

[59] 270 A.3d 239 (Del. 2022).

Delaware Supreme Court issued another key ruling, *In re CVS Opioid Insurance Litigation* ("*CVS*"),[60] which applied and further explained *Rite Aid*. Accordingly, while the parties' briefs all addressed *Rite Aid*, only their reply briefs addressed the Supreme Court's *CVS* opinion. Both *Rite Aid* and *CVS* are summarized more fully below.

III. STANDARD OF REVIEW

The Court grants summary judgment upon a showing "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."[61] The movant bears the burden of establishing the nonexistence of issues of material fact.[62] Upon such a showing, the burden shifts to the nonmovant to demonstrate genuine factual issues exist.[63] The Court views the facts in the light most favorable to the nonmovant.[64]

These standards likewise apply when the parties file cross-motions for summary judgment.[65] Such motions are not *per se* concessions that no material

---

[60] 346 A.3d 81 (Del. 2025).

[61] Del. Super. Ct. Civ. R. 56(c).

[62] *McDonald v. Gov't Emps. Ins. Co.*, 2023 WL 7276649, at *1 (Del. Super. Nov. 3, 2023) (citing *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979)).

[63] *Id.* (citing *Moore*, 405 A.2d at 681).

[64] *Id.* (citing *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992)).

[65] *Id.* (citing *Spivey v. USAA Cas. Ins. Co.*, 2017 WL 3500402, at *4 (Del. Super. Aug. 15, 2017)).

disputes of fact exist.[66] Yet, if no party argues a factual dispute exists, the Court deems the cross-motions to be a stipulation for decision on the merits based upon the record submitted with the motions.[67]

IV. ANALYSIS

A. THE DELAWARE SUPREME COURT'S RULINGS IN *RITE AID* AND *CVS*

In recent years, the Delaware Supreme Court has twice interpreted the language of commercial general liability insurance policies to determine whether they provided coverage to retail pharmacies for opioid litigation. In both cases—*Rite Aid*, decided in 2022, and *CVS*, decided just last year—the Court held that the policies did not provide coverage.[68] Similarly here, an owner of retail pharmacies seeks coverage under commercial general liability insurance policies for defending opioid litigation. The language of the Policies is materially the same as the language at issue in *Rite Aid* and *CVS*, and most of the underlying lawsuits here were before the Court in those cases as well. *Rite Aid* and *CVS*, including the rationale underlying

---

[66] *Mason v. United Servs. Auto. Ass'n*, 697 A.2d 388, 392 (Del. 1997) (citing *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997)).

[67] Del. Super. Ct. Civ. R. 56(h). Here, the parties' motions do not overlap completely. They do, however, each contend that the Court can decide on the current record whether *Rite Aid* applies to certain of the Policies, and no party identifies differences between particular Policies or factual disputes that preclude granting summary judgment.

[68] *See Rite Aid*, 270 A.3d at 241; *CVS Supreme Court*, 346 A.3d at 91-102.

them, are thus key to understanding Delaware law on the issues presented in this action.

1. *RITE AID*

In *Rite Aid*, our Supreme Court considered whether commercial general liability insurers had a duty to defend Rite Aid against lawsuits brought by governmental entities to recover damages stemming from the opioid epidemic.[69]

In addressing that issue, the Court began with well-settled principles of insurance policy interpretation. It interpreted the policy based on the parties' "mutual intent at the time of contracting,"[70] looking first to "the language of the insurance contract itself"[71] and construing that language "in the same manner as it would be understood by an objective, reasonable third party."[72] The Court further

---

[69] *Rite Aid*, 270 A.3d at 241. The Court focused on one policy for purposes of its decision but noted that the insurers "claimed that other policies in the litigation contain the same or similar coverage language for personal injury and that none of them cover" the underlying lawsuits at issue. *Id.* at 242 n.5.

[70] *Id.* at 245 (quoting *Goggin v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 2018 WL 6266195, at *4 (Del. Super. Nov. 30, 2018)).

[71] *Id.* (first quoting *Alstrin v. St. Paul Mercury Ins. Co.*, 179 F. Supp. 2d 376, 388 (D. Del. 2002); and then citing *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 745 (Del. 1997)).

[72] *Id.* (first quoting *IDT Corp. v. U.S. Specialty Ins. Co.*, 2019 WL 413692, at *7 (Del. Super. Jan. 31, 2019); then citing *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010); and then citing *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006)).

noted that an insurance policy is "typically interpreted against the insurer when the policy is ambiguous."[73]

The Court also recognized well-settled principles regarding the duty to defend. It acknowledged that "[t]he duty to defend is broad" and that "[a]n 'insurer has an obligation to defend its insured, even if the action against the insured is groundless, whenever the complaint . . . may potentially come within the scope of the policy.'"[74] As the Court explained, a duty to defend arises "when the complaint alleges 'facts which would support a recovery that is covered by the policy.'"[75] This is so "even when the complaint has only 'one allegation that falls within the scope of the policy's coverage . . . [and] even if an insured is ultimately found to be not liable.'"[76]

Applying these principles, the Court determined that the opioid lawsuits did not trigger the policy's duty to defend.[77] As the Court explained, the policy by its language provided coverage only if the underlying lawsuits sought damages "'for'

---

[73] *Id.* at 252.

[74] *Rite Aid*, 270 A.3d at 246 (alterations in original) (quoting *Heffernan & Co. v. Hartford Ins. Co. of Am.*, 614 A.2d 295, 298 (Pa. Super. Ct. 1992)).

[75] *Id.* (quoting *Erie Ins. Exch. v. Transamerica Ins. Co.*, 533 A.2d 1363, 1368 (Pa. 1987)).

[76] *Id.* (alterations in original) (quoting *Nationwide Mut. Ins. Co. v. Garzone*, 2009 WL 2996468, at *10 (E.D. Pa. Sept. 17, 2009)).

[77] *See id.* at 252.

or 'because of' personal injury," defined in relevant part as "bodily injury."[78] "Bodily injury," in turn, was defined to mean "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time."[79] To be "for" or "because of" bodily injury, the Court explained, it was not enough for the damages to "relate to" or have "some linkage to" an injury.[80] Rather, the language "for" or "because of" requires a more direct relationship between the damages and the injury, where an underlying lawsuit sought "to recover [damages] for the personal injury" or "derivative of the personal injury."[81] The Court also noted the policy provided that "[d]amages because of 'personal injury' include damages claimed by any person or organization for care . . . resulting at any time from the 'personal injury.'"[82] The Court similarly interpreted this language—with its reference to "*the* 'personal injury'"—to require that the relationship between care-related damages and the injury be direct.[83]

---

[78] *See id.* at 241, 243.

[79] *Id.* at 243.

[80] *Rite Aid*, 270 A.3d at 241, 249-50.

[81] *Id.* at 249; *see also id.* at 250 (explaining that the underlying lawsuit must assert "bodily injury to the plaintiff, and damages sought because of that specific bodily injury").

[82] *See id.* at 243.

[83] *See id.* at 241, 252-54.

The Court then implemented its interpretation of the policy through a workable test. Under that test, "damages for bodily injury are covered losses only when asserted by 1) the person injured, 2) a person recovering on behalf of the person injured, or 3) people or organizations that treated the person injured or deceased, who demonstrate the existence of and cause of the injuries."[84] These "[t]hree classes of plaintiffs" are those that assert damages with a sufficiently direct relationship to the injury as required by the policy language.[85]

Applying this test, the Court determined that the governmental entity plaintiffs did not assert damages that were sufficiently tethered to bodily injury. As a general matter, that was because the plaintiffs sought recovery for "only their own economic damages," not for any individual bodily injury.[86] Turning to the three classes specifically, the first did not apply because governmental entities could not themselves have suffered a bodily injury.[87] The second did not apply either, because the plaintiffs did not bring "personal injury damage claims for or on behalf of individuals who suffered or died from the allegedly abusive prescription dispensing practices" and instead expressly disclaimed such damages.[88] Nor did the third apply.

---

[84] *See id.* at 247.

[85] *See Rite Aid*, 270 A.3d at 241, 247.

[86] *See id.* at 241, 252-53.

[87] *See id.* at 248.

[88] *See id.* at 246.

As the Court explained, to trigger coverage, the underlying plaintiff must "seek[] to recover its costs incurred in caring for bodily injury" of a "specific individual[]."[89] The governmental entities did not direct their claims "to an individual injury but to a public health crisis," and their damages did "not depend on proof of bodily injuries" but on their "own aggregate economic injury."[90] The Court noted that "[i]f the [plaintiff] [c]ounties ran public hospitals and sued Rite Aid on behalf of these hospitals to recover their actual, demonstrated costs of treating bodily injuries caused by opioid overprescription, the . . . Policy would most likely be triggered," but that was not the case there.[91] Accordingly, the claims were not covered under the policy.

In holding that there was no duty to defend, the Court recognized that such a duty is "broad" and applies based on "the factual allegations of the pleadings," even if they are in dispute.[92] But there is no duty to defend "[i]f the complaint does not allege damages covered by the insurance policy."[93] Because the underlying actions contained "no claims for personal injury—just facts that support the economic loss claims," they were not covered and there was thus no duty to defend.[94]

---

[89] *See id.* at 252-53.

[90] *See id.*

[91] *Rite Aid*, 270 A.3d at 253-54.

[92] *See id.* at 250.

[93] *Id.* at 252.

[94] *Id.* at 250.

2. *CVS*

In *CVS*, our Supreme Court considered two Superior Court rulings applying *Rite Aid* to additional policies and opioid lawsuits issued to and concerning CVS Pharmacy.[95] On summary judgment, the Superior Court ruled that the insurers had no duty to defend or indemnify.[96] Upon review of the policy language and underlying lawsuits' allegations, the Supreme Court affirmed.[97] In affirming, the Court considered and rejected numerous arguments made by CVS for coverage.

First, after determining that the policies contained "the same 'because of' language" that precluded coverage in *Rite Aid*, the Court held that the policies' pharmacist and druggist endorsements did not change the result.[98] Those endorsements, the Court explained, "d[id] not . . . modify the requirement that damages . . . must be 'because of' bodily injury or property damage."[99] Rather, they modified only the additional requirement that the injury be "caused by an 'occurrence.'"[100] The endorsements thus did not change that there was no coverage

---

[95] *See CVS Supreme Court*, 346 A.3d at 86.

[96] *See id.* at 88-90 (first citing *In re CVS Opioid Ins. Litig.* (*CVS Superior Court I*), 301 A.3d 1194, 1198, 1212-17 (Del. Super. 2023); and then citing *In re CVS Opioid Ins. Litig.*, 2024 WL 3882607, at *6-8 (Del Super. Aug. 20, 2024)).

[97] *See id.* at 86

[98] *Id.* at 91-92.

[99] *Id.* at 91.

[100] *Id.* at 91-92.

because the underlying lawsuits did not assert damages "'because of' bodily injury."[101]

Second, the Court rejected CVS's argument that the underlying lawsuits alleged plaintiffs suffered or provided treatment for injuries that were sufficiently "specific and individualized" to warrant coverage.[102] The Court considered allegations in the underlying suits "specifying the numbers of residents treated, the medication provided, the number of doses, and the cost per dose" and concerning "costs incurred to treat the injured and care for the deceased."[103] The Court also considered allegations made by counties "seeking to recover damages on behalf of public hospitals," "other hospital[s] and medical provider[s]," and "third-party payor[s]."[104] These plaintiffs alleged, for example, that they have "treated, and continue to treat, numerous patients for opioid-related conditions" and "paid 'significant costs for opioid addiction treatment for covered members,'" as well as that "opioid-dependent patients routinely occupy beds in hospitals, including hospitals operated by [the plaintiffs]."[105] These allegations were insufficient to

---

[101] *CVS Supreme Court*, 346 A.3d at 91-92.

[102] *See id.* at 92, 94.

[103] *Id.* at 92-93.

[104] *See id.* at 97-100.

[105] *See id.* (alteration in original).

trigger coverage, the Court held, because they sought recovery for generalized economic losses, rather than for "specific and individualized bodily injury."[106]

Third, the Court considered whether the lawsuits could prompt coverage "as derivative actions brought by governments on behalf of individuals who suffered bodily injury" and held that they could not.[107] Although certain of the lawsuits alleged they were brought "on behalf of" residents or citizens generally, they did not seek damages for injuries to any "specific individuals" and thus were not covered.[108]

Fourth, the Court addressed CVS's contention that coverage should apply to the extent the underlying lawsuits brought claims for property damage.[109] As CVS pointed out, the Court in *Rite Aid* articulated its "individualized, specific" standard only in the context of bodily injury claims.[110] That standard should not apply to property damage, CVS argued, because under the policies, bodily injury and property damage "are different coverages with different allegations required to trigger them."[111] The Court disagreed. It saw "no reason to treat 'bodily injury' and

---

[106] *See id.* at 93-94, 97-100.

[107] *CVS Supreme Court*, 346 A.3d at 94-95.

[108] *Id.*

[109] *Id.* at 95.

[110] *Id.*

[111] *Id.*

'property damage' differently for coverage purposes."[112] As the Court noted, those terms "appear side-by-side in several [policy] provisions" and both "are subject to the policies' 'because of' and 'occurrence' requirements."[113] Applying the same standard to property damage as bodily injury, the Court held that the suits failed to trigger coverage because they did not "seek[] recovery for actual, specific, and individualized property damage."[114]

Last, the Court addressed CVS's argument regarding the duty to indemnify. According to CVS, it was "premature" for the Superior Court to grant the insurers summary judgment on indemnification because the facts of the underlying suits had not yet been established.[115] Again, the Court disagreed. It noted that, "[i]n general, 'an insurer's duty to defend is broader than the substantive coverage afforded under its policies" but that "[u]nder certain limited circumstances . . . an insurer may ultimately need to indemnify the insured even though it had no duty to defend the claims."[116] The Court then explained that coverage was unavailable under both duties based on the Superior Court's determination that "the *nature* of the claims and

---

[112] *Id.*

[113] *CVS Supreme Court*, 346 A.3d at 95.

[114] *Id.* at 96.

[115] *Id.* at 100.

[116] *Id.* (quoting *Charles E. Brohawn & Bros., Inc. v. Emps. Com. Union Ins. Co.*, 409 A.2d 1055, 1058 (Del. 1979)).

the relief sought by the underlying plaintiffs do not fall within the scope of coverage."[117] The Court also noted that the insurers had conceded that "to the extent that the pleadings or underlying lawsuits unexpectedly transform into ones alleging damage from specific and individualized bodily injury and property damage . . . CVS could tender a new claim for coverage at that time."[118]

B. THERE IS NO CONFLICT BETWEEN DELAWARE LAW, ON ONE HAND, AND THE LAW OF CALIFORNIA OR IDAHO, ON THE OTHER.

Put simply, if Delaware law applies here, *Rite Aid* and *CVS* do not bode well for Albertsons. Accordingly, Albertsons argues that Delaware law does not apply and that the Court must instead look to the law of California or Idaho.

In Delaware, a choice-of-law analysis has three steps.[119] First, the Court "determin[es] if the parties made an effective choice of law through their contract."[120] Second, if there has been no contractual choice of law, the Court must

---

[117] *Id.* at 101 (citing *CVS Superior Court I*, 301 A.3d at 1216).

[118] *Id.*

[119] *See Sycamore P'rs Mgmt., L.P. v. Endurance Am. Ins. Co.*, 2021 WL 761639, at *4 (Del. Super. Feb. 26, 2021) (citing *Pfizer Inc. v. Arch Ins. Co.*, 2019 WL 3306043, at *6 (Del. Super. July 23, 2019), *abrogated on other grounds by*, *First Solar, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 274 A.3d 1006 (Del. 2022)). "As the forum state, Delaware applies its own choice-of-law rules." *Arch Ins. Co. v. Murdock*, 2018 WL 1129110, at *8 (Del. Super. Mar. 1, 2018) (citing *Shook & Fletcher Asbestos Settlement Tr. v. Safety Nat'l Cas. Corp.*, 2005 WL 2436193, at *2 (Del. Super. Sept. 29, 2005), *aff'd*, 909 A.2d 125 (Del. 2006)).

[120] *Certain Underwriters at Lloyds, London v. Chemtura Corp.*, 160 A.3d 457, 464 (Del. 2017) (citing Restatement (Second) of Conflict of Laws § 186 (Am. Law Inst. 1971)).

"determin[e] if there is an actual conflict between the laws of the different states each party urges should apply."[121] Third, if there is an actual conflict, the Court will "analyz[e] which state has the most significant relationship" to the dispute.[122] Here, the Policies contain no contractual choice of law.[123] The parties' dispute centers on the second step.

In the second step, Delaware courts consider whether "application of the competing laws yield[s] the same result."[124] If it does, "then no genuine conflict exists 'and the Court should avoid the choice-of-law analysis altogether.'"[125] There is likewise no conflict where "one state's laws do not address a particular issue."[126] In that case, "the Court should apply the settled law."[127]

In prior opioid litigation coverage lawsuits, Delaware courts have generally found choice-of-law analyses unnecessary because there was no conflict with other

---

[121] *Id.* (citing *Deuley v. DynaCorp Int'l, Inc.*, 8 A.3d 1156, 1161 (Del. 2010)).

[122] *Id.*

[123] *See* Albertsons's Op. Br. at 9.

[124] *CVS Superior Court I*, 301 A.3d at 1209 (quoting *Arch Ins.*, 2018 WL 1129110, at *8).

[125] *Vichi v. Koninklijke Philips Electronics, N.V.*, 85 A.3d 725, 773 (Del. Ch. 2014) (first quoting *Deuley*, 8 A.3d at 1161; and then citing *Great Am. Opportunities, Inc. v. Cherrydale Fundraising LLC*, 2010 WL 338219, at *8 (Del. Ch. Jan. 29, 2010)).

[126] *CVS Superior Court I*, 301 A.3d at 1209 (citing *Arch Ins.*, 2018 WL 1129110, at *8).

[127] *Id.* (quoting *Arch Ins.*, 2018 WL 1129110, at *8).

states' laws. Although the Supreme Court was not presented with the issue in *CVS*, the Superior Court there applied Delaware law after finding no conflict with Rhode Island.[128] In *Rite Aid*, the Supreme Court found no conflict with Pennsylvania, despite noting that the Pennsylvania Supreme Court in one case "expressed some doubt about" an interpretation of "because of bodily injury" that excluded damages for contribution to a general fund rather than for individuals, because that expression of doubt was not the basis for the Pennsylvania Supreme Court's decision.[129] And in *AmerisourceBergen*, this Court followed *Rite Aid* in finding no conflict with Pennsylvania and applied the law of Delaware as the forum state.[130]

Here, as explained further below, there is no conflict between Delaware law and the law of California or Idaho, which Albertsons urges the Court to apply. It is evident that Albertsons disagrees with *Rite Aid* and *CVS*.[131] Albertsons does not,

---

[128] *See CVS Superior Court I*, 301 A.3d at 1209-11 (finding that CVS's alleged conflict was based on a misreading of Rhode Island caselaw).

[129] *See Rite Aid*, 270 A.3d at 244-45, 251 (citing *Am. & Foreign Ins. Co. v. Jerry's Sport Ctr., Inc.*, 2 A.3d 526, 531, 540-42 (Pa. 2010)).

[130] *See In re AmerisourceBergen Corp. (n/k/a Cencora) Del. Ins. Litig.*, 2024 WL 5203047, at *8 (Del. Super. Dec. 23, 2024).

[131] *See, e.g.*, Albertsons's Op. Br. at 12-13 (contending *Rite Aid* "insert[ed] a requirement . . . which is neither included in the policy language nor practical for claims brought by entity plaintiffs" and "effectively established a blanket rule that nullifies coverage extended to claims made by 'organizations'"); Albertsons's Ans. Br. at 7 (asserting that *Rite Aid*'s holding renders certain coverage "illusory"); Albertsons's Reply at 3 (calling the rule applied in *Rite Aid* and *CVS* "a novel creation of the Delaware Supreme Court" that "no other jurisdiction" applies); *see*

however, identify California or Idaho authority that conflicts with those Delaware Supreme Court decisions. Rather, California and Idaho apply the same insurance law principles that the Delaware Supreme Court applied in *Rite Aid* and *CVS*. Albertsons now asks this Court to "predict that," based on the same principles, California or Idaho "will reject Delaware's approach,"[132] or, in other words, will disagree with the Delaware Supreme Court. Such a prediction is unwarranted.[133]

1. CALIFORNIA AND IDAHO APPLY THE SAME INSURANCE LAW PRINCIPLES AS DELAWARE.

Despite Albertsons's contention that it is a "novel creation" or a "recently developed" "carve-out,"[134] the Delaware Supreme Court did not conjure its *Rite Aid* ruling from thin air. Rather, the Court based that ruling, and *CVS* applying it, on well-settled principles of insurance law. The courts of California and Idaho apply those same relevant principles.[135]

---

also, e.g., Albertsons's Ans. Br. at 32 (contending that the Insurers' position, based on *Rite Aid*, "ignores foundational principles of insurance law").

[132] *See Mills Ltd. P'ship v. Liberty Mut. Ins. Co.*, 2010 WL 8250837, at *4 (Del. Super. Nov. 5, 2010) (declining to find actual conflict where doing so would require prediction that another state would rule differently than Delaware).

[133] *See Northrop Grumman Innovation Sys., Inc. v. Zurick Am. Ins. Co.*, 2021 WL 347015, at *8 (Del. Super. Feb. 2, 2021) ("Delaware courts don't provoke an actual-conflict analysis on hypotheticals or guesswork. We instead invoke 'settled law.'" (first citing *Mills*, 2010 WL 8250837, at *4; and then quoting *Arch Ins.*, 2018 WL 1129110, at *8)).

[134] *See* Albertsons's Ans. Br. at 9; Albertsons's Reply at 3.

[135] At oral argument, Albertsons conceded that "general principles of Delaware insurance law don't seem to conflict with California or Idaho law." *See* Jan. 14,

For example, like Delaware, California and Idaho interpret insurance policies by looking first to the "plain" or "ordinary" meaning of the policies' language, construing the policies "as a whole."[136] All three states resolve ambiguities "in favor of the insured."[137] Provisions providing or expanding coverage are "interpreted broadly so as to afford the greatest possible protection to the insured," whereas, "exclusionary clauses are interpreted narrowly against the insurer."[138] That rule also

---

2026 Hearing Tr. at 52:3-4. Instead of identifying a conflict, Albertsons suggested that *Rite Aid* and *CVS* are erroneous, contending that those rulings applied "anomalous reasoning" and "stretched" the relevant insurance law rules. *See id.* at 51:19-52:2, 52:5-10.

[136] *See Waller v. Truck Ins. Exch.*, 900 P.2d 619, 627 (Cal. 1995) (citations omitted); *McFarland v. Liberty Ins. Corp.*, 434 P.3d 215, 219, 222 (Idaho 2018) (citations omitted); *accord Rite Aid*, 270 A.3d at 245 (explaining that the court "should first seek to determine the parties' intent from the language of the insurance contract itself," giving effect to the terms' "plain, ordinary meaning" (citations omitted)).

[137] *See Producers Dairy Delivery Co. v. Sentry Ins. Co.*, 718 P.2d 920, 924 (Cal. 1986) (citations omitted); *Foremost Ins. Co. v. Putzier*, 627 P.2d 317, 321 (Idaho 1981) (citation omitted); *accord Rite Aid*, 270 A.3d at 252 ("[A]n insurance policy is typically interpreted against the insurer when the policy is ambiguous . . . .").

[138] *MacKinnon v. Truck Ins. Exch.*, 73 P.3d 1205, 1213 (Cal. 2003) (citation modified); *Farm Bureau Ins. Co. of Idaho v. Kinsey*, 234 P.3d 739, 743 (Idaho 2010) (citation omitted); *accord RSUI Indem. Co. v. Murdock*, 248 A.3d 887, 906 (Del. 2021) (explaining that "[i]nsurance contracts should be interpreted as providing broad coverage to align with the insured's reasonable expectations," whereas "[c]ourts will interpret exclusionary clauses with 'a strict and narrow construction'" (citations omitted)).

applies to endorsements broadening coverage, which are interpreted together with the policy.[139]

The three states are likewise in accord regarding the duty to defend. That duty is "broader than the duty to indemnify."[140] It arises when there is a "potential" or "possibility" for coverage.[141] "In general, doubt as to whether an insurer owes a duty to defend 'must be resolved in favor of the insured.'"[142] If the duty to defend arises

---

[139] *See Waller*, 900 P.2d at 627 ("[C]ourts must consider both the . . . language in the policy, and the endorsements broadening coverage, if any, included in the policy terms." (citation omitted)); *Wright v. Johnson*, 610 P.2d 567, 570 (Idaho 1980) ("In assessing the reach of insurance policies we are bound by law to consider both policy and endorsements . . . ." (citation omitted)); *accord Phila. Indem. Ins. Co. v. Bogel*, 269 A.3d 992, 1005 (Del. 2021) ("Endorsements to a policy must be read together with the policy as one document. They become part of the contract to the same extent as if they were embodied within it." (citation omitted)).

[140] *See Scottsdale Ins. Co. v. MV Transp.*, 115 P.3d 460, 466 (Cal. 2005) (citation omitted); *Hoyle v. Utica Mut. Ins. Co.*, 48 P.3d 1256, 1264 (Idaho 2002); *accord CVS Supreme Court*, 346 A.3d at 100 ("In general, 'an insurer's duty to defend is broader than the substantive coverage afforded under its policies.'" (quoting *Charles E. Brohawn & Bros.*, 409 A.2d at 1058)).

[141] *See Scottsdale*, 115 P.3d at 466, 468 (citations omitted); *Hoyle*, 48 P.3d at 1264 (citation omitted); *accord Smith v. Liberty Mut. Ins. Co.*, 201 A.3d 555, 561 (Del. Super. 2019) (explaining that duty to defend "arises when the allegations of the underlying complaint show a *potential* that liability within coverage will be established" and insurer will be excused "*only* if it can be determined as a matter of law that there is no possible factual or legal basis upon which the insurer might eventually be obligated to indemnify the insured" (citation omitted)); *see also Rite Aid*, 270 A.3d at 245 n.21 (citing *Smith* as "reciting Delaware's 'potential' for coverage standard for duty to defend").

[142] *See Hartford Cas. Ins. Co. v. Swift Distrib., Inc.*, 326 P.3d 253, 258 (Cal. 2014) (citations omitted); *Pendlebury v. W. Cas. & Sur. Co.*, 406 P.2d 129, 134 (Idaho 1965) (citations omitted); *accord ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 73 (Del. 2011) ("[W]here there is some doubt as to whether the complaint against

as to one claim, the insurer must then "defend against all of the claims involved in the action, both covered and noncovered."[143] However, as each state recognizes, "the duty to defend is contractual," and "the insurer has not contracted to pay defense costs for claims that are not even potentially covered."[144]

Applying the same principles, there is no reason to believe that California or Idaho would reject Delaware's rulings in *Rite Aid* and *CVS*. As explained in the next sub-part, Albertsons does not show a conflict through more specific authority either.

---

the insured alleges a risk insured against, that doubt should be resolved in favor of the insured . . . ." (citation omitted)).

[143] *See Horace Mann Ins. Co. v. Barbara B.*, 846 P.2d 792, 795-96 (Cal. 1993); *Hoyle*, 48 P.3d at 1260-61 (citations omitted) (duty to defend arises when complaint's allegations, "in whole or in part," reveal potential for coverage); *accord ConAgra Foods*, 21 A.3d at 73 ("[I]f even one count or theory alleged in the complaint lies within the policy coverage, the duty to defend arises." (citation omitted)).

[144] *See Scottsdale*, 115 P.3d at 466 (citation modified); *Swift Distrib.*, 326 P.3d at 258 ("While the duty to defend is broad, it is 'not unlimited; it is measured by the nature and kinds of risks covered by the policy.'" (citation omitted)); *Hoyle*, 48 P.3d at 1264-65 (explaining that "[i]t makes little sense to require an insurer to defend a lawsuit simply because a complaint, with no covered claims, could potentially be amended to include covered claims," because under that rule "an insurer would be required to defend every lawsuit regardless of the allegations"); *accord CVS Supreme Court*, 346 A.3d at 100 ("The duty to defend 'is limited to suits which assert claims for which it has assumed liability under the policy. . . . The test is whether the complaint alleges a risk within the coverage of the policy.'" (alteration in original) (quoting *Charles E. Brohawn & Bros.*, 409 A.2d at 1058)).

2. ALBERTSONS DOES NOT IDENTIFY CALIFORNIA OR IDAHO LAW THAT CONFLICTS WITH DELAWARE'S INTERPRETATION OF "BECAUSE OF BODILY INJURY" OR "PROPERTY DAMAGE."

In a choice-of-law analysis, "the party seeking the application of foreign law has . . . the burden of adequately proving the substance of the foreign law."[145] Of the California and Idaho authorities Albertsons cites, none present a conflict with Delaware's interpretation of "because of bodily injury" or "property damage." Moreover, certain California authority, though not conclusive, appears to support the principles underlying *Rite Aid* and *CVS*.

a. CALIFORNIA

On California law, Albertsons first cites *AIU Insurance Co. v. Superior Court* ("*AIU*").[146] There, government agencies had brought suit under the Comprehensive Environmental Response and Compensation and Liability Act (CERCLA), alleging that a company was "responsible for the contamination of 79 different hazardous waste disposal sites" and the surrounding environment.[147] The company sought general liability insurance coverage for cleanup of the sites and other related

---

[145] *Vichi*, 85 A.3d at 765 (quoting *Republic of Pan. v. Am. Tobacco Co.*, 2006 WL 1933740, at *4 (Del. Super. June 23, 2006), *aff'd sub nom.*, *State of São Paulo of the Federative Republic of Braz. v. Am. Tobacco Co.*, 919 A.2d 1116 (Del. 2007)).

[146] 799 P.2d 1253 (Cal. 1990); *see* Albertsons's Op. Br. at 13; Albertsons's Ans. Br. at 7.

[147] *AIU*, 799 P.2d at 1260.

"'response' costs."[148] The policies provided coverage for "damages because of . . . property damage to which this policy applies."[149] The California Supreme Court considered whether government response costs were covered.

First, the court determined that the response costs were "damages."[150] The intermediate appellate court had held, among other things, that they were not because the government agencies had no "proprietary interest in the property sought to be cleaned up."[151] The Supreme Court disagreed, holding that costs of "agency efforts specifically directed at cleaning up property" and related "out-of-pocket expenditures" were damages regardless of whether the government "has an ownership interest" in that property.[152]

Second, the court held that the company's response cost reimbursement was "because of" property damage.[153] It did so "[f]or similar reasons" as its "damages" holding.[154] The court further explained response costs could be "because of" property damage regardless of "whether motivations other than protection of

---

[148] *Id.* at 1258.

[149] *See id.* at 1259 (alteration in original). The language of some policies' coverage clauses differed slightly but the court treated each as functionally identical.

[150] *See id.* at 1267, 1275.

[151] *See id.* at 1261.

[152] *See id.* at 1269-70.

[153] *See AIU*, 799 P.2d at 1279.

[154] *Id.*

property—for example, protection of the health of persons living near hazardous waste sites—also contribute to the agencies' pursuit of statutory relief" against the company.[155] That was because "[w]hatever [the agencies'] dominant motive, the event precipitating their legal action is contamination of property."[156]

AIU does not conflict with Delaware law. *Rite Aid* and *CVS* did not turn on whether the underlying suits sought "damages"—there was little question that they did.[157] Nor did those rulings turn on the governmental entities' "motivations" or whether they had a "proprietary interest." Rather, the rule of *Rite Aid* and *CVS* asks whether the underlying complaints seek recovery for "specific and individualized" treatment of bodily injuries or property damage.[158] With respect to property, the Court in *CVS* explained that none of the underlying lawsuits "allege damage to any specific property."[159] In *AIU*, by contrast, the underlying complaints were based on

---

[155] *Id.*

[156] *Id.*

[157] *See, e.g.*, *CVS Supreme Court*, 346 A.3d at 98 (noting that exemplar complaint "alleges . . . monetary damages"); *Rite Aid*, 270 A.3d at 241 ("[H]ere, the plaintiffs, governmental entities, sought to recover . . . economic damages.").

[158] *See, e.g.*, *CVS Supreme Court*, 346 A.3d at 95-97; *Rite Aid*, 270 A.3d at 250-51, 253 (explaining requirement of damages because of a "specific bodily injury" or "for providing care to an injured individual").

[159] *CVS Supreme Court*, 346 A.3d at 96.

damage to specific properties: 79 contaminated hazardous waste disposal sites.[160] *AIU* thus fits within the rule of *Rite Aid* and *CVS*.

Next, Albertsons relies on *AIU Insurance Co. v. McKesson Corp.* ("*McKesson*"),[161] an order of a federal district court sitting in California. There, applying California law, the court considered whether insurers had a duty to defend a pharmaceutical distributor against opioid lawsuits like those at issue here.[162] Relying primarily on *AIU*, the court explained that it was "not persuaded that the California Supreme Court would agree with *Rite Aid*'s interpretation of the insurance policy language" and determined that the lawsuits sought damages "because of bodily injury."[163] The court, however, held that there was no duty to defend on grounds that the lawsuits did not meet the policies' "occurrence" requirement.[164] The Ninth Circuit affirmed summary judgment for the insurers on "occurrence" grounds and declined to reach the "because of bodily injury" issue.[165]

Albertsons suggests that the *McKesson* district court's analysis of "because of bodily injury" shows a conflict with Delaware law. It does not. The *McKesson* court

---

[160] *See AIU*, 799 P.2d at 1260.

[161] 598 F. Supp. 3d 774 (N.D. Cal. 2022); *see* Albertsons's Op. Br. at 13-14; Albertsons's Ans. Br. at 7, 23, 30.

[162] *See McKesson*, 598 F. Supp. 3d at 779-81, 783-84.

[163] *Id.* at 786-87.

[164] *See id.* at 779, 798-99.

[165] *AIU Ins. Co. v. McKesson Corp.*, 2024 WL 302182, at *4 (9th Cir. Jan. 26, 2024).

pointed to *AIU*'s observation that "when [government plaintiffs] seek reimbursement of their response costs, the basis of the claim is harm done to the public fisc."[166] It further pointed out that *AIU* held that "such harm constitutes 'loss' or 'detriment,'" and "reimbursement by responsible parties is monetary 'compensation' for such loss."[167] Those premises—from California's Supreme Court—state California law. But they create no conflict because *Rite Aid* is consistent with them. The Court in *Rite Aid* similarly recognized that government plaintiffs were seeking reimbursement or "compensation" for their own general economic damages and that such harm was for "losses."[168] The purported conflict arises only from the conclusion the *McKesson* court drew from those premises: that the governmental plaintiffs in opioid litigation sought damages "'because of' bodily injury."[169] What *Rite Aid* recognized, and *McKesson* did not, is that that conclusion does not follow. Just because harm is "done to the public fisc" and is a "loss" or "detriment" does not mean it is "because of" bodily injury. Rather, "because of" requires a particular

[166] *McKesson*, 598 F. Supp. 3d at 787 (alteration in original) (quoting *AIU*, 799 P.2d at 1269).

[167] *Id.* (quoting *AIU*, 799 P.2d at 1269).

[168] *See Rite Aid*, 270 A.3d at 248.

[169] *McKesson*, 598 F. Supp. 3d at 787 (stating premises and concluding that "[t]hus, the costs of responding to bodily injury are incurred 'because of' bodily injury").

relationship between the loss and a bodily injury.[170] The *McKesson* court's conclusion, which is in essence a prediction about how the California Supreme Court might rule, does not create a conflict.[171]

Albertsons cites no other case to suggest a conflict with California law and has failed to meet its burden to show a conflict.

The analysis might end there. It bears mention, however, that the Insurers cite three California Supreme Court decisions as analogous to *Rite Aid*.[172] First, *Geddes & Smith, Inc. v. St. Paul Mercury Indemnity Co.*[173] concerned an insurance policy that covered damages "because of injury to or destruction of property."[174] The court considered the extent to which the policy covered a contractor's costs of replacing

---

[170] *See Rite Aid*, 270 A.3d at 248-50 (explaining that "because of" requires that damages are sought for "[a] specific bodily injury," rather than damages that merely "relate to" or have "some linkage" to bodily injuries).

[171] *See Northrop Grumman*, 2021 WL 347015, at *8. Moreover, because the *McKesson* court held that there was no duty to defend on other grounds, its interpretation of "because of bodily injury" is arguably dictum, which would provide further reason to find it "without precedential effect." *See In re MFW S'holders Litig.*, 67 A.3d 496, 521 (Del. Ch. 2013) (explaining that dictum is "judicial statements on issues that 'would have no effect on the outcome of [the] case'" (quoting *Brown v. United Water Del., Inc.*, 3 A.3d 272, 276 & n.17 (Del. 2010)); *see also People v. Yarbrough*, 281 P.3d 68, 71 (Cal. 2012) (considering court's prior statement "dictum" because it "was not necessary to its holding").

[172] *See* Insurers' Op. Br. at 25-26; Insurers' Ans. Br. at 20-21; Insurers' Reply at 18-19.

[173] 334 P.2d 881 (Cal. 1959) ("*Geddes I*").

[174] *Id.* at 883.

defective doors it had installed in houses.[175] It determined that damages to the houses themselves were covered but that "other costs of handling the defective doors and their replacements, loss of profits, and loss of goodwill" were not.[176] That was because "the word property" in the policies "refers to physical or tangible property," not to "goodwill or a business entity."[177]

Second, in a follow-up *Geddes* case, the court held that the same policies provided coverage for both "wages of the carpenters and other men who actually worked on the houses" and "employment of supervisors, secretaries, and administrators" that was "required to carry out the repairs."[178] It so held because such overhead costs represented "an essential expense incurred in the performance of the work" and "provide[d] a measure of the dollar amount of the injury to the houses."[179]

Third, in *Hogan v. Midland National Insurance Co.*, the court explained that the *Geddes* cases "made it plain that only damages to physical or tangible property were included in the policy" and further "ma[de] . . . clear that loss from damage to

---

[175] *See id.* at 882-83.

[176] *Id.* at 885.

[177] *Id.*

[178] *Geddes & Smith, Inc. v. St. Paul Mercury Indem. Co.*, 407 P.2d 868, 873 (Cal. 1965).

[179] *Id.*

intangibles is recoverable only to the extent that it provides a measure of damages to physical property which is within the policy's coverage."[180] Applying these rules, the *Hogan* court held that certain costs paid in an underlying suit were not covered because they were "not the result of injury to physical property."[181]

To be sure, these cases are not directly on point. They do, however, support the principle that damages are only "because of injury to or destruction of property,"[182] where they provide a measure of damages to specific property. That principle aligns with the rule of *Rite Aid* and *CVS* that damages are only "because of bodily injury" or "property damage" where they are attributable to specific injuries or property. That alignment provides further indication that there is no conflict between California and Delaware law.[183]

---

[180] 476 P.2d 825, 830 (Cal. 1970).

[181] *See id.*

[182] *See Geddes I*, 334 P.2d at 883-84 (quoting policy language).

[183] Even if there were a conflict with California law, it is far from clear that would be the appropriate law to apply. A conflict would trigger a choice-of-law analysis under the "most significant relationship" test set forth in Restatement (Second) of Conflict of Laws. *See Chemtura*, 160 A.3d at 464-65 (explaining Second Restatement framework). Applying that test, the Court in *Chemtura* held that the appropriate law to apply to a nationwide insurance program was the law of the state where the insured company was headquartered at the outset of the program. *See id.* at 459-60, 470-71. Here, the earliest relevant policies are those issued to the Albertsons Entities, headquartered in Idaho. The only policies issued in California were to Safeway prior to its acquisition by the Albertsons Entities in 2015. *See* D.I. 326, App. A to Insurers' Op. Br. (listing policies issued to Albertsons with policy periods spanning 1994 through 2023); D.I. 375, Am. App. B to Insurers' Op. Br. (listing policies issued to Safeway with policy periods spanning 2000 through 2015);

b. IDAHO

Turning to Idaho, Albertsons points to no case as conflicting with *Rite Aid* or *CVS*. Instead, Albertsons cites the Idaho Tort Claims Act, which it says "permits governmental entities to be held liable for tortious conduct . . . and allows recovery of both economic and non-economic damages, including medical expenses and other tangible losses."[184] But it is irrelevant what damages can be recovered from governmental entities when they are held liable. Here, in the underlying suits, governmental entities are plaintiffs seeking to hold others liable.

Albertsons next cites the statute as a whole to contend it "does not exclude governmental plaintiffs from seeking reimbursement for costs arising from bodily injury; rather, it recognizes such damages as compensable when resulting from the negligence of others."[185] But the statute is "a legislative waiver of the State of Idaho's sovereign immunity."[186] It has no bearing on the meaning of "because of bodily injury" in insurance policies and does not create a conflict on that point.[187]

Albertsons's Op. Br. at 15. Idaho law thus appears more likely applicable than California under the "most significant relationship" test. As explained in this sub-part, Albertsons has failed to show that California differs from Delaware in its interpretation of "because of bodily injury" or "property damage." Yet, as explained below, Albertsons offers even less to differentiate Idaho from Delaware.

[184] Albertsons's Ans. Br. at 8 (citing Idaho Code Ann. § 6-903(1)).

[185] *Id.* (citing Idaho Code Ann. §§ 6-901 through 6-929).

[186] *Athay v. Stacey*, 196 P.3d 325, 337 (Idaho 2008) (citation omitted).

[187] Albertsons cites another Idaho statute, which it says "defines 'economic damages' to include 'objectively verifiable monetary loss,' such as 'medical expenses.'"

3. ALBERTSONS HAS NOT IDENTIFIED ANY OTHER DIFFERENCES THAT WOULD YIELD A DIFFERENT RESULT.

Unable to identify a conflict regarding the interpretation of "because of bodily injury" or "property damage," Albertsons contends California and Idaho law differ from Delaware in other ways. Even if these were genuine differences, they would not yield a different result, meaning a conflict analysis is not appropriate.[188]

First, Albertsons argues that, when determining whether an insurer has a duty to defend, California and Idaho permit courts to look to evidence extrinsic to the underlying complaint, whereas Delaware does not.[189] Albertsons, however, has not identified any extrinsic evidence that would change the result. Albertsons identifies an expert report that, according to Albertsons, "quantif[ies] past and future opioid Medicaid expenditures which the underlying plaintiff sought to obtain through subrogation in their action."[190] But that report identifies only generalized economic harm. Although it uses Medicaid data for "individuals" and summarizes various

---

Albertsons's Ans. Br. at 8 (citing Idaho Code Ann. § 6-1601(3)). That statute likewise has no bearing on the meaning of "because of bodily injury" in insurance policies.

[188] *See CVS Superior Court I*, 301 A.3d at 1209 (explaining that court will not conduct conflict analysis where "application of the competing laws [would] yield the same result" (quoting *Arch Ins.*, 2018 WL 1129110, at *8)).

[189] *See* Albertsons's Op. Br. at 11.

[190] Albertsons's Op. Br. at 25 (citing D.I. 331, 334, Declaration of Gretchen N. Miller in Support of Albertsons's Mot. for Partial Summ. J. (hereinafter "Miller Decl.") ¶ 3, Ex. 3, at 26); *see also* Albertsons's Reply at 4 (identifying opening brief page 25 as the "extrinsic evidence relevant to the duty to defend" that Albertsons submitted).

types of treatment,[191] the report does so to determine New Mexico's overall future expenditures and does not identify any particular treatment that the state provided to a specific individual.[192] It calculates the type of generalized harm that is insufficient under the rules of *Rite Aid* and *CVS*,[193] with which California and Idaho have not disagreed.[194] Albertsons also points to two declarations submitted with its motion, one from its counsel "attesting to the status of the underlying cases" and the other from a former Safeway employee "addressing the importance of coverage for pharmacy operations."[195] But Albertsons likewise fails to show that either of these declarations would support a different result.[196]

---

[191] *See* D.I. 331, 334, Miller Decl., Ex. 3, at 3-5, 9, 11-13.

[192] *See id.* at 5, 26 (explaining that "[t]he purpose of my study is to calculate future expenditures by the State of New Mexico for the abatement of the selected harms caused by the opioid crisis in New Mexico from 2023 to 2042," and calculating "$5,660,041,036 in total future expenditures"). The report's use of the term "individuals" is also in the context of describing "cohorts of individuals," without identifying any specific individuals within those cohorts. *See id.* at 16.

[193] *See CVS Supreme Court*, 346 A.3d at 100 (holding lawsuits not "because of bodily injury" because they "concern aggregate economic harm"); *Rite Aid*, 270 A.3d at 252-53 (requiring underlying plaintiff to have itself "treated an individual with an injury").

[194] *See supra* § IV.B.2.

[195] Albertsons Reply at 4 (first citing Miller Decl. ¶¶ 2-6; and then citing D.I. 332, Declaration of Gail Kiyomura in Support of Albertsons's Mot. for Partial Summ. J. (hereinafter "Kiyomura Decl.") ¶¶ 4-6).

[196] In addition to referencing the expert report addressed above, one declaration provides general status updates on the Opioid Lawsuits—i.e., whether they are active or have been settled, dismissed, or stayed. *See* Miller Decl. ¶¶ 2-8. There is no reason why such general updates would change the result. The other declaration

Second, Albertsons contends that "California and Idaho law recognize that a duty to defend may arise based on subsequent developments."[197] But although Albertsons suggests that most of the Opioid Lawsuits are "undeveloped" and others are "in the discovery phase," it does not identify what developments would change the outcome, let alone show that such developments have occurred.[198] Moreover, the Idaho and California cases Albertsons cites at most indicate that, if complaints in the Opioid Lawsuits were amended to assert covered claims, Albertsons could seek coverage at that time.[199]

---

states generally that it was the former Safeway employee's "intention and expectation that the insurance policies I procured provided coverage for pharmacy-related business activities and the risks associated therewith." Kiyomura Decl. ¶ 6. But it is unclear how an insured's after-the-fact declaration that it had an "intention and expectation" that policies cover a general type of "business activities and the risks associated therewith" could overcome unambiguous policy language that does not cover a specific risk.

[197] *See* Albertsons's Reply at 6 (citing *Lipson v. Jordache Enters., Inc.*, 11 Cal. Rptr. 2d 271, 273 (Cal. Ct. App. 1992); *Marie Y. v. Gen. Star Indem. Co.*, 2 Cal. Rptr. 3d 135, 156 (Cal. Ct. App. 2003); *Hoyle*, 48 P.3d 1256).

[198] *See id.*

[199] *See Hoyle*, 48 P.3d at 1264-65 (explaining that duty to defend does not arise "simply because a complaint, with no covered claims, could potentially be amended to include covered claims," but instead "if there is a subsequent change in the pleadings, a duty to defend may arise" at that time); *Marie Y.*, 2 Cal. Rptr. 3d at 152, 156, 159 (holding insurer had no duty to defend at time of original complaint but that duty arose after insured tendered amended complaint); *Lipson*, 11 Cal. Rptr. 2d at 275, 277 (observing that insurer acted in good faith by offering to defend amended complaint, and granting insurer's motion to vacate judgment because amended complaint "presented new and unexpected claims"). Albertsons does not contend that Delaware law would prohibit it from tendering an amended complaint for coverage. *Cf. CVS Supreme Court*, 346 A.3d at 101 (noting that "to the extent that

Third, Albertsons contends that California and Idaho law impose a "duty to investigate" and points out that it provided documents and updates to its insurers through a "share site."[200] Albertsons does not, however, identify any relevant extrinsic evidence that would have been uncovered by an investigation or that is contained in the share site.[201]

* * *

Albertsons has not shown any conflict of law that would change the result in this case. Accordingly, no choice-of-law analysis is required, and the Court applies Delaware law.[202]

---

the pleadings or underlying lawsuits unexpectedly transform into ones alleging damage from specific and individualized bodily injury and property damage, the Insurers conceded at oral argument that CVS could tender a new claim for coverage at that time").

[200] *See* Albertsons's Reply at 5 & n.2.

[201] *See id.* Albertsons also points out that "federal and most state courts" follow a notice pleading standard. *See* Albertsons's Reply at 3. Delaware is likewise a notice pleading jurisdiction. *See VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003). It appears that Albertsons's notice pleading point is a repackaged contention that *Rite Aid* and *CVS* are erroneous. *See* Albertsons's Reply at 3 (contending that the *Rite Aid* and *CVS* test "contravenes the notice pleading standards").

[202] *See CVS Superior Court I*, 301 A.3d at 1211. To the extent it is relevant to predict how other jurisdictions' courts might rule, it is notable that other appellate courts have followed *Rite Aid*. *See Westfield Nat'l Ins. Co. v. Quest Pharms., Inc.*, 57 F.4th 558, 563-65 (6th Cir. 2023) (applying Kentucky law, holding that "lawsuits brought by local governments and other entities to recover costs incurred due to the opioid epidemic—but not to recover for any specific bodily injuries" were not "because of bodily injury" and thus did not trigger commercial general liability insurers' duty to defend or indemnify); *Acuity v. Masters Pharm., Inc.*, 205 N.E.3d 460, 473-74 (Ohio

C. APPLYING DELAWARE LAW TO THE POLICIES, THERE IS NO DUTY TO DEFEND OR INDEMNIFY WITH RESPECT TO THE OPIOID LAWSUITS.

Applying Delaware law, the result is straightforward. Of note, most of the underlying Opioid Lawsuits were also at issue in *CVS*.[203] Albertsons does not identify any basis to distinguish the others, and none of Albertsons's arguments warrants a different result here.

2022) (same). Although a pre-*Rite-Aid* Seventh Circuit ruling reached a different conclusion, the courts in these more recent cases declined to follow that ruling. *See Westfield*, 57 F.4th at 564 (declining to follow *Cincinnati Ins. Co. v. H.D. Smith*, 829 F.3d 771, 775 (7th Cir. 2016)); *Acuity*, 205 N.E.3d at 397-98 (same). The Court is not aware of any appellate decision post-*Rite-Aid* that has rejected Delaware's approach.

[203] *See* D.I. 375, App. A to Insurers' Reply (listing 98 cases, out of the 109 at issue here, that were also at issue in *CVS*). In *CVS*, this Court initially addressed two bellwether suits from the federal multidistrict litigation and seven additional lawsuits brought by governmental entities, which the insurers had designated as representative. *See CVS Superior Court I*, 301 A.3d at 1198. The parties then stipulated that this Court's first ruling applied to 2,151 additional government lawsuits but disagreed on its application to 218 lawsuits brought by governmental entities, hospitals, and third-party payors. *See CVS Supreme Court*, 346 A.3d at 89. This Court's second ruling concerned those 218 lawsuits, certain of which were identified by the parties as exemplars. *See id.* The Supreme Court affirmed both Superior Court rulings. *See id.* at 86, 88-90. Of the three suits summarized in this opinion, both the Superior Court and Supreme Court explicitly addressed *Philadelphia*. *See id.* at 92-94; *CVS Superior Court I*, 301 A.3d at 1202-03, 1213-14. The other two were at issue in *CVS* but not explicitly addressed. *See* D.I. 375, App. A to Insurers' Reply, Nos. 10, 75.

First, Albertsons contends that the duty to defend is broader than the duty to indemnify.[204] That is true, but where, as here, the underlying lawsuits do not allege "a risk within the coverage of the policy," the duty to defend does not arise.[205]

Second, Albertsons argues that certain Policies' "Pharmacist and Druggist Endorsements" distinguish this case from *Rite Aid*.[206] But the Court in *CVS* rejected that same argument.[207] Albertsons suggests that the *CVS* Court "failed to address the endorsements' impact on the definition of 'occurrence.'"[208] To the contrary, the *CVS* Court acknowledged that the endorsements modified the definition of "occurrence," but that did not change the result because the separate "because of 'bodily injury'" requirement was still not met.[209] The same goes for "earlier Policies" that "deem pharmacy claims to constitute occurrences."[210] Changing what qualifies as an "occurrence"—whether by modifying the definition or otherwise—does not negate the "because of bodily injury" requirement.

---

[204] *See* Albertsons's Op. Br. at 21.

[205] *See CVS Supreme Court*, 346 A.3d at 100; *Rite Aid*, 270 A.3d at 250.

[206] *See* Albertsons's Ans. Br. at 19; *see also* Albertsons's Op. Br. at 24.

[207] *See CVS Supreme Court*, 346 A.3d at 90-92.

[208] Albertsons's Reply at 13.

[209] *See CVS Supreme Court*, 346 A.3d at 90-92.

[210] *See* Albertsons's Op. Br. at 27-28.

Third, Albertsons invokes claims for "subrogation."[211] But it does not identify any claims that seek subrogation,[212] and *CVS* rejected a similar attempt to cast underlying lawsuits as "derivative actions brought by governments on behalf of individuals."[213]

Fourth, Albertsons points out that certain governmental entities "are seeking reimbursement for Workers' Compensation payments from self-funded Workers' Compensation plans or medical expenses paid out pursuant to self-funded employee/member health and welfare plans."[214] But paying expenses from such plans is not the same as providing medical treatment to an individual, as is required under *Rite Aid* and *CVS*.[215] And Albertsons provides no reason to distinguish these claims from those of "public hospitals," "other hospital[s] and medical provider[s]," and "third-party payor[s]" rejected by *CVS*.[216]

---

[211] *See id.* at 25-26.

[212] For this reason, Albertsons's argument that "California and Idaho recognize the right of governmental entities, employers, and self-funded health plans to pursue subrogation and reimbursement for medical expenses," *see* Albertsons's Ans. Br. at 23, is of no moment.

[213] *See CVS Supreme Court*, 346 A.3d at 94-95.

[214] *See* Albertsons's Op. Br. at 26.

[215] *CVS Supreme Court*, 346 A.3d at 100; *Rite Aid*, 270 A.3d at 252-53.

[216] *See CVS Supreme Court*, 346 A.3d at 97-100.

Last, Albertsons suggests that it is "premature" to rule on indemnification now, because the Opioid Lawsuits are still developing.[217] Just as in *CVS*, here, "the *nature* of the claims and relief sought by the underlying plaintiffs do not fall within the scope of coverage."[218] Accordingly, coverage is unavailable under both duties.[219]

At bottom, Albertsons has failed to show any meaningful difference between this case and *CVS*. The result is therefore the same. The Insurers are entitled to summary judgment under settled Delaware law.

V. CONCLUSION

For the foregoing reasons, the Insurers' motion for summary judgment is **GRANTED**, and Albertsons's motion for partial summary judgment is **DENIED**.

IT IS SO ORDERED.

/s/ *Patricia A. Winston*
Patricia A. Winston, Judge

[217] *See* Albertsons's Op. Br. at 4 n.7.

[218] *See CVS Supreme Court*, 346 A.3d at 101 (citing *CVS Superior Court I*, 301 A.3d at 1216).

[219] *See id.*