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# Hughes Hubbard & Reed

## Hughes Hubbard Wins Coverage for Pharma Distributor

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Hughes Hubbard & Reed captured a victory for JM Smith Corporation when a South Carolina federal judge ruled that the pharmaceutical drug distributor's insurer, Liberty Mutual, had a duty to defend it in an action brought by West Virginia's attorney general.

On Sept. 24, U.S. District Judge Timothy M. Cain issued an opinion that agreed with Hughes Hubbard's arguments on what he described as the "pivotal issue"—whether the West Virginia complaint alleged a covered occurrence.

In June 2012, West Virginia sued JM Smith and 12 other defendants for allegedly participating in a "pill mill scheme" by distributing controlled substances in quantities that exceeded legitimate medical need. The complaint alleged that JM Smith contributed to widespread addiction and abuse of pain killers in West Virginia.

JM Smith sought coverage for the lawsuit from Liberty Mutual under its commercial general liability insurance policies. Liberty Mutual denied coverage, asserting that the West Virginia complaint alleged only intentional acts that would not be covered by the insurance policies.

On Sept. 28, 2012, Liberty Mutual sought a ruling in South Carolina federal court that it had no duty to defend or indemnify JM Smith. Hughes Hubbard countered with its own motion for summary judgment that Liberty Mutual was obligated to defend its insured.

In his ruling, Judge Cain found that the fact that JM Smith knew that it was distributing controlled substances in West Virginia did not lead to the conclusion that JM Smith knowingly participated in the pill mill scheme. He said that the conduct alleged was not, on its face, illegal or intentional. Indeed, the complaint alleged that "JM Smith could have violated West Virginia laws through a failure to adequately monitor the quantity of drugs and respond to suspicious orders."

Judge Cain also disagreed with Liberty Mutual's contention that the addiction and abuse of painkillers in West Virginia was the natural and probable consequences of JM Smith's acts. Instead he agreed with Hughes

Hubbard's arguments that "the results in this case, creating a pill mill with widespread addiction, cannot be said to be a normal consequence of distributing prescription drugs to three pharmacies in a state over a limited time."

George Tsougarakis argued the motion. Jeremy Turk and Taylor Herman also worked on this matter.

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**George A. Tsougarakis**

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