

Coverage Team Successfully Defends Insurer In Medical Product Class Action

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A White and Williams team recently obtained summary judgment for Cincinnati Insurance Company against claims that Cincinnati should cover class action claims brought in Massachusetts against a Utah medical device manufacturer. The class action plaintiffs alleged that KT Tape – a widely-promoted kinesiology product distributed by KT Health Holdings LLC – provides few, if any, medical benefits, and fails to alleviate pain, as advertised. The lead plaintiff (in his individual capacity) also claimed bodily injury from the use of the product.

White and Williams successfully argued that Cincinnati's policy covered only bodily injuries and that Cincinnati should only defend the lead plaintiff's individual claim. As to the broader class allegations, a Massachusetts federal judge accepted Cincinnati's argument that the plaintiffs' allegations were, essentially, for false advertising, and did not involve "bodily injury," caused by an "occurrence," so as to trigger the policy's coverage. The court rejected KT Health's argument that that bodily injury was implicit in the plaintiffs' assertion that the tape failed to alleviate pain as advertised.

Eric Hermanson, Josh Mooney and Rachel Eisenhaure represented Cincinnati Insurance Company.