

Mead Johnson Sues For Coverage Of Baby Formula Suits

By **Pete Brush**

Law360, New York (March 23, 2011) -- Mead Johnson & Co. LLC sued Lexington Insurance Co. in Indiana federal court Tuesday seeking a judgment that the insurer must defend and indemnify it against a slew of consumer class actions over its marketing of infant formula.

Evansville, Ind.-based Mead Johnson also seeks damages and fees, according to the complaint in the U.S. District Court for the Southern District of Indiana.

The Lexington policy was issued together with a policy issued by Lexington's corporate affiliate, National Union Fire Insurance Co. of Pittsburgh, Pa., according to the suit. Both insurers are part of Chartis, which administers both policies, the suit says.

In January, National Union sued Mead Johnson in Massachusetts federal court seeking a declaration that it had no obligation to defend or indemnify the infant formula maker over allegations it deceptively marketed its Enfamil product as the only formula containing docosahexaenoic acid and arachidonic acid, fatty acids essential to brain and eye development in infants.

Mead Johnson had not answered the Massachusetts complaint as of Wednesday morning.

Mead Johnson's suit says it faces at least 10 underlying deceptive marketing complaints, some of which already have been drawn into the In re: Enfamil LIPIL Marketing and Sales Practices Litigation multidistrict case in Florida federal court.

Mead Johnson's suit contains a claims for breach of contract and also seeks to "[advance] this case on the trial calendar to the maximum extent practicable."

In its suit, National Union maintains that a commercial general liability policy it issued to Mead Johnson for the policy period of Feb. 10, 2009, to Feb. 10, 2010, does not include coverage for the consumer suit.

The insurer contends that while the policy covers damages imposed on the company because of "personal and advertising injury," the plaintiffs do not seek redress for either as the terms are defined by the policy, so their claims are not covered.

Consumers suing Mead Johnson claim generic brands also contain the fatty acids, sometimes at higher levels than Enfamil, and that they would have chosen less expensive brands but for the deceptive advertising.

A representative for Mead Johnson declined to comment on the suit Wednesday. A representative for Chartis did not immediately return a request for comment.

Mead Johnson is represented by Cadwalader Wickersham & Taft LLP, Vandenberg & Feliu LLP and Bowers Harrison LLP.

Counsel information for the defendant was not immediately available.

The suit is Mead Johnson et al. v. Lexington Insurance, case number 3:11-cv-00043, in the U.S. District Court for the Southern District of Indiana.

--Additional reporting by Abigail Rubenstein. Editing by John Williams.

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