

No. ED113635

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

OPIOID MASTER DISBURSEMENT TRUST II, A/K/A OPIOID MDT II,

Plaintiffs/Appellants,

v.

ACE AMERICAN INSURANCE COMPANY, *et al.*,

Defendants/Respondents.

Appeal from the Circuit Court of the City of St. Louis, Missouri
The Honorable Richard M. Stewart
Consol. Case Nos. 22SL-CC02974, 23SL-CC05428

**JOINDER BRIEF OF DEFENDANT/RESPONDENT AMERICAN GUARANTEE
AND LIABILITY INSURANCE COMPANY**

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Defendant/Respondent American Guarantee and Liability Insurance Company (“AGLIC”) submits this Joinder Brief adopting and incorporating portions of the Brief of Defendants/Respondents National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) and American Home Assurance Company (“American Home”) (collectively, the “AIG Insurers”), as follows:

As to AGLIC, at issue in this appeal is its single following form excess liability policy, Policy No. AEC 5087987-00, which was effective for the period October 1, 2004, to October 1, 2005 (the “AGLIC Excess Policy”). *See* Trust’s Br., p. 8-9; D491; D494. The Insuring Agreement of the AGLIC Excess Policy provides, in relevant part:

- B.** This insurance applies only to damages covered by the Controlling Underlying Policy as shown in Item **6.A.** of the Declarations. Except as otherwise provided by this policy, the coverage follows the definitions, terms, conditions, limitations, and exclusions of the Controlling Underlying Policy in effect at the inception of this policy.

D494, p. 17.

The “Controlling Underlying Policy” to which AGLIC follows form is an umbrella liability policy issued by National Union effective for the same period, Policy No. BE 2978239 (the “AIG Umbrella Policy”). *Id.* at p. 2. The AIG Umbrella Policy to which the AGLIC Excess Policy follows form contains a Products-Completed Operations Hazard Claims Made Retained Limit Endorsement (“PCOH Claims-Made Endorsement”), which limits coverage for liability “included within” the products-completed operations hazard to (1) claims for damages because of “Bodily Injury” or “Property Damage” first made in writing against any insured during the policy period, and (2) for which written notice is received by the insurer during the policy period. *See* D501.

In the Circuit Court of St. Louis County, AGLIC moved for partial summary judgment against Plaintiff/Appellant Opioid Master Disbursement Trust II (the “Trust”) on the AGLIC Excess Policy, asserting the Opioid Lawsuits allege liability included within the PCOH but that the claims-made-and-reported requirements of the PCOH Claims-Made Endorsement were not satisfied.¹ *See* D491. The Trust cross-moved for partial summary judgment against AGLIC on that same issue, but in doing so, the Trust did not dispute the claims-made-and-reported requirements of the PCOH Claims-Made Endorsement were not satisfied as to AGLIC (or any other insurer). *See* D539.

On March 10, 2025, the Circuit Court granted AGLIC’s partial summary judgment motion, denied the Trust’s cross-motion, and entered Judgment for AGLIC and against the Trust, finding “the Trust presents claims for damages . . . within the scope of the PCOH Claims-Made Endorsement under the umbrella and excess policies, for which the parties agree that the ‘claims-made-and-reported’ requirements for coverage are not satisfied. . . .” and, therefore, the Circuit Court held “the opioid claims for which the Trust seeks coverage, are not covered under . . . the excess polic[y] issued by . . . AGLIC.”² D541, p. 3-4.

In this appeal, it remains undisputed that the claims-made-and-reported requirements of the PCOH Claims-Made Endorsement were not satisfied, including as

¹ AGLIC’s partial summary judgment motion adopted and incorporated by reference the arguments of AIG in its cross-motion for summary judgment addressing the PCOH Claims-Made Endorsement. *See* D491.

² The Judgment of the Circuit Court was reentered on June 10, 2025. *See* D552. The Circuit Court also entered Judgment for certain other insurers, including the AIG Insurers. *See* D541; D552.

respects AGLIC and the AGLIC Excess Policy. *See* Trust's Br., p. 24; p. 25, fn. 7. AGLIC adopts and incorporates by reference the arguments set forth in the AIG Insurers' Respondents Brief, in particular, its arguments concerning the PCOH Claims-Made Endorsement.

For these reasons, Defendant/Respondent American Guarantee and Liability Insurance Company respectfully requests the Court to affirm the Circuit Court's Judgment in its favor.

Dated: January 21, 2026

Respectfully submitted,

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By: /s/ T. Michael Ward

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant/Respondent's Joinder Brief was filed by the Court's electronic filing system on January 21, 2026, for service electronically on all counsel of record and sent by email to the following:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies under Rule 84.06 of the Missouri Rules of Civil Procedure that:

1. Defendant/Respondent's Joinder Brief includes the information required by Rule 55.03.
2. Defendant/Respondent's Joinder Brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and Eastern District Rule 360;
3. Defendant/Respondent's Joinder Brief, excluding cover page, signature blocks, certificate of compliance, and affidavit of service, contains 542 words, as determined by the word-count tool contained in the Microsoft Word 365 software with which this the Brief was prepared; and
4. Defendant/Respondent's Joinder Brief has been scanned for viruses and to the undersigned's best knowledge, information, and belief is virus free.

/s/ T. Michael Ward

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CERTIFICATE OF COMPLIANCE UNDER RULE 55.03(A)

Under Rule 55.03(a), the undersigned further certifies that he signed an original of this Joinder Brief and that an original of this pleading shall be maintained for a period not less than the maximum allowable time to complete the appellate process.

/s/ T. Michael Ward

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