

**IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

No. ED113635

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

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
Case No. 22SL-CC02974

**BRIEF OF RESPONDENTS NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA. AND AMERICAN HOME ASSURANCE COMPANY**

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	7
STATEMENT OF FACTS	12
A. The National Opioid Epidemic And The Opioid Lawsuits	12
B. Mallinckrodt And Its Leading Role In Causing The Opioid Epidemic	13
C. Mallinckrodt’s Bankruptcy Proceedings And The Creation Of The Trust.....	16
D. The Trust’s Coverage Action	17
E. The Parties’ Motions For Summary Judgment.....	17
F. The Circuit Court’s Decision.....	24
ARGUMENT.....	25
I. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT BECAUSE ALL LIABILITY MALLINCKRODT FACED IN THE OPIOID LAWSUITS ARISES OUT OF MALLINCKRODT’S “PRODUCTS” AND THEREFORE IS INCLUDED WITHIN THE PRODUCTS-COMPLETED OPERATIONS HAZARD.	26
A. The Applicability Of The PCOH Exclusion And PCOH Claims-Made Endorsement Hinges On The Phrase “Arising Out Of,” Which Is Interpreted Broadly Under Missouri Law.	27
B. All Of The Liability Mallinckrodt Faced In The Opioid Lawsuits Concerned Harm “Arising Out Of” Mallinckrodt’s “Products,” Which Is Defined To Include Representations About Those Products.	30
C. The Trust’s Arguments Do Not Establish That Any Liability Mallinckrodt Faced In The Opioid Lawsuits Did Not “Arise Out Of” Mallinckrodt’s “Products.”	38
1. The Trust’s Argument That The Language Of The PCOH— Including “Arising Out Of”—Is Somehow Narrower Than What Missouri Courts And Other Courts Have Held Must Fail.	39
2. The Trust’s Other Arguments, Focused On The Absence Of A Specific Mallinckrodt Product In “Unbranded Marketing” And The Ingestion Of Other “Non-Mallinckrodt Opioids,” Likewise Must Fail.....	46

II. ALTERNATIVELY, THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT BECAUSE ALL LIABILITY MALLINCKRODT FACED IN THE OPIOID LAWSUITS ARISES OUT OF MALLINCKRODT’S “WORK” AND THEREFORE IS INCLUDED WITHIN THE PRODUCTS-COMPLETED OPERATIONS HAZARD. 50

III. IN NO EVENT IS THE TRUST ENTITLED TO SUMMARY JUDGMENT, BECAUSE IT CANNOT ESTABLISH AS AN UNDISPUTED FACT THAT MALLINCKRODT FACED AND RESOLVED LIABILITY FOR HARM CAUSED BY OPIOIDS MANUFACTURED BY SOMEONE ELSE..... 52

CONCLUSION 54

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Atlas Rsrv. Temporaries, Inc. v. Vanliner Ins. Co.</i> , 51 S.W.3d 83 (Mo. Ct. App. 2001).....	44
<i>Becker v. Schenk</i> , 716 S.W.3d 350 (Mo. Ct. App. 2025).....	50
<i>Braxton v. U.S. Fire Ins. Co.</i> , 651 S.W.2d 616 (Mo. Ct. App. 1983).....	39
<i>Brazas Sporting Arms, Inc. v. Am. Empire Surplus Lines Ins. Co.</i> , 220 F.3d 1 (1st Cir. 2000).....	29, 34, 52
<i>Brazas Sporting Arms, Inc. v. Am. Empire Surplus Lines Ins. Co.</i> , 59 F. Supp. 2d 223 (D. Mass. 1999), <i>aff'd</i> , 220 F.3d 1 (1st Cir. 2000).....	29
<i>Burns v. Smith</i> , 303 S.W.3d 505 (Mo. banc 2010).....	43
<i>Capitol Indem. Corp. v. 1405 Assocs., Inc.</i> , 340 F.3d 547 (8th Cir. 2003)	<i>passim</i>
<i>Capitol Indem. Corp. v. Callis</i> , 963 S.W.2d 247 (Mo. Ct. App. 1997).....	28
<i>Cincinnati Ins. Co. v. Intek Corp.</i> , No. 4:08cv1440 JCH, 2010 WL 716197 (E.D. Mo. Feb. 24, 2010).....	28, 34
<i>Cincinnati Ins. Co. v. U.S. Seamless, Inc.</i> , No. 3:15-cv-1, 2016 U.S. Dist. LEXIS 138028 (D.N.D. Mar. 30, 2016).....	51
<i>Colony Ins. Co. v. Pinewoods Enters., Inc.</i> , 29 F. Supp. 2d 1079 (E.D. Mo. 1998).....	52
<i>Columbia Mut. Ins. Co. v. Schauf</i> , 967 S.W.2d 74 (Mo. 1998)	28
<i>Cook's Fabrication & Welding, Inc. v. Mid-Continent Casualty Co.</i> , 364 S.W.3d 639 (Mo. Ct. App. 2012).....	40, 41
<i>Cytosol Labs., Inc. v. Federal Ins. Co.</i> , 536 F. Supp. 2d 80 (D. Mass. 2008)	29

Eon Labs Mfg., Inc. v. Reliance Ins. Co.,
756 A.2d 889 (Del. 2000) 48, 49

Fibreboard Corp. v. Hartford Accident & Indem. Co.,
16 Cal. App. 4th 492 (1993) 49

Finn v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.,
896 N.E.2d 1272 (Mass. 2008) 29, 31, 51

Gateway Hotel Holdings, Inc. v. Lexington Ins. Co.,
275 S.W.3d 268 (Mo. Ct. App. 2008)..... 25

George v. Brewer,
62 S.W.3d 106 (Mo. Ct. App. 2001)..... 54

Harrison v. Tomes,
956 S.W.2d 268 (Mo. banc 1997)..... 43

Hawkeye-Security Ins. Co. v. Davis,
6 S.W.3d 419 (Mo. Ct. App. 1999)..... 51

Henderson v. Mass. Bonding & Ins. Co.,
84 S.W.2d 922 (Mo. 1935) 43

Hunt v. Capitol Indem. Corp.,
26 S.W.3d 341 (Mo. Ct. App. 2000)..... 27, 51

Kinsella v. Wyman Charter Corp.,
417 F. Supp. 2d 159 (D. Mass. 2006) 29

Liggett Grp., Inc. v. Ace Prop. & Cas. Ins. Co.,
798 A.2d 1024 (Del. 2002) 49

Local Union 1287 v. Kansas City Area Transp. Auth.,
848 S.W.2d 462 (Mo. banc 1993)..... 54

Maher Bros., Inc. v. Quinn Pork, LLC,
512 S.W.3d 851 (Mo. Ct. App. 2017)..... 43

In re National Prescription Opiate Litigation,
1:17-md-02804 (N.D. Ohio) 13

Opioid Master Disbursement Tr. II v. Covidien Unlimited Co.,
Case No. 20-12522 (JTD), 2024 WL 206682
(D. Del. Bankr. Jan. 18, 2024) 13, 14, 15

Richards v. Bunkhouse Bar & Grill, LLC,
719 S.W.3d 810 (Mo. Ct. App. 2025).....*passim*

Scottsdale Ins. Co. v. Aqueous Vapor, LLC,
No. 4:20-00328-CV-RK, 2021 WL 123401 (W.D. Mo. Jan. 12, 2021)..... 28, 34

Scottsdale Ins. Co. v. Olivares,
614 S.W.3d 65 (Mo. Ct. App. 2020)..... 25

Sentynl Therapeutics, Inc. v. U.S. Specialty Ins. Co.,
527 F. Supp. 3d 1203 (S.D. Cal. 2021), *aff'd*, No. 21-55370, 2022 WL
706941 (9th Cir. Mar. 9, 2022)..... 38

St. Charles Cnty., Mo. v. Purdue Pharma L.P., et al.,
No. 4:18-cv-01376-NCC (E.D. Mo. Aug. 20, 2018)..... 13

State of Cal. v. Purdue Pharma L.P. et al.,
No. 30-2014-00725287-CU-BT-CXC (Cal. Sup. Ct. Dec. 23, 2014) 37

Trainwreck West Inc. v. Burlington Ins. Co.,
235 S.W.3d 33 (Mo. Ct. App. 2007)..... 44

Travelers Prop. Cas. Co. of Am. v. Anda, Inc.,
658 F. App'x 955 (11th Cir. 2016) 36

Travelers Property Casualty Co. of America v. Actavis, Inc.,
16 Cal. App. 5th 1026 (2017)*passim*

Viacom, Inc. v. Transit Cas. Co.,
138 S.W.3d 723 (Mo. banc 2004)..... 28

Zogenix, Inc. v. Fed. Ins. Co.,
4:20-cv-06578-YGR, 2022 WL 3908529 (N.D. Cal. May 26, 2022)..... 37

Statutes

3 New Appleman Law of Liability Insurance § 16.02(2) (2025)..... 26

INTRODUCTION

Mallinckrodt plc (“Mallinckrodt”) was the largest manufacturer of opioids in the United States. It was driven into bankruptcy because it was accused in thousands of lawsuits of having engaged in a knowingly misleading and deceptive marketing campaign, as part of a conspiracy with other companies, that mischaracterized the risks of its opioids, which are highly addictive narcotics akin to heroin. That conduct resulted in states, cities, and counties across the country being flooded with opioids, which in turn fueled a nationwide opioid crisis. At the time it filed for bankruptcy, Mallinckrodt was a defendant in thousands of lawsuits (the “Opioid Lawsuits”) brought by government entities and others saddled with the enormous economic costs of abating that public health crisis.

Standing in Mallinckrodt’s shoes, Plaintiff/Appellant Opioid Master Disbursement Trust II (the “Trust”) brought insurance coverage claims under 22 insurance policies (collectively, the “AIG Policies”) issued by National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) and American Home Assurance Company (“American Home,” and together, the “AIG Insurers”) that contain provisions—the focus of this appeal—that eliminate or limit the scope of coverage for liability concerning harm “included within” the “products-completed operations hazard” or “PCOH.”

Specifically, fourteen of the AIG Policies—primary liability policies that provide an initial layer of coverage, and thus face a greater exposure to losses—contain an express “PCOH Exclusion” that *eliminates* coverage for liability “included within” the products-completed operations hazard (the “AIG Primary Policies”). Another eight AIG Policies—umbrella policies that apply in excess of the primary layer of insurance, and thus face less

exposure to losses—*provide* coverage for liability “included within” the products-completed operations hazard (the “AIG Umbrella Policies”) *but on a limited basis*. The “PCOH Claims-Made Endorsement” to those AIG Umbrella Policies limits PCOH coverage to lawsuits brought against Mallinckrodt, and reported to the AIG Insurers, *during* the policy period of the AIG Umbrella Policies.

In addition to the 22 insurance policies issued by the AIG Insurers, the Trust’s appeal relates to an additional eight policies issued by four other insurers, Aspen Ins. UK Ltd. (“Aspen”), Old Colony State Insurance Company (“Old Colony”), ACE American Insurance Company (“ACE”), and American Guarantee & Liability Insurance Company (“AGLIC”). Those eight policies apply excess of the umbrella layer of insurance, and “follow form” to the AIG Umbrella Policies, meaning they incorporate the terms and conditions of those policies, including the conditions to coverage set forth in the PCOH Claims-Made Endorsement.¹

The PCOH Exclusion and PCOH Claims-Made Endorsement apply to all that is “included within” the “products-completed operations hazard,” defined as “all ‘bodily injury’ and ‘property damage’ occurring away from premises you own or rent and *arising out of ‘your product’ or ‘your work[.]’*” “Your product” is defined broadly to include

¹ While ACE and AGLIC filed joinders to this brief, Aspen and Old Colony filed their own brief. Because Aspen and Old Colony’s brief addresses the same endorsement to the AIG Umbrella Policies discussed herein, and because this brief relates to all policies and provisions at issue in the Trust’s appeal, the AIG Insurers respectfully suggest that, for the sake of efficiency, the Court review this brief first.

both “goods or products,” including opioids, “manufactured, sold, handled, distributed or disposed of by” Mallinckrodt, as well as “[w]arranties or representations . . . with respect to the fitness, quality, durability, performance or use of ‘your product.’” “Your work” too is defined broadly as “work or operations performed by [Mallinckrodt] or on [its] behalf,” and “[w]arranties or representations” about such work.

In response to a motion for partial summary judgment filed by the Trust concerning the applicability of the PCOH provisions to the Opioid Lawsuits, the AIG Insurers argued both that the Trust was not entitled to summary judgment and cross-moved for summary judgment based on those same provisions. The Circuit Court, the Honorable Richard Stewart, denied the Trust’s motion and granted the AIG Insurers’ cross-motion, as well as the cross-motions filed by ACE, Aspen, Old Colony, and AGLIC.

The Circuit Court observed that, “[u]nder Missouri law, the phrase ‘arising out of,’ when used in an insurance policy, is interpreted broadly to mean ‘originating from,’ or ‘having its origins in,’ or ‘growing out of,’ or ‘flowing from,’ and includes a much broader spectrum than the term ‘caused by’ or the concept of proximate causation.” D541, p. 2 (¶ 1); Trust’s App. 2. This led the Circuit Court to the common-sense conclusion that in the Opioid Lawsuits, “Mallinckrodt faced liability concerning injury that ‘grew out of’ or ‘originated from’ and thus ‘arose out of’ Mallinckrodt’s opioid products, including the manner in which Mallinckrodt sold its opioids and opioid ingredients to the public, and the representations that Mallinckrodt made as part of its alleged effort to increase its sales of its opioid products and maintain its market position as a leading seller and manufacturer of opioids.” D541, p. 3 (¶ 2); Trust’s App. 3. In short, lawsuits against a manufacturer of

opioids that allege harms from opioids assert claims that “arise out of” the manufacturer’s products, and are thus “included within” the scope of the PCOH Exclusion and the PCOH Claims-Made Endorsement.

As the Circuit Court’s opinion correctly reasoned, the applicability of the PCOH Exclusion and PCOH Claims-Made Endorsement hinges on—and this appeal distills down to—the scope of the key phrase “*arising out of*” in the definition of the “products-completed operations hazard.” All of the liability Mallinckrodt faced in the Opioid Lawsuits concerns harm that originates from, grows out of, or flows from Mallinckrodt’s opioid products, its work, or its misrepresentations about the addictive nature of opioids and the manner in which Mallinckrodt marketed opioids. Put simply, but for the misconduct in the way it manufactured, marketed, and sold its opioid products, Mallinckrodt—the “kingpin” of opioid manufacturers, according to the DEA—would not have been named as a defendant and subject to liability in thousands of Opioid Lawsuits. Under Missouri law, that “simple causal relationship” is all that is required by “arising out of.”

On appeal, the Trust offers the same contorted logic it presented to the Circuit Court. It does not dispute that the PCOH Exclusion and PCOH Claims-Made Endorsement apply to most of the allegations in the Opioid Lawsuits. But it argues that allegations that Mallinckrodt and its co-conspirators used “unbranded marketing” to misrepresent the safety and efficacy of opioids “generally” and without reference to a specific Mallinckrodt-branded opioid product take the Opioid Lawsuits outside the scope of the PCOH. The Circuit Court correctly saw through this argument, finding that even liability for unbranded

marketing “arose out of Mallinckrodt’s products, both because those unbranded representations were part of Mallinckrodt’s efforts to boost its own opioid product sales and because unbranded representations about the safety and efficacy of opioids in general encompass Mallinckrodt’s products.” D541, p. 3 (¶ 3); Trust’s App. 3.

Moreover, while the Trust argues in this appeal that the liability Mallinckrodt faced in the Opioid Lawsuits does not arise out of Mallinckrodt’s products, Mallinckrodt itself, in sworn statements, told the bankruptcy court the opposite, explaining that the Opioid Lawsuits were lawsuits “stemming from” and “concerning” the “production and sale” of its “products.” *E.g.*, D415, pp. 7 (¶ 12), 30 (¶ 68), 33 (¶ 76). In fact, Mallinckrodt’s Risk Manager and insurance broker [REDACTED]

[REDACTED]

[REDACTED] D489, pp. 3–6.

Just as the Circuit Court did here, every court confronted with the argument that the Trust advances on this appeal has rejected it. For example, the Eleventh Circuit held that a materially identical PCOH exclusion precluded coverage for an Opioid Lawsuit filed by the State of West Virginia, seeking to recover the costs resulting from an opioid seller and other companies having “flooded” the market with opioids.

The Circuit Court’s opinion is well-grounded in Missouri law, well-reasoned, consistent with Mallinckrodt’s own understanding of the Opioid Lawsuits and its insurance policies, and supported by all courts that have considered the Trust’s “unbranded marketing” theory. For these reasons, and as discussed below, the AIG Insurers

respectfully request that this Court affirm the Circuit Court's grant of summary judgment in the AIG Insurers' favor.

STATEMENT OF FACTS

A. The National Opioid Epidemic And The Opioid Lawsuits

For most of the twentieth century, the consensus among medical professionals was that opioids should be "reserved for patients with the most serious conditions, such as cancer," because of concerns about addiction. D454, p. 21 (¶ 35). Therefore, "to expand the market for opioids and realize blockbuster profits," the manufacturers and distributors of opioids "needed to create a profound transformation in medical and public perception that would permit the use of opioids not only for acute and palliative care, but also for long periods of time to treat more common aches and pains[.]" D416, p. 13 (¶ 5); D490, p. 9 (¶ 9 Response).

To that end, the nation's largest manufacturers and distributors of opioids, "through a common, sophisticated, and highly deceptive marketing campaign that began in the late 1990s, . . . set out to, and did, reverse the popular and medical understanding of opioids." D416, p. 13 (¶ 6). Their efforts "were wildly successful"; the "prescribing of opioids to treat chronic pain long-term . . . is now commonplace," and the U.S. is "awash in opioids." D416, pp. 13 (¶ 6), 15 (¶ 11). The "success" of their scheme had a catastrophic impact. "According to the U.S. Centers for Disease Control and Prevention, . . . the nation has been swept up in an opioid-induced 'public health epidemic,'" D416, p. 16 (¶ 14), which has been described as "the worst manmade public health crisis in American history." D454, p. 12 (¶ 12). "[B]etween 1999 and 2020, more than 564,000 Americans . . . died from

overdoses involving opioids,” and “[c]ountless more have become addicted . . . as a direct result of opioid use.” D454, p. 8 (¶ 4).

The opioid epidemic also resulted in economic harm to state and local governments, including the massive cost of abating the crisis. *See, e.g., St. Charles Cnty., Mo. v. Purdue Pharma L.P., et al.*, No. 4:18-cv-01376-NCC (E.D. Mo. Aug. 20, 2018). D417. As a result, states, counties, cities, hospitals, and others have filed thousands of Opioid Lawsuits against the manufacturers, distributors, and retailers of opioids, alleging those entities were responsible for the epidemic and resulting losses. D454, pp. 118–19 (¶¶ 286–87). The majority of those suits were consolidated for pre-trial purposes in a multi-district litigation in federal court in the Northern District of Ohio, *In re National Prescription Opiate Litigation*, 1:17-md-02804 (N.D. Ohio), and the remainder are or were pending in courts around the country.

B. Mallinckrodt And Its Leading Role In Causing The Opioid Epidemic

Mallinckrodt was formed in St. Louis, Missouri in 1867. D454, p. 19 (¶ 30). Mallinckrodt develops, manufactures, and sells pharmaceutical products, including opioid products. D490, p. 77 (¶ 70). *See also Opioid Master Disbursement Tr. II v. Covidien Unlimited Co.*, No. 20-12522 (JTD), 2024 WL 206682, at *2 (D. Del. Bankr. Jan. 18, 2024). Mallinckrodt’s business has generally consisted of two segments: Specialty Brands and Specialty Generics. D415, p. 13 (¶ 31). While the Specialty Brands segment focused on non-opioid pharmaceutical products, Specialty Generics “developed, manufactured, marketed, promoted, and sold branded and generic opioid pharmaceuticals.” D398, p. 8 (¶ 17); *see also* D415, pp. 13–14 (¶ 31), 15–16 (¶¶ 35–36), 17 (¶¶ 39–40). Mallinckrodt

sold three types of opioid products: branded “finished dosage products,” which are products as they are “ultimately received by the customer”—pills, for example—with a Mallinckrodt brand name; generic finished dosage products; and “active pharmaceutical ingredients” or “APIs,” which are ingredients used by Mallinckrodt or sold to other opioid manufacturers “to create finished dosage opioid products.” D398, pp. 4 (¶ 2), 40–41 (¶ 80); D415, p. 17 (¶ 40).

“In 2000, Mallinckrodt became a wholly owned subsidiary of Tyco International Ltd. (‘Tyco’) and one of the primary units in Tyco’s healthcare business.” D454, p. 20 (¶ 31). In 2007, “Tyco separated into three publicly traded companies, including Covidien. As part of [that] transaction, Tyco’s healthcare business—including the development, manufacture, marketing, promotion, and sale of opioid pharmaceuticals—became part of Covidien.” D454, p. 20 (¶ 31).

“[W]hile under Covidien’s domination and control, [Mallinckrodt] became the most significant manufacturer, marketer, and producer of opioid products in the United States. . . . [F]rom 2006 to 2012, Mallinckrodt produced 28.9 billion opioid pills—more than 80 pills for each American,” which “accounted for at least 23.7% of the national opioid market.” D454, pp. 20–21 (¶ 33). *See Opioid Master Disbursement Tr. II*, 2024 WL 206682, at *2. Mallinckrodt’s “deceptive marketing and sales efforts . . . were so successful that they led one vice president of sales to refer to [Mallinckrodt’s] growing oxycodone business as a ‘new economy.’” D454, pp. 21–22 (¶ 35).

As the Trust itself explains, “[w]ith large levels of production and market share, Mallinckrodt’s products had a concomitant role in fueling the nationwide opioid

epidemic[.] . . . ‘Everybody thinks of Purdue when they think about the opioid epidemic,’ a former DEA supervisor explained. But Mallinckrodt . . . was up to its ‘eyeballs in oxycodone, and they knew exactly what they were doing.’” D454, p. 21 (¶ 34). As the Trust acknowledges, Mallinckrodt was even “larger than the notorious Purdue Pharma,” Trust’s Br.² at 9, leading the DEA to “call[] Mallinckrodt ‘the kingpin within the drug cartel’ of pharma companies driving the opioid epidemic.” D454, pp. 8 (¶ 3), 96–97 (¶ 227). *See Opioid Master Disbursement Tr. II*, 2024 WL 206682, at *28.

In December 2011, after receiving subpoenas from the DEA and other regulators, Covidien announced the spinoff of Mallinckrodt into a standalone entity, which was completed in 2013. *See* D454, pp. 11 (¶ 10), 99 (¶ 235), 100 (¶¶ 238–39). According to the Trust, Mallinckrodt “was fully aware that its products were being abused and aware of the financial and human consequences of that abuse,” D454, p. 10 (¶ 7), and “engaged in the spinoff in an attempt to shield the assets of the enterprise’s medical device and supplies business from the substantial opioid claims” it knew would arise from Mallinckrodt’s wrongful conduct. *See* D454, pp. 6–7 (¶ 1). The Trust filed and is pursuing a lawsuit against Covidien for what it claims was a fraudulent transfer of massive opioids liability into, and assets away from, Mallinckrodt. *See generally* D454.

In or around 2017, Mallinckrodt was first named as a defendant in the Opioid Lawsuits. *See* D398, p. 4 (¶ 3). By 2020, “Mallinckrodt’s opioid-related liability arising from its products and from its role in creating and perpetuating the opioid crisis, . . . led

² “Trust’s Br.” refers to the Brief for Appellant Opioid Master Disbursement Trust II, dated November 24, 2025.

to the filing of more than 3,000 [Opioid Lawsuits] against Mallinckrodt around the country seeking massive damages[.]” *See* D454, p. 7 (¶ 2). As both the Trust and a Mallinckrodt executive have explained, Mallinckrodt was “beset by an ‘all-consuming tidal wave of litigation’ *concerning the production and sales of its opioid products and unbranded promotional activities regarding those products.*” D454, p. 9 (¶ 6) (emphasis added); D415, p. 33 (¶ 76).

C. Mallinckrodt’s Bankruptcy Proceedings And The Creation Of The Trust

On October 12, 2020, in response to the “years-long onslaught of litigation regarding Specialty Generics’ production and sale of opioid medications,” Mallinckrodt filed for bankruptcy. D415, p. 30 (¶ 68); *see also* D456, p. 3 (bankruptcy court describing cause of Mallinckrodt’s bankruptcy as an “onslaught of litigation *arising out of [its] production of certain drugs*”) (emphasis added).

Under the plan of reorganization, the Trust was established to administer the settlement of opioid-related claims and pursue Mallinckrodt’s insurance claims relating to the Opioid Lawsuits, as well as other claims against third parties. *See* D457, pp. 6–7 (¶ 55), 14 (¶ 274), 15 (¶ 284), 17 (T). The Trust is entitled to pursue claims and causes of action “based in whole or in part on any conduct or circumstance occurring or existing on or before the Effective Date [of the Plan] and arising out of, relating to, or in connection with any opioid product or substance[.]” D457, p. 14 (¶ 274). Through the bankruptcy, Mallinckrodt “settled” all of its opioid-related liability in part by agreeing to pay \$1.725

billion to the Trust.³ *See* D457, pp. 16 (¶ 290), 8 (¶ 202), 14–15 (¶ 281); D456, p. 11; D458, pp. 7–8 (¶ 81).

D. The Trust’s Coverage Action

On June 16, 2022, the effective date of Mallinckrodt’s plan, the Trust filed a Petition for Declaratory Relief in the Circuit Court; on July 28, 2022, the Trust filed a First Amended Petition, which named additional insurers as defendants; and on December 20, 2023, the Trust initiated a separate but related proceeding by filing another Petition for Declaratory Relief that added several policies to the case, which was subsequently consolidated into this case. *See* D406. Altogether, the petitions seek declaratory relief with respect to insurance coverage for the liability Mallinckrodt faced in the Opioid Lawsuits, under approximately 100 insurance policies,⁴ issued by 20 insurers, including 33 policies issued by the AIG Insurers and other AIG companies from 1995 to 2021. *See* D398, pp. 9–23 (¶¶ 27–46); D399.

E. The Parties’ Motions For Summary Judgment

On April 16, 2024, in the middle of the discovery process, the Trust filed a Motion for Partial Summary Judgment that deals with only a single insurer, National Union, and just 13 of the 14 AIG Primary Policies. *See* D409; D413, p. 37. The Trust asked the Circuit

³ Mallinckrodt filed a second bankruptcy proceeding in August 2023 in part because it was unable to meet its payment obligations under the plan. *See* D458, pp. 4–6 (¶¶ 8–9). As a result, Mallinckrodt made a final \$250 million “settlement” payment to the Trust in lieu of paying the full remaining \$1.275 billion outstanding, ultimately paying \$700 million in total. D459; D458, pp. 5–6 (¶ 9).

⁴ This appeal concerns a subset of these policies.

Court to rule, based on 11 “exemplar” Opioid Lawsuits, that an exclusion in those 13 policies—the PCOH Exclusion—does not bar coverage for what the Trust claims is one subset of the liability Mallinckrodt purportedly faced in the Opioid Lawsuits. *See* D413, pp. 14–20.

The Insuring Agreements in the fourteen AIG Primary Policies,⁵ which define the scope of coverage provided by those policies, state as follows:

We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. . . . This insurance applies to “bodily injury” and “property damage” only if: (1) The “bodily injury” or “property damage” is caused by an “occurrence” [defined as “an accident”] that takes place in the “coverage territory”; (2) The “bodily injury” or “property damage” occurs during the policy period; and (3) Prior to the policy period, no insured [identified in the policy] knew that the bodily injury” or “property damage” had occurred in whole or in part.

E.g., D431, pp. 13 (¶ 1), 27 (¶13); AIG’s App. 7, 11; D490, p. 74 (¶ 62).

The AIG Primary Policies, however, each contains the following exclusion:

This insurance does not apply to “bodily injury” or “property damage” included within the “products-completed operations hazard.”

See, e.g., D431, p. 37; AIG’s App. 13; D490, p. 75 (¶ 63) (emphasis added). The term “products-completed operations hazard” is defined to “[i]nclude[] all ‘bodily injury’ and ‘property damage’ occurring away from premises⁶ you own or rent and *arising out of ‘your*

⁵ The AIG Primary Policies are: National Union Policy Nos. GL 187-21-21, GL 650-64-83, GL 436-10-60, GL 270-49-92, GL 964-51-88, GL 509-47-72, GL 726-71-72, GL 333-31-10, GL 379-66-74, GL 693-89-45 (covering 2017–2018), GL 693-89-45 (covering 2018–2019), GL 686-23-54, GL 1728939, *see* D413, p. 37, and American Home Policy No. GL 159-53-88 (D498).

⁶ The requirement in the PCOH that the bodily injury or property damage “occur[] away from [Mallinckrodt’s] premises” is not at issue in this case.

product’ or ‘your work[.]’” D431, p. 27 (¶ 16); AIG’s App. 11; D490, p. 76 (¶ 65)

(emphasis added). “[Y]our product” is defined as:

Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by (a) You; (b) Others trading under your name; or (c) A person or organization whose business or assets you have acquired. . . .

D431, p. 28 (¶ 21); AIG’s App. 12; D490, p. 76 (¶ 66). And “your product” includes:

Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your product”; and The providing of or *failure to provide warnings* or instructions.

D431, p. 28 (¶ 21); AIG’s App. 12; D490, p. 76 (¶ 66) (emphasis added). Similarly,

“your work” is defined as:

Work or operations performed by you or on your behalf; and . . . Materials, parts or equipment furnished in connection with such work or operations.

D431, p. 28 (¶ 22); AIG’s App. 12; D490, p. 76 (¶ 67) (emphasis added). And “your work” includes:

Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and The providing of or *failure to provide warnings* or instructions.

D431, p. 28 (¶ 22); AIG’s App. 12; D490, p. 76 (¶ 67) (emphasis added).

According to the Trust, the liability Mallinckrodt faced in the Opioid Lawsuits falls into three distinct categories or buckets: (1) liability because of misleading and deceptive marketing that referenced the brand name of Mallinckrodt’s opioid products and that resulted in bodily injury caused by the ingestion of its opioid products; (2) liability because

of misleading and deceptive “unbranded” marketing that referenced opioids generally, such as oxycodone, but did not specifically mention the brand name of the oxycodone that Mallinckrodt sold (i.e., Roxicodone) and that resulted in bodily injury caused by the ingestion of Mallinckrodt’s opioid products; and (3) liability because of misleading and deceptive “unbranded” marketing that resulted in harm from the ingestion of other manufacturers’ opioids, such as Purdue’s branded version of oxycodone called OxyContin, or illicit opioids, such as fentanyl—what Mallinckrodt refers to as “non-Mallinckrodt opioids.” D413, pp. 9–10.

The Trust conceded in its motion that the PCOH Exclusion in the AIG Primary Policies precludes coverage for the first and second buckets. *See* D413, pp. 7–10, 21, 23, 32, 35. Instead, the Trust’s motion concerned the third purported bucket of liability resulting from “non-Mallinckrodt opioids.” *See generally* D413. According to the Trust’s theory, that third category of hypothetical liability is distinguishable from the liability the Trust concedes is “included within” the PCOH Exclusion only because, for example, the oxycodone pill someone ingested because of Mallinckrodt’s illicit unbranded marketing campaign happened to be OxyContin (Purdue’s branded oxycodone) rather than Roxicodone (Mallinckrodt’s branded oxycodone). *See* D413, pp. 10, 13. The Trust asserted that difference renders the PCOH Exclusion inapplicable. D413, pp. 10–11, 21–22, 28–29.

The AIG Insurers opposed and cross-moved for summary judgment against the Trust on the same 13 AIG Primary Policies, as well as a fourteenth AIG Primary Policy with an identical PCOH Exclusion, Policy No. GL 159-53-88 issued by American Home;

and the eight AIG Umbrella Policies.⁷ *See* D487. The eight AIG Umbrella Policies sit just excess of the AIG Primary Policies or other AIG primary policies (which are “fronting” policies that provide no true risk transfer and do not contain a PCOH Exclusion), and contain an Insuring Agreement that is materially identical to the Insuring Agreement in the AIG Primary Policies described above. *See, e.g.*, D453, pp. 13–14; AIG’s App. 19–20; D490, p. 75 (¶ 64).

The AIG Umbrella Policies do not contain a PCOH exclusion; instead, they contain the PCOH Claims-Made Endorsement that, in relevant part, provides:

This endorsement provides claims-made coverage. Coverage is limited to liability for claims *first made against the insured and reported to us while the coverage is in force*. . . . The provisions of this endorsement are limited to Claims or Suits seeking damages included within the Products-Completed Operations Hazard. . . .

See, e.g., D453, p. 86; AIG’s App. 23; D490, p. 75 (¶ 64) (emphasis added). As a result, while the eight AIG Umbrella Policies provide coverage for bodily injury included within the products-completed operations hazard, they do so *only on a claims-made-and-reported basis*—that is, only when (1) a claim was first made against Mallinckrodt, and (2) written notice of that claim was provided by Mallinckrodt to the AIG Insurers during the respective policy period. *See* D453, p. 86; AIG’s App. 23; D490, p. 75 (¶ 64). There is no factual dispute that no claim for the Opioid Lawsuits was made against Mallinckrodt or reported

⁷ The AIG Umbrella Policies are: D499–D500 (National Union Policy No. BE2977855); D501 (National Union Policy No. BE2978239); D467–D469 (National Union Policy No. BE2979931); D463–D464 (American Home Policy No. BE4485682); D465–D466 (American Home Policy No. BE9835077); D451 (National Union Policy No. BE2227062); D452 (National Union Policy No. 27471560); D453; AIG’s App. 14–29 (National Union Policy No. 15972632). D490, p. 75 (¶ 64 n.4).

by Mallinckrodt to the AIG Insurers during the policy periods of the AIG Umbrella Policies, and therefore that Mallinckrodt failed to satisfy the conditions set forth in the PCOH Claims-Made Endorsement. *See* Trust’s Br. at 24; *see also* D490, p. 77 (¶ 69).⁸

The AIG Insurers advanced two principal arguments in their opposition and cross-motion. *First*, the AIG Insurers argued that the issue presented in the Trust’s motion was unripe to the extent it depended on the existence of liability for that third bucket, precluding summary judgment in the Trust’s favor. The Trust had presented no facts establishing that Mallinckrodt actually faced and settled liability for injury arising out of “non-Mallinckrodt opioids”—instead, the Trust’s summary judgment motion asked the Circuit Court to assume that such liability existed. *See* D413, pp. 28–29 (arguing that, “*to the extent* that Mallinckrodt’s liability arose in part from non-Mallinckrodt products,” the PCOH Exclusion does not apply) (emphasis added). The AIG Insurers argued that hypothetical third bucket of liability did not exist. That is, the AIG Insurers disputed that Mallinckrodt faced any more liability to St. Charles County, for example, because a resident at some point during their addiction to oxycodone—an addiction fueled by Mallinckrodt’s unbranded marketing campaign that falsely represented that oxycodone was safe and non-addictive—ingested a smashed OxyContin pill rather than a smashed Roxicodone pill. (D487, pp. 38–41.) At a minimum, the AIG Insurers argued that (1) the existence of such liability was a disputed question of fact that precluded summary judgment on the theory

⁸ As noted, ACE, Aspen, Old Colony, and AGLIC moved for summary judgment on the same grounds (either in a separate motion or by joinder) on the PCOH Claims-Made Endorsement in the AIG Umbrella Policies, which was incorporated into the eight “follow form” excess policies issued by those insurers. *See* D502; D503; D520; D491.

advanced by the Trust, and (2) the Trust had failed to establish that such liability would be covered under the Insuring Agreement of the policies in any event—a burden the Trust must meet before arguing the applicability of an exclusion.⁹ D487, pp. 26–29.

Second, the AIG Insurers argued that even if the Circuit Court were to accept the Trust’s hypothetical scenario, the AIG Insurers were entitled to summary judgment because any such liability, along with all of Mallinckrodt’s liability from the Opioid Lawsuits, was “included within” the “products-completed operations hazard.” D487, pp. 29–43. As the AIG Insurers argued, the key phrase in the definition of PCOH, “arising out of,” is construed very broadly under settled Missouri law and requires only a “simple causal relationship” between the harm and the subject of the phrase. D487, pp. 31–34. Because there is at least a “simple causal relationship” between the harm alleged in the Opioid Lawsuits and Mallinckrodt’s products (and its representations about its products), all of the liability it faced is included within the products-completed operations hazard, even the liability in the hypothetical third bucket. D487, pp. 34–41. The AIG Insurers therefore asserted that the PCOH Exclusion in the AIG Primary Policies precludes coverage and the PCOH Claims-Made Endorsement in the AIG Umbrella Policies is triggered such that no coverage is available.

⁹ The AIG Insurers have multiple additional defenses to coverage based on other provisions and exclusions in the AIG Policies and the other policies at issue in this case, including, among others, that the harm at issue was not “caused by an occurrence,” defined as an accident, and that the Opioid Lawsuits brought by governments and other entity plaintiffs do not seek “damages because of bodily injury.” The AIG Insurers reserve their rights to address those defenses, when appropriate and if necessary, in the course of litigation.

F. The Circuit Court's Decision

On March 10, 2025, the Circuit Court for the County of St. Louis entered a Judgment and Order Granting Certain Insurers' Motions for Summary Judgment on the fourteen AIG Primary Policies and the eight AIG Umbrella Policies, which was certified as final and appealable (the "Judgment"). D541; Trust's App. 1–5; *see also* D545; D552; Trust's App. 6–7. The Judgment denied the Trust's Motion. D541, p. 4; Trust's App. 4. The Judgment also granted Aspen's and ACE's motion for summary judgment, AGLIC's motion for partial summary judgment, and Old Colony's joinder in Aspen and ACE's motion for summary judgment; and likewise denied the Trust's cross-motions as to those insurers. D541, p. 4; Trust's App. 4. In relevant part, the Circuit Court held as follows:

Under Missouri law, the phrase "arising out of," when used in an insurance policy, is interpreted broadly to mean "originating from," or "having its origins in," or "growing out of," or "flowing from" and includes a much broader spectrum than the term "caused by" or the concept of proximate causation. . . .

. . . Mallinckrodt faced liability concerning injury that "grew out of" or "originated from" and thus "arose out of" Mallinckrodt's opioid products, including the manner in which Mallinckrodt sold its opioids and opioid ingredients to the public, and the representations that Mallinckrodt made as part of its alleged effort to increase its sales of its opioid products and maintain its market position as a leading seller and manufacturer of opioids.

The definition of "Your product" in the policies expressly included not only "products" but also "representations" Mallinckrodt made about its products. Any alleged injuries caused by Mallinckrodt's "unbranded" representations arose out of Mallinckrodt's products, both because those unbranded representations were part of Mallinckrodt's efforts to boost its own opioid product sales and because unbranded representations about the safety and efficacy of opioids in general encompass Mallinckrodt's products.

Therefore, the Trust presents claims for damages that fall within the scope of the PCOH Exclusion Endorsement that excludes coverage under the primary

policies, and 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. . . .

D541, pp. 2–3 (¶¶ 1–4); Trust’s App. 2–3. The Circuit Court concluded “that the opioid claims for which the Trust seeks coverage, are not covered under the primary policies issued by the AIG Insurers, [or] the umbrella policies issued by AIG Insurers.” D541, p. 4 (¶ 5); Trust’s App. 4.

ARGUMENT

As the Trust correctly stated, the grant of summary judgment is reviewed *de novo*, Trust’s Br. at 28–29, and “will be upheld on appeal if there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law.” *Gateway Hotel Holdings, Inc. v. Lexington Ins. Co.*, 275 S.W.3d 268, 274 (Mo. Ct. App. 2008); *Scottsdale Ins. Co. v. Olivares*, 614 S.W.3d 65, 69–70 (Mo. Ct. App. 2020). Summary judgment is “particularly appropriate when construction of a contract”—such as an insurance policy—“is at issue and the contract is unambiguous on its face.” *Gateway Hotel Holdings, Inc.*, 275 S.W.3d at 274.

The AIG Insurers agree with the Trust that, when interpreting an insurance policy, the policy language is given its plain meaning, or the meaning that would be attached by an ordinary person. *See* Trust’s Br. at 29–30. *See also* *Richards v. Bunkhouse Bar & Grill, LLC*, 719 S.W.3d 810, 819 (Mo. Ct. App. 2025). Where the plain meaning is clear, Missouri courts need not consider the rules of construction. *See id.*

I. THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT BECAUSE ALL LIABILITY MALLINCKRODT FACED IN THE OPIOID LAWSUITS ARISES OUT OF MALLINCKRODT’S “PRODUCTS” AND THEREFORE IS INCLUDED WITHIN THE PRODUCTS-COMPLETED OPERATIONS HAZARD.

Some liability insurance policies do not “cover liability for bodily injury or property damage that occurs *after the insured has placed its goods or products into the stream of commerce or completed all work on a project.*” 3 New Appleman Law of Liability Insurance § 16.02(2) (2025) (emphasis added). Indeed, “many [liability] policies are issued with endorsements that expressly exclude products-completed operations coverage.” *Id.* Such limitations on PCOH coverage are especially important in the context of a pharmaceutical business, like Mallinckrodt’s. Pharmaceutical companies pose significant risks to insurers. *See* D461. “The [products] liability burden on pharmaceutical companies has been described as grossly disproportionate to their sales in comparison with other manufacturing industries.” D461, p. 2. As a result, PCOH exclusions and conditions to PCOH coverage in liability policies issued to pharmaceutical companies are not uncommon.

Here, the Circuit Court correctly held that the operative language of the PCOH definition at issue in both the PCOH Exclusion and the PCOH Claims-Made Endorsement —“bodily injury . . . arising out of ‘your product’ or ‘your work,’” which includes “representations” and “the failure to provide warnings” about “your product” or “your work”—is clear and unambiguous, and applies to *all* liability that Mallinckrodt faced in the Opioid Lawsuits. Summary judgment, in favor of the AIG Insurers, should be affirmed.

A. The Applicability Of The PCOH Exclusion And PCOH Claims-Made Endorsement Hinges On The Phrase “Arising Out Of,” Which Is Interpreted Broadly Under Missouri Law.

The AIG Primary Policies do not cover liability for damages because of “‘bodily injury’ or ‘property damage’ *included within* the ‘products-completed operations hazard.’” *See, e.g.*, D431, p. 37; AIG’s App. 13; D490, p. 75 (¶ 63) (emphasis added). The AIG Policies make clear that what is “*included within*” the products-completed operations hazard is all “bodily injury” or “property damage” occurring away from the insured’s premises and “*arising out of*” the insured’s product or work, as well as “[w]arranties or representations made at any time with respect to the fitness, quality, durability, performance or use of” such products or work, and the “providing of or failure to provide warnings or instructions” regarding such products or work. D431, pp. 27–28 (¶¶ 16, 21–22); AIG’s App. 11–12; D490, p. 76 (¶¶ 65–67) (emphasis added).

As recently as May 2025, the Missouri Court of Appeals confirmed that, under Missouri law, the phrase “‘*arising out of*’ as used in insurance contracts” means “‘originating from,’ ‘having its origins in,’ ‘growing out of,’ or ‘flowing from.’” *Bunkhouse Bar & Grill, LLC*, 719 S.W.3d at 819 (emphasis added). “[T]he applicable causation standard” for “arising out of” “is not the strict ‘direct and proximate cause’ standard applicable in general tort law.” *Capitol Indem. Corp. v. 1405 Assocs., Inc.*, 340 F.3d 547, 550 (8th Cir. 2003) “Instead, ‘arising out of’ may be established by a ‘*simple causal relationship*’ . . . between the accident or injury and the activity of the insured.” *Id.* (emphasis added) (applying Missouri law); *see also Hunt v. Capitol Indem. Corp.*, 26 S.W.3d 341, 344 (Mo. Ct. App. 2000).

Consistent with the settled law on the meaning of “arising out of,” courts applying Missouri law, including the Missouri Supreme Court, have consistently construed “arising out of”—*even when used in insurance policy exclusions*—broadly, and to require only “a ‘simple causal relationship . . .’ between the accident or injury and the activity of the insured.” *1405 Assocs., Inc.*, 340 F.3d at 550 (exclusion for injury “arising out of . . . termination” barred coverage); *see also Columbia Mut. Ins. Co. v. Schauf*, 967 S.W.2d 74, 78–81 (Mo. 1998) (exclusion for property damage “arising out of” insured’s “operations” barred coverage); *Capitol Indem. Corp. v. Callis*, 963 S.W.2d 247, 248–50 (Mo. Ct. App. 1997) (exclusion for injury “arising out of assault, battery or assault and battery” barred coverage); *Cincinnati Ins. Co. v. Intek Corp.*, No. 4:08cv1440 JCH, 2010 WL 716197, at *4 (E.D. Mo. Feb. 24, 2010) (PCOH exclusion barred coverage); *Scottsdale Ins. Co. v. Aqueous Vapor, LLC*, No. 4:20-00328-CV-RK, 2021 WL 123401, at *3–4 (W.D. Mo. Jan. 12, 2021) (same); *Richards*, 719 S.W.3d at 820 (exclusion for injury “arising out of” assault or battery, or the failure to prevent assault or battery, barred coverage).

Under Massachusetts law,¹⁰ like Missouri law, “[t]he phrase ‘arising out of’ must be read expansively, incorporating a greater range of causation than that encompassed by

¹⁰ In insurance coverage disputes, as to choice of law, the law of the insured’s domicile at the time of issuance of the policy is given significant weight. *See Viacom, Inc. v. Transit Cas. Co.*, 138 S.W.3d 723, 725 (Mo. banc 2004). Here, certain of the AIG Policies were issued to Mallinckrodt, plc, a Missouri-based company. *See, e.g.*, D431, p. 7; AIG’s App. 5. Certain others were issued to Covidien, Ltd., a Massachusetts-based company. *See, e.g.*, D453, p. 11; AIG’s App. 18. Certain others were issued to Tyco Healthcare Group LP, also a Massachusetts-based company. *See, e.g.*, D498, p. 5. Massachusetts law and Missouri law are consistent on the issues addressed in this brief, and are cited interchangeably.

proximate cause under tort law.” *Finn v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 896 N.E.2d 1272, 1278 (Mass. 2008) (internal citations omitted); *Kinsella v. Wyman Charter Corp.*, 417 F. Supp. 2d 159, 165 (D. Mass. 2006). According to the Supreme Judicial Court of Massachusetts, “‘*arising out of*’ denotes a ‘*causation more analogous to ‘but for’ causation*,’ in which the court examining the exclusion inquires whether there would have been personal injuries, and a basis for the plaintiff’s suit, in the absence of the objectionable underlying conduct.” *Finn*, 896 N.E.2d at 1279 (emphasis added) (internal citations omitted); *see also Brazas Sporting Arms, Inc. v. Am. Empire Surplus Lines Ins. Co.*, 220 F.3d 1, 6–7 (1st Cir. 2000).

Accordingly, Massachusetts courts, like Missouri courts, interpret “arising out of” expansively and enforce “arising out of” exclusions—including PCOH exclusions—regularly. *See Kinsella*, 417 F. Supp. 2d at 164 (exclusion for “‘bodily injury’ . . . arising out of the ownership, maintenance, use or entrustment to others of any . . . watercraft” barred coverage); *Finn*, 896 N.E.2d at 1276 (exclusion for “any claim arising out of any misappropriation of trade secret” barred coverage); *Brazas Sporting Arms, Inc. v. Am. Empire Surplus Lines Ins. Co.*, 59 F. Supp. 2d 223, 226 (D. Mass. 1999), *aff’d*, 220 F.3d 1 (1st Cir. 2000) (PCOH exclusion barred coverage); *Cytosol Labs., Inc. v. Federal Ins. Co.*, 536 F. Supp. 2d 80, 88–89 (D. Mass. 2008) (PCOH exclusion barred coverage).

In sum, when interpreting a policy exclusion based on the phrase “arising out of,” all that is required for the exclusion to apply is a “simple causal relationship” between the harm and the subject of the exclusion; that is, so long as the injury “originat[es] from,” “grow[s] out of,” or “flow[s] from” the excluded activity, it “arises out of” that activity.

B. All Of The Liability Mallinckrodt Faced In The Opioid Lawsuits Concerned Harm “Arising Out Of” Mallinckrodt’s “Products,” Which Is Defined To Include Representations About Those Products.

As the Circuit Court correctly determined, *all* of the liability Mallinckrodt faced in the Opioid Lawsuits—even Mallinckrodt’s hypothetical third bucket of liability—unquestionably satisfies the “simple causal relationship” expressed by the phrase “arising out of” in the definition of the products-completed operations hazard. *See* D541, p. 3 (¶¶ 2–4); Trust’s App. 3. Mallinckrodt’s liability clearly “originat[es] from,” “grow[s] out of,” or “flow[s] from” its products, or representations about such products, such that the PCOH Exclusion and the PCOH-Claims Made Endorsement apply, and no coverage is available for the Opioid Lawsuits.

Importantly, the Trust concedes that the PCOH Exclusion and PCOH Claims-Made Endorsement apply to the liability Mallinckrodt faced in buckets one and two—liability arising from Mallinckrodt’s branded or unbranded marketing that resulted in the ingestion of an opioid sold by Mallinckrodt, or an opioid sold by another manufacturer that included Mallinckrodt’s API. *See* Trust’s Br. at 11, 15, 28, 33, 36. The Trust asserts only that the hypothetical liability in bucket three resulting from “non-Mallinckrodt opioids”—that it asked the Circuit Court, and now this Court, to assume Mallinckrodt faced and settled in the Opioid Lawsuits—is not “included within” the products-completed operations hazard.¹¹ *See id.* at 23, 25 & n.7, 28, 36, 45; *see also* D413, pp. 10–11, 23; D524, pp. 8–9, 17–18, 21–22.

¹¹ The illogical result of the Trust’s argument—that the presence of “non-Mallinckrodt” opioids means that the PCOH Exclusion does not apply—is that insureds that were

But to be “included within” the products-completed operations hazard, all that is required is for that hypothetical third bucket of liability to “aris[e] out of” Mallinckrodt’s opioid products (including APIs), its work relating to those products, or its representations about such products. As case law discussed above establishes, when applying the key phrase “arising out of” in an insurance policy, a court must examine if there would have been a basis for the suit in the absence of—that is, *but for*—the subject of the “arising out of” phrase. *See Finn*, 896 N.E.2d. at 1279 (in interpreting an “arising out of” exclusion, a court “inquires whether there would have been personal injuries, and a basis for the plaintiff’s suit, in the absence of the objectionable underlying conduct”).

Here, an examination of the allegations in the complaints in Mallinckrodt’s hand-picked “exemplar” Opioid Lawsuits; statements made by Mallinckrodt and the Trust to the bankruptcy court and by the bankruptcy court itself; and decisions from every other court that has considered this precise issue, establish that Mallinckrodt would not have faced liability in the Opioid Lawsuits were it not for its manufacturing, marketing, and sales of its opioid products, including what Mallinckrodt stated about opioids generally in its “unbranded marketing” campaign.

First, the allegations in the complaints in the “exemplar” Opioid Lawsuits underscore that the plaintiffs in those suits were seeking to hold Mallinckrodt liable for

issued coverage excluding the PCOH, like Mallinckrodt and Purdue Pharma, would be able to get coverage for what neither would be able to get on its own. In other words, Mallinckrodt cannot get coverage for liability arising out of Mallinckrodt’s products, and Purdue cannot get coverage for liability arising out of Purdue’s products, but both can get coverage for liability that, in some fashion, involves both companies’ products.

fueling the opioid crisis by *producing, marketing, and selling opioid products*, and that, *but for* such conduct, Mallinckrodt would not have been named as a defendant in those suits.¹² Indeed, the allegations center on Mallinckrodt’s prominence as a manufacturer and seller of opioid products. *See, e.g.*, D416, p. 29 (¶ 48); D490, p. 9 (¶ 9 Response) (“Mallinckrodt is the largest U.S. supplier of opioid pain medications and among the top ten generic pharmaceutical manufacturers in the United States based on prescriptions.”); D418, p. 8 (¶ 28); D490, p. 12 (¶ 14 Response); D419, p. 13 (¶ 26); D490, p. 19, (¶ 17 Response) (“Mallinckrodt manufactures four branded opioids . . . Mallinckrodt is also one of the largest manufacturers of generic opioids[.]”).

The complaints allege that Mallinckrodt “promoted its branded opioids Exalgo and Xartemis XR, and opioids generally, in a campaign that consistently mischaracterized the risk of addiction. Mallinckrodt did so through its website and sales force, as well as through unbranded communications[.]” D416, p. 225 (¶ 581); D490, p. 9 (¶ 9 Response). Mallinckrodt’s “sales representatives distributed [unbranded] third-party marketing material” to their “target audience”—doctors—so that they would prescribe more of Mallinckrodt’s products. D420, pp. 27–32 (¶¶ 81, 85, 87–99); D490, p. 36 (¶ 25 Response).

As alleged in the Opioid Lawsuits, the goal of that marketing—or the “motive,” as the Trust refers to it, *see* Trust’s Br. at 12, 39—was not to help Purdue sell more OxyContin, even if that was one result; the goal was clearly to increase sales of *Mallinckrodt’s products*, as “Defendants would not spend billions of dollars on marketing

¹² For a detailed discussion of the complaints in the Trust’s 11 exemplar Opioid Lawsuits, please see Brief of Respondents Aspen Ins. UK Ltd. And Old Colony State. Ins. Co.

to physicians if they did not believe that such efforts were successful in generating prescriptions. For that reason, they [i.e., manufacturers, including Mallinckrodt] devote substantial resources to marketing their drugs to prescribers and patients and then meticulously tracking their return on that investment.” D416, p. 46 (¶ 93); D490, p. 9 (¶ 9 Response); *see also* D417, pp. 139–40 (¶ 426); D418, p. 72 (¶ 202); D490, pp. 13 (¶ 14 Response), 31 (¶ 21 Response). As the Trust itself explained, in addition to selling more of its own finished dosage opioid products—i.e., ready-to-use pills—Mallinckrodt was “incentivized to increase the overall opioid market” through unbranded marketing “because that would [also] increase” sales of Mallinckrodt’s “active pharmaceutical ingredients,” or APIs, the components sold “to other opioid manufacturers” to use in their finished dosage products. D454, pp. 42–43 (¶ 92). That is, Mallinckrodt’s participation in unbranded marketing also had the effect of increasing the sales of finished dosage opioid products manufactured by other pharmaceutical manufacturers, such as Purdue, which utilized Mallinckrodt’s APIs—another Mallinckrodt “product”—in the manufacture of their own branded opioid pills.

The exemplar Opioid Lawsuits allege that Mallinckrodt’s and the other defendants’ unbranded marketing campaign was successful, as “Defendants each experienced a material increase in sales, revenue, and profits from the fraudulent, misleading, and unfair market activities[.]” D416, p. 245 (¶ 625). At bottom, therefore, the complaints in the exemplar Opioid Lawsuits selected by the Trust allege that Mallinckrodt’s unbranded marketing efforts—and any potential liability for such efforts—“originat[ed] from,” “gr[ew] out of,” or “flow[ed] from” its conduct relating to its own opioid products, or

representations about such products. *1405 Assocs., Inc.*, 340 F.3d at 550. That is all that is necessary to establish the requisite “simple causal relationship” for the third bucket of liability to be comfortably “included within” the products-completed operations hazard, and thus precluded from coverage. See *Cincinnati*, 2010 WL 716197, at *4; *Scottsdale*, 2021 WL 123401, at *3–4; *Brazas*, 220 F.3d at 6, 8–9.

Second, Mallinckrodt’s statements in the bankruptcy record, statements from the bankruptcy court, and even the Trust’s own statements in its lawsuit against Covidien—statements made *before* the Trust concocted the hypothetical third bucket of liability in an effort to escape the PCOH Exclusion and the PCOH Claims-Made Endorsement—also establish that all liability Mallinckrodt faced in the Opioid Lawsuits “originat[ed] from,” “gr[ew] out of,” or “flow[ed] from” its production and sale of its opioids, both finished dosage opioids and APIs. For example, Mallinckrodt swore to the bankruptcy court that:

“Certain Mallinckrodt entities, primarily associated with the Specialty Generics business, have been named in over 3,000 lawsuits *stemming from the Debtors’ production and sale of opioid medications.*” D415, p. 7 (¶ 12) (emphasis added).

The Mallinckrodt Debtors “have been dragged into an all-consuming tidal wave of litigation *concerning the production and sales of its opioid products.*” D415, p. 33 (¶ 76) (emphasis added).

“[C]ertain of the Debtors have been subject to an increasing number of lawsuits in the United States *concerning their manufacturing and sale of opioid products.*” D415, p. 48 (¶ 114) (emphasis added).

Mallinckrodt also expressly admitted that liability concerning the “production and sale” of its opioid products is why it filed for bankruptcy: “The Debtors commence[d] this chapter 11 proceeding following a years-long *onslaught of litigation regarding Specialty*

Generics’ production and sale of opioid medications[.]” D415, p. 30 (¶ 68) (emphasis added).

Relying on Mallinckrodt’s sworn statements, the bankruptcy court also concluded that the Opioid Lawsuits against Mallinckrodt arose out of Mallinckrodt’s products. The court found that, “[i]n the years leading up to the commencement of these bankruptcy cases, Debtors faced an onslaught of litigation *arising out of their production of certain drugs.*” D456, p. 3 (emphasis added). It found specifically that “certain Debtors, primarily those on the Specialty Generics side of the business, were named in over 3,000 lawsuits *stemming from their production and sale of opioid medications.*” D456, p. 3 (emphasis added). And, according to the bankruptcy court, these claims were brought by “both governmental entities seeking to abate the opioid crisis they allege Debtors contributed to, as well as private organizations and individuals who were affected by *Debtors’ opioid products.*” D456, p. 15 (emphasis added).

In its lawsuit against Covidien, even the Trust expressly alleged, “Mallinckrodt faced crushing liability as a result of its conduct. It was subject to government investigations and beset by an *‘all-consuming tidal wave of litigation’ concerning the production and sales of its opioid products* and unbranded promotional activities *regarding those products.*” D454, p. 9 (¶ 6). The Trust’s assertion now that the PCOH Exclusion and PCOH Claims-Made Endorsement do not encompass the liability Mallinckrodt faced in the Opioid Lawsuits, because a portion of that liability purportedly did not arise out of Mallinckrodt’s products, is not credible.

Third, every court that has considered the very same question at issue here has applied materially identical PCOH exclusions, under materially identical state law, to preclude coverage for materially identical Opioid Lawsuits against other opioid sellers—Mallinckrodt’s alleged co-conspirators in the unbranded marketing campaign—because such claims “arise out of” the opioid sellers’ “products.” In 2016, six years before this coverage action was filed, the Eleventh Circuit held that a PCOH exclusion with “arising out of” language precluded coverage for an Opioid Lawsuit filed by the State of West Virginia against an opioid seller, *Anda*, seeking to recover the costs resulting from *Anda* and other pharmaceutical companies having “flooded” the market with opioids. *See Travelers Prop. Cas. Co. of Am. v. Anda, Inc.*, 658 F. App’x 955, 958–59 (11th Cir. 2016). The court recognized that “arising out of” requires only a “minimal causal connection or link” between the defendant’s products, and that “arising out of” is “much broader” than “caused by.” *Id.* at 958. Accordingly, the court concluded, “[t]he injuries alleged by the State in the West Virginia [Opioid Lawsuit] have, at the very minimum, a ‘connection with’ *Anda*’s products.” *Id.*

One year later, in 2017, the California Court of Appeal reached the same conclusion in *Travelers Property Casualty Co. of America v. Actavis, Inc.*, 16 Cal. App. 5th 1026, 1044–52 (2017). The court held that a PCOH exclusion, which contained the same language at issue here, precluded coverage for Opioid Lawsuits filed against a group of pharmaceutical manufacturers affiliated with *Actavis* (which was a co-defendant alongside *Mallinckrodt* in one of the Trust’s own “exemplar” complaints that describes both *Mallinckrodt* and *Actavis* as the “Marketing Defendants”). *See* D417, p. 29 (¶ 79). Like

here, the Opioid Lawsuits in *Actavis* alleged that the Marketing Defendants engaged in a “highly deceptive [unbranded] marketing campaign designed to expand the market and increase sales of opioid products by promoting them for treating long-term chronic, non-acute, and non-cancer pain—a purpose for which [the insured] allegedly knew its opioid products were not suited.” 16 Cal. App. 5th at 1030 (internal quotations omitted). The Opioid Lawsuits at issue in *Actavis* include detailed allegations of the defendants’ use of unbranded marketing “to evade regulations and consumer protection laws[.]” *E.g.*, Second Amended Complaint ¶¶ 86–161, *State of Cal. v. Purdue Pharma L.P. et al.*, No. 30-2014-00725287-CU-BT-CXC (Cal. Sup. Ct. Dec. 23, 2014).

The *Actavis* court held that the PCOH exclusion applied—even to liability relating to heroin use—because all of the liability “arose out of” the manufacturer’s “products or the alleged statements and misrepresentations made about those products.” 16 Cal. App. 5th at 1030. The appellate court agreed with the trial court that “[a]ll of the harm that is asserted in the [Opioid] [L]awsuits—narcotics addiction, the public nuisance in the California [Opioid Lawsuit] and the public health costs, etc. highlighted in the Chicago [Opioid Lawsuit]—stem from [Actavis affiliate] Watson’s products and what Watson said and did not say about the products.” *Id.* at 1044; *see also Zogenix, Inc. v. Fed. Ins. Co.*, 4:20-cv-06578-YGR, 2022 WL 3908529, at *9 (N.D. Cal. May 26, 2022) (following *Actavis* and holding that a PCOH exclusion precluded coverage for claims in the Opioid Lawsuits relating to, among other things, unbranded marketing by an opioids manufacturer).

A few years later, the Southern District of California held, and the Ninth Circuit affirmed, that the PCOH exclusion there—identical to the one here—precluded coverage for liability relating to a government investigation into the insured’s opioid business. *Sentynl Therapeutics, Inc. v. U.S. Specialty Ins. Co.*, 527 F. Supp. 3d 1203, 1209–10 (S.D. Cal. 2021), *aff’d*, No. 21-55370, 2022 WL 706941 (9th Cir. Mar. 9, 2022). The court concluded that “legal claims for marketing practices tied to the known dangers of opioids . . . ‘arise out of’ opioids, despite the lack of a product-centric liability theory.” *Id.* at 1209.

As in these cases, all of the liability faced by Mallinckrodt in the Opioid Lawsuits—even liability purportedly relating to the ingestion of non-Mallinckrodt opioids—arises out of Mallinckrodt’s products, or what Mallinckrodt said and did not say about the products, and thus is “included within” the products-completed operations hazard and subject to the PCOH Exclusion and the PCOH Claims-Made Endorsement.

C. The Trust’s Arguments Do Not Establish That Any Liability Mallinckrodt Faced In The Opioid Lawsuits Did Not “Arise Out Of” Mallinckrodt’s “Products.”

In asserting that the Circuit Court and every other court got it wrong, the Trust makes (1) several arguments focused on the language of the PCOH, and (2) a set of arguments focused on the absence of a reference to Mallinckrodt-specific products in “unbranded marketing” and the alleged ingestion of non-Mallinckrodt opioids. These arguments, addressed below in sections 1 and 2 respectively, all fail to establish the PCOH Exclusion and the PCOH Claims-Made Endorsement do not apply.¹³

¹³ In a footnote, the Trust references the concurrent cause argument that it advanced before the Circuit Court—that Mallinckrodt was liable “because of bodily injury arising out of

1. The Trust’s Argument That The Language Of The PCOH—Including “Arising Out Of”—Is Somehow Narrower Than What Missouri Courts And Other Courts Have Held Must Fail.

The Trust does not dispute the broad scope of “arising out of” as used in policy provisions—including exclusions—under Missouri law, much less offer any alternative, narrower definition. *See* Trust’s Br. at 38–39, 41–44. Indeed, the Trust concedes that a “simple causal relationship” is all that “arising out of” requires. Trust’s Br. at 42–44. Nevertheless, the Trust asks this Court to disregard the broad meaning of “arising out of” and disregard settled Missouri law addressing and applying other “arising out of” exclusions in insurance policies. The Trust likewise asks the Court to depart from every case ruling on the question of whether PCOH exclusions apply to preclude coverage specifically for Opioid Lawsuits against pharmaceutical companies. Yet the four arguments the Trust offers provide no valid basis to do so.

First, the Trust argues, in essence, that “your product”—when tethered to “arising out of”—somehow curtails the breadth of “arising out of” as established by years of Missouri (and Massachusetts) precedent. According to the Trust, “no matter how

both covered (non-Mallinckrodt products) and excluded (Mallinckrodt products) causes,” and thus, under the concurrent cause rule, the AIG Policies must respond to all liability Mallinckrodt faced in the Opioid Lawsuits, and not just bucket three. *See* Trust’s Br. at 29 n.8; *see also* D524, pp. 29–30. For the concurrent cause rule to have any applicability, there must be an excluded risk and a risk *not* subject to an exclusion, both of which constitute concurrent proximate causes of the insured’s liability. *Braxton v. U.S. Fire Ins. Co.*, 651 S.W.2d 616, 619 (Mo. Ct. App. 1983). Because *all* of the insured’s liability-causing activities—misconduct concerning the marketing and sale of Mallinckrodt’s opioids, including any unbranded marketing resulting in bucket three liability—are subject to the PCOH Exclusion, there is no covered risk here, and therefore the concurrent cause rule does not apply. *See* D533, pp. 29–31.

expansively this Court interprets ‘arising out of,’ that prepositional phrase is still tethered to its object: ‘your product.’” Trust’s Br. at 35. But there is no authority for the proposition that “your product” limits, narrows, or changes the meaning of “arising out of” or that it means something different than it does when used in every other exclusion examined by Missouri courts. The Trust does not present a single case supporting its theory that “your product” alters the meaning of “arising out of,” much less any case, from any court, that has ever construed “arising out of” to narrowly mean “immediately caused by” or “caused by the ingestion of” or the like—as the Trust would have it. By contrast, as explained above, under settled Missouri law, the phrase “bodily injury . . . arising out of ‘your product’” requires only a minimal causal link—“a simple causal relationship”—between the harm and the “product,” which is defined to include representations, warranties, and failure to warn about the product. As discussed, the minimal threshold connection is met here. *See supra* at 27–29.

The single case that the Trust offers to suggest that “your product” somehow significantly narrows the scope of “arising out of,” *Cook’s Fabrication & Welding, Inc. v. Mid-Continent Casualty Co.*, 364 S.W.3d 639, 643–44 (Mo. Ct. App. 2012), does not so hold. (*See* Trust’s Br. at 35–36.) The court in *Cook’s* did not interpret the phrase “your product” or consider its alleged impact on the breadth of the preposition phrase “arising out of.” Instead, the court adjudicated an exclusion precluding coverage for “‘Property damage’ to ‘your work’ arising out of it or any part of it and included in the ‘products-completed operations hazard.’” *Id.* Focusing on the language “*to* ‘your work,’” the court ruled that harm that included “lost profits,” “reduced production,” and “inability to access

materials” did not constitute “property damage to your work.” *Id.* at 644–45 (emphasis in original). *Cook’s* does nothing to advance the Trust’s cause.¹⁴

Second, the Trust argues that an “ordinary person of average understanding” reading the definition of “your product,” along with the PCOH Exclusion, “would conclude that the Exclusion does not bar coverage for Claims that do not allege liability based on the ingestion of Mallinckrodt opioids or on warranties or representations about Mallinckrodt’s opioids.” Trust’s Br. at 34–35. To begin with, the parties agree on the governing principles here. As Missouri courts have articulated, “[w]hen interpreting an insurance policy, we give the policy language its plain meaning, or the meaning that would be attached by ***an ordinary insurance purchaser.***” *Richards*, 719 S.W.3d at 818 (emphasis added). The parties, however, clearly disagree on the application of these principles.

The plain meaning of the PCOH—interpreting it as an ordinary person would—leads to the conclusion that all liability Mallinckrodt faced in the Opioid Lawsuits concerns harm that arose out of its products, and representations about its products. Indeed, fatal to the Trust’s argument to the contrary is that the record demonstrates that an “ordinary person”—in fact, the actual “ordinary insurance purchaser” here, *id.*—concluded that coverage for the Opioid Lawsuits was precluded by the PCOH Exclusion. Correspondence

¹⁴ The Trust also takes issue with two of the cases that the Circuit Court cited in its opinion because they “did not involve coverage exclusions.” Trust’s Br. at 41–43. While true that those two cases did not involve exclusions, this ignores the reality that there is an enormous body of case law (all cited and discussed in the AIG Insurers’ briefs below) broadly interpreting and applying “arising out of” language ***in exclusions*** under Missouri law, *see supra* at 27–28, including in one of the other cases that the Circuit Court cited, *Capitol Indemnity Corp. v. 1405 Associates., Inc.*, 340 F.3d 547, 550 (8th Cir. 2003) (applying Missouri law).

between Mark Huddleston, Mallinckrodt’s Risk Manager, and Kenneth Boland, Senior Vice President of Claims at Marsh, the broker that helped Mallinckrodt purchase the AIG Policies, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] D489, pp. 3–6.

Third, the Trust argues in the alternative—without support—that the language “your product” somehow renders the phrase “arising out of,” and thus the PCOH Exclusion, ambiguous. Specifically, the Trust asserts that “[e]ven if the phrase ‘your products’ could also be interpreted to include representations made in the unbranded promotional campaign, the Exclusion would be considered ambiguous.” Trust’s Br. at 35. The Trust further contends that “the Insurers, as the drafters of the policies, could have avoided any potential ambiguity and worded the policies to ensure the limitation of coverage they now claim was intended.” Trust’s Br. at 37.

The AIG Insurers need not have drafted the AIG Policies differently, those policies are not ambiguous, and they do not become so just because the Trust does not like the outcome. Missouri courts apply the “plain meaning” of an insurance policy, and “Missouri courts have judicially defined ‘arising out of’ as used in insurance contracts to have its plain and ordinarily understood meaning of ‘originating from,’ ‘having its origins in,’ ‘growing out of,’ or ‘flowing from.’” *Richards*, 719 S.W.3d at 819. Multiple Missouri courts have held that similar “arising out of” exclusions clearly and unambiguously

preclude coverage. *See supra* at 27–28. Moreover, multiple courts that have had occasion to address the precise issue here—whether PCOH exclusions preclude coverage for Opioid Lawsuits—have held that substantially identical exclusions clearly and ***unambiguously*** apply. *See supra* at 36–38.

The Trust does not—and cannot—cite a single case supporting its contrary position that, unless the PCOH Exclusion and PCOH Claims-Made Endorsement are interpreted in their favor, the language in those provisions is ambiguous. Rather, the Trust cites a slew of inapposite cases for uncontroversial principles of contract interpretation. Indeed, while four of these cases are offered as the ***key*** authorities for the Trust’s “Points Relied On,” not one supports its argument that the PCOH Exclusion is ambiguous or has otherwise been misinterpreted. *See* Trust’s Br. at 27 (citing *Burns v. Smith*, 303 S.W.3d 505, 510–11 (Mo. banc 2010) (“business pursuits” exclusion did not apply to a negligence claim because the phrase “business pursuits” was ambiguous); *Henderson v. Mass. Bonding & Ins. Co.*, 84 S.W.2d 922, 924, 926 (Mo. 1935) (condition in a policy— “[N]o explosives are made, sold, kept or used on the insured premises”—was not violated by the presence of fireworks on the premises because fireworks are not “explosives”); *Harrison v. Tomes*, 956 S.W.2d 268, 269–70 (Mo. banc 1997) (auto exclusion precluding coverage for “bodily injury or property damage” “arising out of . . . the ownership, maintenance, use, loading or unloading of motor vehicles or all other motorized land conveyances . . . owned or operated or rented or loaned to an insured” did not apply because insured was not “operat[ing]” the vehicle); *Maher Bros., Inc. v. Quinn Pork, LLC*, 512 S.W.3d 851, 854, 856–57 (Mo. Ct. App. 2017) (“farm liability”

exclusion did not apply to a negligence claim concerning the death of pigs because the word “care” was ambiguous).

The AIG Insurers do not dispute the principles articulated in these cases; nor do the AIG Insurers dispute that those cases correctly applied those principles. The point, however, is that there is no ambiguity here and applying those very same Missouri principles of contract interpretation leads to the conclusion that the plain and unambiguous language of the PCOH Exclusion and the PCOH Claims-Made Endorsement applies to all of the liability that Mallinckrodt faced in the Opioid Lawsuits.¹⁵ No case suggests, much less holds, otherwise.

Without on-point legal authority, the Trust simply disagrees with the Circuit Court, the AIG Insurers, and the robust body of case law adjudicating the same and similar exclusions. But an insurance policy is “not ambiguous merely because the parties disagree over its meaning.” *Trainwreck West Inc. v. Burlington Ins. Co.*, 235 S.W.3d 33, 40 (Mo. Ct. App. 2007). Missouri and Massachusetts courts have interpreted the key phrase “arising out of” without difficulty and have applied the PCOH Exclusion—including to these very Opioid Lawsuits—concluding it unambiguously precludes coverage.

Fourth, the Trust argues that the Circuit Court “improperly swept Mallinckrodt’s marketing and sales ‘efforts’” or “motive” “into the definition of ‘your products.’” Trust’s

¹⁵ To be sure, Missouri courts need not consider the rules of construction regarding how to resolve ambiguities where, as here, there are no ambiguities and the plain meaning is clear. See *Richards*, 719 S.W.3d at 819; *Atlas Rsrv. Temporaries, Inc. v. Vanliner Ins. Co.*, 51 S.W.3d 83, 87 (Mo. Ct. App. 2001). The Trust may not ask this Court to rewrite the AIG Policies under the guise of “construction.”

Br. at 40. According to the Trust, “[t]he court determined that because Mallinckrodt’s ‘motive’ in undertaking the unbranded campaign was to sell more of its products, statements made during the campaign fit within the ‘your product’ definition.” Trust’s Br. at 12. The Trust does not dispute that the purpose—that is, the motive—behind Mallinckrodt’s unbranded marketing campaign was to sell more of its products, including finished dosage opioid products manufactured by others but utilizing Mallinckrodt’s APIs; indeed, the Trust concedes that unbranded marketing was a back-door way for Mallinckrodt to sell its products while avoiding certain regulations. *See* Trust’s Br. at 16–17, 34. The Trust argues instead that motive is not enough because motive “is not in the policy text” and thus is “irrelevant.” Trust’s Br. at 12, 40.

But “motive” need not appear in the policy text for any harm from unbranded marketing to fall squarely within the PCOH definition. The Opioid Lawsuits make clear that selling Mallinckrodt’s own products was the focus of Mallinckrodt’s business, the motive behind its marketing, *and* the result of its marketing efforts, as Mallinckrodt’s marketing did lead to flooding the market with its own products and “blockbuster profits.” *See supra* at 31–34. Harm that results from realizing the objective—or “motive”—of selling products is sufficient to meet the “simple causal relationship” required by “arising out of.” *See 1405 Assocs., Inc.*, 340 F.3d at 550. Any harm from exposure to Mallinckrodt’s “unbranded” marketing of its products—which did succeed in selling more of its products, including APIs—originates from, or grows out of, or flows from Mallinckrodt’s products, and specifically the manner in which Mallinckrodt marketed and sold its products.

2. The Trust’s Other Arguments, Focused On The Absence Of A Specific Mallinckrodt Product In “Unbranded Marketing” And The Ingestion Of Other “Non-Mallinckrodt Opioids,” Likewise Must Fail.

The Trust emphasizes two discrete parts in the hypothetical chain of events concerning its “bucket three” liability to argue that Mallinckrodt’s use of “unbranded marketing” renders the PCOH Exclusion and PCOH Claims-Made Endorsement inapplicable to this hypothetical subset of liability: (1) the unbranded marketing that purportedly precipitated the harm does not specifically reference Mallinckrodt’s branded products, and (2) the harm was caused by the ingestion of an opioid that was not specifically a Mallinckrodt-branded opioid. Even assuming that the causal chain happened as the Trust posits, it is still the case that all of Mallinckrodt’s liability “arises out of” Mallinckrodt’s products or representations about its products.

The Trust argues that the unbranded marketing references opioids only generally, and representations about opioids generally are not representations about Mallinckrodt’s branded products specifically. *See* Trust’s Br. at 40. The Trust argues, notwithstanding that it was a back-door way to avoid regulations and sell more Mallinckrodt products, “the unbranded promotional campaign steered clear of representations about or even any mention of Mallinckrodt’s own products, and even the speakers and publications had no discernible link to Mallinckrodt.” Trust’s Br. at 40. The *Actavis* court rejected that logic and this Court should too.

In *Actavis*, the California Court of Appeal adjudicated the same kind of marketing campaign that is at issue here, which involved Watson, the insured there, and the “other

defendants”—among which were Mallinckrodt—and whose goal was to “persuade[] doctors and patients” that opioids as a class of drugs were safe to use for chronic pain and not as addictive as the drug companies knew it was. 16 Cal. App. 5th at 1033–34. The California Court of Appeal held that the PCOH exclusion applied as a matter of law to all of the alleged liability, because “[a]ll of the harm that is asserted in the [Opioid] [L]awsuits . . . stem from [Actavis affiliate] *Watson’s products and what Watson said and did not say about the products.*” *Id.* at 1044 (emphasis added). Just because Mallinckrodt was adept at hiding its identity as the author of representations about opioids does not change the fact that *representations about opioids generally* are necessarily *representations about the subset of opioids that are Mallinckrodt’s products*, and therefore fall within the definition of “your product” in the PCOH provisions.

Next, the Trust argues that Mallinckrodt’s unbranded marketing activities led to harm relating to the use of *other* opioids that were not Mallinckrodt’s—illicit opioids or other manufacturers’ opioids. To begin with, certain of these “other opioids”—while not carrying a Mallinckrodt brand name—did contain Mallinckrodt’s “active pharmaceutical ingredients” or APIs, which were ingredients that Mallinckrodt sold to other companies as a component part of a finished dosage opioid product, like a pill. D398, pp. 4 (¶ 2), 40–41 (¶ 80); D415, p. 17 (¶ 40). The definition of “your product” broadly includes any “goods or products”—including APIs—sold by Mallinckrodt, and is by no means limited to Mallinckrodt-*branded* products. D431, p. 28 (¶ 21); AIG’s App. 12; D490, p. 76 (¶ 66); *see also* D504, p. 25 (¶ 46). That means that any liability resulting from “non-Mallinckrodt opioids” that contain Mallinckrodt’s APIs would present harm from the ingestion of

Mallinckrodt’s “product,” as defined in the PCOH, making it squarely “included within” the PCOH even by the Trust’s own logic.

But even if certain harm resulted from non-Mallinckrodt opioids with no APIs from Mallinckrodt, that does not alter the conclusion that the PCOH applies. *See Actavis*, 16 Cal. App. 5th at 1030 (claims alleging harm from other non-Actavis opioids, including illicit opioids, were still subject to the PCOH exclusion). Again, as the *Actavis* court concluded:

[T]he alleged resurgence in heroin use, also arises out of Watson’s [an affiliate of Actavis] products. Heroin is not, of course, a product made or distributed by Watson, but that fact is not dispositive. The Products Exclusions extend . . . to bodily injury arising out of warranties or representations made by Watson in connection with its products. The complaints allege a direct causal connection between those warranties and representations and the resurgence in heroin use: Watson’s warranties and representations made as part of [their marketing] campaign to increase the sales of highly addictive opioid painkillers allegedly had the intended effect of increasing their sales, use, and addiction, which led to a dramatic increase in the use of heroin as a cheaper alternative.

Id. at 1046.

The Supreme Court of Delaware’s decision in *Eon* is also instructive. In *Eon*, an insured diet drug manufacturer sought coverage for claims asserting fraud, misrepresentation, and other causes of action in connection with the marketing and sale of its diet drug. *Eon Labs Mfg., Inc. v. Reliance Ins. Co.*, 756 A.2d 889, 892 (Del. 2000). The insured conceded that certain claims based solely on the use of its product were barred by the PCOH exclusion but argued that certain “combination claims” alleging injuries caused by its drug and another company’s drug were not. *Id.* at 891. The court rejected this argument, explaining that it “distorts the essential fact that in all of the cases[,] it is the

involvement or presence of [the insured’s product] (including misrepresentations and failure to warn, etc.) that is the basis of” the combination claims. *Id.* at 893.

As the Delaware Supreme Court held, the fact that the combination claims “also involved the products of others does not negate the application of the ‘arising out of language.” *Id.* at 894 (granting summary judgment for the insurer); *see also Fibreboard Corp. v. Hartford Accident & Indem. Co.*, 16 Cal. App. 4th 492, 505 (1993) (PCOH exclusion barred coverage for liability involving other companies’ asbestos products); *Liggett Grp., Inc. v. Ace Prop. & Cas. Ins. Co.*, 798 A.2d 1024, 1033 (Del. 2002) (PCOH exclusion barred coverage for liability involving other companies’ tobacco products). Here too, regardless of whether other products played some role, it is the insured’s conduct marketing and selling *its products* that form the basis of the Opioid Lawsuits, and thus all liability that those insureds faced arose out of their opioid products.

Further, the complaints in the Trust’s hand-picked exemplar Opioid Lawsuits expressly allege the close link between the use of Mallinckrodt’s products and the subsequent use of other opioids. One complaint alleges that there is a “well-established relationship between the use of prescription opiates and the use of non-prescription opioids—like heroin and illicit . . . fentanyl[.]” D418, p. 82 (¶ 238). Another complaint alleges that “[t]he strongest risk factor for a heroin use disorder is prescription opioid use.” D423, p. 74 (¶ 283). Still another alleges, “Individuals addicted to prescription opioids often transition to heroin due to its lower cost, ready availability, and similar high.” D417, p. 198 (¶ 615).

Even the Trust itself acknowledges this alleged connection between prescription opioids and other opioids. According to the Trust, the lawsuits allege “that promotional campaign activated and exacerbated the dramatic proliferation of opioid use, abuse, diversion and addiction, first to prescription opioids and later, illicit opioids like heroin and fentanyl.” Trust’s Br. at 10. This connection—which the Trust agrees is alleged—directly refutes that any liability for harm from the ingestion of illicit opioids or opioids produced by other manufacturers does not “arise out of” Mallinckrodt’s “products.”

In sum, all of the liability Mallinckrodt faced in the Opioid Lawsuits—including the theoretical “bucket three” subset of liability concerning “unbranded marketing” and the ingestion of “non-Mallinckrodt opioids” if it existed—is captured by the PCOH. Accordingly, the PCOH Exclusion and PCOH Claims-Made Endorsement apply to all of the Opioid Lawsuits, and the Circuit Court properly granted summary judgment.

II. ALTERNATIVELY, THIS COURT SHOULD AFFIRM SUMMARY JUDGMENT BECAUSE ALL LIABILITY MALLINCKRODT FACED IN THE OPIOID LAWSUITS ARISES OUT OF MALLINCKRODT’S “WORK” AND THEREFORE IS INCLUDED WITHIN THE PRODUCTS-COMPLETED OPERATIONS HAZARD.

This Court will affirm the grant of summary judgment on any ground supported by the record, whether or not relied upon by the Circuit Court. *See Becker v. Schenk*, 716 S.W.3d 350, 357, 361 (Mo. Ct. App. 2025). While the Circuit Court deemed it unnecessary to reach the issue, as the AIG Insurers argued below, *see* D487, pp. 42–43, the “your work” facet of the PCOH is an independent ground on which summary judgment can be affirmed, as this too bars coverage for all liability faced by Mallinckrodt in the Opioid Lawsuits, including the Trust’s hypothetical alternative “bucket three” theory of liability.

The PCOH is defined to “[i]nclude[] all ‘bodily injury’ and ‘property damage’ occurring away from premises you own or rent and arising out of ‘your product’ *or* ‘**your work**[.]’” D431, p. 27 (¶ 16); AIG’s App. 11; D490, p. 76 (¶ 65) (emphasis added). Though the Trust neglects to analyze the “your work” language in the PCOH, the PCOH Exclusion unequivocally precludes coverage for, and the PCOH Claims-Made Endorsement is triggered by, injuries “arising out of” “your work,” defined as “work or operations performed by [Mallinckrodt]” as well as “[w]arranties or representations made at any time with respect to the fitness, quality, durability, performance or use” of that work, and the “providing of or failure to provide warnings or instructions.” D431, pp. 27–28 (¶¶ 16, 22); AIG’s App. 11–12; D499, p. 12 (N, O); D490, p. 76 (¶ 67).

Language in a liability policy “must be given its plain meaning without unduly straining the language.” *Hawkeye-Security Ins. Co. v. Davis*, 6 S.W.3d 419, 424 (Mo. Ct. App. 1999) (affirming summary judgment for the insurer on duties to defend and indemnify); *accord Finn*, 896 N.E.2d at 1277. “If the language of an insurance policy is unequivocal, it should be given its plain meaning, even if it restricts coverage.” *Hunt*, 26 S.W.3d at 342 (internal citations omitted); *Finn*, 896 N.E.2d at 1277 (An insurance policy “whose provisions are plainly and definitely expressed in appropriate language must be enforced in accordance with its terms.”). Other courts to have considered the meaning of “your work,” albeit in different contexts, have applied that particular part of the PCOH definition to preclude coverage. *See Cincinnati Ins. Co. v. U.S. Seamless, Inc.*, No. 3:15-cv-1, 2016 U.S. Dist. LEXIS 138028, at *10–11 (D.N.D. Mar. 30, 2016) (granting summary judgment for the insurer).

The plain meaning of the term suggests that a business’s marketing activities are a part of its “work or operations.” *See* D431, p. 28 (¶ 22), AIG’s App. 12; D499, p. 12 (N); D490, p. 76 (¶ 67). Mallinckrodt’s liability here likewise “originat[es] from,” “ha[s] its origins in,” “grow[s] out of,” or “flow[s] from” Mallinckrodt’s “work.” *1405 Assocs., Inc.*, 340 F.3d at 550; *Colony Ins. Co. v. Pinewoods Enters., Inc.*, 29 F. Supp. 2d 1079, 1083 (E.D. Mo. 1998); *Brazas*, 220 F.3d at 7. Thus, all of the liability Mallinckrodt faced in the Opioid Lawsuits also “arises out of” Mallinckrodt’s “work.” Accordingly, for this reason too, the Opioid Lawsuits are subject to the PCOH Exclusion and PCOH Claims-Made Endorsement, rendering coverage unavailable under the AIG Policies.

III. IN NO EVENT IS THE TRUST ENTITLED TO SUMMARY JUDGMENT, BECAUSE IT CANNOT ESTABLISH AS AN UNDISPUTED FACT THAT MALLINCKRODT FACED AND RESOLVED LIABILITY FOR HARM CAUSED BY OPIOIDS MANUFACTURED BY SOMEONE ELSE.

In no event is the Trust entitled to the summary judgment it seeks on the applicability of the PCOH Exclusion and PCOH Claims-Made Endorsement to the “bucket three” liability. Again, the AIG Insurers dispute that the bucket three subset of liability posited by the Trust—predicated on “Claims based entirely on the unbranded campaign and non-Mallinckrodt opioid[s],” Trust’s Br. at 45—even exists.¹⁶ The Trust baldly asserts

¹⁶ The Trust’s assertions that “National Union cited no factual disputes” and the applicability of the PCOH Exclusion is “purely a legal issue” are incorrect. Trust’s Br. at 11. The AIG Insurers asserted below that a key factual predicate—the very liability for which the Trust seeks coverage—is a “hotly disputed fact.” D487, pp. 10, 23. As argued below, the Trust has not adduced any evidence proving as a factual matter that Mallinckrodt faced and resolved liability concerning the ingestion of opioids other than Mallinckrodt’s own—including the claimants to whom such liability is owed, or the amount owed, or under which policies, or for which policy years—and thus the liability is purely hypothetical. D487, pp. 23–25; D533, pp. 9–10. For these reasons, while this

that Opioid Lawsuits allege that “Mallinckrodt was liable for bodily injuries sustained regardless of whether the injured person used opioids manufactured by Mallinckrodt.” Trust’s Br. at 10. But *none of the complaints in the Trust’s “exemplar” Opioid Lawsuits* alleges anything approximating that statement.

Instead, in support, the Trust cites only its own mischaracterizations of the Opioid Lawsuits in its Statement of Uncontroverted Facts, portions of the declaration of Stephen A. Welch—the very same Mallinckrodt executive who stated under oath to the bankruptcy court numerous times in numerous ways that the Mallinckrodt Debtors “have been dragged into an all-consuming tidal wave of litigation concerning *the production and sales of its opioid products,*” D415, p. 33 (¶ 76)—and one paragraph from the complaint filed by the State of Florida, which alleges that “each Defendant created or assisted in the creation of the epidemic of opioid use and injury, and each Defendant is jointly and severally liable for abating it.” *See* Trust’s Br. at 10; D414, pp. 2 (¶¶ 4–5), 14 (¶ 19(p)); D415, p. 34 (¶ 77); D419, p. 110 (¶ 473).

Moreover, whether or not the allegations in the Opioid Lawsuits can be massaged to say what the Trust wants them to say, Mallinckrodt’s liability for those lawsuits has now been determined through its bankruptcy, and the record here tends to *disprove* that the bankruptcy attached any value to that purported third bucket. Mallinckrodt’s bankruptcy plan is clear that a claim made by or on behalf of an individual will only lead to a recovery

Court has a sufficient record to hold the PCOH Exclusion and PCOH Claims-Made Endorsement apply, if the Court disagrees, the Court should remand this case for further proceedings to determine—as a factual matter—whether Mallinckrodt’s “bucket three” liability actually exists as the Trust posits.

from the Trust if it can be shown that the individual *actually used a Mallinckrodt product*. See D536, pp. 6 (¶ 4.2), 11–14 (¶ 5.2). Even the Trust concedes that liability based on the use of a Mallinckrodt product would be barred by the PCOH Exclusion and PCOH Claims-Made Endorsement. Trust’s Br. at 36.

Against this factual record, the Trust asks the Court to ignore the record and *assume* that Mallinckrodt faced and settled liability from the use of other opioids in determining whether to apply the PCOH Exclusion and PCOH Claims-Made Endorsement. Such a counter-factual assumption cannot serve as the basis for the declaratory relief sought in the Trust’s motion. See *Local Union 1287 v. Kansas City Area Transp. Auth.*, 848 S.W.2d 462, 463–64 (Mo. banc 1993); *George v. Brewer*, 62 S.W.3d 106, 109 (Mo. Ct. App. 2001).

CONCLUSION

For the foregoing reasons, the AIG Insurers respectfully request that this Court enter an order affirming the Circuit Court’s Judgment.

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that pursuant to Mo. Sup. Ct. R. 84.06(c) that this brief (1) contains the information required by Rule 55.03; (2) complies with the limitations contained in Rule 84.06(b) and E.D. Local Rule 360; (3) contains 12,642 words, based on the word count that is part of Microsoft Word LTSC MSO. The undersigned counsel further certifies that the electronic version of this brief has been scanned and is free of viruses.

/s/ JoAnn Sandifer _____

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2026, pursuant to Supreme Court Rule 103.08, the foregoing was electronically filed with the Clerk of the Eastern District Court of Appeals by operation of the Court's electronic filing system with copies served upon all counsel of record.

/s/ JoAnn Sandifer