

**IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

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

Plaintiff,

v.

ACE AMERICAN INSURANCE COMPANY, *et al.*

Defendants.

Case No. 22SL-CC02974

Division No. 2

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

Plaintiff,

v.

AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY, *et al.*

Defendants.

Case No. 23SL-CC05428

Division No. 2

**AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY’S
COMBINED REPLY IN SUPPORT OF ITS MOTION FOR PARTIAL
SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION TO PLAINTIFF’S
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT DIRECTED TO
AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY**

Pursuant to Missouri Supreme Court Rules 74.04(c)(3) and 74.04(c)(2), Defendant, American Guarantee and Liability Insurance Company (“AGLIC”), by and through its undersigned counsel, submits the following Combined Reply in Support of its Motion for Partial Summary Judgment against Plaintiff Opioid Master Disbursement Trust II, A/K/A Opioid MDT II (the “Trust”), and Response in Opposition to Plaintiff’s Cross-Motion for Partial Summary Judgment Directed to AGLIC. In support of its Combined Reply and Response in Opposition, AGLIC states as follows:

AGLIC hereby adopts and incorporates by reference the arguments in Section II of AIG’s¹ Reply in Support of Cross-Motion for Summary Judgment (entitled “The AIG Insurers’ Cross-Motion on the PCOH Claims-Made Endorsement Should be Granted for the Same Reasons”) (filed on November 4, 2024).

The Trust blatantly ignores the express requirements of the Products-Completed Operations Hazard Claims Made Retained Limit Endorsement (“PCOH Claims-Made Endorsement”) incorporated into the AGLIC Excess Policy. The Trust concedes that the PCOH Claims-Made Endorsement requires both that: (1) a “Claim” for damages because of “Bodily Injury” or “Property Damage” must first be made in writing against any “Insured” during the policy period, October 1, 2004 to October 1, 2005; *and* that (2) written notice is received by the insurer during the policy period, October 1, 2004 to October 1, 2005. *See* Plaintiff’s Resp. to AGLIC’s SOF, ¶ 5. Yet, the Trust offers *nothing* to demonstrate that either of these requirements were satisfied. This is because it is undisputed that *no claim* for the Opioid Lawsuits was ever tendered under any insurance policy issued by AGLIC to the Debtors. *See id.* at ¶ 15. And, it is undisputed that AGLIC’s first notice of the Opioid Lawsuits under the AGLIC Excess Policy was the Trust’s service of its Complaint in Case No. 22SL-CC02974, naming AGLIC as a defendant, just over two years ago on June 24, 2022. *See id.* at ¶ 16.

The Trust’s single argument in support of its cross-motion—that the PCOH Claims-Made Endorsement “does not apply to liability of Mallinckrodt . . . because of bodily injury that arose in whole or in part from non-Mallinckrodt opioid drugs”—is patently wrong for the reasons set forth in AIG’s Reply brief adopted and incorporated herein. *See* Plaintiff’s Opp. to AGLIC’s Motion

¹ The capitalized terms used in this brief bear the same meanings and definitions set forth in AGLIC’s Statement of Uncontroverted Facts in Support of its Motion for Partial Summary Judgment against the Trust.

and Legal Memorandum in Support and Cross-Motion for Partial Summary Judgment, ¶ 6. And, again, the Trust's lone argument improperly ignores the claims-made and reported requirements of the Endorsement.

The Trust offers ***nothing*** to rebut the undisputed fact that the Opioid Lawsuits were all first asserted against the Debtors (including Tyco International Ltd., the named insured on the AGLIC Excess Policy) after the AGLIC Excess Policy period, October 1, 2004 to October 1, 2005. The Trust also offers ***nothing*** to rebut the fact that no claim for the Opioid Lawsuits was received by AGLIC during the AGLIC Excess Policy period, October 1, 2004 to October 1, 2005. Indeed, the Trust does not dispute that ***no claim*** for the Opioid Lawsuits was ever tendered under any policy issued by AGLIC to the Debtors (Plaintiff's Resp. to AGLIC's SOF, ¶ 15), ***or*** that AGLIC's first notice of the Opioid Lawsuits under the AGLIC Excess Policy was not until June 2022 when the Trust served its Complaint, naming AGLIC as a defendant, in Case No. 22SL-CC02974 (*id.* at ¶ 16).

Because the express requirements of the PCOH Claims-Made Endorsement incorporated into the AGLIC Excess Policy were undisputedly not satisfied, there is no coverage for the Opioid Lawsuits under the AGLIC Excess Policy.

For these reasons, AGLIC respectfully requests that the Court enter an Order granting AGLIC's Motion for Partial Summary Judgment, denying the Trust's Cross-Motion for Partial Summary Judgment Directed to AGLIC, and entering judgment in favor of AGLIC.

Dated: November 5, 2024

/s/ T. Michael Ward

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**CERTIFICATE OF SERVICE AND
CERTIFICATE OF COMPLIANCE WITH RULE 55.03(A)**

I hereby certify that a copy of the foregoing was served by the Court's electronic filing system on this 5th day of November, 2024, on all counsel of record. In addition, the undersigned counsel certifies under Rule 55.03(a) of the Missouri Rules of Civil Procedure that he has signed the original of this Certificate and the foregoing pleading.

/s/ T. Michael Ward

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