

IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT

No. ED113635

OPIOID MASTER DISBURSEMENT TRUST II,

Plaintiff/Appellant,

v.

ACE AMERICAN INSURANCE CO., et al.,

Defendants/Respondents.

Appeal from the Circuit Court for the County of St. Louis
Case No. 22SL-CC02974
Hon. Richard Stewart

APPENDIX TO BRIEF FOR APPELLANT
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FILED
03/10/25
JOAN M. GILMER
CIRCUIT CLERK
ST. LOUIS COUNTY, MO

**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

**JUDGMENT AND ORDER GRANTING CERTAIN INSURERS' MOTIONS
FOR SUMMARY JUDGMENT ON THE "PRODUCTS-COMPLETED
OPERATIONS HAZARD" ENDORSEMENTS**

Plaintiff Opioid Master Disbursement Trust II, a/k/a Opioid MDT II ("Trust") filed a Motion for Partial Summary Judgment against National Union Fire Insurance Company of Pittsburgh, Pa. regarding the scope of the Products Hazard (aka "Your Products") Exclusion (hereinafter, the "PCOH Exclusion Endorsement"), and National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") and American Home Assurance Company ("American Home" and together with National Union, "AIG Insurers") filed a Cross-Motion for Summary Judgment against the Trust, seeking rulings on the PCOH Exclusion Endorsement and on a "Products-Completed Operations Hazard ["PCOH"] Claims Made Retained Limit Endorsement" providing coverage for liability falling within the scope of the PCOH on a claims-made-and-reported basis (hereinafter, the "PCOH Claims-Made Endorsement"). Defendants Aspen Insurance UK Ltd. ("Aspen") and ACE American Insurance Company ("ACE") filed a Joint Motion for Summary Judgment on

the 11 Exemplar Opioid Lawsuits identified by the Trust, seeking a ruling on the PCOH Claims-Made Endorsement. Defendant Old Colony State Insurance Company (“Old Colony”) subsequently joined in Aspen’s and ACE’s Motion for Summary Judgment. Defendant American Guarantee and Liability Insurance Company (“AGLIC”) filed a Motion for Partial Summary Judgment adopting and incorporating National Union’s motion to the extent that it addresses the PCOH Claims-Made Endorsement. The Trust subsequently cross-moved for summary judgment against Aspen, ACE, Old Colony, National Union, and AGLIC for a ruling on the PCOH Claims-Made Endorsement. The parties’ motions were called, heard by this Court, and submitted on January 31, 2025.

This Court, having reviewed the briefs and record, and heard the arguments of counsel, finds as follows:

1. 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. *See Schmidt v. Utilities Ins. Co.*, 182 S.W.2d 181, 183 (Mo. 1944); *See also Capitol Indem. Corp. v. 1405 Assocs., Inc.*, 340 F.3d 547, 550 (8th Cir. 2003); *Colony Ins. Co. v. Pinewoods Enterprises, Inc.*, 29 F. Supp. 2d 1079, 1083 (E.D. Mo. 1998); *see also Finn v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 896 N.E.2d 1272, 1278 (Mass. 2008).

2. As such, the Court finds that Mallinckrodt¹ 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.

3. 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.

4. 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. *See Traveler’s Prop. Cas. Co. of Am. v. Actavis*, 225 Cal. Rptr. 3d 5, 11–12 (Cal. Ct. App. 2017).

¹ In 2020 Mallinckrodt filed for bankruptcy to resolve its liability in connection with the Opioid Lawsuits. On March 2, 2022, the bankruptcy court entered an order. The Order, in part, permitted the Trust to pursue any available liability insurance coverage for the Opioid Lawsuits and other opioid claims. The trust brought this lawsuit seeking insurance coverage under the policies at issue.

5. For the foregoing reasons, the Court finds that the opioid claims for which the Trust seeks coverage, are not covered under the primary policies issued by the AIG Insurers, the umbrella policies issued by AIG Insurers, or the excess policies issued by Aspen, Old Colony, ACE, and AGLIC.

Therefore, for the reasons set forth above, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

- a) The Motion for Partial Summary Judgment filed by the Trust is DENIED.
- b) The Cross-Motion for Summary Judgment filed by the AIG Insurers is GRANTED.
- c) The Motion for Summary Judgment filed by Aspen and ACE is GRANTED.
- d) The Joinder in Aspen's and ACE's Motion filed by Old Colony is also GRANTED.
- e) The Motion for Partial Summary Judgment filed by AGLIC is GRANTED.
- f) The Cross-Motions for Summary Judgment filed by the Trust against Aspen, ACE, Old Colony, and AGLIC are DENIED, and the Cross-Motion for Summary Judgment filed by the Trust against National Union is DENIED to the extent of the ruling that it seeks under the PCOH Claims-Made Endorsement.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the following policies are hereby DISMISSED from the instant action:

- a) 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 (6/28/2017-6/28/2018), GL 693-89-45 (6/28/2018-6/28/2019), GL 686-23-54, GL 1728939, and American Home Policy No. GL 159-53-88;
- b) Aspen Policy Nos. K0A0DKT09A0E and K0A0DKT10A0E;
- c) Old Colony Policy No. OC-EXL-11-15-08;
- d) ACE Policy Nos. XCP G23883983, XCP G23891839, XCP G24902444, and XCP G25828537;
- e) National Union Policy Nos. BE2977855, BE2978239, BE2979931, BE2227062, 27471560, and 15972632;
- f) American Home Policy Nos. BE4485682 and BE9835077; and
- g) AGLIC Policy No. AEC 5087987-00.

SO ORDERED:


Judge Division 2

FILED
09/26/25
JOAN M. GILMER
CIRCUIT CLERK
ST. LOUIS COUNTY, MO

**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 2

JUDGMENT

The Court, upon the motion of Plaintiff the Opioid Master Disbursement Trust II, also known as the Opioid MDT II (the “Trust”), pursuant to Missouri Rule of Civil Procedure 74.01(b), hereby amends its order disposing of certain motions and cross-motions for summary judgment on the “Products-Completed Operations Hazard” Endorsements (the “Order”).

In its March 10, 2025, Order, the Court:

- a) Denied the Trust’s motion for partial summary judgment against Nation Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”);
- b) Denied the Trust’s cross-motion for summary judgment against Aspen Insurance UK Ltd. (“Aspen”), ACE American Insurance Company (“ACE”), Old Colony State Insurance Company (“Old Colony”), and American Guarantee and Liability Insurance Company (“AGLIC”), and denied the Trust’s cross-motion for summary judgment against National Union, to the extent of the ruling the Trust seeks under the Products-Completed Operations Hazard (“PCOH”) Claims-Made Endorsement;

- c) Granted the AIG Insurers'¹ cross-motion for summary judgment;
- d) Granted Aspen's and ACE's motion for summary judgment;
- e) Granted AGLIC's motion for partial summary judgment; and
- f) Granted Old Colony's joinder in Aspen and ACE's motion for summary judgment.

The Court finds that the Order is eligible for certification as a final judgment because it resolved all claims against ACE, Aspen and Old Colony, and resolved a distinct judicial unit of claims arising from a distinct set of insurance policies against AGLIC, and the AIG insurers including National Union.

Further, upon considerations of the factors set out in *Crawford v. Distrib. Operations, Inc.*, 561 S.W.3d 463, 467 (Mo. Ct. App. E.D. 2018), the Court finds that there is no just cause for delay of an appeal. The Order effectively dismisses ACE, Aspen, and Old Colony so the case is not still pending in the Court as to all parties. The claims subject to the Order and those that remain in the trial court arise out of separate insurance policies. As a result, the Trust cannot obtain similar relief through both sets of claims, resolving the remaining claims in the trial court will not necessarily moot the claims subject to the Order, and the factual underpinning of both sets of claims is not intertwined.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED, that the Trust's motion for certification is GRANTED. The Order is hereby certified under Mo. Sup. Ct. R. 74.01(b) as a final judgment with no just cause for delay of an appeal.

SIGNED this 26th day of September, 2025

By: 

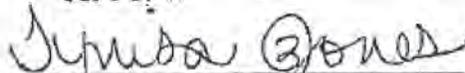
Judge Richard M. Stewart

¹ National Union and American Home Assurance Company ("American Home") (collectively, "AIG Insurers").

EXHIBIT M
(filed under seal)

POLICY CERTIFICATION COVER PAGE

**THIS IS A CERTIFIED TRUE AND CORRECT
COPY OF THE ORIGINAL POLICY#**


AUTHORIZED SIGNATURE

To not obstruct the information on the first page of the policy documents, this cover sheet has been inserted as a means to provide the certification stamp.

Date: 07/25/2013

Policy Number: 509-47-72

Underwriter Name: KAREN WOJTANEK
 Underwriter Region: 0004
 Underwriter Branch: 0004
 Underwriter Telephone: 617-457-2700

Operator Name: JAMALUDIN MOHD AFIQ
 Operator Telephone: 03--271-9610

Issuing Division: 0055
 Policy Effective Date: 06/28/2013
 Transaction Type: NB

Set Copy Name: INSURED COPY

EPS TRACKING-ID: UUF74971900307252013
 POLICY NUMBER: 005094772
 TABLE EFFECTIVE DATE: 05/29/2013
 TABLE WRITTEN DATE: 05/29/2013

DocuCorp International **Archive Copy**

eUPS

KAREN WOJTANEK
BOSTON
99 HIGH STREET
BOSTON, MA 02110

Re: MALLINCKRODT, PLC

PRODUCER IS: #0008922

MARSH USA INC.
99 HIGH STREET
BOSTON, MA 02110

509-47-72

PRODUCER COV LTR **Archive Copy**

CONFIDENTIAL

AIGINS-MNK00000803

App.11



AIG Insurance
877-To-Serve (867-3783)
Email: toserve@AIG.com

07/25/2013

LORRAINE GRINDALL
MARSH USA INC.
99 HIGH STREET
BOSTON, MA 02110

Re: INSURED NAME: MALLINCKRODT, PLC
Policy No.: GL 509-47-72
Effective Date: 06/28/2013

Dear LORRAINE GRINDALL:

Enclosed please find the following document:

New Policy

Thank you for your binder. Enclosed please find the original and broker copies of the policy issued to the above named insured.

Renewal

Thank you for your renewal binder. Enclosed, please find the original and broker copies of the policy issued to the above named insured.

Endorsement(s) No. and Type of Change

Enclosed please find the original and one copy of the change endorsement(s) as requested.

The enclosed documents provide a complete and accurate representation of the coverages agreed to under the terms and conditions set out in the binder or change request document. Upon your review, please contact your underwriter promptly with any questions or concerns.

We appreciate your business and strive to make your satisfaction our #1 priority.

Archive Copy

POLICY NUMBER: GL 509-47-72

COMMERCIAL GENERAL LIABILITY
CG 00 01 04 13

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V -Definitions.

SECTION I - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. 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. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" 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 listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person

(2) On ways next to premises you own or rent; or

(3) Because of your operations;

provided that:

(a) The accident takes place in the "coverage territory" and during the policy period;

(b) The expenses are incurred and reported to us within one year of the date of the accident; and

(c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid administered at the time of an accident;

(2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

a. All expenses we incur.

b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.

e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials

to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
21. "Your product":
- a. Means:
 - (1) 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; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
22. "Your work":
- a. Means:
 - (1) Work or operations performed by you or on your behalf; and
 - (2) Materials, parts or equipment furnished in connection with such work or operations.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2) The providing of or failure to provide warnings or instructions.

POLICY NUMBER: GL 509-47-72

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - PRODUCTS - COMPLETED OPERATIONS
HAZARD**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

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

ENDORSEMENT NO.23

This endorsement, effective 12:01 AM: November 15, 2009

Forms a part of policy no.: 27471560

Issued to: COVIDIEN PLC

By: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

Commercial Umbrella Liability Policy with CrisisResponse®

Products-Completed Operations Hazard Claims Made Retained Limit Endorsement

NOTICE: 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. PLEASE REVIEW THE ENDORSEMENT CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

TO THE EXTENT ANY PROVISION OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED OR ANY OF THE POLICY'S OTHER ENDORSEMENTS CONFLICT WITH THE PROVISIONS OF THIS ENDORSEMENT, THE PROVISIONS OF THIS ENDORSEMENT SHALL SUPERSEDE.

The provisions of this endorsement are limited to Claims or Suits seeking damages included within the Products-Completed Operations Hazard for all healthcare products, medications, medical devices and pharmaceuticals (except, however, Claims and Suits seeking damages arising out of any discharge, dispersal, seepage, migration, release or escape of Pollutants and included within the Products-Completed Operations Hazard).

This policy is amended as follows:

ITEM 2. of the Declarations is amended to include the following additional provisions:

ITEM 2a. RETROACTIVE DATES:

- 1/1/1986 Mallinckrodt Chemical and Medical
- 5/31/1986 Mallinckrodt Veterinary (but only for specific liabilities for which Mallinckrodt retained responsibility)
- 12/1/1986 Surgical Dynamics, Inc.
- 2/16/1995 J.T. Baker
- 7/1/1997 U.S. Surgical Corp (USSC) - Clinical trials.

ENDORSEMENT NO. 23 (Continued)

4/6/1999	Sherwood Davis & Geck (SDG) - Clinical Trials
11/8/2007	Scandius Biomedical, Inc.
6/5/2008	Tissue Science Laboratories, Inc & Tissue Science Laboratories plc
3/6/2009	Bacchus Vascular, Inc.
6/17/2009	Power Medical Interventions, Inc.
10/1/2001	All Other Entities Set forth in the Schedule of Designated Entities
10/1/2001	All other healthcare products, medications, medical devices and pharmaceuticals manufactured, sold, distributed or handled by any Insured.

Item 2b. CONTINUITY DATE: 10/1/01 or the date of acquisition, whichever is later, except for Surgical Dynamics which has a 12/1/1998 date.

ITEM 5. SELF-INSURED RETENTION of the **DECLARATIONS** is deleted in its entirety.

Section I. INSURING AGREEMENT - COMMERCIAL UMBRELLA LIABILITY is amended to include the following additional provisions:

- A. We will pay on behalf of the **Insured** those sums in excess of the **Retained Limit** that the **Insured** becomes legally obligated to pay as damages by reason of liability imposed by law because of **Bodily Injury** or **Property Damage** to which this insurance applies or because of **Bodily Injury** or **Property Damage** to which this insurance applies assumed by the **Insured** under an **Insured Contract**.

The amount we will pay for damages is limited as described in Section IV. Limits of Insurance.

- B. This policy applies, only if:
1. the **Bodily Injury** or **Property Damage** is caused by an **Occurrence** that takes place anywhere in the world, and the **Bodily Injury** or **Property Damage** occurs on or after the Retroactive Date and prior to the end of the **Policy Period**, and
 2.
 - a. a **Claim** for damages because of **Bodily Injury** or **Property Damage** is first made in writing against any **Insured** in accordance with Paragraph C. below during the **Policy Period** or any Extended Reporting Period we provide and written notice is received by us during the **Policy Period** or Extended Reporting Period (if applicable), or
 - b. written notice of the **Occurrence** is received by us during the **Policy Period** pursuant to **Section VI. Conditions, Paragraph G. Duties in the Event of an Occurrence, Claim or Suit**.

ENDORSEMENT NO. 18

This endorsement, effective 12:01 AM: October 1, 2004

Forms a part of policy no.: BE 2978239

Issued to: TYCO INTERNATIONAL LTD.

By: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

Commercial Umbrella Policy Form

Products-Completed Operations Hazard Claims-Made Coverage Retained Limit Endorsement

NOTICE: THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE. COVERAGE IS LIMITED TO LIABILITY FOR OCCURRENCES REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR CLAIMS FIRST MADE TO THE COMPANY DURING THE POLICY PERIOD. PLEASE REVIEW THE ENDORSEMENT CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

The provisions of this endorsement are limited to Claims and Suits seeking damages included within the Products-Completed Operations Hazard for all healthcare products, medications, medical devices and pharmaceuticals (except, however, Claims and Suits seeking damages arising out of any discharge, dispersal, seepage, migration, release or escape of Pollutants and included within the Products-Completed Operations Hazard).

This policy is amended as follows:

Solely as respects liability included within the Products-Completed Operations Hazard of the entities listed in the Schedule of Designated Entities and Products, the following shall apply:

ITEM 2. of the Declarations is amended to include the following additional provisions:

ITEM 2a. RETROACTIVE DATES:

01/01/1986 Mallinckrodt Chemical and Medical

05/31/1986 Mallinckrodt Veterinary (but only for specific liabilities for which Mallinckrodt retained responsibility)

12/01/1986 Surgical Dynamics, Inc.

02/16/1995 J.T. Baker

07/01/1997 U.S. Surgical Corp (USSC) - Clinical trials.

ENDORSEMENT NO. 18 (Continued)

04/06/1999 Sherwood Davis & Geck (SDG) - Clinical Trials

10/01/2001 All Other Entities Set forth in the Schedule of Designated Entities

10/01/2001 All other healthcare products, medications, medical devices and pharmaceuticals manufactured, sold, distributed or handled by any insured.

Item 2b. CONTINUITY DATE: 10/1/2001 or the date of acquisition, whichever is later, except for Surgical Dynamics which has a 12/1/1998 date.

The Self Insured Retention in ITEM 3. D. of the Declarations is deleted in its entirety.

Section I. Coverage is deleted in its entirety and replaced with the following:

I. Coverage

A. We will pay on behalf of the Insured those sums in excess of the Retained Limit that the Insured becomes legally obligated to pay as damages by reason of liability imposed by law or assumed by the Insured under an Insured Contract because of Bodily Injury or Property Damage to which this insurance applies.

The amount we will pay for damages is limited as described in Section III. Limits of Insurance.

B. This policy applies, only if:

- 1. the Bodily Injury or Property Damage is caused by an Occurrence that takes place anywhere in the world, and the Bodily Injury or Property Damage occurs on or after the Retroactive Date and prior to the end of the Policy Period, and
- 2.a a Claim for damages because of Bodily Injury or Property Damage is first made in writing against any Insured in accordance with Paragraph C below during the Policy Period or any Extended Reporting Period we provide and written notice is received by us pursuant to Section VI. Conditions, Paragraph F. Duties in the Event of an Occurrence, Claim or Suit, or
- 2.b written notice of the Occurrence is received by us during the Policy Period pursuant to Section VI. Conditions, Paragraph F. Duties in the Event of an Occurrence, Claim or Suit.

C. A Claim by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

- 1. When notice of such Claim is received and recorded by any Insured in writing and reported to us during the Policy Period or any applicable Extended Reporting Period, or
- 2. When we make settlement in accordance with Paragraph A. above.

All Claims for damages because of Bodily Injury to the same person, including damages claimed by any person or organization for care, loss of services or death resulting at any time

ENDORSEMENT NO. 18 (Continued)

from the **Bodily Injury**, will be deemed to have been made at the time the first of those **Claims** is made against any **Insured**.

All **Claims** for damages because of **Property Damage** causing loss to the same person or organization will be deemed to have been made at the time the first of those **Claims** is made against any **Insured**.

- D. Damages because of **Bodily Injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **Bodily Injury**.
- E. If we are prevented by law or statute from paying damages covered by this policy on behalf of the **Insured**, then we will indemnify the **Insured** for those sums in excess of the **Retained Limit**.

Section II. Defense is deleted in its entirety and replaced by the following:

II. Defense

- A. We shall have the right and duty to defend any **Claim** or **Suit** seeking damages covered by the terms and conditions of this policy when the applicable limits listed in the **Schedule of Retained Limits** have been exhausted by payment of **Claims** to which this policy applies.
- B. When we assume the defense of any **Claim** or **Suit**:
 - 1. We will defend any **Suit** against the **Insured** seeking damages on account of **Bodily Injury**, **Property Damage**, **Personal Injury** or **Advertising Injury** even if such **Suit** is groundless, false or fraudulent, but we have the right to investigate, defend and settle the **Claim** as we deem expedient.
 - 2. We will pay for the following:
 - a. premiums on bonds to release attachments for amounts not exceeding our **Limits of Insurance**, but we are not obligated to apply or furnish any such bond,
 - b. premiums on appeal bonds required by law to appeal any **Claim** or **Suit** we defend, but we are not obligated to apply for or furnish any such bond,
 - c. all costs taxed against the **Insured** in any **Claim** or **Suit** we defend,
 - d. pre-judgement interest awarded against the **Insured** on the part of the judgement we pay. If we make an offer to pay the applicable **Limit of Insurance**, we will not pay any pre-judgement interest unless based on that period of time after the offer,

ENDORSEMENT NO. 18 (Continued)

- e. all interest that accrues after entry of judgement and before we have paid, offered to pay or deposited in court the part of the judgement that is within our applicable Limit of Insurance, and
- f. the Insured's expenses incurred at our request.

We will not defend any Suit or Claim after our applicable Limits of Insurance have been exhausted by payment of judgements or settlements.

All Defense Expenses we incur in the defense of any Suit or Claim are in addition to our Limits of Insurance. Provided, however, that if Defense Expenses are expressly described in the Schedule of Retained Limits to reduce an applicable Retained Limit, then Defense Expenses for liability in excess of that Retained Limit will reduce the applicable Limits of Insurance of this policy.

- C. In all other instances except A. above, we will not be obligated to assume charge of the investigation, settlement or defense of any Claim made, Suit brought or proceeding instituted against the Insured. We will, however, have the right and shall be given the opportunity to participate in the defense and trial of any Claims, Suits or proceedings relative to any Occurrence which, in our opinion, may create liability on our part under the terms of this policy. If we exercise such right, we will do so at our own expense.

Section III. Limits of Insurance, Paragraphs D. and E. are deleted in their entireties and replaced by the following:

- D. Subject to C. above, the Each Occurrence Limit is the most we will pay for the sum of damages covered under Insuring Agreement I. because of all Bodily Injury or Property Damage arising out of any one Occurrence.

If the applicable Retained Limits listed in the Schedule of Retained Limits are reduced or exhausted by payment of one or more Claims that would be insured by our policy, we will:

- 1. In the event of reduction, pay in excess of the reduced underlying Retained Limits, or
- 2. In the event of exhaustion of the underlying Retained Limits continue in force as underlying insurance.

The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the Policy Period shown in the Declarations, unless the Policy Period is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the preceding period for purposes of determining the Limits of Insurance.

- E. Retained Limit

We will be liable only for that portion of damages in excess of the limits listed in the Schedule of Retained Limits and then up to the amount not exceeding the Each Occurrence Limits as stated in the Declarations.

ENDORSEMENT NO. 18 (Continued)

The Retained Limits listed in the attached Schedule of Retained Limits shall apply whether or not the Insured maintains applicable underlying insurance listed in the Schedule of Underlying Insurance or other insurance providing coverage to the Insured applicable to a loss.

Amounts received through such policies listed in the Schedule of Underlying Insurance or other insurance providing coverage to the Insured for payment of the loss may be applied to reduce or exhaust the Retained Limit if such policies were purchased by the Named Insured to specifically apply as underlying insurance to this policy. However, in no event will amounts received through such policies listed in the Schedule of Underlying Insurance or other insurance providing coverage to the Insured for the payment of Defense Expenses reduce the Retained Limit.

The Retained Limits listed in the attached Schedule of Retained Limits shall not be reduced or exhausted by Defense Expenses, unless expressly indicated in the Schedule of Retained Limits.

Section IV. Definitions is amended to include the following additional definitions:

Claim means a demand for money or Suit.

Defense Expenses means payment(s) allocated to the investigation, settlement or defense of a specific Claim or Suit, including but not limited to:

1. Attorney's fees and all other investigation, loss adjustment and litigation expenses,
2. Premiums on bonds to release attachments,
3. Premiums on appeal bonds required by law to appeal any Claim or Suit,
4. Costs taxed against the Insured in any Claim or Suit,
5. Pre-judgment interest awarded against the Insured, and
6. Interest that accrues after entry of judgment.

Section IV. Definitions, Paragraph E. subparagraph 5. Is deleted in its entirety and replaced by the following:

5. Any of your partners, executive officers, directors, stockholders or employees but only while acting within their duties.

Section IV. Definitions, Paragraph E. is amended by adding the following additional subparagraph:

Any person or organization to whom you become obligated to include as an additional Insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of your operations or premises owned by or rented to you. However, the insurance

ENDORSEMENT NO. 18 (Continued)

provided will not exceed the coverages and/or Limits of Insurance of this policy.

Section V. Exclusions is amended to include the following additional exclusions:

This insurance does not apply to:

Any Claim alleging or arising out of an Occurrence committed on or after the applicable Retroactive Date shown above, if the Insured, an officer, manager in your risk management, insurance or legal department or an employee who was authorized by you to give or receive notice of an Occurrence, knew as of the Continuity Date shown above that such Occurrence could result in a Claim.

Claims arising out of the same Occurrence or series of continuous, repeated or related Occurrences alleging the same or similar facts alleged or contained in any Claim which has been reported, or any Occurrence of which notice has been given, under any policy of which this policy is a renewal, replacement or succeeds in time.

Any Claim that is prior to or pending as of the Retroactive Date, or any Claim arising out of or relating to any fact, circumstance, situation or Occurrence alleged in such prior or pending Claim.

Personal Injury or Advertising Injury.

Section V. Exclusions, Paragraphs I., J and S. are deleted in their entireties, unless amended by separate endorsement to provide otherwise.

Section VI. Conditions is amended to include the following additional conditions:

Automatic Extended Reporting Period

If we or the Named Insured cancel, refuse to renew or replace this policy (hereinafter "cancel or non-renew"), the Named Insured will have the right following the effective date of such cancellation or non-renewal to a period of thirty (30) days (herein referred to as the Automatic Extended Reporting Period) in which to give written notice to us of Claims first made against you during the Automatic Extended Reporting Period for any Bodily Injury or Personal Injury occurring prior to the end of the Policy Period and otherwise covered by this policy.

The Automatic Extended Reporting Period will not apply to Claims that are covered under any subsequent insurance you purchase or is purchased for your benefit, or that would be covered but for the exhaustion of the Limits of Insurance applicable to such Claims or is within any applicable Retained Amount.

The Automatic Extended Reporting Period does not reinstate or increase the Limits of Insurance or extend the Policy Period.

Optional Extended Reporting Period

ENDORSEMENT NO. 18 (Continued)

If we or the Named Insured will cancel or non-renew this policy, the Named Insured will have the right, upon payment of an additional premium of up to two hundred percent (200%) of the full annual premium, to a period of five (5) years following the effective date of such cancellation or non-renewal (herein referred to as the Optional Extended Reporting Period) in which to give written notice to us of Claims first made against you during the Optional Extended Reporting Period for any Bodily Injury or Property Damage occurring prior to the end of the Policy Period and otherwise covered by this policy.

As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the Policy Period.

The rights contained in this clause will terminate unless the Named Insured provides written notice of such election together with the additional premium due to us within thirty (30) days of the effective date of cancellation or non-renewal. The additional premium for the Optional Extended Reporting Period will be deemed fully earned at the inception of the Optional Extended Reporting Period. The Optional Extended Reporting Period is not cancelable. This clause and the rights contained herein will not apply to any cancellation resulting from non-payment of premium. Our offer of renewal terms, conditions, limits of insurance or premiums different from those of the expiring policy will not constitute a non-renewal.

The aggregate limit of insurance for any Extended Reporting Period will be part of, and not in addition to, the Aggregate Limit of Insurance for the Policy Period. An Optional Extended Reporting Period does not reinstate or increase the Limits of Insurance or extend the Policy Period.

If the Named Insured exercises its right to purchase an Optional Extended Reporting Period, the Automatic Extended Reporting Period will not apply.

Section VI. Conditions, Paragraph F. Duties in the Event of an Occurrence, Claim or Suit, is deleted in its entirety and replaced by the following:

You must provide us with immediate written notice of:

a) any claim, either paid or reserved, for twenty-five percent (25%) or more of the applicable limits of insurance listed in the Schedule of Retained Limits.

You must also give us immediate written notice of any injury of the following types:

- a) a fatality,
- b) severe burns,
- c) traumatic brain injury,
- d) dismemberment or amputation,
- e) loss or impairment of eyesight or hearing,
- f) severe scarring,
- g) paralysis,
- h) a sexual assault or battery, including, but not limited to, rape, molestation, or sexual abuse.

ENDORSEMENT NO. 18 (Continued)

No Insured will, except at that Insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

Schedule of Designated Entities

1. Mallinckrodt, Inc.
2. Mallinckrodt Chemical (f/k/a Mallinckrodt Specialty Chemicals Company)
3. Mallinckrodt Baker, Inc. (f/k/a Baker, Inc.)
4. Liebel-Flarsheim Company
5. U.S. Surgical Corporation
6. Sherwood Davis & Geck
7. Uni-Patch
8. General Surgical Innovations (GSI)
9. Innerdyne
10. Origin Medsystems
11. MIST
12. Surgical Dynamics, Inc. (but only with respect to products manufactured or sold prior to July 1, 2002)
13. Catalyst Resources, Inc. (subsequently merged into Mallinckrodt Chemical Inc.)
14. Tastemaker, Ltd.
15. Infrasonics
16. J.T. Baker
17. Tyco Healthcare, LP,
18. Any other Insured, but solely with respect to liability, included within the **Products-Completed Operations Hazard**, arising out of its health care products, medications, medical devices and pharmaceuticals., or
19. Any parent corporation of any **Designated Entity** listed in items 1 through 18 above, for its liability arising out of the operations of such **Designated Entity**, subject to all of this policy's terms, definitions, conditions and exclusions of this policy

Schedule of Retained Limits

Designated Coverage	Retained Limit
Liability included within the Products-Completed Operations Hazard , of the entities listed in the Schedule of Designated Entities	<u>\$7,500,000 Each Claim or Suit</u>

All other terms, conditions and exclusions of the policy remain unchanged.

Authorized Representative
or countersignature (where required by law)