

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