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

REPLY BRIEF FOR APPELLANT OPIOID MASTER DISBURSEMENT TRUST II

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Because the Trust's[1] appeal involves a purely legal question—the proper interpretation of the Products Hazard, and consequently whether the Products Hazard Exclusion and/or the Products Hazard Endorsement apply to the Claims—the Trust will not correct each factual misrepresentation made by National Union and American Home ("AIG") or by Aspen and Old Colony ("Aspen") (collectively, the "Insurers"). Some clarifications are in order, however. First, although the Trust has referred to "buckets" of liability at hearings in the trial court, it has not characterized Mallinckrodt's liability for the Opioid Claims as falling into the "three buckets" that AIG refers to throughout its brief, *e.g.*, AIGBr.19-20 (citing D413, pp.9-10, the Trust's summary-judgment brief describing "two separate bases for Mallinckrodt's opioid liability"), 23, 30, 31. As the Trust has explained, this appeal "addresses only whether claims alleging that Mallinckrodt was liable for bodily injury wholly caused by the unbranded promotional campaign are 'included within the products hazard.'" TrustBr.29 n.8; *see also* TrustBr.33 (injuries at issue allegedly arose "out of Mallinckrodt's 'unbranded promotional activities to change" public perception regarding "opioids in general," and the public's "concomitant or resulting use of other manufacturers' opioid products and illicit opioids.")

Second, the Trust has *not* "conceded" that the Products Hazard Exclusion "precludes coverage" for claims alleging bodily injury caused by both the unbranded campaign and the ingestion of Mallinckrodt's opioid products. AIGBr.20, 54. The Trust has asked the Court, if it agrees that claims for bodily injury "wholly caused by" the

[1]This brief uses the same defined terms as the Trust's opening brief.

unbranded campaign are outside the Products Hazard and reverses the grant of summary judgment to the Insurers, to direct the trial court to consider on remand whether claims alleging bodily injury caused by both Mallinckrodt's own products and the unbranded promotional campaign are also outside the Products Hazard (because they are subject to the "concurrent claims" doctrine or other principles of insurance-coverage law). TrustBr.29 n.8.

Third, AIG repeatedly characterizes as "hypothetical" Mallinckrodt's liability for bodily injury wholly caused by Mallinckrodt's unbranded campaign and non-Mallinckrodt opioids, *see, e.g.*, AIGBr.20, 22, 23, 30, 31, 34, 46. The summary-judgment record, however, includes an example of such a complaint from a plaintiff diagnosed with neonatal abstinence syndrome who alleged that her injuries resulted from the unbranded campaign and her mother's ingestion of a list of opioids that did not include a Mallinckrodt product. D414, pp.30-34 (¶¶35-38). And again, if the Trust prevails in this appeal, the trial court can consider on remand the consequences for claims by individuals injured by multiple opioids. Point III, *post*, addresses more fully AIG's incorrect argument that the Trust cannot be granted summary judgment if it did not "establish as an undisputed fact that Mallinckrodt faced and resolved liability for harm caused by" non-Mallinckrodt opioids. AIGBr.52.

Finally, both Insurers refer repeatedly to Mallinckrodt's manufacture of active pharmaceutical ingredients (APIs). Whether or to what extent Mallinckrodt faced liability for bodily injuries arising out of other manufacturers' opioids that contained Mallinckrodt's APIs will be a question of fact, subject to discovery, if the Trust prevails in this appeal. Aspen, however, implies that Mallinckrodt's APIs are far more prevalent in those other

manufacturers' opioids than the record supports, saying APIs "sold to other companies comprised approximately 50% of Mallinckrodt's business." AspenBr.15. But the Statement of Uncontroverted Material Facts (SUMF) that Aspen cites states that "roughly half" of the revenues of *Specialty Generics*, a Mallinckrodt *subsidiary*, came from APIs; that Mallinckrodt uses its APIs in its own finished products in addition to selling them to other manufacturers; and that in 2019, Mallinckrodt "generated net sales" exceeding $2.4 billion from its Specialty Brands Products compared to just "$337.1 million from APIs'" D504, pp.6-8 (¶¶15-18), indicating that revenues from the sale of APIs constituted far less than half of "Mallinckrodt's business." And the SUMF says nothing about what portion of the APIs manufactured by Mallinckrodt are used in opioid products as opposed to other pharmaceuticals, let alone what portion of non-Mallinckrodt opioids incorporated Mallinckrodt APIs.

ARGUMENT

I. Claims against Mallinckrodt alleging bodily injury due to its unbranded promotional campaign fall outside the Products Hazard.

Contrary to AIG's representations, the Trust is not arguing that the language of the Products Hazard is "narrower than Missouri courts" have held, or that the phrase "your product" "limits" or "narrows" the meaning of "arising out of" or renders the Products Hazard ambiguous. AIGBr.39-40, 42-43. Nor is it the Trust's position that only "claims caused by ingestion of a Mallinckrodt-branded product" fit within the Products Hazard. AspenBr.23. Rather, even if the Court interprets "arising out of" expansively, that phrase cannot be divorced from its object: "your product." Thus, in determining whether bodily

injuries caused by Mallinckrodt's unbranded promotional campaign "arise out of" Mallinckrodt's products and are within the Products Hazard, the Court must be mindful that the Policies define "your [Mallinckrodt's] product" to include only Mallinckrodt's products (whether branded or generic) and specific kinds of communications regarding those products: certain warranties and representations regarding the product, and the providing of or failure to provide warnings or instructions. D527, pp.4-5 (¶66 and Response).

The "your product" definition does not include—and therefore necessarily excludes—other kinds of communications or business activities that may support sales of the product, not to mention the insured's motives in undertaking such communications or activities. This strict reading of the "your product" definition is required for at least two reasons: (1) coverage exclusions must be read "'narrowly, to afford the greatest possible coverage,'"[2] *Harrison v. Tomes,* 956 S.W.2d 268, 270 (Mo. banc 1997) (citation omitted); and (2) courts cannot "rewrite policies to add language." *Jones v. Mid-Century Ins. Co.*, 287 S.W.3d 687, 691 & n.1 (Mo. banc 2009). Under the plain meaning of "your product"

[2]Aspen contends that the Products Hazard Endorsement in its Policies is not an exclusion and thus need not be interpreted narrowly. AspenBr.27. Regardless of whether the Endorsement's restrictions on coverage require it to be construed as an exclusion, TrustBr.31, it is subject to the requirement under Missouri law that courts interpret insurance policies "if reasonably possible, to provide coverage." *Harrison v. Tomes*, 956 S.W.2d 268, 270 (Mo. banc 1997); *see also Crossman v. Yacubovich*, 290 S.W.3d 775, 781 (Mo. App. 2009). Moreover, Aspen's suggestion that because the Trust is seeking coverage, the Trust bears the burden of showing the Products Hazard Endorsement's claims-made-and-reported requirements were satisfied, AspenBr.27 n.13, is off-base. As the Trust has continuously argued, the Claims do not fit within the Products Hazard and it is not seeking coverage under that Endorsement.

as defined in the Policies, the bodily injuries allegedly caused by non-Mallinckrodt opioids and Mallinckrodt's unbranded campaign—which did not include any representations or warranties about Mallinckrodt's products but instead avoided references to those products—did not "arise out of" Mallinckrodt's products.

The Trust is hardly arguing that "your product" renders "arising out of" ambiguous, as AIG claims, AIGBr.42. Rather, even assuming, as the Insurers argue, "your product" could also be interpreted to include unbranded representations about a class of products in general, the Products Hazard definition would be considered ambiguous, and that ambiguity would have to be resolved against the Insurers and in favor of the Trust, as Mallinckrodt's transferee. *See, e.g., Burns v. Smith*, 303 S.W.3d 505, 511-12 (Mo. banc 2010).

The Insurers' argument to the contrary (a) overemphasizes the broad interpretation of "arising out of" in the Products Hazard definition, while ignoring both the subject and the object of that phrase; (b) relies on extrinsic evidence that is neither relevant nor part of the summary-judgment record; and (c) cites cases that are inapposite for multiple reasons. And despite touting the "materially identical" cases they claim have ruled on "the very same" issue as here, AIGBr.36-38; *see also* AspenBr.35-38, they do not quote a single court holding that general statements regarding a category of products constitute representations with respect to the insured's own products.

Without support in the policy language or caselaw, both AIG and Aspen are reduced to declaring that representations about opioids "generally" or "as a class of product" are "necessarily" representations about Mallinckrodt's own opioids. AIGBr.47; AspenBr.34.

That *ipse dixit* does not satisfy AIG's burden to demonstrate that the Products Hazard Exclusion bars coverage here, *see Burns*, 303 S.W.3d at 510, nor does it negate the fact that the Insurers chose to define "Your product" to mean *only* "goods or products … manufactured [or] sold … by … You," meaning the insured, Mallinckrodt. D527, pp.4-5 (¶66 and Response); D431, p.28 (¶21), App.16; TrustBr.31-32.

A. The Products Hazard includes all bodily injury—not all liability—arising out of an insured's product.

The Products Hazard "includes all 'bodily injury' … arising out of 'your product' or 'your work.'" D527 pp.3-4 (¶65 and Response); D431, p.27 (¶16); App.15. The Insurers emphasize the broad interpretation given to "arising out of," *e.g.,* AIGBr.27-29; AspenBr.23-24, but ignore both the subject—"bodily injury"—and the object—"your product"—of that phrase. Instead, the Insurers repeatedly substitute Mallinckrodt's "liability" for "bodily injury" as the subject of the phrase. *See, e.g.,* AIGBr.10 ("but for the misconduct in the way it manufactured, marketed, and sold its opioid products, Mallinckrodt … would not have been named as a defendant and subject to liability"); AIGBr.26 ("all liability Mallinckrodt faced … arises out of Mallinckrodt's 'products'"); AIGBr.30 (Mallinckrodt's liability clearly 'originate[s] from' … its products, or representations"); AIGBr.31 ("Mallinckrodt would not have faced liability … were it not for its manufacturing, marketing, and sales of its opioid products"); AIGBr.33-34 ("the complaints … allege that Mallinckrodt's unbranded marketing efforts—and any potential liability …—'originat[ed] from,' … its conduct relating to its own opioid products…."); AIGBr.36, 38, 41, 46, 49, 50; AspenBr.12, 16, 17 ("Each exemplar alleged liability flowing

from the manner in which Mallinckrodt tried to sell its opioid products"), 20, 22, 24, 28, 30-32.

Likewise, the Insurers maintain that the object of "arising out of" is satisfied by conduct of Mallinckrodt outside the confines of the Policies' definition of "your product": Mallinckrodt's products and its representations about those products. *See, e.g.*, AIGBr.31-32 (referring to Mallinckrodt's "fueling the opioid crisis by producing, marketing, and selling opioid products"); AIGBr.32 (referring to the "goal" or "motive" of Mallinckrodt's unbranded marketing); AIGBr.45 (referring to harm "originat[ing] from" "the manner in which Mallinckrodt marketed and sold its products"); AspenBr.22 ("misrepresentations made as part of a specific plan to sell its own opioid products."); AspenBr.29 ("Mallinckrodt's conduct in how it chose to sell and market its opioids"). That the Insurers repeatedly reframe the object of "your product" to include conduct outside its narrow definition demonstrates the lack of connection between the bodily injury alleged in the Claims and Mallinckrodt's products and representations about them.

According to AIG, the "arising out of" requirement is satisfied here because "but for the misconduct in the way it manufactured, marketed, and sold its opioid products, Mallinckrodt … would not have been named as a defendant and subject to liability." AIGBr.10; *see also* AIGBr.31-32. If the Insurers had intended such an expansive exclusion—in effect barring coverage for any lawsuit where the plaintiff(s) alleged some misconduct in the way Mallinckrodt manufactured, marketed, or sold its product—they easily could have drafted an exclusion that said so.

The Products Hazard the Insurers chose to include in their Policies, however, encompasses only "bodily injury … arising out of your product." Even using AIG's "but for" formulation—a standard the Insurers do not allege any Missouri court has adopted—the proper question is whether the bodily injury alleged in the Claims would have occurred but for Mallinckrodt's products or its representations about its products. With respect to the Claims, which allege bodily injury caused by the unbranded campaign and ingestion of non-Mallinckrodt opioids, the answer is yes. Those claims are not within the Products Hazard, and neither the Exclusion nor the Endorsement applies. Summary judgment should be vacated.

B. The statements AIG relies on are outside the summary-judgment record and irrelevant.

AIG directs the Court to extrinsic evidence, including (a) "Mallinckrodt's statements in the bankruptcy record, statements from the bankruptcy court, and …the Trust's statements in litigation against Covidien [Mallinckrodt's one-time ultimate parent]" (the "litigation statements"). AIGBr.34-35 (citing D415, D456, D454); *see also* AspenBr.29 n.15; and (b) emails between Mallinckrodt and its insurance broker, Marsh. AIGBr.41-42 (citing D489). AIG claims that the litigation statements "establish that all liability Mallinckrodt faced in the Opioid Lawsuits 'originat[ed] from,' … its production and sale of its opioids,'" AIGBr.34 (alteration original), and maintains that the emails are "fatal" to the Trust's argument about how an "ordinary person" would read the Products Hazard Exclusion. AIGBr.41.

AIG's reliance on these statements is misplaced. First, extrinsic evidence has no role in interpreting insurance contracts, *see, e.g., Burns*, 303 S.W.3d at 511-13 (ambiguities must be construed in favor of insured without resorting to extrinsic evidence). Second, even if it were proper to go beyond the Policies' four corners, AIG has not cited its or any SUMF to show that these statements are in the summary-judgment record. *See Green v. Fotoohighiam*, 606 S.W.3d 113, 117 (Mo. banc 2020) ("'Facts come into a summary judgment record *only* via Rule 74.04(c)'s numbered-paragraphs-and responses framework. … *[P]arties cannot cite or rely on facts outside the Rule 74.04(c) record.*'") (citation omitted) (emphasis original); *Hershey v. Curators of Univ. of Mo.*, 719 S.W.3d 915, 921-22 (Mo. App. 2025) ("Appellate review of a summary judgment is … limited solely to those facts" submitted in compliance with Rule 74.04(c)(1)-(4); "each factual assertion in the argument must [also] contain a specific page citation to the documents containing the Rule 74.04(c) numbered paragraphs and responses," *i.e.*, a SUMF). Because AIG has not cited any Rule 74.04(c)-compliant paragraphs that set forth the statements it claims "establish" its interpretation of the Products Hazard and are "fatal" to the Trust's, this Court should not consider them.[3] *Hershey*, 719 S.W.3d at 922.

Third, the statements quoted by AIG assert, not that the alleged bodily injury arose from Mallinckrodt's products, but that the "lawsuits," "litigation," and "liability" "stem" from, "concern," or "arise from" Mallinckrodt's production and sale of its products.

[3]Indeed, the Insurers' briefs frequently cite to exhibits, not SUMFs.

AIGBr.34-35. Thus, even if the Court could consider extrinsic evidence and AIG had properly cited them, the statements would be probative of nothing.

C. The cases the Insurers rely on are distinguishable.

Although the Insurers claim that "every court that has considered the very same … issue here" under "materially identical" circumstances has held that coverage is barred, AIGBr.36-38; AspenBr.35-37, the cases they cite are distinguishable and otherwise lack persuasive value for multiple reasons.[4] First, the policies at issue in those cases differ from the Policies here.[5] The policies in *Actavis*, for example, defined "your products" more broadly, to include "*any statement* made, or that *should have been made* about … the products," 16 Cal. App. 5th at 1031-32, 1044 (emphasis added). In contrast, the Insurers' Policies define "your product" to include only representations and warranties made about "your product," *i.e.*, Mallinckrodt's products, or "the providing of or failure to provide warnings or instructions."). D527, pp.4-5 (¶66 and Response); D431, p.28 (¶21.b); App.16 (¶21.b). The policy in *Sentynl Therapeutics, Inc. v. U.S. Specialty Insurance Co.*, 527 F. Supp. 3d 1203, 1208 (S.D. Cal. 2021), excluded coverage for "*claims*"—not bodily

[4]AIG claims that "Missouri and Massachusetts courts have … applied the PCOH Exclusion—including to these very Opioid Lawsuits—concluding it unambiguously precludes coverage," AIGBr.44, but cites no cases.

[5]Moreover, each case applied California law, which differs from Missouri law in at least one critical way: California precludes coverage for intentional acts, even if the resulting harm is unintended. *See, e.g., Travelers Prop. Cas. Co. v. Actavis*, 16 Cal. App. 5th 1026, 1038, 1040-41 (2017) (coverage was barred because the complaints alleged that the insured had "engaged in deliberate conduct"); *Zogenix, Inc. v. Fed. Ins. Co.*, 2022 WL 3908529, **5-7 (N.D. Cal. 2022) (deeming *Actavis* "instructive" and holding that certain allegations for which the insured sought coverage were based on "intentional conduct" and thus not covered).

injury—"arising out of" the insured's goods or products and did not define "products." In contrast, the "your product" definition in the Policies effectively excluded (a) communications other than representations, warranties, warnings, and instructions with respect to Mallinckrodt's products only and (b) all other business activities related to those products. *See* TrustBr.39-40. The policies in *Travelers Property Casualty Co. v. Anda, Inc.*, 658 F. App'x 955, 957-58 (11th Cir. 2016), likewise did not narrow the definition of "products" or "your product."

Second, none of the opinions considered the actual issue here: whether bodily injury that arose from promotional statements that were not "warranties or representations" about Mallinckrodt's product fall within the Products Hazard. *Anda*, 658 F. App'x at 957, 958, did not address an unbranded campaign, but instead discussed allegations that West Virginia was harmed because Anda's products "so flooded the market" that the state "suffers from an opioid epidemic." The insured in *Sentynl*, 527 F. Supp. 3d at 1205-06, on the other hand, did not seek coverage for bodily-injury claims, but for the expense of defending a DOJ inquiry into its products, including "its marketing practices in connection with" them.

AIG implies that *Actavis* addressed whether bodily injury arising out of an unbranded promotional campaign fits within the Products Hazard—even gratuitously inserting "[unbranded]" into a quotation from the decision, AIGBr.37; *see also* AIGBr.46-47 ("*Actavis* … adjudicated the same kind of marketing campaign … at issue here"). But AIG refers only to allegations in a *lawsuit* for which Actavis sought coverage, thus tacitly

acknowledging that the *opinion* does not address those allegations. AIGBr.37 (citing California complaint).

Similarly, despite maintaining that the court in *Zogenix* "reached the same conclusion [as the *Actavis* court] with respect to another opioid manufacturer's 'unbranded marketing,'" Aspen relies exclusively on a reference to "unbranded marketing" in a complaint for which Zogenix sought coverage. AspenBr.36 (citing D535). The complaint Aspen cites, although submitted as a summary-judgment exhibit, does not appear to be referenced in any SUMF and is not properly in the record. *See Weber v. Federal Home Loan Mortg. Corp.*, 675 S.W.3d 728, 732 n.2 (Mo. App. 2023) (declining to consider exhibit attached to but not referenced in a SUMF). Not only does the *Zogenix* opinion not mention "unbranded marketing," it references the insured's representations about its own product: "all the harm asserted [in the Walker County complaint] stems from Zogenix's manufacture and marketing of Zohydro and representations and omissions about Zohydro. … The complaint … alleges a direct connection between Zohydro, the statements Zogenix made about Zohydro, and the overdose and addictions caused by Zogenix's products." 2022 WL 3908529, **8-9.

Whether the complaints for which the insured in *Actavis* and/or *Zogenix* sought coverage referenced the insured's unbranded marketing is irrelevant. The *opinions* neither include the word "unbranded" nor address the specific issue here: whether representations promoting a category of products in general, with no mention of a particular manufacturer's specific products, constitute representations with respect to those specific products.

After the Insurers filed their briefs, the federal district court in *Dundon v. ACE Property & Casualty Insurance Co.* held that a Products-Completed Operations Hazard exclusion in certain insurance policies issued to Endo International "bar[red] coverage" of certain lawsuits "to the extent [they] involve claims for bodily injury arising from Endo's products, including Endo's unbranded promotions." 2026 WL 374433, *11 (E.D. Pa. Feb. 10, 2026). *Dundon* is not instructive here for several reasons. First, the court held that under applicable Pennsylvania law, ""arising out of' requires 'but for' causation," which the court further described as only a "'de minimis' standard." *Id.* at **12, 20. In contrast, the Insurers have cited no Missouri case holding that "arising out of" equates to "but for" causation or is a "de minimis" standard.

Second, similar to the policies in *Actavis*, Endo's policies differ from the Policies here because they define "Your product" to include, in addition to the insured's goods or products, "Warranties or representations *made at any time, or that should have been made*, with respect to … such goods or products." *Id.* at *3 (emphasis added). Third, the district court relied heavily on the trial court's flawed opinion in this case, *id.* at **19, 20, which improperly relied on Mallinckrodt's motive in undertaking its unbranded campaign, even though "your product" is defined narrowly to include only Mallinckrodt's products themselves, and specific kinds of statements with respect to those products. TrustBr.38-41. Similarly, *Dundon* found *Actavis* persuasive in concluding that "[e]ven if Endo's unbranded marketing did not expressly mention Endo's products by name," because the underlying allegations against Endo "demonstrate[d]" that Endo's marketing was "designed to increase the market for its opioid products," there was "enough of a causal

connection under the de minimis 'but for' causation standard for the Court to find that bodily injuries allegedly resulting from Endo's unbranded promotions 'arise out of' Endo's products." *Id.* at *20. Thus, like the trial court here, *Dundon* improperly expanded the definition of "Your product" to include the insured's motive behind its unbranded campaign.

In sum, because the bodily injury alleged in the Claims did not arise out of Mallinckrodt's products or representations about those products, summary judgment should be vacated.

II. The "your work" provision in the Products Hazard Exclusion does not apply to exclude coverage here. (AIG's Point II).

AIG's alternative argument—that "all liability Mallinckrodt faced … arises out of Mallinckrodt's 'work' and therefore is included" in the Products Hazard Exclusion —is not supported by the Policy language or the cases AIG cites. AIGBr.50-52. Coverage-promoting principles of Missouri law require "*strictly* construe[ing] exclusionary clauses against the drafter," *Burns*, 303 S.W.3d at 510 (emphasis original), and "avoid[ing] an interpretation that renders some provisions trivial or superfluous." *Nooter Corp. v. Allianz Underwriters Ins. Co.*, 536 S.W.3d 251, 264 (Mo. App. 2017). AIG, however, advocates for an expansive interpretation of "your work," as used in the Products Hazard Exclusion, that would transform a limited exclusion for services or projects performed for Mallinckrodt's customers into one that would effectively eliminate all coverage under the Policies, because everything an insured does could be deemed its "work."

"Your work," like every policy provision, must be interpreted in the context in which it is used. The Policies define "your work" as "(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." D527, p.5 (¶67 and Response); D431, p.28 (¶22); App.16. The phrase also includes "[w]arranties or representations made at any time with respect to the fitness, quality, durability, performance or use of 'your work,'" as well as the "providing of or failure to provide warnings or instructions." D527, p.5 (¶67 and Response); D431, p.28; App.16. The inclusion of "materials, parts or equipment" and "warranties or representations" shows that, just as "your product" refers to a product that an insured manufacturer or distributor sells to others, "your work" is a project or service that an insured contractor or other service provider performs or sells to others, not to the insured's internal operations.

That "your work" refers to services or projects performed for third parties, and not an insured's ongoing internal business functions, is further bolstered by the carve-out from the Products Hazard Exclusion for "[w]ork that has not yet been completed or abandoned," and the explicit description of when "'your work' will be deemed completed," including references to "[w]hen all of the work called for in your contract has been completed," the "job site," and other "contractor or subcontractor working on the same project." D527, pp.3-4 (¶65); D431, p.27; App.15. The "marketing activities" of a manufacturer/distributor like Mallinckrodt are typically a work in progress, not "completed."

In the circuit court, the Trust cited cases that confirm this interpretation of "your work" as services or projects performed for the insured's customers, D524, p.32-33,

including *City of Park Ridge v. Clarendon Am. Ins. Co.*, 90 N.E.3d 479, 484 (Ill. App. 2017) ("the term 'products-completed operations hazard' generally applies to construction activities, maintenance, and related trades…."); *Liberty Mut. Ins. Co. v. Triangle Indus. Inc.*, 957 F.2d 1153, 1158 (4th Cir. 1992) ("the term 'completed operations hazard' [the predecessor to the term "your work"] refers to … those policyholders who provide a service in addition to or instead of a particular product.").

In contrast, none of the cases AIG cites supports "the suggest[ion] that a business's marketing activities are a part of its 'work or operations.'" AIGBr.51-52. *Cincinnati Ins. Co. v. U.S. Seamless, Inc.*, 2016 WL 5339563, **1, 4 (D.N.D. 2016), addressed warranty claims involving the defendant's siding. The court simply held that the policies at issue "excluded coverage for damages to property when the property is the insured's product and clearly exclude coverage for warranties and representations related to 'your product' and 'your work.'" *Id.* at *4. The policy at issue in *Colony Insurance Co. v. Pinewoods Enterprises, Inc.*, 29 F. Supp. 2d 1079, 1082-84 (E.D. Mo. 1998), did not involve a Products Hazard Exclusion or the phrase, "your work," but extended coverage to "liability arising out of your operations or premises … rented to you." *Id.* at 1082. The court held that the insured was entitled to coverage for lawsuits filed after a deck collapsed on the insured's campsite, both because the collapse arose out of the insured's operation of the campsite, and because the deck was part of the insured's leased premises. *Id.* at 1083. *See* TrustBr.42-43. Nor did *Brazas Sporting Arms, Inc. v. American Empire Surplus Lines Insurance Co.*, 220 F.3d 1, 7 (1st Cir. 2000), involve application of a "your work" provision.

That AIG cannot identify a single case that remotely supports the conclusion that an insured's "marketing activities," or any other continuing business-support function, are a part of the business's "work or operations" demonstrates that AIG's reliance on the "your work" subpart of the Products Hazard Exclusion is as misplaced as its reliance on the "your product" provision. The grant of summary judgment to the Insurers should be reversed.

III. If the Court determines the applicability of the Products Hazard Exclusion is not ripe, the trial court's grant of summary judgment should be reversed and the case remanded for further factual development. (AIG's Point III)

Having been granted summary judgment, AIG has walked back its argument that the Trust's summary judgment motion sought "an improper advisory opinion on the applicability of the PCOH exclusion." *See* D487, pp.22-29. AIG now maintains that the issue of how the Products Hazard Exclusion should be interpreted is justiciable only if this Court agrees with the Insurers' interpretation, although AIG now frames the issue as a failure on the Trust's part "to establish as an undisputed fact that Mallinckrodt faced and resolved liability for harm caused by opioids" it did not manufacture. *See* AIGBr.52-54.

The Trust made plain that it was not asking the trial court to determine "whether any particular opioid claims against Mallinckrodt, or any particular quantum of Mallinckrodt's opioid liability, were outside the products hazard exclusion," or for any factual finding "with respect to any particular opioid claim against Mallinckrodt." D413, p.8; *see also* TrustBr.23. The Trust explained in response to AIG's ripeness argument that the Trust's "Motion raises a live dispute that is crucial to the resolution of the present litigation, as underscored by the fact that AIG (and other insurers) have moved for summary judgment on the very same issue." D524, pp.12-13. The Trust also observed that "courts routinely

rule on the applicability of exclusions at the summary judgment stage before coverage has been established, often at the behest of insurers." D524, p.13 (citing cases). Neither of the cases AIG cites, AIGBr.54, involved the interpretation of an insurance contract. And the Trust described how "[d]eciding the legal issue of the products hazard exclusion's scope will streamline the litigation." D524, pp.13-14.

By interpreting the Products Hazard Exclusion—albeit wrongly, as the Trust has demonstrated—the trial court implicitly rejected AIG's argument that the issue was not ripe. AIG cannot have it both ways: If the issue is not yet ripe because of a factual dispute regarding whether Mallinckrodt "faced and settled liability from the use of other opioids," AIGBr.54, the grant of summary judgment should be reversed and the case remanded for further factual development.[6]

CONCLUSION

The grant of summary judgment to the Insurers should be vacated. If the Court holds that Claims based solely on Mallinckrodt's unbranded campaign and non-Mallinckrodt opioid drugs fall outside the Products Hazard, the Court should enter partial summary judgment in favor of the Trust and direct the trial court to address all remaining issues, including with respect to claims also involving Mallinckrodt opioids. *See* TrustBr.29, n.8.

[6]The Court should disregard AIG's statement that "the record here tends to disprove that the bankruptcy attached any value to [what AIG improperly describes as] that purported third bucket." AIGBr.53-54 (citing D536). AIG cites an exhibit, D536, that it did not reference in its only SUMF, D490. Even if extrinsic evidence were relevant, the exhibit is not properly in the summary-judgment record and cannot "disprove" anything. *Hershey*, 719 S.W.3d at 921-22.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Supreme Court Rule 84.06(c), that this Reply Brief for Appellant includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b) and this Court's Local Rule 360, as extended by this Court's Order dated February 24, 2026, granting Appellant leave to file a reply brief containing up to 4,875 words. I further certify that this brief contains 4,846 words, excluding the cover, the tables, this certificate, and the signature block, as determined by the Word for Microsoft 365, Version 2019 word-counting system in Times New Roman with a typeface of 13 points.

/s/ *James F. Bennett*

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2026, pursuant to Supreme Court Rule 103.08, I electronically filed the foregoing Reply Brief for Appellant with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to all counsel of record.

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