

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.

AMERICAN GUARANTEE AND LIABILITY  
INSURANCE COMPANY

Served By: Cole County Sheriff  
c/o Director of Insurance  
Department of Commerce and Insurance  
Truman State Office Building  
301 W. High St., Room 530  
Jefferson City, MO 65101

AMERICAN HOME ASSURANCE COMPANY;

Served By: Cole County Sheriff  
c/o Director of Insurance  
Department of Commerce and Insurance  
Truman State Office Building  
301 W. High St., Room 530  
Jefferson City, MO 65101

NATIONAL UNION FIRE INSURANCE COMPANY  
OF PITTSBURGH, PA;

Served By: Cole County Sheriff  
c/o Director of Insurance  
Department of Commerce and Insurance  
Truman State Office Building  
301 W. High St., Room 530  
Jefferson City, MO 65101

DOE DEFENDANT 3; DOE DEFENDANT 4;  
DOE DEFENDANT 5; DOE DEFENDANT 6;  
DOE DEFENDANT 7; DOE DEFENDANT 8;  
DOE DEFENDANT 9; DOE DEFENDANT 10;  
DOE DEFENDANT 11; DOE DEFENDANT 12;  
DOE DEFENDANT 13; DOE DEFENDANT 14;  
DOE DEFENDANT 15; DOE DEFENDANT 16;  
DOE DEFENDANT 17; DOE DEFENDANT 18;  
DOE DEFENDANT 19; DOE DEFENDANT 20;  
DOE DEFENDANT 21; DOE DEFENDANT 22;

Case No. \_\_\_\_

Division \_\_\_\_

**JURY TRIAL  
DEMANDED**

DOE DEFENDANT 23; DOE DEFENDANT 24; |  
DOE DEFENDANT 25; DOE DEFENDANT 26; |  
DOE DEFENDANT 27; DOE DEFENDANT 28; |  
DOE DEFENDANT 29; DOE DEFENDANT 30, |  
  
Defendants. |

**PETITION FOR DECLARATORY RELIEF**

Plaintiff the Opioid Master Disbursement Trust II, also known as the Opioid MDT II (the “Trust”),<sup>1</sup> a statutory trust created by the Fourth Amended Plan of Reorganization (the “Plan”)<sup>2</sup> of Mallinckrodt plc, et al. (the “Debtors”<sup>3</sup>), by and through its undersigned attorneys, submits this Petition (the “Petition”) for declaratory relief and resulting damages.

The Trust was established for the benefit of individuals and entities harmed by the Debtors’ role in creating, perpetuating, and contributing to the nationwide opioid crisis (the “Opioid Claimants”). As detailed below, pursuant to the Plan,<sup>4</sup> the Debtors’ rights to insurance coverage for claims arising out of, relating to, or in connection with any opioid product or substance (the “Opioid Mass Tort Claims”) have been transferred to the Trust, and the Trust has been granted sole authority to pursue those coverage rights. The Opioid Mass Tort Claims

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<sup>1</sup> The Trust’s name bears the number “II” to distinguish it from a similar trust that is contemplated in *In re Purdue Pharma L.P.*, No. 19-23649 (Bankr. S.D.N.Y. 2019).

<sup>2</sup> As used herein, the “Plan” refers to the Fourth Amended Plan of Reorganization, the materials referred to and incorporated therein, and its implementing documents. The Plan was confirmed by an order of the United States Bankruptcy Court for the District of Delaware dated March 2, 2022 (the “Confirmation Order”). The Plan and Confirmation Order are attached as Attachments 1 and 2, respectively. The Effective Date of the Plan is June 16, 2022. “Effective Date” as used herein has the meaning set forth in the Plan.

<sup>3</sup> A complete list of the Debtors is available at <http://restructuring.primeclerk.com/Mallinckrodt>. The Debtors principally responsible for developing, manufacturing, promoting, and distributing branded and generic opioid pharmaceuticals, and active pharmaceutical ingredients (which are defined herein as “APIs”) that were included in opioid pharmaceuticals, are Mallinckrodt LLC, Mallinckrodt APAP LLC, Mallinckrodt Enterprises LLC, SpecGx LLC, and SpecGx Holdings LLC.

<sup>4</sup> Descriptions of the Plan herein are subject in all respects to the actual terms of the Plan.

include<sup>5</sup> claims by individuals who suffered bodily injuries due to the use of Debtors' opioid pharmaceuticals, and to the use of other manufacturers' opioid pharmaceuticals, and illicit opioid drugs, for which Debtors were responsible. The Opioid Mass Tort Claims also include claims by entities, including governmental entities and others, that incurred costs because of the bodily injuries of such individuals. The insurance policies as to which Debtors' rights were transferred to the Trust include the insurance policies listed in Exhibit A hereto (the "Insurance Policies"), which were issued by the insurers named herein and in Exhibit A hereto (the "Defendants").<sup>6</sup>

The Trust brings this declaratory judgment action to effectuate its purposes and fulfill its obligations under the Plan. In support of its Petition, the Trust respectfully states and alleges as follows:

### **NATURE OF THE ACTION**

1. This is an action for declaratory relief under Missouri's declaratory judgment statute, Mo. Rev. Stat. §§ 527.010–527.130, and Missouri Supreme Court Rules 87.01–87.11.

#### **I. BACKGROUND**

2. From the time the original Mallinckrodt entity was founded in St. Louis, Missouri, in 1867, the Debtors and their affiliates developed, manufactured, marketed, promoted, and sold active pharmaceutical ingredients ("APIs") and pharmaceutical products. Since at least

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<sup>5</sup> Throughout this Petition, "including" and similar terms mean "including but not limited to" and similar formulations.

<sup>6</sup> The Trust does not currently know the identities of all of the insurers that issued insurance policies as to which the Plan transferred rights to the Trust, nor details concerning all such insurance policies. Accordingly, the Defendants include a number of Doe Defendants, and the insurance policies as to which the Trust seeks coverage include some number of insurance policies that are not currently listed in Exhibit A. To the extent currently known to the Trust, the issuing insurers, policy numbers, and policy periods of the insurance policies as to which the Trust seeks coverage are listed in Exhibit A, which is hereby incorporated by reference as if fully set forth herein. If and when the Trust learns the identities of Doe Defendants, it will identify them with actual insurer names through amendment of this Petition, including Exhibit A, or other appropriate means consistent with Missouri law. If and when additional insurance policies issued by known Defendants or Doe Defendants are obtained or identified by the Trust, such policies will be added to Exhibit A by amendment of this Petition or other appropriate means consistent with Missouri law. References to Exhibit A herein include any such amendments, or additions by other appropriate means.

1995, the Debtors developed, manufactured, marketed, promoted, and sold both branded and generic opioid pharmaceuticals, and their APIs were included in opioid pharmaceuticals manufactured by the Debtors and others. In addition, Debtors engaged in an extensive unbranded promotional campaign, not specific to Debtors' opioid pharmaceuticals, that promoted the use of opioid pharmaceuticals generally and caused individuals to use not only Debtors' opioid pharmaceuticals but the opioid pharmaceuticals of other manufacturers, as well as illicit opioid drugs.

3. By early 2020, the Debtors had been named in over 3,000 Opioid Mass Tort Claims. Between 2017 and October 12, 2020 (the "Petition Date"), the Debtors spent more than \$100 million defending Opioid Mass Tort Claims, with litigation expenses exceeding a million dollars a week. The Debtors also spent \$30 million pre-petition to settle just two Opioid Mass Tort Claims.

4. On the Petition Date, each of the Debtors commenced in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") a voluntary case under chapter 11 of the Bankruptcy Code (the "Bankruptcy Proceedings").

5. On March 2, 2022, the Bankruptcy Court confirmed the Plan.

6. Among other things, the Plan created a series of interrelated trusts, including operating opioid trusts<sup>7</sup> and the Trust.

7. Pursuant to the terms of the Plan, from and after its effective date, which occurred on June 16, 2022 (the "Effective Date"):

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<sup>7</sup> The operating trusts include trusts established for the benefit of specified classes of Opioid Claimants, including personal injury claimants, governmental entity claimants, and third-party payor claimants. *See* Attach. 1 arts. III.B.8–9.

- a. the Opioid Mass Tort Claims are channeled to, and the Debtors' opioid liabilities are transferred to and assumed by, the various trusts described above;
- b. the Debtors are discharged from liability for Opioid Mass Tort Claims;
- c. the Debtors' rights to insurance coverage for Opioid Mass Tort Claims—the "Assigned Insurance Rights," as defined in the Plan—among other assets, are transferred to the Trust;
- d. the Trust is empowered, obligated, and has the sole authority to, among other things: (1) preserve, hold, collect, manage, maximize, and liquidate the Assigned Insurance Rights, and (2) enforce, initiate, pursue, prosecute, defend, compromise, and/or resolve the Assigned Insurance Rights; and
- e. the Trust is obligated to distribute proceeds of the Assigned Insurance Rights, among other assets, to Opioid Claimants and/or to the operating opioid trusts which in turn will distribute funds to Opioid Claimants.

**II. A JUSTICIABLE CONTROVERSY EXISTS BETWEEN THE TRUST AND THE DEFENDANTS**

- 8. The Plan is now fully effective.
- 9. The Trust brings this action pursuant to, and to fulfill its purposes and obligations under, the Plan.
- 10. The Insurance Policies provide coverage for the Debtors' liability for Opioid Mass Tort Claims.
- 11. The Defendants have refused or reserved the right to refuse, will refuse or reserve the right to refuse, or otherwise have failed or declined or will fail or decline to meet their coverage obligations under the Insurance Policies for or with respect to the Debtors' liability for

the Opioid Mass Tort Claims. Among other things, two of the Defendants are named in a related action concerning the Trust's coverage claims under substantively identical policies, *Opioid Master Disbursement Trust II, a/k/a Opioid MDT II v. Ace American Insurance Company*, Case No. 22SL-CC02974 (the "Related Action"), where they have not acknowledged any obligation to provide coverage for the Debtors' liability for the Opioid Mass Tort Claims. The third Defendant was previously named in the Related Action with respect to a different form of policy, and was voluntarily dismissed with respect to that policy. None of the Defendants has acknowledged any obligation to provide coverage for the Debtors' liability for the Opioid Mass Tort Claims.

12. Pursuant to the Missouri Declaratory Judgment Act, which seeks to afford relief from uncertainty and insecurity and to reduce multiplicity of litigation, the Trust seeks declarations concerning the proper construction of the Insurance Policies, the validity of the Trust's claims that the Insurance Policies provide coverage for liability and defense costs associated with the Opioid Mass Tort Claims, and other rights and status under or with respect to the Insurance Policies as they pertain to the Debtors' liability for the Opioid Mass Tort Claims or other matters that are within the scope of the Trust's purposes and obligations under the Plan.

## **PARTIES**

### **I. PLAINTIFF, BENEFICIARIES, AND THE DEBTORS**

13. Plaintiff, the Trust, is a Delaware statutory trust under and pursuant to the provisions of the Delaware Statutory Trust Act, Del. Code Ann. tit. 12, §§ 3801, et seq., and a "qualified settlement fund" within the meaning of the Treasury Regulations issued under section 468B of the Internal Revenue Code.

14. The beneficiaries of the Trust include the operating opioid trusts to which the Trust is obligated to distribute proceeds of the Assigned Insurance Rights, as well as the Opioid

Claimants to which the operating opioid trusts in turn are obligated to distribute funds. The operating opioid trusts, and the categories of Opioid Claimants to which they respectively will distribute funds, include the following:<sup>8</sup>

Operating Opioid Trust	Category/ies of Opioid Claimants
NOAT II	State Opioid Claims
	Municipal Opioid Claims
TAFT II	Tribal Opioid Claims
Third-Party Payor Trust	Third-Party Payor Opioid Claims
PI Trust	Personal Injury Opioid Claims
	Neonatal Abstinence Syndrome Personal Injury Opioid Claims
Hospital Trust	Hospital Opioid Claims
NAS Monitoring Trust	Neonatal Abstinence Syndrome Monitoring Opioid Claims
Emergency Room Physicians Trust	Emergency Room Physicians Opioid Claims

15. The above categories of Opioid Claimants include states (including New York and Pennsylvania) where Defendants are domiciled, as well as municipalities, third-party payors, personal injury claimants, hospitals, and emergency room physicians that are citizens of those states. On information and belief, there are many thousands of such municipalities, third-party payors, personal injury claimants, hospitals, and emergency room physicians that have overlapping citizenship with one or more Defendants.

16. The Debtors have had a continuous and significant corporate presence in Missouri since the original Mallinckrodt entity (G. Mallinckrodt & Co.) was founded in St. Louis in 1867.

17. The segment of the Debtors’ business that developed, manufactured, marketed, promoted, and sold branded and generic opioid pharmaceuticals, and produced APIs that were included in opioid pharmaceuticals generally, is referred to as the “Specialty Generics” business.

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<sup>8</sup> For ease of reference, the chart below uses spelled-out versions of certain defined terms from the Plan.

18. At all times relevant to this action and on the Petition Date, the principal location of the Debtors' "Specialty Generics" business was in St. Louis County, Missouri. St. Louis County also was home to the Debtors' pilot plant,<sup>9</sup> research and development facilities, commercial dose production facilities, and production site for its APIs.

19. As of the Petition Date, the "Specialty Generics" business included and primarily was comprised of Debtors Mallinckrodt LLC, Mallinckrodt APAP LLC, Mallinckrodt Enterprises LLC, SpecGx LLC, and SpecGx Holdings LLC. All of these entities are subsidiaries of the Debtors' ultimate parent entity, Mallinckrodt plc.

20. Debtor Mallinckrodt LLC is a Delaware corporation with its principal place of business in Missouri.

21. Debtor Mallinckrodt APAP LLC is a Delaware corporation with its principal place of business in Missouri.

22. Debtor Mallinckrodt Enterprises LLC is a Delaware corporation with its principal place of business in Missouri.

23. Debtor SpecGx LLC is a Delaware corporation with its principal place of business in Missouri.

24. Debtor SpecGx Holdings LLC is a New York corporation with its principal place of business in Missouri.

## **II. DEFENDANTS**

25. Each of the Insurance Policies contractually obligates the issuing insurer to provide insurance coverage or other benefits to one or more of the Debtors for risks located in Missouri.

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<sup>9</sup> A "pilot plant" is a small-scale production location at which companies test and validate aspects of production before moving into full-scale production.



26. Each of the Defendants issued Insurance Policies out of which the claim(s) and cause(s) of action set forth in this Petition arose. In issuing the Insurance Policies, each of the Defendants transacted business in Missouri and/or made contracts within Missouri and/or contracted to insure persons and/or risks that were located in Missouri at the time of contracting. Each of the Defendants has requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process. The cause of action asserted herein arises from or relates to each Defendant's conduct and/or contacts in Missouri.

27. Defendant American Guarantee and Liability Insurance Company ("American Guarantee") is a New York corporation with its principal place of business in Illinois. American Guarantee has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. According to the National Association of Insurance Commissioners, American Guarantee is actively engaged in business in Missouri. American Guarantee is licensed to issue policies in Missouri by the Missouri Department of Insurance and, on information and belief, regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. For example, according to the Missouri Department of Insurance, in 2021 alone, American Guarantee earned \$37,272,977 in premiums from Missouri policyholders. American Guarantee maintains a registered agent in Jefferson City, Missouri. American Guarantee previously has availed itself of Missouri as a forum by filing litigation in Missouri state or federal court. The Missouri long-arm statute is satisfied with regard to American Guarantee because, among other things, the cause of action against American Guarantee arises from the transacting of business in Missouri and/or the making of

contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and American Guarantee has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

28. Defendant American Home Assurance Company (“American Home”) is a New York corporation with its principal place of business in New York. American Home has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. According to the National Association of Insurance Commissioners, American Home is actively engaged in business in Missouri. American Home is licensed to issue policies in Missouri by the Missouri Department of Insurance and, on information and belief, regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. For example, according to the Missouri Department of Insurance, in 2021 alone, American Home earned \$1,965,613 in premiums from Missouri policyholders. American Home maintains a registered agent in Jefferson City, Missouri, and has an office in St. Louis, Missouri. American Home previously has availed itself of Missouri as a forum by filing litigation in Missouri state or federal court. The Missouri long-arm statute is satisfied with regard to American Home because, among other things, the cause of action against American Home arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and American Home has the requisite minimum contacts

with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

29. Defendant National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) is a Pennsylvania corporation with its principal place of business in New York. National Union has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. According to the National Association of Insurance Commissioners, National Union is actively engaged in business in Missouri. National Union is licensed to issue policies in Missouri by the Missouri Department of Insurance and, on information and belief, regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. According to the Missouri Department of Insurance, in 2021 alone, National Union earned \$75,522,080 in premiums from Missouri businesses. National Union maintains a registered agent in Jefferson City, Missouri. At least one of the Insurance Policies for which National Union is a Defendant specifies Missouri as the location of contracting. National Union previously has availed itself of Missouri as a forum by filing litigation in Missouri state or federal court. The Missouri long-arm statute is satisfied with regard to National Union because, among other things, the cause of action against National Union arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and National Union has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process

30. Doe Defendant 3 (“Doe 3”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 3 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 3 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 3 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 3 because, among other things, the cause of action against Doe 3 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 3 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

31. Doe Defendant 4 (“Doe 4”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 4 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 4 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 4 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 4 because, among other things, the cause of action against Doe 4 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that

were located in Missouri at the time of contracting, and Doe 4 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

32. Doe Defendant 5 (“Doe 5”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 5 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 5 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 5 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 5 because, among other things, the cause of action against Doe 5 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 5 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

33. Doe Defendant 6 (“Doe 6”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 6 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 6 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 6 is not a Missouri entity, the

Missouri long-arm statute is satisfied with regard to Doe 6 because, among other things, the cause of action against Doe 6 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 6 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

34. Doe Defendant 7 ("Doe 7") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 7 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 7 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 7 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 7 because, among other things, the cause of action against Doe 7 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 7 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

35. Doe Defendant 8 ("Doe 8") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 8 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises

from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 8 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 8 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 8 because, among other things, the cause of action against Doe 8 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 8 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

36. Doe Defendant 9 (“Doe 9”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 9 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 9 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 9 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 9 because, among other things, the cause of action against Doe 9 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 9 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

37. Doe Defendant 10 (“Doe 10”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 10 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 10 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 10 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 10 because, among other things, the cause of action against Doe 10 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 10 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

38. Doe Defendant 11 (“Doe 11”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 11 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 11 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 11 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 11 because, among other things, the cause of action against Doe 11 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that



were located in Missouri at the time of contracting, and Doe 11 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

39. Doe Defendant 12 ("Doe 12") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 12 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 12 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 12 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 12 because, among other things, the cause of action against Doe 12 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 12 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

40. Doe Defendant 13 ("Doe 13") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 13 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 13 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 13 is not a Missouri entity, the

Missouri long-arm statute is satisfied with regard to Doe 13 because, among other things, the cause of action against Doe 13 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 13 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

41. Doe Defendant 14 ("Doe 14") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 14 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 14 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 14 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 14 because, among other things, the cause of action against Doe 14 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 14 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

42. Doe Defendant 15 ("Doe 15") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 15 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises

from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 15 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 15 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 15 because, among other things, the cause of action against Doe 15 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 15 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

43. Doe Defendant 16 (“Doe 16”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 16 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 16 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 16 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 16 because, among other things, the cause of action against Doe 16 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 16 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

44. Doe Defendant 17 (“Doe 17”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 17 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 17 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 17 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 17 because, among other things, the cause of action against Doe 17 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 17 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

45. Doe Defendant 18 (“Doe 18”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 18 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 18 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 18 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 18 because, among other things, the cause of action against Doe 18 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that

were located in Missouri at the time of contracting, and Doe 18 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

46. Doe Defendant 19 (“Doe 19”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 19 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 19 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 19 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 19 because, among other things, the cause of action against Doe 19 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 19 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

47. Doe Defendant 20 (“Doe 20”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 20 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 20 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 20 is not a Missouri entity, the

Missouri long-arm statute is satisfied with regard to Doe 20 because, among other things, the cause of action against Doe 20 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 20 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

48. Doe Defendant 21 ("Doe 21") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 21 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 21 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 21 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 21 because, among other things, the cause of action against Doe 21 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 21 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

49. Doe Defendant 22 ("Doe 22") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 22 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises

from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 22 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 22 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 22 because, among other things, the cause of action against Doe 22 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 22 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

50. Doe Defendant 23 ("Doe 23") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 23 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 23 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 23 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 23 because, among other things, the cause of action against Doe 23 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 23 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

51. Doe Defendant 24 (“Doe 24”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 24 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 24 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 24 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 24 because, among other things, the cause of action against Doe 24 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 24 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

52. Doe Defendant 25 (“Doe 25”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 25 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 25 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 25 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 25 because, among other things, the cause of action against Doe 25 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that



were located in Missouri at the time of contracting, and Doe 25 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

53. Doe Defendant 26 (“Doe 26”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 26 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 26 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 26 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 26 because, among other things, the cause of action against Doe 26 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 26 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

54. Doe Defendant 27 (“Doe 27”) issued Insurance Policies that cover the Debtors’ liability as a result of Opioid Mass Tort Claims. Doe 27 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 27 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 27 is not a Missouri entity, the

Missouri long-arm statute is satisfied with regard to Doe 27 because, among other things, the cause of action against Doe 27 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 27 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

55. Doe Defendant 28 ("Doe 28") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 28 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 28 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 28 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 28 because, among other things, the cause of action against Doe 28 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 28 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

56. Doe Defendant 29 ("Doe 29") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 29 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises

from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 29 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 29 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 29 because, among other things, the cause of action against Doe 29 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 29 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

57. Doe Defendant 30 ("Doe 30") issued Insurance Policies that cover the Debtors' liability as a result of Opioid Mass Tort Claims. Doe 30 has specifically availed itself of the benefits of transacting business in Missouri by, among other things, selling insurance policies in Missouri or covering insureds and risks located in Missouri, and the cause of action here arises from or relates to the sale of such policies to the Debtors, their affiliates, and other insureds. On information and belief, Doe 30 regularly sells insurance policies in, and/or provides coverage to insureds located in or risks present within, Missouri. If Doe 30 is not a Missouri entity, the Missouri long-arm statute is satisfied with regard to Doe 30 because, among other things, the cause of action against Doe 30 arises from the transacting of business in Missouri and/or the making of contracts within Missouri and/or the contracting to insure persons and/or risks that were located in Missouri at the time of contracting, and Doe 30 has the requisite minimum contacts with Missouri in light of the surrounding circumstances of the case so as not to offend constitutional due process.

## JURISDICTION AND VENUE

58. The jurisdiction of this Court is invoked to determine questions of actual controversy between and among the parties that cannot be resolved absent relief from this Court. This Court has subject matter jurisdiction under Mo. Rev. Stat. § 478.070, which confers on Missouri courts original jurisdiction over all cases and matters, civil and criminal. This Court also has subject matter jurisdiction pursuant to Mo. Rev. Stat. §§ 527.010–527.130 and Missouri Supreme Court Rules 87.01–87.11, which confer upon Missouri courts the power to declare rights, status, and other legal relations.

59. This Court has personal jurisdiction over the Defendants under Missouri Supreme Court Rule 54.06 and Mo. Rev. Stat. § 500.560. Each of the Defendants transacted business within Missouri by, among other things, conducting a series of acts in Missouri for the purpose of realizing pecuniary interest—such as contracting to insure the Debtors, which include entities headquartered in and risks located in the State of Missouri, and the other categories of acts identified in Paragraphs 25–57. Each Defendant therefore has minimum contacts with Missouri that will allow for personal jurisdiction in the present action. In addition, each of the Defendants has continuous or systematic contacts with Missouri, and/or has consented, either explicitly or implicitly, to the jurisdiction of this Court, thus warranting the exercise of personal jurisdiction in this action. Details regarding the contacts of each of the Defendants are provided in Paragraphs 25–57, which are incorporated herein.

60. Venue is proper under Mo. Rev. Stat. § 508.010. This action sounds in contract, not tort, and none of the Defendants is a resident of Missouri, *see id.* § 508.010.2(4).

## FACTUAL BACKGROUND

### **I. THE DEBTORS' OPIOID-RELATED BUSINESS**

61. Prior to the Effective Date of the Plan, the Debtors' business was divided into two segments: (a) Specialty Generics, and (b) Specialty Brands.

62. Notwithstanding the implication of its name, the Specialty Generics segment of the Debtors developed, manufactured, marketed, promoted, and sold both branded and generic opioid products. It developed, manufactured, marketed, promoted, and sold, (i) APIs that are used by the Debtors and other manufacturers to create finished dosage opioid products, and (ii) finished dosage opioid products. Finished dosage products are products in the form ultimately received by the consumer, such as tablet, capsule, or liquid. In addition, the Specialty Generics segment of the Debtors engaged in an extensive unbranded promotional campaign, not specific to Debtors' opioid pharmaceuticals, that promoted the use of opioid pharmaceuticals generally and caused individuals to use not only Debtors' opioid pharmaceuticals but the opioid pharmaceuticals of other manufacturers, as well as illicit opioid drugs.

63. Opioids are classified by the Drug Enforcement Agency as Schedule II or Schedule III medications because the medications carry significant risks, including risks of abuse, misuse, and addiction. The labeling approved for these medications by the Food and Drug Administration ("FDA") warns of the risk of abuse and misuse, including through "black box" warnings that discuss the risks of abuse, misuse, and addiction.

64. The Debtors first produced APIs in 1898, when they first made the opium-based controlled substances morphine and codeine. From at least 1995 through the Petition Date, the Debtors' APIs included: acetaminophen/paracetamol (which are used in pain management pharmaceuticals like Tylenol® and in finished dosage opioid products); natural opiates, such as morphine sulfate and codeine phosphate; semi-synthetic opiates such as hydrocodone,

hydromorphone, and oxycodone; and synthetic opiates, including fentanyl. During that time period, the Debtors' APIs were used in finished dosage opioid products manufactured and sold by the Debtors and by other manufacturers.

65. The Debtors' finished dosage opioid products have included the following:

Branded/Generic (Branded Name)	Chemical Name
Branded (Exalgo)	Hydromorphone hydrochloride, extended release
Branded (Roxicodone)	Oxycodone hydrochloride
Branded (Xartemis XR)	Oxycodone hydrochloride and acetaminophen
Branded (Magnacet)	Oxycodone and acetaminophen
Branded (Methadose)	Methadone hydrochloride
Generic	Morphine sulfate, extended release
Generic	Morphine sulfate oral solution
Generic	Fentanyl transdermal system
Generic	Oral transmucosal fentanyl citrate
Generic	Oxycodone and acetaminophen
Generic	Hydrocodone bitartrate and acetaminophen
Generic	Hydromorphone hydrochloride
Generic	Hydromorphone hydrochloride, extended release
Generic	Naltrexone hydrochloride
Generic	Oxymorphone hydrochloride
Generic	Methadone hydrochloride
Generic	Oxycodone hydrochloride
Generic	Buprenorphine and naloxone

## II. THE DEBTORS' OPIOID-RELATED CORPORATE HISTORY

66. The Debtors underwent a series of corporate transactions between their initial predecessor's founding in St. Louis in 1867 and the Petition Date.

67. In the bankruptcy proceeding, the Debtors described their corporate history by using "Mallinckrodt" as a summary term for the Debtors' business that historically has operated under that name, rather than by use of specific corporate entity names.<sup>10</sup> Except where the Trust has additional clear and complete information, the Trust takes the same approach herein. If and

<sup>10</sup> See, e.g., Declaration of Stephen A. Welch, Chief Transformation Officer, In Support of Chapter 11 Petitions and First Day Motions at 11 n.5, *In re Mallinckrodt PLC*, No. 20-12522 (JTD) (Bankr. D. Del. Oct. 12, 2020), ECF No. 128.

when the Trust learns additional relevant information concerning historic corporate transactions, whether through discovery or otherwise, it will provide that detail through amendment of this Petition or other appropriate means consistent with Missouri law.

68. Upon information and belief, throughout the policy periods of the Insurance Policies, the insured opioid-related risk was located primarily in Missouri because, among other reasons, Debtors' opioid-related business was located in Missouri. Upon information and belief, numerous claimants with respect to the Opioid Mass Tort Claims are located in Missouri.

69. From 1996 to 2000, Mallinckrodt (formerly known as IMCERA Group and International Minerals and Chemical Corporation) was a stand-alone company, without a corporate parent. Throughout this period, at least one Mallinckrodt entity involved in the development, manufacture, marketing, promotion, and sale of opioid pharmaceuticals had its principal place of business in Missouri.

70. In 2000, Mallinckrodt became a wholly owned subsidiary of Tyco International Ltd. ("Tyco"), and became one of the primary business units in Tyco's healthcare business. At the time, at least one Mallinckrodt entity involved in the development, manufacture, marketing, promotion, and sale of opioid pharmaceuticals had its principal place of business in Missouri, and that continued to be the case thereafter, through and including the date of the transaction described in the following paragraph.

71. In 2007, Tyco separated into three publicly traded companies, including Covidien Ltd. As part of this transaction, Tyco's healthcare business—including development, manufacture, marketing, promotion, and sale of opioid pharmaceuticals—was transferred to Covidien Ltd., which became the parent company for Mallinckrodt. At the time, at least one Mallinckrodt entity involved in the development, manufacture, marketing, promotion, and sale of

opioid pharmaceuticals had its principal place of business in Missouri, and that continued to be the case thereafter, through and including the date of the transaction described in the following paragraph.

72. In 2009, Covidien Ltd. changed its name to Covidien plc.

73. In 2013, Covidien plc transferred its pharmaceuticals business, which included the business and operations of Mallinckrodt and the rest of its opioids business, to Mallinckrodt plc. At the time, at least one Mallinckrodt entity involved in the development, manufacture, marketing, promotion, and sale of opioid pharmaceuticals had its principal place of business in Missouri, and that continued to be the case thereafter, through and including the Effective Date of the Plan.

74. As of the Petition Date, Mallinckrodt plc was the ultimate parent company of “Specialty Generics,” which was comprised of the following Debtors: Mallinckrodt LLC, Mallinckrodt APAP LLC, Mallinckrodt Enterprises LLC, SpecGx LLC, and SpecGx Holdings LLC. As set forth above, the principal place of business of all of these entities is in Missouri.

### **III. THE COVIDIEN PLC/MALLINCKRODT PLC SEPARATION AGREEMENT**

75. The 2013 transaction between Covidien plc and Mallinckrodt plc is detailed in a June 28, 2013 Separation and Distribution Agreement (the “Covidien Separation Agreement”).

76. Under the Covidien Separation Agreement, Covidien plc transferred to Mallinckrodt plc the “Mallinckrodt Liabilities,” including liabilities “relating to, arising out of or resulting from” the pharmaceuticals business, which included the opioids business.

77. Under the Covidien Separation Agreement, Covidien plc transferred to Mallinckrodt plc the “Mallinckrodt Assets,” including rights under “Mallinckrodt Policies” and “Shared Policies” with respect to insurance coverage for liabilities arising out of the opioids business transferred to Mallinckrodt plc, which rights subsequently were transferred to the Trust



pursuant to the Plan and include rights that the Trust is pursuing in this action. The Covidien Separation Agreement provides that Covidien plc retained certain other rights under or with respect to the same policies, including a right to share in certain proceeds.<sup>11</sup> Mallinckrodt Policies are insurance policies that had been issued to Mallinckrodt and related entities as of October 17, 2000. Shared Policies are insurance policies that were issued on or after that date, through the date of the Covidien Separation Agreement.

#### **IV. THE OPIOID MASS TORT CLAIMS**

78. The Debtors' liability for the Opioid Mass Tort Claims arises from the Debtors' role in creating, perpetuating, and contributing to the nationwide opioid crisis, including serious and wide-ranging bodily injuries caused by the use and misuse of opioid pharmaceuticals and illicit opioid drugs, in two respects: supply and demand.

79. As to supply, the Opioid Mass Tort Claims allege that the Debtors manufactured, marketed, and sold substantial quantities of opioid pharmaceuticals that caused serious and wide-ranging bodily injuries among their users. The Opioid Mass Tort Claims further allege that Debtors failed to maintain effective controls over the distribution of opioids, by selling and distributing far greater quantities of opioids than were necessary for legitimate medical purposes, and by failing to report and halt suspicious orders, both of which led to an oversupply of pharmaceuticals and fueled the illegal secondary market for opioids, and caused serious and wide-ranging bodily injuries among their users.

80. As to demand, the Opioid Mass Tort Claims allege that, through their marketing and promotion of opioid pharmaceuticals, including the use of unbranded advertising, paid

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<sup>11</sup> The Trust reserves, and does not waive, any and all of its rights and defenses with respect to these matters.

speakers and key opinion leaders,<sup>12</sup> and industry-funded organizations posing as neutral and credible professional societies, the Debtors and their co-defendants throughout the supply chain changed the prevailing practices in the medical community for the treatment of chronic pain, and the perception of the risks posed, by opioid pharmaceuticals. These unbranded efforts were focused on opioid pharmaceuticals generally; they were not specific to the Debtors' products. Indeed, the unbranded content disseminated by these groups did not mention the Debtors or the Debtors' products. The Opioid Mass Tort Claims allege that Debtors and their co-defendants' facilitation of and participation in this unbranded advertising, in turn, led to the opioid epidemic as a whole, by among other things causing and increasing the use of and addiction to not only the Debtors' opioid pharmaceuticals, but also opioids developed, manufactured, marketed, promoted, and sold by other pharmaceutical companies and to illicit opioids, such as heroin and fentanyl, distributed through black market channels, and in turn causing and increasing the serious and wide-ranging bodily injuries associated with that use and addiction.

81. As noted above, the Debtors developed, manufactured, marketed, promoted, and sold both branded and generic opioid pharmaceuticals, and their APIs were included in opioid pharmaceuticals manufactured by both the Debtors and others.

82. In many instances, the Debtors are allegedly jointly and severally liable with other manufacturers and distributors for injuries caused by opioids that are not the Debtors' products. These injuries do not arise out of the Debtors' sales or representations about their own products, but instead are alleged to arise out of the Debtors' extensive use of unbranded promotional activities to change the way the medical community and the public perceived, prescribed, and

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<sup>12</sup> According to the allegations in the Opioid Mass Tort Claims, key opinion leaders are medical experts who appeared to be independent, neutral actors who were paid to deliver deceptive messages about opioids because of their ability to influence their peer prescribers, but were in fact neither independent, nor neutral.

used opioids in general, and their concomitant or resulting use of other manufacturers' opioid products and illicit opioids.

83. Based on these allegations and related facts, the Opioid Mass Tort Claims seek to hold the Debtors liable for bodily injuries, and costs incurred because of bodily injuries, allegedly caused by: (1) the Debtors' products; (2) the Debtors' alleged conduct in creating and fueling the nationwide opioid crisis; (3) the opioid products of other manufacturers; and (4) illicit opioids.

84. The Opioid Mass Tort Claims include claims brought by individuals (or in the case of decedents, their estates) seeking damages because of bodily injuries for which they allege the Debtors are responsible. They also include claims brought by certain public and private entities seeking damages because of amounts they incurred because of opioid-related bodily injuries suffered by their citizens, patients, insureds, or others. For example, Opioid Mass Tort Claims have been asserted by governmental entities, including states, cities, counties, and Native American tribes across the country, seeking damages including the costs of public services incurred because of bodily injuries caused by Debtors' actions and opioid use and abuse for which the Debtors are alleged to be responsible. Similarly, numerous healthcare providers, healthcare plans, and other third-party payors have asserted Opioid Mass Tort Claims seeking damages related to increased costs of healthcare because of bodily injuries caused by the Debtors' actions and opioid use and abuse for which Debtors are alleged to be responsible.

85. The Opioid Mass Tort Claims assert a variety of claims, including, negligence, product liability, and other common law and statutory claims arising from the Debtors' conduct in connection with the development, manufacture, marketing, promotion, and sale of opioids.

Generally, the plaintiffs in the Opioid Mass Tort Claims seek damages and other relief, and attorneys' fees and costs.

## **V. THE DEBTORS' BANKRUPTCY PROCEEDINGS**

### **A. Notice to Opioid Claimants of the Bankruptcy Proceedings, and the Appointment of the Future Claims Representative**

86. The Bankruptcy Court did not set a bar date for the Opioid Mass Tort Claims in the Bankruptcy Proceedings.

87. Rather, the Debtors undertook a broad opioid noticing program to advise known and unknown Opioid Claimants of the Bankruptcy Proceedings, including both a direct notice strategy and a media and community outreach strategy.

88. As detailed in the Bankruptcy Court's opinion on confirmation, the Bankruptcy Court received uncontroverted evidence that the Debtors' noticing program reached approximately 91% of all adults in the United States and about 82% of all Canadian adults with an average frequency of six times.<sup>13</sup> The noticing campaign was comprised of advertising on network broadcast and cable television, in newspapers, magazines, on social media and other online locations including a dedicated website, as well as radio. The Debtors also sent a direct, mailed notice, along with a solicitation package, to all Opioid Claimants with pending lawsuits against the Debtors, all persons and entities that had filed opioid-related proofs of claims in the Bankruptcy Proceedings, all persons and entities that had appeared in the Bankruptcy Proceedings on opioid-related issues, all co-defendants to the Debtors in the Opioid Mass Tort Claims, all putative representatives of various classes of the Opioid Mass Tort Claims, and all

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<sup>13</sup> See Revised Opinion at 42–43, *In re Mallinckrodt PLC*, No. 20-12522 (JTD) (Bankr. D. Del. Feb. 8, 2022), ECF No. 6378.

Opioid Claimants in *In re Purdue Pharma L.P.*<sup>14</sup> Mallinckrodt's bankruptcy filing, the Bankruptcy Proceedings, and the Plan received extensive coverage in national and local news, and business and insurance media.

89. The Bankruptcy Court also approved the appointment of a Future Claims Representative (“FCR”) to ensure that the interests of future Opioid Claimants were adequately represented in the Bankruptcy Proceedings. Roger Frankel was provisionally appointed as FCR on March 16, 2021, and finally appointed as FCR on June 11, 2021.<sup>15</sup>

**B. Iterations of the Plan, and Insurers' Objections Thereto**

90. On April 20, 2021, the Debtors filed the first iteration of the Plan. On April 21, 2021, the Debtors filed the first iteration of the Disclosure Statement.

91. On September 29, 2021, the Debtors filed the first amended iteration of the Plan.

92. The first iteration and the first amended iteration of the Plan mirrored the Plan as confirmed in relevant respects. For example, under all iterations of the Plan, the Opioid Mass Tort Claims are channeled to, and the Debtors' opioid liabilities are transferred to and assumed by, the various trusts described above; the Debtors are discharged from liability for Opioid Mass Tort Claims; the Debtors' rights to insurance coverage for Opioid Mass Tort Claims—the “Assigned Insurance Rights,” as defined in the Plan—among other assets, are transferred to the Trust; the Trust is empowered, obligated, and has the sole authority to, among other things: (1) preserve, hold, collect, manage, maximize, and liquidate the Assigned Insurance Rights, and (2) enforce, initiate, pursue, prosecute, defend, compromise, and/or resolve the Assigned Insurance Rights; and the Trust is obligated to distribute proceeds of the Assigned Insurance

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<sup>14</sup> *Id.* at 43.

<sup>15</sup> *Id.* at 5.

Rights, among other assets, to Opioid Claimants and/or to the operating opioid trusts which in turn will distribute funds to Opioid Claimants.

93. In October 2021, various entities and parties filed objections to the first amended iteration of the Plan, including twenty insurance companies.

94. Ultimately, the Debtors, with the support of all putative representatives of various classes of the Opioid Mass Tort Claims, resolved the insurers' objections through language contained in the Bankruptcy Court's Order confirming the Plan. That language provides that any dispute concerning the rights and obligations under the Insurance Policies will be resolved pursuant to the terms of the Insurance Policies and applicable law.<sup>16</sup>

**C. Confirmation of the Plan, and Creation of the Trust**

95. On March 2, 2022, the Bankruptcy Court confirmed the Plan.

96. The Plan created the Trust, which is a Delaware statutory trust under and pursuant to the provisions of the Delaware Statutory Trust Act, Del. Code Ann. tit. 12, §§ 3801, *et seq.*, and a "qualified settlement fund" within the meaning of the Treasury Regulations issued under section 468B of the Internal Revenue Code.

97. Pursuant to the terms of the Plan, as of the Effective Date:

- a. the Opioid Mass Tort Claims are channeled to, and the Debtors' opioid liabilities are transferred to and assumed by, the various trusts described above;
- b. the Debtors are discharged from liability for Opioid Mass Tort Claims;

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<sup>16</sup> See Attach. 2 ¶ 277.

- c. the Debtors' rights to insurance coverage for Opioid Mass Tort Claims—the “Assigned Insurance Rights,” as defined in the Plan—among other assets, are transferred to the Trust;
- d. the Trust is empowered, obligated, and has the sole authority to, among other things: (1) preserve, hold, collect, manage, maximize, and liquidate the Assigned Insurance Rights; and (2) enforce, initiate, pursue, prosecute, defend, compromise, and/or resolve the Assigned Insurance Rights; and
- e. the Trust is obligated to distribute proceeds of the Assigned Insurance Rights, among other assets, to Opioid Claimants and/or to the operating opioid trusts which in turn will distribute funds to Opioid Claimants.

98. The “Assigned Insurance Rights” are defined as:

[A]ny and all rights, titles, privileges, interests, claims, demands, or entitlements of the Debtors to any proceeds, payments, benefits, Causes of Action, choses in action, defense or indemnity (collectively, “rights”), regardless of whether such rights existed in the past, now exist, or hereafter arise, and regardless of whether such rights are or were accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed or contingent, based on, arising under, or attributable to, any and all Opioid Insurance Policies. For the avoidance of doubt, Assigned Insurance Rights includes the Debtors' rights, based on, arising under, or attributable to Opioid Insurance Policies issued to the Debtors' prior affiliates, subsidiaries, and parents (including Medtronic plc [the current parent of the successor to Covidien plc (Covidien Limited)] and its subsidiaries, and parents), or otherwise, or any of their predecessors, successors, or assigns.<sup>17</sup>

99. The “Opioid Insurance Policies” are defined as:

(i) with regard to Insurance Contracts issued to any Debtors, (a) all Insurance Contracts that provide general liability, life sciences, or product liability coverages, other than those specifically or categorically listed in the Schedule of Excluded Insurance Policies included in the Plan Supplement, and (b) all Insurance Contracts that may provide or may have

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<sup>17</sup> Attach. 1 at 6–7.

provided the Debtors with rights with respect to any Opioid Claim, other than those specifically or categorically listed in the Schedule of Excluded Insurance Policies included in the Plan Supplement (collectively, the “Post-Spin Opioid Insurance Policies”); (ii) all Insurance Contracts issued to Covidien Limited (f/k/a Covidien plc) or its affiliates, subsidiaries, or parents prior to the 2013 spin-off of Mallinckrodt plc from Covidien (the “Spin-Off”) under which, as of the Effective Date, the Debtors have or hold rights to coverage with respect to any Opioid Claim (the “Covidien Insurance Policies”); and (iii) all Insurance Contracts issued to the predecessors of Covidien Limited (f/k/a Covidien plc) and their affiliates, subsidiaries, or parents prior to the Spin-Off under which, as of the Effective Date, the Debtors have or hold rights to coverage with respect to any Opioid Claim (the “Pre- Covidien Insurance Policies”). Rights as used in this definition means any and all rights, titles, privileges, interests, claims, demands, or entitlements of the Debtors to any proceeds, payments, benefits, Causes of Action, choses in action, defense or indemnity, and includes all rights, regardless of whether such rights existed in the past, now exist, or hereafter arise, and regardless of whether such rights are or were accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed or contingent. Notwithstanding anything in this definition or otherwise in the Plan to the contrary, (x) Opioid Insurance Policies include the Insurance Contracts set forth on the Schedule of Opioid Insurance Policies included in the Plan Supplement, which schedule is not, and is not intended to be, exhaustive (provided, however, that any such Insurance Contracts that are Covidien Insurance Policies or Pre-Covidien Insurance Policies are Opioid Insurance Policies only if and to the extent provided in clauses (ii) and (iii), respectively, of the first sentence of this definition); and (y) nothing in this definition or any other provision of the Plan shall modify or override the paragraph of the Confirmation Order pertaining to the resolution of the Limited Objection to the Plan filed by Covidien [Docket No. 4699], which paragraph shall control with respect to all matters addressed in such paragraph in the event of any inconsistency. For the avoidance of doubt, nothing in this definition or any other provision of the Plan shall grant the [Trust] any rights under any Insurance Contracts that are not Opioid Insurance Policies, nor shall this definition or any other provision of the Plan grant the [Trust] any rights under the Covidien Insurance Policies and Pre-Covidien Insurance Policies beyond those that the Debtors may have or hold on the Effective Date.<sup>18</sup>

100. All of the Insurance Policies are Opioid Insurance Policies under the terms of the Plan, and the rights that the Trust is pursuing in this action are Assigned Insurance Rights.

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<sup>18</sup> *Id.* at 30.



## **VI. THE INSURANCE POLICIES**

101. The Insurance Policies cover policy periods between 2000 and 2007.

102. The Trust possesses copies of or information concerning certain of the Insurance Policies. Upon information and belief, Defendants possess copies of Insurance Policies or information regarding the Insurance Policies that are at least equal to that possessed by the Trust. The Trust will make its copies of the Insurance Policies available to the Court on request, and/or to the Defendants as appropriate through the litigation process.

103. Based on the evidence the Trust has been able to obtain to date, and upon information and belief, the Insurance Policies contain standard-form wording drafted by the insurance industry and supplied by the Defendants.

104. Consistent with the usual manner in which insurers market and sell, and insureds purchase, liability insurance, each of the Insurance Policies either contains comprehensive terms, conditions, and other provisions setting forth the coverage provided by the policy, subject to applicable law; or contains limited provisions of its own and follows form to—that is, incorporates by reference—provisions of one or more underlying or otherwise listed or designated policies that themselves contain, or follow form to, one or more policies that contain comprehensive coverage provisions, which together determine the coverage provided by the policy, subject to applicable law.

105. The Trust is entitled to have the Insurance Policies interpreted or construed in a manner that maximizes insurance protection for liability for the Opioid Mass Tort Claims. Provisions of the Insurance Policies that grant or extend coverage must be construed broadly in favor of coverage, provisions that purport to exclude or limit coverage must be construed narrowly against the Defendants, and the Defendants bear the burden of establishing by a preponderance of the evidence or other applicable standard the applicability of any exclusions or

other limiting language on which they seek to rely. Any ambiguity in the language or application of the Insurance Policies must be resolved against the Defendants and in favor of coverage for the Opioid Mass Tort Claims.

106. The Insurance Policies promise in their affirmative grants of coverage, without limitation and with varying wording, to indemnify the Debtors for, or to pay on the Debtors' behalf, all damages and defense costs that the Debtors become legally obligated to pay:

- a. because of or on account of bodily injury during the policy period;
- b. because of bodily injury during the policy period that is caused by an occurrence; or
- c. pursuant to similar wording.

107. Pursuant to the Assigned Insurance Rights, the Trust is entitled to enforce these promises and to receive the proceeds of the Insurance Policies pursuant to the policies' affirmative grants of coverage.

108. Under the terms of the Insurance Policies and applicable law, the Insurance Policies provide insurance coverage to the Debtors for the Debtors' liability and defense costs for or in connection with the Opioid Mass Tort Claims. Pursuant to the Assigned Insurance Rights, the Trust is entitled to enforce the Debtors' rights to such coverage and to receive the proceeds of the Insurance Policies with respect to the Debtors' liability and defense costs for or with respect to the Opioid Mass Tort Claims.

109. The Opioid Mass Tort Claims trigger the Defendants' coverage obligations under the terms and conditions of the Insurance Policies and applicable law, and the damages and defense costs incurred for or in connection with the Opioid Mass Tort Claims are within the

coverage grants of the Insurance Policies, because, without limitation, the Opioid Mass Tort Claims seek damages and defense costs that the Debtors become legally obligated to pay:

- a. on account of bodily injury during the policy period;
- b. because of bodily injury during the policy period that is caused by an occurrence; or
- c. pursuant to similar wording.

110. Under the terms of the Insurance Policies and applicable law, each of the Defendants is jointly and severally liable to the Debtors for the full amount of the Debtors' liability and defense costs for or in connection with the Opioid Mass Tort Claims that trigger their policy periods, subject only to any applicable attachment points and any applicable limits of liability of the Insurance Policies. Pursuant to the Assigned Insurance Rights, the Trust is entitled to enforce the Debtors' rights to such coverage and to receive the proceeds of the Insurance Policies with respect to the Debtors' liability and defense costs for or with respect to the Opioid Mass Tort Claims.

111. Based on the evidence the Trust has been able to obtain to date, and upon information and belief, each of the Insurance Policies provides, and applicable law confirms, that the Defendants' obligations are not diminished in the event of the insured's insolvency or bankruptcy.

112. All applicable conditions precedent to coverage or recovery under the Insurance Policies, if any, have been satisfied, compliance with such conditions precedent is excused, such conditions precedent do not apply, or Defendants have waived or are estopped or otherwise precluded from relying on such conditions precedent.

113. Defendants sold the Insurance Policies in consideration of substantial premiums. Any and all necessary premiums for the Insurance Policies have been fully paid.

114. Each of the Insurance Policies has been in full force and effect since it was issued by the Defendants, including at all times material to this Petition.

115. No exclusions or limitations in the Insurance Policies (other than any applicable attachment points, any applicable limits of liability, or any applicable policy triggers) apply to preclude or limit coverage for the Opioid Mass Tort Claims.

116. Certain of the Insurance Policies contain exclusions for bodily injuries that are within the products-completed operations hazard, which generally is defined to apply to products of the Debtors. Defendants bear the burden of establishing that such exclusions bar coverage here. They cannot meet that burden because, without limitation, the Opioid Mass Tort Claims seek to hold the Debtors liable for more than harm allegedly caused by the Debtors' products. The Opioid Mass Tort Claims also seek to hold the Debtors liable for bodily injuries allegedly caused by the Debtors' conduct in creating and fueling the nationwide opioid crisis and by the opioid products of other manufacturers and illicit narcotics. In addition, in many instances, the Debtors are alleged to be jointly and severally liable with other manufacturers and distributors for injuries caused by opioids that are not Debtors' products. These injuries do not arise out of the Debtors' own products, but instead are alleged to arise out of the Debtors' extensive use of unbranded promotional activities to change the way the medical community and the public perceived, prescribed, and used opioids in general, and their concomitant or resulting use of other manufacturers' opioid products and illicit opioids. These injuries are therefore not within the products-completed operations hazard exclusions.

117. One of the Insurance Policies issued by Defendant American Guarantee, AEC508798700, contains exclusions for bodily injuries arising out of oxycodone or any of the Debtors' products containing oxycodone. Defendant American Guarantee bears the burden of establishing that such exclusions apply to bar coverage here. Defendant American Guarantee cannot meet this burden because, without limitation, the Opioid Mass Tort Claims seek to hold the Debtors liable for more than harm allegedly caused by oxycodone or Debtors' products containing oxycodone. They seek to hold the Debtors liable for opioid products they developed, manufactured, marketed, promoted, and sold that contain opioid pharmaceuticals other than oxycodone. They also seek to hold the Debtors liable for bodily injuries caused by the Debtors' conduct in creating and fueling the nationwide opioid crisis, by the opioid products of other manufacturers (including non-oxycodone products), and by illicit opioids such as heroin and fentanyl, which are not and do not contain oxycodone. In addition, in many instances, the Debtors are allegedly jointly and severally liable with other manufacturers and distributors for injuries caused by opioid pharmaceuticals developed, manufactured, marketed, promoted, and sold by the other manufacturers and distributors, including opioid pharmaceuticals that do not contain oxycodone. These injuries do not arise out of oxycodone or any of the Debtors' products containing oxycodone and are not within policy exclusions pertaining to oxycodone.

**COUNT ONE: DECLARATORY JUDGMENT (ALL DEFENDANTS)**

118. Debtors incorporate the foregoing paragraphs as if fully set forth herein.

119. Because the Effective Date has occurred, among other things:

- a. the Debtors' liability for Opioid Mass Tort Claims has been channeled exclusively to and assumed by the opioid operating trusts at the Trust;
- b. the Debtors have been discharged from liability for Opioid Mass Tort Claims;

- c. the Debtors' rights to insurance coverage for Opioid Mass Tort Claims—the "Assigned Insurance Rights," as defined in the Plan—among other assets, has been transferred to the Trust;
- d. the Trust is empowered, obligated, and has the sole authority to, among other things: (1) preserve, hold, collect, manage, maximize, and liquidate the Assigned Insurance Rights; and (2) enforce, initiate, pursue, prosecute, defend, compromise, and/or resolve the Assigned Insurance Rights; and
- e. the Trust is obligated to distribute proceeds of the Assigned Insurance Rights, among other assets, to the operating opioid trusts, which in turn will distribute funds to Opioid Claimants.

120. Pursuant to the Assigned Insurance Rights and the Trust's right, obligation, and authority to preserve, hold, collect, manage, maximize, liquidate enforce, initiate, pursue, prosecute, defend, compromise, and/or resolve the Assigned Insurance Rights with respect to the Debtors' liability for the Opioid Mass Tort Claims, the Trust has a legally protected interest directly at issue and subject to immediate or prospective consequential relief. The Trust's request for relief is ripe for adjudication.

121. The Trust does not have another adequate available remedy at law, including because non-declaratory relief would not resolve coverage for future Opioid Mass Tort Claims.

122. The Trust is a person with interests under written contracts—the Insurance Policies—or whose rights are affected by contracts—the Insurance Policies. The Trust may therefore have this Court determine questions of construction or validity arising under the Insurance Policies, and obtain a declaration of its rights under the Insurance Policies.

123. The Trust asserts and seeks a declaratory judgment that each of the Defendants is obligated under each of the Insurance Policies it issued, including each policy period of each such Insurance Policy, to provide coverage in full for the Debtors' liability for Opioid Mass Tort Claims that trigger the coverage obligations of the policy in question as set forth above, subject only to any applicable attachment points and any applicable limits of liability of the Insurance Policies in question.

124. Defendants have disputed, declined, or failed to perform fully their coverage obligations with respect to the Opioid Mass Tort Claims or, upon information and belief, will dispute, decline, or fail to perform fully these obligations. Among other things, two of the Defendants are named in the Related Action concerning the Trust's coverage claims under substantively identical policies, where they have not acknowledged any obligation to provide coverage for the Debtors' liability for the Opioid Mass Tort Claims.

125. As a result, the Trust has a real, substantial, presently existing controversy as to which it seeks specific relief.

126. The requested declaratory relief will be of a conclusive character, in that it will resolve the controversy between the Trust and the Defendants.

**PRAYER FOR RELIEF**

WHEREFORE, the Trust requests that the Court enter judgment against Defendants as follows:

a. Declaring the rights and obligations of the Trust and the Defendants under or with respect to the Insurance Policies and Assigned Insurance Rights with respect to the Debtors' liability for Opioid Mass Tort Claims;

b. Awarding money damages that have accrued as of the time of trial as a result of the Court's declaration of the Trust's entitlement to coverage under or with respect to the

Insurance Policies and Assigned Insurance Rights with respect to the Debtors' liability for the Opioid Mass Tort Claims;

- c. Awarding costs of suit;
- d. Awarding reasonable attorneys' fees incurred in prosecuting this action;
- e. Awarding pre-judgment interest;
- f. Awarding post-judgment interest; and
- g. Providing such other and further relief to which this Court may deem Plaintiff to

be justly entitled.

Respectfully Submitted,

**RIEZMAN BERGER, P.C.**

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