

**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,		Case No. 22SL-CC02974
v.		Division 2
ACE AMERICAN INSURANCE COMPANY, ET AL.,		
Defendants.		

**PLAINTIFF’S (1) OPPOSITION TO AMERICAN GUARANTEE AND
LIABILITY INSURANCE COMPANY’S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND LEGAL MEMORANDUM IN SUPPORT AND (2) CROSS-MOTION
FOR PARTIAL SUMMARY JUDGMENT DIRECTED TO AMERICAN GUARANTEE
AND LIABILITY INSURANCE COMPANY**

Plaintiff, the Opioid Master Disbursement Trust II, also known as the Opioid MDT II (the “Trust”), as successor in interest to Mallinckrodt plc and certain related entities (“Mallinckrodt”), respectfully submits this (1) Opposition to American Guarantee and Liability Insurance Company’s (“AGLIC”) Motion for Partial Summary Judgment and Legal Memorandum in Support (“Opposition”); and (2) Cross-Motion for Partial Summary Judgment (“Cross-Motion”) Directed to American Guarantee and Liability Insurance Company. In support of its Opposition and Cross-Motion, the Trust states:

1. In its motion, AGLIC adopts and incorporates by reference the arguments set forth in Section III of the Cross-Motion for Partial Summary Judgment filed on July 17, 2024 by

Defendants National Union Fire Insurance Company of Pittsburgh, Pa and American Home Assurance Company (the “AIG Cross-Motion”).¹

2. AGLIC moves on a single policy it issued, policy number AEC 5087987-00, that had a policy period from October 1, 2004 to October 1, 2005 (the “2004-2005 AGLIC Policy”).

3. AGLIC argues that the 2004-2005 AGLIC Policy contained a Products-Completed Operations Hazard Claims Made Retained Limit Endorsement which required all claims for damages for bodily injury arising out of Mallinckrodt’s products to have been made during the policy period and reported to AGLIC during the policy period.

4. While not expressly stated in its motion, AGLIC appears to argue (as AIG does) that all of Mallinckrodt’s liability stems from damages for bodily injury arising out of Mallinckrodt’s products, but because no claims were made or reported during the AGLIC policy period, no coverage is available.²

5. Plaintiff opposes AGLIC’s motion and in support of its Opposition adopts and incorporates the facts and arguments set forth in the following pleadings: (1) Plaintiff’s Memorandum of Law in Support of its Motion for Partial Summary Judgment Against National Union Fire Insurance Company of Pittsburgh, Pa. Regarding the Scope of the Products Hazard (AKA “Your Products”) Exclusion; (2) Plaintiff’s Statement of Uncontroverted Facts in Support of Plaintiff’s Motion for Partial Summary Judgment Against National Union Fire Insurance Company of Pittsburgh, Pa. Regarding the Scope of the Products Hazard (AKA “Your Products”) Exclusion; (3) Plaintiff’s Reply in Further Support of its Motion for Partial Summary Judgment

¹ As the AIG Cross-Motion does not contain a Section III, the Trust assumes AGLIC meant to reference the AIG Insurers’ Memorandum of Law in Opposition to Plaintiff’s Motion for Partial Summary Judgment and in Support of Cross-Motion for Summary Judgment.

² AGLIC does not expressly argue this in its motion, but based on its incorporation of AIG’s arguments, the Trust understands this to be AGLIC’s argument as well.

Against National Union Fire Insurance Company of Pittsburgh, Pa. Regarding the Scope of the Products Hazard (aka “Your Products”) Exclusion and Opposition to National Union Fire Insurance Company of Pittsburgh, Pa. and American Home Assurance Company’s Cross-Motion for Summary Judgment; (4) Plaintiff’s Response to AGLIC’s Statement of Uncontroverted Facts in Support of Motion for Partial Summary Judgment, and (5) Statement of Uncontroverted Facts in Support of (1) Plaintiff’s Cross-Motion for Partial Summary Judgment Directed to American Guarantee and Liability Insurance Company, and (2) Plaintiff’s Cross-Motion for Partial Summary Judgment Directed to Aspen Insurance UK Ltd., ACE American Insurance Company, and Old Colony State Insurance Company.

6. Additionally, the Trust hereby files this Cross-Motion for Partial Summary Judgment, seeking summary judgment that the Products-Completed Operations Hazard Claims Made Retained Limit Endorsement contained in the 2004-2005 AGLIC Policy does not apply to liability of Mallinckrodt insureds (individually and collectively “Mallinckrodt”) because of bodily injury that arose in whole or in part from non-Mallinckrodt opioid drugs. In other words, to the extent that Mallinckrodt was liable because of bodily injury resulting in whole or in part from opioid pharmaceuticals manufactured, sold, handled, distributed, or disposed of by other pharmaceutical companies or from illicit opioid drugs, whether because of Mallinckrodt’s role in creating and fueling the nationwide opioid crisis through the unbranded promotion of opioid drugs generally, because of joint and several liability, or otherwise, such liability does not fall within the Products-Completed Operations Hazard Claims Made Retained Limit Endorsement contained in the 2004-2005 AGLIC Policy, which applies only to bodily injury arising solely from “your [Mallinckrodt’s] product[s]”.

7. In support of its Cross-Motion, the Trust incorporates the same documents referenced in paragraph 5.

Dated: September 18, 2024
St. Louis, MO

RIEZMAN BERGER, P.C

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the Opioid MDT II*

CERTIFICATE OF SERVICE

Pursuant to Missouri Rule of Civil Procedure 55.03(a), the undersigned hereby verifies that he signed the original foregoing document.

The undersigned hereby certifies that on September 18, 2024, a true copy of the foregoing was served, via electronic filing pursuant to Missouri Rules of Civil Procedure Rule 103.08, to all parties of record, and that a true copy of the foregoing was served via email pursuant to Missouri Rules of Civil Procedure Rule 43.01(c)(1)(D), to all such parties.

/s/ P. Tyler Connor
P. Tyler Connor, MBN 69049