

**IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS
STATE OF MISSOURI**

OPIOID MASTER DISBURSEMENT TRUST II,
A/K/A OPIOID MDT II,

Plaintiff,

v.

ACE AMERICAN INSURANCE COMPANY, *et al.*

Defendants.

Case No. 22SL-CC02974

Division No. 2

**PLAINTIFF’S RESPONSE TO THE AIG INSURERS’ STATEMENT OF
ADDITIONAL UNCONTROVERTED FACTS IN OPPOSITION TO
PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN
SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

Plaintiff, the Opioid Master Disbursement Trust II, also known as the Opioid MDT II (the “Trust”), pursuant to Missouri Supreme Court Rule 74.04(c)(2), respectfully submits this Response to National Union Fire Insurance Company of Pittsburgh, Pa. and American Home Assurance Company’s (together, the “AIG Insurers”) Statement of Additional Uncontroverted Facts in Support of the AIG Insurers’ Opposition to Plaintiff’s Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment (together with Plaintiff’s Motion, the “Motions”).

The Trust does not controvert any fact set forth by the AIG Insurers in their Statement of Additional Uncontroverted Facts that is in any way material to the Motions. While the Trust controverts incomplete recitations of material policy language, and while the AIG Insurers include additional facts that are immaterial, the Trust does not believe that there are any genuine disputes about material facts. The Trust’s responses are made only for purposes of the Motions, however, and are without prejudice to the Trust’s rights to dispute facts and legal claims to the extent they are material to other issues in this case.

The following Response to the AIG Insurers' Statement of Additional Uncontroverted Facts responds to each paragraph therein.

62. All of the AIG Primary Policies¹ include the following in their Insuring Agreements:

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. ... The insurance applies to "bodily injury" and "property damage" only if: (1) The "bodily injury" or "property damage" is caused by an "occurrence" [defined as "an accident"] that takes place in the "coverage territory"; (2) The "bodily injury" or "property damage" occurs during the policy period; and (3) Prior to the policy period, no insured [identified in the policy] knew that the bodily injury" or "property damage" had occurred in whole or in part. (*E.g.*, Ex. M, National Union Policy No. GL 509-47-72, Section I.1.a., at AIGINS-MNK00000812 (emphasis added); *id.*, Section V.13. at AIGINS-MNK00000826.)

RESPONSE: Paragraph 62 is uncontroverted for purposes of the Motions.

63. All of the AIG Primary Policies contain an identical "Products-Completed Operations Hazard" Exclusion. The PCOH Exclusion is set forth in an endorsement included in each of the policies. It provides in full: "This insurance does not apply to 'bodily injury' or 'property damage' included within the 'products-completed operations hazard.'" (*E.g.*, Ex. M, National Union Policy No. GL 509-47-72 at AIGINS-MNK00000836.)

RESPONSE: Paragraph 63 is uncontroverted for purposes of the Motions.

64. All of the AIG Umbrella Policies² contain an identical endorsement, the "Products-Completed Operations Hazard Claims-Made Retained Limit Endorsement":

¹ The complete list of AIG Primary Policies, which contain the PCOH exclusion and are the subject of this Cross-Motion, is as follows: National Union Policy Nos. GL 187-21-21, GL 650-64-83, GL 436-10-60, GL 270-49-92, GL 964-51-88, GL 509-47-72, GL 726-71-72, GL 333-31-10, GL 379-66-74, GL 693-89-45 (covering 2017–2018), GL 693-89-45 (covering 2018–2019), GL 686-23-54, GL 1728939 (see Mot., Appendix A), and Ex. 1, American Home Policy No. GL 159-53-88.

² The complete list of AIG Umbrella Policies, which contain the PCOH Claims-Made Endorsement and are the subject of this Cross-Motion, is as follows: Ex. 2, National Union Policy No. BE2977855; Ex. 3, National Union Policy No. BE2978239; Ex. 4, National Union Policy No. BE2979931; Ex. 5, American Home Policy No. BE4485682; Ex. 6, American Home Policy No. BE9835077; Ex. 7, National Union Policy No. BE2227062; Ex. 8, National Union Policy No. 27471560; Ex. 9, National Union Policy No. 15972632.

The provisions of this endorsement are limited to Claims and Suits seeking damages included within the Products-Completed Operations Hazard for all healthcare products, medications, medical devices and pharmaceuticals[.] ...

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

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

(Ex. 2, National Union Policy No. BE 2227062, ENDORSEMENT NO. 23, at AIGINS-MNK00000409-410.)

RESPONSE: Paragraph 64 is uncontroverted for purposes of the Motions.³

65. In all of the AIG Primary Policies and AIG Umbrella Policies, “products-completed operations hazard” is defined to “Include[] all ‘bodily injury’ and ‘property damage’ occurring away from premises you own or rent and arising out of ‘your product’ or ‘your work.’”

(E.g., Ex. M, National Union Policy No. GL 509-47-72, Section V.16.a. at AIGINS-MNK00000836; e.g., Ex. 2, National Union Policy No. BE2977855 at AIGINS-MNK00018095.)

RESPONSE: Paragraph 65 is controverted insofar as it is an incomplete recitation of the policy language and the citation provided to the policy does not contain the quoted language. The “products-completed operations hazard” is defined in full as follows:

“Products-completed operations hazard”: (a) includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of “your product” or “your work” except:

³ The Trust notes that AIG failed to label the exhibit referenced in this paragraph in its Statement of Additional Uncontroverted Facts.

- (1) Products that are still in your physical possession; or**
- (2) Work that has not yet been completed or abandoned. However, “your work” will be deemed completed at the earliest of the following times:**
 - (a) When all of the work called for in your contract has been completed;**
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site;**
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.**

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

[“Products-completed operations hazard”] (b) Does not include “bodily injury” or “property damage” arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the “loading or unloading” of that vehicle by any insured;**
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials . . .**

See National Union Policy No. GL 509-47-72 Ex. M, at 26 or AIGINS-MNK00000826; see also National Union Policy No. BE2977855 Ex. 2, at AIGINS-MNK00018095.

66. In all of the AIG Primary Policies and AIG Umbrella Policies, “Your Product” is defined as follows:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by (a) You; (b) Others trading under your name; or (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products. . . . [And] [i]ncludes: (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of ‘your product’; and (2) The providing of or failure to provide warnings or instructions.”

(E.g., Ex. M, National Union Policy No. GL 509-47-72, Section V.21. at AIGINS-MNK00000827; e.g., Ex. 2, National Union Policy No. BE2977855 at AIGINS-MNK00018095–18096.)

RESPONSE: Paragraph 66 is uncontroverted for purposes of the Motions.

67. In all of the AIG Primary Policies and AIG Umbrella Policies, “Your Work” is defined as:

(1) Work or operations performed by you or on your behalf; and (2) Materials, parts or equipment furnished in connection with such work or operations. . . [And] [i]ncludes (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of ‘your work’, and (2) The providing of or failure to provide warnings or instructions.

(E.g., Ex. M, National Union Policy No. GL 509-47-72, Section V.22. at AIGINS-MNK00000827; Ex. 2, National Union Policy No. BE2977855 at AIGINS-MNK00018096.)

RESPONSE: Paragraph 67 is uncontroverted for purposes of the Motions.

68. The policy periods of the AIG Umbrella Policies cover annual periods from 2003 until 2011. (See Ex. 2, National Union Policy No. BE2977855; Ex. 3, National Union Policy No. BE2978239; Ex. 4, National Union Policy No. BE2979931; Ex. 5, American Home Policy No. BE4485682; Ex. 6, American Home Policy No. BE9835077; Ex. 7, National Union Policy No. BE2227062; Ex. 8, National Union Policy No. 27471560; Ex. 9, National Union Policy No. 15972632; Ex. 20, Affidavit of Lowell J. Chase.)

RESPONSE: The Trust objects to Paragraph 68 and states that no response is warranted, because Paragraph 68 is not material, as the only issue presented by the pending motions is a question of policy interpretation that is solely a legal issue. To the extent a response is required, Paragraph 68 is uncontroverted for purposes of the Motions.

69. The AIG Insurers did not receive notice on behalf of Mallinckrodt plc or any affiliated entity concerning opioid-related liability during the policy periods of the AIG Umbrella

Policies. (Ex. 20, Affidavit of Lowell J. Chase; *see* Ex. 10, Email Correspondence regarding Notice, at AIGINS-MNK00003257–3258.)

RESPONSE: The Trust objects to Paragraph 69 and states that no response is warranted, because Paragraph 69 is not material, as the only issue presented by the pending motions is a question of policy interpretation that is solely a legal issue. To the extent a response is required, Paragraph 69 is uncontroverted for purposes of the Motions.

70. Mallinckrodt plc and its affiliates (“Mallinckrodt”) comprise a pharmaceutical company that develops, manufactures, and sells opioid products. (Amended Petition at ¶¶ 2, 80; *see* Ex. A, Welch Dec. ¶¶ 31, 40.)

RESPONSE: The Trust objects to Paragraph 70 and states that no response is warranted, because Paragraph 70 is not material, as the only issue presented by the pending motions is a question of policy interpretation that is solely a legal issue. To the extent a response is required, Paragraph 70 is uncontroverted for purposes of the Motions.

Dated: September 18, 2024
St. Louis, MO

RIEZMAN BERGER, P.C

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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