

**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 AMERICAN GUARANTEE AND LIABILITY
INSURANCE COMPANY’S STATEMENT OF UNCONTROVERTED FACTS IN
SUPPORT OF MOTION FOR PARTIAL 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 American Guarantee and Liability Insurance Company’s (“AGLIC”) Statement of Uncontroverted Facts in Support of its Motion for Partial Summary Judgment (the “Motion”).

In its Statement of Uncontroverted Facts, AGLIC does not include any material disputed facts. To be clear, AGLIC includes a number of disputed facts and legal claims that are not material to the Motion and that the Trust therefore does not controvert only for purposes of the Motion; the Trust reserves the right to raise a genuine dispute about such facts and to controvert such legal claims to the extent they are material to other issues in this case.

The following Response to AGLIC’s Statement of Uncontroverted Facts responds to each paragraph therein.

1. AGLIC hereby adopts and incorporates by reference the fact statements set forth in National Union Insurance Company of Pittsburgh, Pennsylvania and American Home Assurance

Company's (collectively, "AIG") Cross-Motion for Partial Summary Judgment (the "Cross-Motion") applicable to Section III of AIG's Cross-Motion.

RESPONSE: The Trust objects to Paragraph 1 and states that no response is warranted, because Paragraph 1 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, the Trust hereby adopts and incorporates by reference its response to the AIG Insurers' Statement of Additional Facts in Support of the AIG Insurers' Opposition to Plaintiff's Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment.

I. Additional Uncontroverted Facts

A. The AGLIC Excess Policy.¹

2. AGLIC issued a Following Form Excess Liability Policy, policy number AEC 5087987-00, to Tyco International Ltd. effective for the period October 1, 2004 to October 1, 2005 (the "AGLIC Excess Policy"). Affidavit of Lisa Chonarzewski ("Chonarzewski Aff."), Ex. A, AGLIC Excess Policy.

RESPONSE: The Trust objects to Paragraph 2 and states that no response is warranted, because Paragraph 2 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 2 is uncontroverted for purposes of the Motion.

3. The Insuring Agreement of the AGLIC Excess Policy provides, in pertinent part, as follows:

B. This insurance applies only to damages covered by the Controlling Underlying Policy as shown in Item 6.A. of the Declarations. Except as otherwise provided by this policy, the coverage follows the definitions, terms, conditions, limitations, and exclusions of the Controlling Underlying Policy in effect at the inception of this policy.

Id. at Ex. A, ZUR000035 (emphasis in original).

¹ The headings used throughout this Response are those used by AGLIC in its Statement of Uncontroverted Facts and are restated verbatim here for purpose of maintaining the same organization used in the insurer's filing. The Trust does not agree with any characterization or assertions made in these headings and does not believe any response to the headings is required under the Missouri Rules of Civil Procedure.

RESPONSE: Paragraph 3 is uncontroverted for purposes of the Motion.

4. The Controlling Underlying Policy shown in the Declarations to the AGLIC Excess Policy is policy number BE 2978239 issued by National Union Fire Insurance Company of Pittsburgh, Pennsylvania, effective October 1, 2004 to October 1, 2005 (the “National Union Policy”). *Id.* at Ex. A, ZUR000020.

RESPONSE: Paragraph 4 is uncontroverted for purposes of the Motion.

B. The National Union Policy to Which the AGLIC Excess Policy Follows Form.

5. The National Union Policy to which the AGLIC Excess Policy follows form contains a Products-Completed Operations Hazard Claims Made Retained Limit Endorsement, which provides, in part, as follows:

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....

* * *

A. 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.

B. 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 . . . during the Policy Period or any Extended Reporting Period we provide and written notice is received by us . . . during the Policy Period or any [] Extended Reporting Period [if applicable] . . . or

2.b. written notice of the Occurrence is received by us during the Policy Period[.]

Id. at Ex. B, National Union Policy, AIGINS-MNK00015887–88 (emphasis in original).

RESPONSE: The Trust objects to Paragraph 5 and states that no response is warranted, because Paragraph 5 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 5 is uncontroverted for purposes of the Motions.

6. The National Union Policy defines “Claim” as a “demand for money or **Suit**.” *Id.* at Ex. B, AIGINS-MNK00015891 (emphasis in original).

RESPONSE: The Trust objects to Paragraph 6 and states that no response is warranted, because Paragraph 6 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 6 is uncontroverted for purposes of the Motions.

7. The National Union Policy defines “Suit,” in relevant part, as a “civil proceeding in which **Bodily Injury, Property Damage, Personal Injury** or **Advertising Injury** to which this insurance applies is alleged.” *Id.* at Ex. B, AIGINS-MNK00015901 (emphasis in original).

RESPONSE: The Trust objects to Paragraph 7 and states that no response is warranted, because Paragraph 7 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 7 is uncontroverted for purposes of the Motions.

8. The National Union Policy defines “Products-Completed Operations Hazard,” in part, as “includ[ing] all **Bodily Injury** and **Property Damage** occurring away from premises you own or rent and arising out of **Your Product** or **Your Work**.” *Id.* (emphasis in original).

RESPONSE: Paragraph 7 is controverted insofar as it is an incomplete recitation of the policy language. The “Products-Completed Operations Hazard” is defined in full as follows:

1. **Products-Completed Operations Hazard** 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:
 - a. products that are still in your physical possession; or
 - b. work that has not yet been completed or abandoned.

2. **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.

3. **This hazard does not include Bodily Injury or Property Damage arising out of:**

- a. **the transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the loading or unloading of it;**
- b. **the existence of tools, uninstalled equipment or abandoned or unused materials.**

See AGLIC Ex. B, at AIGINS-MNK00015901.

9. The National Union Policy defines “Your Product,” in relevant part, as “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, “Your Product” includes “Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Your Product**....” *Id.* at Ex. B, AIGINS-MNK00015901–02 (emphasis in original).

RESPONSE: Paragraph 9 is uncontroverted for purposes of the Motion.

10. The National Union Policy defines “Your Work,” in pertinent part, as “Work or operations performed by you or on your behalf....” *Id.* at Ex. B, AIGINS-MNK00015902.

RESPONSE: Paragraph 10 is controverted insofar as it is an incomplete recitation of the pertinent policy language. “Your Work” is defined in pertinent part as follows:

(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) [w]arranties or representations made at any time with respect to the fitness, quality, durability, performance or use of Your Work, and (2) [t]he providing of or failure to provide warnings or instructions.

See AGLIC Ex. B, at AIGINS-MNK00015902.

11. The National Union Policy defines “Bodily Injury,” in part, as “bodily injury, sickness, disability or disease.” *Id.* at Ex. B, AIGINS-MNK00015898.

RESPONSE: The Trust objects to Paragraph 11 and states that no response is warranted, because Paragraph 11 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 11 is uncontroverted for purposes of the Motion.

12. The National Union Policy defines “Property Damage,” in relevant part, as “Physical Injury to tangible property, including all resulting loss of use of that property.” *Id.* at Ex. B, AIGINS-MNK00015901.

RESPONSE: The Trust objects to Paragraph 12 and states that no response is warranted, because Paragraph 12 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 12 is uncontroverted for purposes of the Motion.

13. The National Union Policy defines “Occurrence,” as respects “Bodily Injury” or “Property Damage,” in pertinent part, as “an accident, including continuous or repeated exposure to conditions, which results in **Bodily Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured.**” *Id.* at Ex. B, AIGINS-MNK00015900 (emphasis in original).

RESPONSE: The Trust objects to Paragraph 13 and states that no response is warranted, because Paragraph 13 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 13 is uncontroverted for purposes of the Motion.

C. The Opioid Lawsuits.²

14. The Opioid Lawsuits were all first asserted against the Debtors³ (including Tyco International Ltd.) after October 1, 2005. *Id.* at Ex. C, Petition for Declaratory Relief (Case No. 23SL-CC05428), ¶ 3 (dating the Opioid Lawsuits as “[b]etween 2017 and October 12, 2020,” when Mallinckrodt filed for bankruptcy); *id.* at ¶ 5.

RESPONSE: The Trust objects to Paragraph 14 and states that no response is warranted, because Paragraph 14 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 14 is uncontroverted for purposes of the Motion.

D. Claim for the Opioid Lawsuits to AGLIC.

15. No claim for the Opioid Lawsuits was ever tendered under any policy of insurance issued by AGLIC to the Debtors (including Tyco International Ltd.), including the AGLIC Excess Policy. *Id.* at ¶ 6.

RESPONSE: The Trust objects to Paragraph 15 and states that no response is warranted, because Paragraph 15 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 15 is uncontroverted for purposes of the Motion.

16. AGLIC’s first notice of any claim for the Opioid Lawsuits under the AGLIC Excess Policy issued to Tyco International Ltd. was Plaintiff’s service of the Complaint in Case No. 22SL-CC02974, naming AGLIC as a defendant, on June 24, 2022. *Id.* at ¶ 7.

RESPONSE: The Trust objects to Paragraph 16 and states that no response is warranted, because Paragraph 16 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 16 is uncontroverted for purposes of the Motion.

² “Opioid Lawsuits” bears the same meaning as that term is defined in AIG’s Memorandum in Opposition to Plaintiff’s Motion for Partial Summary Judgment and in Support of Cross-Motion for Partial Summary Judgment on the Products-Completed Operations Hazard Exclusion.

³ “Debtors” bears the same meaning as that term is used in Plaintiff’s Complaint in Case No. 23SL-CC05428.

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