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

OPIOID MASTER DISBURSEMENT TRUST II, A/K/A OPIOID MDT II, Plaintiff, v. AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY, *et al*. Defendants.	Case No. 23SL-CC05428 Division No. 2

ASPEN'S & ACE'S MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR SUMMARY JUDGMENT ON THE TRUST'S 11 EXEMPLAR OPIOID LAWSUITS

Pursuant to MO. SUP. CT. R. 74.04, Defendants Aspen Insurance UK Ltd. ("Aspen") and ACE American Insurance Company ("ACE"), by and through their undersigned counsel, submit the following Memorandum of Law in support of their Motion for Summary Judgment on the Trust's 11 Exemplar Opioid Lawsuits:

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I. INTRODUCTION

Mallinckrodt was one of the largest manufacturers and marketers of both prescription opioids and opioid ingredients for use by other companies in the country. After the opioid epidemic ravaged the nation, over 3,000 lawsuits were filed to hold Mallinckrodt liable for the harm caused by its efforts to sell its opioid products, prompting Mallinckrodt to seek bankruptcy protection for what it characterized as liabilities "concerning the production and sale of its opioid products." But now that Mallinckrodt has received that protection, the bankruptcy trust created to seek insurance for the settled opioid claims (the plaintiff in this case, hereinafter the "Trust") incredibly argues that because Mallinckrodt's alleged liabilities arose in part from its involvement in a nationwide marketing campaign that sought to increase the use of opioids generally, such liabilities do ***not*** arise from Mallinckrodt's opioid products and thus are covered by excess insurance policies issued by the movants here, Aspen and ACE. In so arguing, the Trust has chosen 11 "exemplar lawsuits" that it asserts demonstrate that all underlying opioid claims against Mallinckrodt should be covered.[1] As explained below, each of these exemplar lawsuits arises from Mallinckrodt's sales of—and representations regarding—its opioid products, and therefore are not covered.

The Trust is a bankruptcy trust that seeks liability insurance coverage from Aspen,

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[1] On April 16, 2024, the Trust filed a motion for partial summary judgment seeking a ruling consistent with this tenuous position as applied to a PCOH ***exclusion*** in other policies issued by National Union (the "Trust's motion"). Because the PCOH exclusion addressed in the Trust's motion and the PCOH coverage form to which this motion applies raise related issues, they should be analyzed and ruled upon by this Court in tandem.

ACE, and other insurers under policies issued to the Trust's bankruptcy debtors, Mallinckrodt plc, Mallinckrodt LLC, Mallinckrodt APAP LLC, Mallinckrodt Enterprises LLC, SpecGx LLC, and SpecGx Holdings LLC (collectively "Mallinckrodt"), and Mallinckrodt's former parents, Covidien plc and Covidien Ltd. (collectively "Covidien"). The thousands of underlying claims for which the Trust seeks coverage alleged that Mallinckrodt and other pharmaceutical companies flooded the United States with opioids in excess of legitimate medical need while using a massive marketing campaign to increase the nationwide demand for their opioid products and opioids generally (which obviously includes Mallinckrodt's own products), ultimately resulting in the catastrophic national opioid epidemic.

Years before the first opioid claims were made against Mallinckrodt in 2017, Aspen and ACE issued insurance policies that provided two common types of coverage for annual periods between 2007 and 2011. For claims unrelated to Mallinckrodt's sale and marketing of its products (*e.g.*, a fall at a warehouse), the policies provided "occurrence"-based coverage triggered by an accidental injury that occurred during the policy period. For claims "arising out of" Mallinckrodt's sales of (and representations about) its opioid products, the policies provided "Products-Completed Operations Hazard" (or "PCOH") coverage on a "claims-made-and-reported" basis, meaning ***coverage would only apply if a claim was both first made against Mallinckrodt and first reported to the insurers during the corresponding policy period***.[2]

[2] Insofar as relevant to this motion, Aspen issued policies for the 2009-11 policy periods,

The Trust surely recognizes that it cannot invoke Aspen and ACE's PCOH coverage. It is undisputed that when the underlying opioid product claims were first brought against Mallinckrodt in 2017—well after Aspen's and ACE's PCOH annual coverage had expired—Mallinckrodt reported those opioid product claims under its 2016-17 and 2017-18 claims-made-and-reported PCOH coverage, ***not*** to Aspen or ACE under the policies at issue here. When Mallinckrodt subsequently filed for bankruptcy in 2020, it specifically characterized the claims now at issue as claims "***concerning the production and sale of its opioid products***." Nevertheless, the Trust—which subsequently acquired the right to seek insurance for Mallinckrodt's underlying opioid liability—is now attempting to recharacterize Mallinckrodt's representations at the heart of its bankruptcy liability. Specifically, the Trust claims for the first time that Mallinckrodt's liabilities did ***not***, in fact, arise from Mallinckrodt's sale of or representations about its opioid products, simply because the claims in part assert liability for "unbranded" marketing efforts to increase the overall sales of opioids nationwide. The Trust is wrong.

The issue before this Court is simple: do the 11 underlying "exemplar lawsuits" that allege harm resulting from one of the world's largest pharmaceutical companies' marketing and sales of opioids constitute claims "arising out of" that company's sales of and representations pertaining to its opioid "products"? As courts around the country have held—including in the *Actavis* and *Anda* cases *infra*, which expressly addressed the

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while ACE issued policies for the 2007-11 policy periods. Both sets of policies incorporate the operative language from "followed policies" issued by American Home and National Union.

nationwide opioid lawsuits—the answer to this question is unquestionably yes. Even to the extent that Mallinckrodt faced liability resulting from its efforts to increase the nationwide demand for opioids ***generally***, such liability nevertheless arises from representations about Mallinckrodt's own products for the simple reason that representations about opioids generally are also representations about Mallinckrodt's opioid products. In any event, such liability is rooted in Mallinckrodt's efforts to market and sell more of its own opioid products and opioid ingredients—conduct falling squarely within the PCOH coverage limitation. Because it is undisputed that there were no underlying opioid claims first made against Mallinckrodt or reported to Aspen or ACE during the subject policy periods, Aspen and ACE respectfully submit that they are entitled to summary judgment on the Trust's claims for coverage under the 2009-11 Aspen policies and the 2007-11 ACE policies.

II. FACTUAL BACKGROUND

A. MALLINCKRODT IS A MAJOR MANUFACTURER OF OPIOIDS AND ACTIVE PHARMACEUTICAL INGREDIENTS (APIS) USED IN OPIOIDS.

Mallinckrodt has long been a leading manufacturer, marketer, and distributor of opioid products. *See* Statement of Uncontroverted Facts ("SOF") at ¶¶ 1-2. Historically, Mallinckrodt has "manufacture[d] both (a) finished dosage products, meaning the product (whether in the form of a tablet, capsule, or liquid) that the patient ultimately receives, and (b) APIs [active pharmaceutical ingredients], which are then used to create finished products" (whether by Mallinckrodt or by other opioid manufacturers). *See id*. at ¶ 15. To increase sales of these products, Mallinckrodt allegedly engaged in both "branded"

marketing of specific opioid products and also "unbranded" marketing of opioids generally. *See id*. at ¶ 4. Mallinckrodt's "unbranded" marketing allegedly was intended to, and did, develop a favorable public perception of opioids, increase the demand for opioids, and thus benefit Mallinckrodt's sales of both branded products (such as Exalgo) to the consuming public, as well as APIs to other "finished dosage" opioid manufacturers. *See id*. at ¶¶ 9-14, 19.

B. ASPEN AND ACE ONLY INSURE OPIOID PRODUCT CLAIMS IF FIRST MADE AGAINST MALLINCKRODT AND FIRST REPORTED TO THE INSURERS DURING THE POLICY PERIODS.

In connection with Mallinckrodt's pharmaceutical business, Aspen and ACE only provided coverage for claims arising from Mallinckrodt's sales and marketing of opioid products if such claims satisfied the requirements of the "Products-Completed Operations Hazard Claims Made Retained Limit Endorsement." *See id*. at 40. Claims that fall within this "PCOH" endorsement are those that allege "'Bodily Injury' and 'Property Damage'[3] occurring away from premises you [*i.e.*, Mallinckrodt] own or rent and ***arising out of*** 'Your Product' or 'Your Work' except…products that are still in your physical possession[.]" *See id*. at 41 (emphasis added).[4] The policies define "Your Product" as "any goods or

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[3] Aspen and ACE do not concede that the underlying claims allege "Bodily Injury" or "Property Damage" within the meaning of the Aspen and ACE policies. The weight of appellate authority—including from the only two state supreme courts to have addressed the issue—holds that similar opioid claims do ***not*** seek damages because of "Bodily Injury" or "Property Damage." *See Westfield Nat'l Ins. Co. v. Quest Pharm., Inc.*, 57 F.4th 558 (6th Cir. 2023); *Acuity v. Masters Pharm., Inc.*, 205 N.E.3d 460 (Ohio 2022); *ACE Am. Ins. Co. v. Rite Aid Corp.*, 270 A.3d 239 (Del. 2022). Aspen and ACE reserve their rights with respect to this and all other coverage defenses.

[4] The policies themselves show defined terms (*e.g.*, "Products-Completed Operations

products…manufactured, sold, handled, distributed or disposed of by" Mallinckrodt, Covidien, and any other involved insureds, and includes "warranties or ***representations*** made at any time with respect to the fitness, quality, durability, performance or use of 'Your Product'[,]" as well as "the providing of or failure to provide warnings or instructions." *See id*. at ¶ 42 (emphasis added). In other words, a slip-and-fall occurring at a Mallinckrodt facility is not a PCOH claim, while a claim involving a product already sold by Mallinckrodt, or a claim involving Mallinckrodt's "representations" about its products, falls within the PCOH.

The PCOH endorsement also specifies certain types of products that fall within the policies' PCOH coverage. Specifically, the endorsement applies to "all healthcare products, medications, medical devices and pharmaceuticals[,]" including "active pharmaceutical ingredients" ("APIs") used in those products. *See id*. at 40. Therefore, claims arising from the sale of, or representations about, opioid pharmaceuticals and opioid ingredients (APIs) are specifically within the PCOH.

Lastly, the PCOH endorsement only provides what is commonly referred to as "claims-made-and-reported" coverage. *See id*. at 40. This means that a claim against Mallinckrodt arising from its opioid products or APIs, or representations about opioid products or APIs, is only covered if: (1) the claim was first made against Mallinckrodt during the policy period (sometime between 2007 and 2011, for the policies at issue here);

Hazard") in bold instead of quotations. Aspen and ACE will use the latter to avoid confusion with other bold/italic emphasis herein throughout.

and (2) Mallinckrodt reported that claim to Aspen and ACE during the relevant policy period. If, on the other hand, a claim arising out of Mallinckrodt's opioid products or representations regarding opioid products was first made against Mallinckrodt ***after*** the Aspen and ACE policy periods, then the claim is not covered by the Aspen and ACE policies. *See id.*

C. AFTER THE ASPEN AND ACE POLICIES EXPIRED, CLAIMS ARISING FROM MALLINCKRODT'S OPIOID PRODUCTS AND MARKETING REPRESENTATIONS WERE FIRST MADE AGAINST MALLINCKRODT.

Between 2017 and 2020—years after the last of the Aspen and ACE policies' PCOH coverage expired in 2011—Mallinckrodt was named in over 3,000 underlying opioid lawsuits brought by government entities, third-party payors, and individuals. *See id*. at ¶ 20. As illustrated by the 11 "exemplar complaints" submitted by the Trust in connection with its own summary judgment motion, the underlying lawsuits generally asserted that Mallinckrodt was liable for damages as the result of Mallinckrodt's and other companies': (1) deceptive promotion (by both "branded" and "unbranded" marketing) of prescription opioid products as safe and effective for chronic pain, thus leading to overuse; and (2) shipping suspicious orders of prescription opioid products instead of halting them and reporting them to regulatory authorities, leading to widespread oversupply and product diversion to illicit uses. *See id*. at ¶¶ 23-36. The underlying lawsuits allege that this resulted in the national opioid epidemic, which involved unprecedented levels of opioid misuse, addiction, and death, not just from prescription opioid abuse, but also from the use of illegal opioids like heroin and fentanyl, which were readily available when addicted consumers were no longer able to obtain opioids legally. *See id*. at ¶ 24.

After first being sued in 2017, Mallinckrodt tendered the initial round of opioid claims under certain policies then in effect in 2017 which (like the 2007-2011 Aspen and ACE policies at issue here) specifically provided claims-made-and-reported coverage for claims within the "PCOH." *See id*. at ¶¶ 51, 53-54. Mallinckrodt did ***not*** report any opioid claims to the 2007-2011 Aspen or ACE under the policies at issue here. *See id*. at ¶¶ 49-50. Mallinckrodt then filed for bankruptcy protection in October 2020, specifically asking the court to resolve its liability for the thousands of underlying claims and lawsuits "***concerning the production and sale of its opioid products***" (Mallinckrodt's words, emphasis added). *See id*. at ¶ 60.

D. AFTER MALLINCKRODT CHARACTERIZED ITS BANKRUPTCY LIABILITIES AS ARISING FROM ITS OPIOID PRODUCTS, THE TRUST THEN FILED THIS SUIT ARGUING THAT THE BANKRUPTCY LIABILITIES DO NOT ARISE FROM MALLINCKRODT'S OPIOID PRODUCTS.

As part of the bankruptcy, the Trust was established to pursue insurance to fund the underlying opioid settlements, and it subsequently filed this action. *See id*. at ¶¶ 62, 66. Departing from the position in Mallinckrodt's bankruptcy filings that its underlying liability "concer[ned] the production and sale of its opioid products," the Trust now asserts that the opioids claims are also ***non***-PCOH claims for which the Trust can seek recovery under the "occurrence"-based coverage provided by dozens of policies issued to Mallinckrodt in past years. *See id*. at ¶¶ 60, 69. Specifically, the Trust contends that because the underlying claims allege "unbranded promotional activities to change the way the medical community and the public perceived, prescribed, and used opioids in general," such claims fall outside the claims-made coverage for Mallinckrodt's own products under

the PCOH endorsement. *See id*. at ¶ 70. The Trust also points to allegations in the underlying lawsuits that Mallinckrodt's "unbranded marketing" resulted in members of the public using "other manufacturers' opioid products and illicit opioids," which it likewise contends created liability outside the expired PCOH claims-made coverage. *See id*. at ¶¶ 69-70.

As discussed below, the underlying lawsuits—as represented by the 11 exemplar complaints selected by the Trust itself—make clear that the claims are predicated on damages "arising out of" Mallinckrodt's opioid "products" and its "representations" regarding opioid products.

III. LEGAL STANDARDS

Summary judgment is proper where "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *See Ameristar Jet Charter, Inc. v. Dodson Int'l Parts, Inc.*, 155 S.W.3d 50, 58 (Mo. 2005) (citing MO. SUP. CT. R. 74.04). In ruling on a motion for summary judgment, courts must consider the facts set forth in support of the motion to be true, unless contradicted by the non-movant's response. *See Risher v. Farmers Ins. Co.*, 200 S.W.3d 84, 87 (Mo. Ct. App. 2006). There are no facts in dispute here as to the insurance provisions at issue, the allegations of the exemplar claims for which coverage is sought, that the claims were first made against Mallinckrodt after the Aspen and ACE policy periods, or the historic reporting of these claims to other PCOH coverage periods, and not to Aspen's and ACE's policies.

The interpretation of an insurance policy is a question of law that may be resolved on summary judgment. *See Chastain v. United Fire & Cas. Co.*, 653 S.W.3d 616, 620

(Mo. Ct. App. 2022) (affirming summary judgment in favor of insurer based on policy exclusion). Courts interpret policy language "in the context of the policy as a whole" and according to "its ordinary meaning unless another meaning is plainly intended." *See Columbia Mut. Ins. Co. v. Schauf*, 967 S.W.2d 74, 77 (Mo. 1998) (citations omitted). *See also McGilloway v. Safety Ins. Co.*, 174 N.E.3d 1191, 1196 (Mass. 2021) (setting forth similar standard).[5] Where, as here, the policy provision is a grant of coverage, the burden is on the insured to prove that there is coverage. *See Rockhurst Univ. v. Factory Mut. Ins. Co.*, 582 F. Supp. 3d 633, 637 (W.D. Mo. 2022).

Here, the Trust seeks indemnity coverage under Aspen's and ACE's excess policies, not a declaration of a duty to defend. "A liability insurer has two distinct duties, the duty to indemnify the insured for covered losses, and the duty to defend the insured in any lawsuit seeking damages that would be covered losses." *Trainwreck W. Inc. v. Burlington Ins. Co.*, 235 S.W.3d 33, 44 (Mo. Ct. App. 2007) (citations and quotations omitted). "An insurer's duty to defend is broader than its duty to indemnify." *Allen v. Bryers*, 512 S.W.3d 17, 31 (Mo. 2016*), as modified* (Apr. 4, 2017) (citations omitted). "The duty to defend is determined by comparing the insurance policy language with facts: (1) alleged in the

[5] In addition to Missouri law, Aspen and ACE will also cite the law of Massachusetts, where the subject policies were issued to its named insured, Covidien, who had its headquarters there at the time of contracting. *See Viacom, Inc. v. Transit Cas. Co.*, 138 S.W.3d 723, 724-25 (Mo. 2004), *as modified on denial of reh'g* (Aug. 3, 2004) (applying Pennsylvania law to policies issued to company headquartered in Pennsylvania, where underlying asbestos lawsuits were filed nationwide). Aspen and ACE do not waive the right to raise Massachusetts as the principal choice of law in the event of a later conflict between the law of Missouri and Massachusetts.

petition; (2) the insurer knows at the outset of the case; or (3) that are reasonably apparent to the insurer at the outset of the case." *Id.* (internal citations and quotations omitted). *See also Holyoke Mut. Ins. Co. in Salem v. Vibram USA, Inc.*, 106 N.E.3d 572, 576 (Mass. 2018) (discussing similar standard). On the other hand, "[t]he duty to indemnify is determined by the facts as they are established at trial or as they are finally determined by some other means, for example through summary judgment or settlement." *McCormack Baron Mgmt. Servs., Inc. v. Am. Guarantee & Liab. Ins. Co.*, 989 S.W.2d 168, 173 (Mo. 1999) (internal citations omitted). Because the duty to defend is broader than the duty to indemnify, "[w]here there is no duty to defend, there is no duty to indemnify." *Trainwreck*, 235 S.W. at 44. *See also Utica Mut. Ins. Co. v. Amity Ins. Agency, Inc.*, 993 N.E.2d 752 (Mass. App. 2013) (recognizing same).

IV. ARGUMENT

A. THE UNDERLYING OPIOID CLAIMS FALL WITHIN THE SCOPE OF THE PCOH.

1. The Plain Language of the PCOH Includes Any Injuries "Arising Out of" Both Mallinckrodt's "Products" and Its "Representations" Regarding Its Products, Not Merely Injuries Directly and Solely Caused by Its Products.

The PCOH endorsement governs "'Claims' or 'Suits' seeking damages included within the 'Products-Completed Operations Hazard' [*i.e.*, the PCOH] for all healthcare products, medications, medical devices and pharmaceuticals[.]" *See* SOF at ¶¶ 40. In relevant part, the policies define the PCOH to include injury "occurring away from premises you [the insured] own or rent and ***arising out of 'Your Product'***[,]" defined to include not just "products…manufactured, sold, handled, distributed or disposed of by" Mallinckrodt, but also "***representations*** made at any time with respect to the fitness,

quality, durability, performance or use of 'Your Product'[.]" *See id*. at ¶ 42 (emphasis added). Thus, when the two definitions of "Your Product" are inserted into the definition of the PCOH, the provision is clear that the PCOH includes either:

> "Bodily Injury" and "Property Damage" occurring away from premises you own or rent and ***arising out of*** [***products…manufactured, sold, handled, distributed or disposed of by You***].
>
> [or]
>
> …***arising out of*** [***representations made at any time with respect to the fitness, quality, durability, performance or use of*** [***products…manufactured, sold, handled, distributed or disposed of by You***]].

Id. at ¶ 41 (emphasis added).

The key issue presented by this motion is whether the underlying opioid claims for which the Trust seeks coverage "arise out of" Mallinckrodt's opioid "products" and/or its "representations" about those opioid products. Courts in Missouri and around the country have recognized that the phrase "arising out of" is "very broad, general[,] and comprehensive" and is "much broader than the words 'caused by'[.]" *See Fid. & Cas. Co. of New York v. Wrather*, 652 S.W.2d 245, 251 (Mo. Ct. App. 1983). It does ***not*** mean "the direct and efficient cause of the injuries sustained." *See id*. (quotations omitted). *See also Capitol Indem. Corp. v. 1405 Assocs., Inc.*, 340 F.3d 547, 550 (8th Cir. 2003) (applying Missouri law and recognizing that "arising out of" means "originating from," "having its origins in," "growing out of," or "flowing from," and that "the applicable causation standard is ***not*** the strict 'direct and proximate cause' standard applicable in general tort law[,]" but instead a "***simple causal relationship***...between the accident or

injury and the activity of the insured") (emphasis added, citations and quotations omitted); *Colony Ins. Co. v. Pinewoods Enterprises, Inc.*, 29 F. Supp. 2d 1079, 1083 (E.D. Mo. 1998) (recognizing that "***an unbroken chain of events need not be established but rather a simple causal relationship must exist*** between the accident or injury and the activity of the insured.") (emphasis added).

Clearly, if a person ingests a Mallinckrodt pill and becomes addicted, such a claim "arises out of" a Mallinckrodt product. However, the Trust now argues that Mallinckrodt's liability for social harm caused by ***other*** companies' opioid products, or even caused by illegal heroin use, does not "arise out of" Mallinckrodt's "products" or "representations" about its products. This argument ignores the broad meaning of "arising out of" and that every theory of liability asserted against Mallinckrodt was rooted in Mallinckrodt's efforts to increase sales of either its own branded opioid products to consumers or its "active pharmaceutical ingredients" ("APIs") to other opioid manufacturers, by making ***representations*** about the safety and effectiveness of those products and thus increasing the overall demand for opioids among the consuming public. Thus, it is beyond reasonable dispute that Mallinckrodt's liabilities "arise out of" its opioid "products" and "representations."

Mirroring this case, courts around the country have concluded that similar opioid lawsuits against other opioid manufacturers and distributors alleged claims falling within the scope of the PCOH. In *Actavis*, a California appellate court addressed the same question at issue here: whether opioid claims against an opioid manufacturer that was ***one of Mallinckrodt's co-defendants*** fell within the PCOH. The appellate court agreed with

the trial court's reasoning that "[a]ll of the harm that is asserted in the lawsuits—narcotics addiction, the public nuisance in the California action and the public health costs, etc. highlighted in the Chicago [Action]—stem from [the insured's] products and what [the insured] said and did not say about the products." *See The Travelers Prop. Cas. Co. of Am. v. Actavis, Inc.*, 225 Cal. Rptr. 3d 5, 21-22 (Cal. Ct. App. 2017). *See also Zogenix, Inc. v. Federal Insurance Co.*, No. 4:20-cv-06578, 2022 WL 3908529 (N.D. Cal. May 26, 2022) (analyzing *Actavis* to reach the same conclusion with respect to another opioid manufacturer).

Similarly, in *Anda*, the Eleventh Circuit held that opioid claims against an opioid distributor fell within the PCOH, explaining that "[t]he State['s] claims that Anda and other pharmaceutical distributors have so flooded the market with their products that West Virginia suffers from an opioid epidemic" alleged a "causal connection" that was "sufficient to meet the low bar" required of the phrase "arising out of." *Travelers Prop. Cas. Co. of Am. v. Anda, Inc.*, 658 F. App'x 955, 958-59 (11th Cir. 2016) (applying California law and holding that PCOH exclusions applied); *cf. Sentynl Therapeutics, Inc. v. U.S. Specialty Ins. Co.*, No. 21-55370, 2022 WL 706941, at *1-2 (9th Cir. Mar. 9, 2022) (applying California law and holding that PCOH exclusion applied to subpoenas served on opioid company in connection with "investigation of potential violations of federal law by anyone illegally profiting from opioids"; phrase "arising out of" is broad, government investigation was targeted at entities profiting from sales of opioids, and exclusion "embrace[d] claims about what a seller said and did not say about the products") (citations and quotations omitted).

This broad application of "arising out of" is not a new development. Under this broad standard, courts have long recognized that an injury "arises out of" an insured's product (or an insured's "representation" about its product) both where the product ***directly*** causes the injury, and also where the insured's liability is premised on its participation in an industry's ***oversupply of a dangerous product to the public at large***. *See*, *e.g.*, *Brazas Sporting Arms, Inc. v. Am. Empire Surplus Lines, Inc.*, 220 F. 3d 1 (1st Cir. 2000) (applying Massachusetts law and holding that claims against gun manufacturer for flooding market with more guns than it knew could legitimately be purchased fell within scope of PCOH, notwithstanding that underlying lawsuit alleged that injury was caused by insured's "conduct" and not its "products"); *Beretta U.S.A. Corp. v. Fed. Ins. Co.*, 17 F. App'x 250, 255 (4th Cir. 2001) (same under Maryland law); *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 540 (Fla. 2005) (applying Florida law and holding that PCOH exclusion encompassed underlying complaints against insured and other gun manufacturers alleging damages due to gun violence, which court recognized "all originated from [the insured's] products").

As discussed further below, because Mallinckrodt's underlying liability was premised entirely on its sales of opioid products and its "representations" about the safety and effectiveness of those products, the Trust's efforts to circumvent the policies' PCOH coverage limitations must fail.

2. <u>The 11 Exemplar Opioid Lawsuits Allege Harm "Arising Out of" Both Mallinckrodt's Sale of Its "Products" and Its "Representations" Regarding Its Products</u>.

The underlying opioid claims, as represented by the Trust's hand-picked "exemplar

lawsuits," unambiguously sought to hold Mallinckrodt liable for alleged harms "arising out of" Mallinckrodt's opioid products and its "representations" about those products—both through its own direct sales of generic and branded opioid pills, and through its "unbranded" marketing or advertising of opioids generally. The Trust itself has acknowledged that "Mallinckrodt, while under [its former parent and the insurers' first named insured] Covidien's domination and control, became the most significant manufacturer, marketer, and producer of opioid products in the United States as measured by market share[,]" producing 28.9 billion opioid pills from 2006 to 2012. *See* SOF at ¶ 2. The exemplar lawsuits make clear that Mallinckrodt's liability was inextricably intertwined with this leading role in the market for opioid products, and that there would have been no claims against Mallinckrodt absent its manufacture of opioid products and its "representations" about those products via both "branded" and "unbranded" advertising.

For example, the State of Georgia alleged that "Mallinckrodt is the largest supplier of opioid pain medications and among the top ten generic pharmaceutical manufacturers in the United States, based on prescriptions[,]" and that Mallinckrodt "conducted, and continues to conduct, a marketing scheme designed to mislead doctors and patients about the safety and efficacy of opioids for the treatment of chronic pain[,]" the result of which "has been the use of opioids by a far broader group of patients." *See id*. at ¶ 28. St. Charles County alleged that "Mallinckrodt promoted its branded opioids Exalgo and Xartemis XR, and opioids generally, in a campaign that consistently mischaracterized the risk of addiction." *See id*. at ¶ 27. The *Brockel* complaint alleged that "Mallinckrodt manufactures, promotes, markets, sells and/or distributes Schedule II controlled substances

such as Oxycodone/Acetaminophen, Morphine Sulfate ER, Oxycodone Hydrochloride, Roxicodone and Methadone HCL[,]" and that "these drugs were prescribed to [the underlying plaintiff] Brockel during the 2010 through 2017 time period." *See id*. at ¶ 30. The *Koechley* complaint alleged that "[the underlying plaintiff's decedent] was prescribed opioids from each Manufacturer Defendant [defined to include Mallinckrodt], including but not limited to morphine, fentanyl, hydrocodone, OxyContin, oxycodone, and Percocet." *See id*. at ¶ 31. The *Riling* complaint alleged that "during her pregnancy in 2006 and 2007, A.P. Riling's mother consumed opioids manufactured or distributed by the named defendants including…Mallinckrodt's products, including Roxicodone[.]" *See id*. at ¶ 23. These are just a few of the many allegations showing that the underlying exemplar lawsuits sought damages arising from Mallinckrodt's liability as a seller and marketer of its opioid products, which is the risk that specifically and unambiguously falls within the scope of the Aspen and ACE policies' PCOH endorsement.

Tellingly, prior to its bankruptcy, Mallinckrodt itself acknowledged that the underlying opioid product claims implicate its claims-made-and-reported PCOH coverage in the years when the opioid product claims were first made against it, and not in the years of the earlier 2007-11 Aspen and Ace coverage. Discovery has revealed that after Mallinckrodt was served with its first opioid lawsuit in June 2017, Mallinckrodt notified its insurers for the 2016-17 policy period then in effect, which likewise provided PCOH coverage for opioid product claims first made and reported during that 2016-17 policy period. *See id*. at ¶¶ 51-52. Notably, Mallinckrodt did ***not*** provide notice under the earlier expired claims-made-and-reported PCOH coverage of the 2007-11 Aspen and ACE policy

periods. *See id*. at ¶ 50. Mallinckrodt's conduct indicates that it understood the opioid claims to be within the PCOH, and that there was no coverage under the expired Aspen and ACE policies.

Mallinckrodt's communications with its insurance broker (Marsh) likewise confirm that the opioid claims are within the PCOH. After the opioid lawsuits were filed against Mallinckrodt, Marsh advised Mallinckrodt that another insurer was denying coverage for the underlying opioid claims under "GL policies that contain [PCOH] exclusions" and that it was "therefore unlikely [that those policies] would apply to opioid claims." *See id*. at ¶ 57. Mallinckrodt apparently agreed and instructed Marsh to discontinue claim notices under the policies containing PCOH exclusions. *See id*. ¶¶ 58.

It was only after the Trust took over that anyone affiliated with Mallinckrodt concocted the argument that Mallinckrodt's opioid liabilities did not arise out of its sale of opioid products or its representations regarding opioid products. It was the Trust, not Mallinckrodt, that first asserted claims under these policies when it filed suit in 2022, roughly 10 years after the last of the policies' PCOH coverage expired.

Given the allegations of the 11 exemplar complaints, the precedent in both the opioid and other contexts discussed above, the above course of dealing, and Mallinckrodt's own candid representation to the bankruptcy court that the 3,000 underlying lawsuits "***concern[ed] the production and sale of its opioid products***" (discussed in the section immediately below), it is clear that the underlying opioid claims allege injuries "arising out of" Mallinckrodt's "products" and "representations" regarding those products and thus unambiguously fall within the claims-made-and-reported PCOH coverage.

3. <u>The Trust Cannot Escape the Insurers' PCOH Coverage Limitations by Claiming That Mallinckrodt's Liability Arose From Other Opioid Manufacturers' Products or Illicit Drugs</u>.

As discussed above, a claim may "arise out of" a product or a "representation" about a product even if the product itself is not the immediate, direct, or proximate cause of the injury. Instead, the relevant inquiry is whether there is a "simple causal relationship," *see Capitol Indem. Corp.*, 340 F.3d at 550, between the underlying claims and opioid products manufactured, sold, or distributed by Mallinckrodt, or representations made by Mallinckrodt regarding opioid products, or Mallinckrodt's failure to issue warnings in connection with opioid products. Contrary to the Trust's position, this language is satisfied even where the underlying opioid claims allege collective theories of liability against Mallinckrodt and other opioid companies, or that Mallinckrodt is responsible for the rise in use of illicit drugs.

Indeed, courts have already addressed and rejected the Trust's argument in connection with the opioid lawsuits. In *Actavis*, just like here, the insured opioid manufacturer argued that the claims against it were outside the PCOH because abuse of prescription opioids allegedly caused people to turn to illegal drugs like heroin, which were not products manufactured by the insured. The California Court of Appeal readily rejected that argument:

> The second category of bodily injury, the alleged resurgence in heroin use, also ***arises out of Watson's products***. Heroin is not, of course, a product made or distributed by Watson, ***but that fact is not dispositive***. The Products Exclusions extend, as we have explained, to bodily injury ***arising out of warranties or representations*** made by Watson in connection with its products. The complaints allege a ***direct causal connection between those warranties and representations and the resurgence in heroin use***: Watson's

> warranties and representations made as part of this campaign to increase the sales of highly addictive opioid painkillers allegedly had the intended effect of increasing their sales, use, and addiction, which led to a dramatic increase in the use of heroin as a cheaper alternative.
>
> * * *
>
> …***[T]he alleged resurgence in heroin use arises out of Watson's opioid products and the statements and representations Watson made about them***.

See Actavis, 225 Cal. Rptr. 3d at 22-23 (emphasis added).

Similarly, in *Fibreboard Corp. v. Hartford Accident & Indem. Co.*, 20 Cal. Rptr. 2d 376 (Cal. Ct. App. 1993), the appellate court roundly rejected an argument mirroring the Trust's position in this case. There, the insured (Fibreboard) manufactured and sold products containing asbestos, prompting hundreds of claims against Fibreboard and other manufacturers, many of which asserted concert of action, civil conspiracy, and market share liability. 20 Cal. Rptr. 2d at 378-79. In subsequent coverage litigation, Fibreboard argued that, because it could be held liable under these collective liability theories even if the plaintiffs' injuries were caused by products manufactured by ***other companies***, the underlying claims did not fall within the scope of the PCOH. *See id.* at 380, 382. The California Court of Appeal disagreed, first recognizing that the phrase "arising out of" is to be broadly construed, and ultimately holding that the underlying claims "arose out of" Fibreboard's products—even where premised on the "legal fiction" of collective liability, and even if the plaintiffs' injuries were proximately caused by other companies' products—because the "gravamen" of the underlying claims was that Fibreboard's manufacture and sale of harmful asbestos products resulted in injury. *See id.* at 383-86.

The same applies here. The Trust cannot sidestep the application of the insurers'

PCOH coverage limitations simply because some underlying claims may have alleged harm resulting from the collective liability of Mallinckrodt and other opioid companies, or because people allegedly turned to illicit drugs as a result or Mallinckrodt's opioids or its involvement in promoting opioids. *See also Liggett Grp., Inc. v. Ace Prop. & Cas. Ins. Co.*, 798 A.2d 1024, 1033 (Del. 2002) (applying North Carolina law and holding that PCOH exclusion precluded coverage for second-hand smoke claims against insured tobacco company, notwithstanding that alleged injuries also resulted from other tobacco companies' products, because "[t]he underlying complaints name[d] [the insured] as a defendant because they allege that [the insured's] product caused injury"); *Eon Labs Mfg., Inc. v. Reliance Ins. Co.*, 756 A.2d 889, 893-94 (Del. 2000) (applying New York and Illinois law and rejecting argument that PCOH exclusion did not apply to injuries caused by a combination of both the insured's drug and other defendants' drugs, opining that the "argument distorts the essential fact that in all of the cases it is the involvement or presence of [the insured's] [drug] (including misrepresentations and failure to warn, etc.) that is the basis of the [underlying] suits").

4. <u>The Trust Cannot Circumvent the Insurers' PCOH Coverage Limitations by Relying on Mallinckrodt's "Unbranded Advertising," Which Also "Arises Out of" Mallinckrodt's Products and "Representations" About Its Products</u>.

The Trust previously told this Court that "the claims seeking damages not within the [PCOH] are those that 'arise out of [Mallinckrodt's] extensive use of ***unbranded promotional activities*** to change the way the medical community and the public perceived, prescribed, and used opioids in general,' and that 'seek to hold [Mallinckrodt] liable for

bodily injuries allegedly caused by [Mallinckrodt's] conduct in creating and fueling the nationwide opioid crisis,' specifically injuries suffered from 'the opioid products of other manufacturers and illicit narcotics.'" *See* SOF at ¶ 68. The Trust ignores the undisputed fact that Mallinckrodt's efforts to "change" the public perception of opioids by utilizing "unbranded" marketing was ***simply another strategy*** to increase sales of its own opioid products, specifically its branded "finished dosage" opioids and its APIs.

For example, the State of Mississippi alleged that Mallinckrodt's "unbranded, third-party marketing" was specifically "deployed as part of their national marketing strategies for their ***branded*** drugs," since "[b]y using ***unbranded*** communications, drug companies [including Mallinckrodt] can sidestep the extensive regulatory framework…governing ***branded*** communications." *See id*. at ¶ 26 (emphasis added).[6] Similarly, the underlying plaintiffs in the *Paul* and *Berzinski* cases alleged that "Mallinckrodt engaged in widespread conduct ***aimed at vastly increasing profits resulting from the sale of opioid drugs*** by increasing prescriber demand [and] increasing patient demand[.] *See id*. at ¶¶ 34-35 (emphasis added). There is simply nothing in the underlying allegations or the factual record developed to date which might suggest that Mallinckrodt's "unbranded" advertising was intended to do ***anything but*** increase sales of its own opioid products. Indeed, the connection between the unbranded marketing campaign and Mallinckrodt's alleged

[6] Consistently, internal Mallinckrodt marketing materials obtained from the Trust in discovery, as well as related documents received from one of Mallinckrodt's third-party advertising agencies, show that "unbranded" advertising was part of Mallinckrodt's launch strategy for specific ***branded*** opioid products such as Exalgo. *See id*. at ¶¶ 9-14.

purpose of increasing sales of its products is common sense—Mallinckrodt is a for-profit pharmaceutical company, after all.[7] And that suffices to establish the "simple causal relationship" for claims "arising out of" Mallinckrodt's products.

The Trust has tried to circumvent the PCOH coverage limitations by claiming that Mallinckrodt's "unbranded" marketing caused injuries due to the increased use of ***other companies'*** opioid products. But that is irrelevant under the text of the Aspen and ACE policies, which include within the PCOH harms "arising out of" "representations…with respect to the fitness, quality, durability, performance or use" of Mallinckrodt's products. Even if the unbranded marketing did not reference Mallinckrodt's products by name, an unbranded representation that "opioid drugs generally [are] safe and effective for chronic pain" (*see* Trust's Mot. at 4) ***is a representation about Mallinckrodt's products*** because Mallinckrodt's opioid products are a subset of "opioid drugs generally." The fact that such representations about opioid drugs generally ***also*** encompass other manufacturers' opioids or resulted in the increased use of other manufacturers' opioids does not alter that fact,

[7] This is not a novel concept, nor is it unique to Mallinckrodt or this case. "Unbranded marketing" has long been recognized as "a strategy where businesses promote ***their products*** or services without ***directly*** associating them with a specific brand name." *See id*. at ¶ 5 (emphasis added). "Companies use this type of advertising to draw consumer attention to problems and issues that the ***company product*** can potentially resolve[.]" *See id*. at ¶ 6 (emphasis added). "[S]uch campaigns can increase product awareness and increase physician visits, prescribing ***and sales***." *See id*. at ¶ 7 (emphasis added). According to a recent study, "[p]harmaceutical companies, or third parties acting on their behalf, have an ***underlying commercial intent*** to drive the choice for a particular treatment[,]" and "[t]his unbranded advertising is part of a broader and integrated marketing campaign that ***aims to increase sales of prescription-only medicines***." *See id*. at ¶ 8 (emphasis added).

which is all that is needed to bring harms arising from unbranded marketing within the PCOH.

In addition, according to the Trust, Mallinckrodt has long "developed, manufactured, marketed, promoted, and sold active pharmaceutical ingredients ('APIs')[,]" which are "used by [Mallinckrodt] ***and other manufacturers*** to create finished dosage opioid products[.]" *See id*. at ¶ 15 (emphasis added). According to the Trust itself, Mallinckrodt's alleged liability arises not just from its own "finished dosage" opioid products, but also from those APIs, which the Trust alleges formed the very basis for Mallinckrodt's joint and several liability "with other manufacturers and distributors for injuries caused by opioids that are ***not [Mallinckrodt's] products***." *See id*. at ¶ 70 (emphasis added). And as the Trust recently told the bankruptcy court, Mallinckrodt and its parent Covidien were "incentivized" to engage in "unbranded advertising" and thus "increase the overall opioid market because that would ***increase its API sales to other opioid manufacturers***." *See id*. at ¶ 19 (emphasis added).[8]

In sum, while the Trust would have this Court rule that Mallinckrodt's "unbranded" marketing of opioids was untethered to sales of Mallinckrodt's own branded opioid products like Exalgo (an argument which is divorced from both the underlying allegations

[8] *See State ex rel. O'Connell v. Crandall*, 562 S.W.2d 746, 750 n.5 (Mo. App. 1978) (noting that plaintiffs' allegation in their petition constituted judicial admission); *Moore Auto. Grp., Inc. v. Goffstein*, 301 S.W.3d 49, 54 (Mo. 2009) (recognizing that judicial admissions from another case may be considered as "ordinary admissions against interest" in separate proceedings, even where parties are not identical). *See also Baumann v. Zhukov*, 802 F.3d 950, 953 (8th Cir. 2015) (Missouri law) (recognizing that allegations in complaint are "binding judicial admissions" in same suit).

and the factual record, as discussed further above), Mallinckrodt's unbranded marketing about "opioids generally" was plainly intended to increase sales of Mallinckrodt's own products and constituted representations about Mallinckrodt's own products. And the Trust has separately and candidly acknowledged to the bankruptcy court that "unbranded" marketing was specifically intended to increase sales of the component products Mallinckrodt sold to other manufacturers: its APIs. Because the scope of the subject Aspen and ACE policies' PCOH coverage encompasses "pharmaceuticals," which are ***specifically defined to include APIs***, *see id*. at ¶ 46, underlying allegations of "unbranded" promotional activities only confirm that the opioid claims "arise out of" Mallinckrodt's efforts to sell more and more of its own products, thus falling squarely within the scope of the PCOH.

5. <u>The Trust Is Bound by Mallinckrodt's Representations to the Bankruptcy Court That the Underlying Opioid Claims "Arise Out of" Mallinckrodt's Products</u>.

Finally, in addition to the reasons set forth above establishing that the Trust cannot claim coverage under the Aspen and ACE policies, the Trust is estopped from arguing that the opioid claims do not arise out of Mallinckrodt's products. Judicial estoppel is an equitable doctrine that is intended "to prevent parties from playing fast and loose with the judicial process by taking inconsistent positions in two different proceedings." *Vacca v. Missouri Dep't of Lab. & Indus. Rels.*, 575 S.W.3d 223, 225 (Mo. 2019), *as modified* (June 4, 2019). In determining whether judicial estoppel applies, Missouri courts consider: (1) whether the party's later position is "clearly inconsistent with its earlier position"; (2) "whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would

create the perception that either the first or the second court was misled"; and/or (3) "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *See id*. at 232-33 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)) (internal quotations and citations omitted). These factors "are guideposts, not elements," and "once a party takes truly inconsistent positions, there are no inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel." *Id*. (quotations and citations omitted).

Critically, courts have recognized that judicial estoppel applies where, ***as here***, a trust created pursuant to a confirmed Chapter 11 plan tries to benefit from a position that ***contradicts its debtors' prior statements in the bankruptcy***. In *Falcon Products*, a bankruptcy trust filed suit to recover certain sums that had been previously paid by its debtors to the defendant—a third party who was responsible for administering the debtors' PPO healthcare plan—predicating its argument on the position that the assets did not qualify as an "employee benefit plan." *See In re Falcon Prod., Inc.*, 372 B.R. 474, 477-80 (Bankr. E.D. Mo. 2007), *aff'd*, No. 4:07-CV-1495CAS, 2008 WL 363045 (E.D. Mo. Feb. 8, 2008). Relying on the debtors' affirmative representation in pre-confirmation bankruptcy proceedings that the PPO plan ***was*** an "employee benefit plan," the court held that the trust was judicially estopped from taking a position inconsistent with its debtors' prior statements. *See id*. at 483. In so holding, the court expressly rejected the trust's argument that it was a separate entity from the debtors, finding that the trust was the "***representative of the Debtors' bankruptcy estate***" and thus "***bound by prior***

representations made by the Debtors while they were debtors-in-possession." *See id*. (emphasis added).

Here, the Trust claims that Mallinckrodt's underlying liability for opioid claims is in large part unrelated to Mallinckrodt's products. This completely contradicts Mallinckrodt's own pre-confirmation representation to the bankruptcy court in its June 17, 2021 disclosure statement. There, Mallinckrodt acknowledged in no uncertain terms that the underlying opioid claims "arise out of" Mallinckrodt's products. In the very first sentence under a heading entitled "**KEY EVENTS LEADING TO COMMENCEMENT OF THE CHAPTER 11 CASES**" (stylization in original), Mallinckrodt represented to the bankruptcy court:

> Over the three years prior to the Petition Date, certain of the Debtors and their ultimate parent Debtor Mallinckrodt plc have been involved in 3,034 cases in 50 states and Puerto Rico filed against the Debtors—with 2,785 cases in federal court and 249 cases in state court as of October 7, 2020—***concerning the production and sales of its opioid products***.

See SOF at 60; Ex. 9 to SOF at 48 (emphasis added).

As the representative of Mallinckrodt pursuant to Chapter 11, the Trust cannot now "play[] fast and loose with the judicial process" by taking a clearly inconsistent—in fact, ***opposite***—position to circumvent the Aspen and ACE policies' PCOH coverage limitations and thus "derive an unfair advantage" in this litigation. *See Vacca*, 575 S.W.3d at 225; *New Hampshire*, 532 U.S. at 751. Therefore, the Trust is judicially estopped from adopting its new "made-for-litigation" position that the liability of Mallinckrodt—one of the largest opioid manufacturers in the country, if not the world—arose out of something other than Mallinckrodt's opioid products.

B. THE TRUST DOES NOT DISPUTE THAT THERE WERE NO CLAIMS FIRST MADE AND REPORTED DURING THE 2009-11 POLICY PERIODS.

Having established that the exemplar lawsuits fall within the scope of the PCOH, the only remaining question is whether the 11 exemplar opioid lawsuits trigger the Aspen and ACE policies' PCOH coverage. As discussed above, the policies' PCOH coverage can be triggered "only if…a 'Claim' for damages…is first made in writing against any 'Insured'…during the 'Policy Period'…and written notice is received by us during the 'Policy Period'[,]" or alternatively "written notice of the 'Occurrence' is received by us during the 'Policy Period'[.]" *See* SOF at ¶ 40.[9] The policies further provide that "[a] 'Claim' by a person or organization seeking damages will be deemed to have been made…when notice of such 'Claim' is received and recorded by any 'Insured' in writing and reported to us during the 'Policy Period' or any applicable Extended Reporting Period[.]" *See id.*

The Trust, Aspen, and ACE agree that there were no claims made against Mallinckrodt or reported to the insurers during the subject 2007-11 policy periods. *See* SOF at ¶¶ 48-49. Therefore, the underlying opioid claims do not trigger coverage under the Aspen or ACE policies.

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[9] *See The Renco Grp., Inc. v. Certain Underwriters at Lloyd's, London*, 362 S.W.3d 472, 479 (Mo. Ct. App. 2012) ("The basic distinction between claims-made and occurrence policies is that while the occurrence policy is triggered by the insured's liability-producing conduct, the claims-made policy is triggered by the presentation of a claim."). *See also Wittner, Poger, Rosenblum & Spewak, P.C. v. Bar Plan Mut. Ins. Co.*, 969 S.W.2d 749, 752 (Mo.1998) (same).

V. CONCLUSION

For the reasons discussed above, the 11 exemplar opioid lawsuits against Mallinckrodt unambiguously "arise out of" Mallinckrodt's opioid products and its "representations" regarding opioid products, whether those products be "finished dosage" opioid drugs sold to consumers or APIs sold to the other opioid manufacturers with whom the underlying plaintiffs sought to hold Mallinckrodt jointly and severally liable.

Accordingly, Aspen and ACE respectfully submit that this Court should grant summary judgment in their favor and hold that the exemplar lawsuits are not covered under the 2009-11 Aspen policies or the 2007-11 ACE policies because: (1) they allege injuries falling within the scope of the PCOH; and (2) they were neither made nor reported during the subject policy periods. Aspen and ACE further request that, as a legal and logical extension of the aforementioned relief, this Court's holding apply to all underlying claims for which coverage is sought by the Trust, given that the Trust has put forth the 11 exemplar lawsuits as a representative sample of the full universe of opioid claims against Mallinckrodt.

WHEREFORE, the Defendants, Aspen Insurance UK, Ltd. and ACE American Insurance Company, respectfully request that this Court enter an order granting their Motion for Summary Judgment as set forth above, and for such other and further relief as this Court deems fair and just under the circumstances.

Dated: July 17, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Aspen's and ACE's Memorandum of Law in support of their Joint Motion for Summary Judgment on the Trust's 11 Exemplar Opioid Lawsuits has been served via email on the below counsel of record this 17th day of July, 2024.

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