In the Missouri Court of Appeals
Eastern District

DIVISION FOUR

OPIOID MASTER DISBURSEMENT TRUST II A/K/A OPIOID MDT II, Appellant, v. ACE AMERICAN INSURANCE, ET AL, Respondents.	)	ED113635 Filed: July 21, 2026

Appeal from the Circuit Court of St. Louis County
The Honorable Richard M. Stewart, Judge

Introduction

The Opioid Master Disbursement Trust II (Trust) appeals the circuit court's judgment granting summary judgment in favor of Respondents. The Trust raises one point on appeal, arguing the circuit court erred in finding that a liability insurance policy exclusion applied to claims for bodily injuries caused by an allegedly deceptive promotional campaign marketing unbranded opiate products.

We disagree. Because the bodily injuries the Trust seeks coverage for arise from allegedly false representations—employed in a marketing scheme promoting opiate

manufacturers' products—such injuries fall within the policy exclusion and coverage is precluded. Accordingly, we affirm the circuit court's judgment.

Factual and Procedural Background

Creation of the Trust

Mallinckrodt and its related entities (collectively Debtors) manufactured, marketed, and distributed opioid products. Debtors sold branded opioids—Exalgo, Xartemis, Roxicodone, Magnacet, and Methadose—and generic opioids as well. Additionally, Debtors developed, manufactured, marketed, promoted, and sold active pharmaceutical ingredients (APIs) used by Debtors and other manufacturers to create finished dosage opioid products.

Government entities, third-party payors (such as substance abuse treatment providers), and individuals named Debtors as defendants in over 3,000 lawsuits, alleging harm caused by opioids. The claims included allegations that Debtors engaged in unbranded marketing—promoting opioid products generally without directly associating their brand name with it—in order to increase sales of its products.

Crushed by the financial weight of these lawsuits, Debtors filed for bankruptcy in October 2020. In March 2022, the Trust was created in the bankruptcy proceeding to administer the settlement of opioid-related claims for individuals and entities purportedly harmed by Debtors' actions. As part of the bankruptcy proceeding, Debtors transferred

their insurance coverage rights to the Trust, allowing it to pursue Insurers[1] for coverage arising out of any opioid mass tort claims.

Exemplar Cases

The Trust chose eleven exemplar cases out of the thousands filed to illustrate the types of pre-bankruptcy liability Debtors faced. These exemplar cases fit into two major categories: lawsuits initiated by governmental entities, and personal injury cases, including those involving neonatal abstinence syndrome (NAS) cases.[2] An allegation common to all the opioid lawsuits is that unbranded marketing was designed to understate the risk of opioid use, encourage the overprescribing of opioids, and create an increase in the use of opioids, leading to various bodily and societal injuries alleged in these suits.

Mississippi, Georgia, Florida, and St. Charles County, Missouri, sued Debtors and other entities for their part in engaging in unbranded marketing that purportedly falsely claimed that opioids were not addictive. In their complaints, the governmental entities allege that Debtors strategically used physicians, professional societies, publications,

[1] The Insurer Respondents in this matter are National Union Fire Insurance Company of Pittsburgh, PA (National Union), American Home Assurance Company (American Home), Aspen Insurance UK Ltd. (Aspen), Old Colony State Insurance Company (Old Colony), ACE American Insurance Company (ACE), and American Guarantee and Liability Insurance Company (AGLIC); National Union and American Home are known collectively as (AIG Insurers).

[2] NAS is a condition that affects infants as a consequence of the sudden discontinuation of exposure to opioids after experiencing chronic in utero exposure due to maternal use during pregnancy. NAS claimants allege that after birth, these infants experience excruciating pain due to withdrawal and require years of ongoing treatment to deal with the after effects of exposure.

targeted communications by sales representatives, and patient advocacy groups to disseminate misinformation about the risk of opioid addiction, safety of opioids to treat chronic pain, and appropriate dosage information. Additionally, Mississippi and St. Charles County alleged Debtors engaged in this marketing campaign to avoid the regulations on branded marketing enforced by the Food and Drug Administration. Moreover, the government entities allege that the rise in prescription opioid use led to patients becoming addicted to one of its cheaper alternatives, heroin, when prescriptions could no longer be obtained.

Two of the exemplar suits include wrongful death claims from the estates of two decedents. Both lawsuits allege that after sustaining injuries in automobile accidents, the decedents were prescribed opioids as a result of the unbranded marketing campaign and eventually became addicted. The opioids taken by the decedents were made by Debtors and other manufacturers. Like the Mississippi and St. Charles County complaints, the estates allege Debtors engaged in unbranded marketing to avoid the regulations surrounding branded marketing.

Guardians of children diagnosed with NAS also filed suit against Debtors. The NAS lawsuits claim that Debtors' unbranded marketing led to plaintiffs' mothers ingesting opioids and the plaintiffs suffering from NAS after birth. The Trust seeks coverage under insurance policies acquired by Debtors to pay for the damages like those alleged by the plaintiffs in the exemplar cases.

Insurance Policies

Thirty insurance policies are at issue in this appeal. These policies fit into three categories: primary, umbrella, and excess. We explain each layer of coverage and its operative language below.

Primary Policies: Products-Completed Operations Hazard Exclusion

The AIG Insurers issued Debtors fourteen policies that provide a primary layer of coverage. However, these primary policies exclude coverage for bodily injury within the products-completed operations hazard exclusion (PCOH Exclusion). Under the PCOH Exclusion, coverage is excluded for claims of "'bodily injury' … occurring away from premises you own or rent and **arising out** of '**your product.**'" (emphases added). "Bodily injury" means in part "sickness, or disease… including death." The policies define "your product" to include "[a]ny goods or products … manufactured, sold, handled, distributed or disposed of by you … and **[w]arranties or representations made at any time with respect to the fitness, quality, durability, performance or use of 'your product'; and [t]he providing of or failure to provide warnings or instructions**." (emphasis added).

Umbrella Policies: PCOH Claims-Made Retained Limit Endorsement

The AIG Insurers also issued eight umbrella policies that provide coverage for bodily injury claims, including sickness, disability, disease, death and mental injury, despite such claims falling within the PCOH Exclusion. But coverage of those claims is limited by the language contained in the policies' PCOH Claims-Made Endorsement provision:

> 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 or Extended Reporting Period** (if applicable) or (2)(b) written notice of the Occurrence is received by us during the Policy Period[.]
>
> (emphasis added).

Excess Policies: PCOH Claims-Made Retained Limit Endorsement

Aspen, Old Colony, ACE, and AGLIC issued an additional eight excess policies that follow form to the AIG Insurers' umbrella policies, meaning the PCOH Claims-Made Endorsement sets the same limits for coverage. The excess policies' coverage for bodily injuries arising out of Debtors' products is only triggered if both (1) a claim was made against Debtor and (2) reported to Insurers during the policy period. The Trust admits no such claims were made or reported during the applicable period.

Circuit Court Proceedings

The Trust filed its First Amended Petition for Declaratory Relief against Insurers and several other defendants in July 2022.[3] In December 2023, the Trust initiated a separate, but related proceeding by filing another Petition for Declaratory Relief that added several policies to the case. These Petitions were ultimately consolidated into the current action by the circuit court. In its suit, the Trust sought a declaratory judgment regarding the proper construction, validity, and rights of and under the Insurers' policies.

In each of their answers, the Insurers asserted an affirmative defense that the bodily injuries the Trust is seeking coverage for fall into a coverage exclusion. During the discovery process the Trust moved for partial summary judgment against National Union, one of the two AIG Insurers. Both AIG Insurers opposed the motion and cross-moved for partial summary judgment based on the PCOH Exclusion provision in the AIG primary policies and the PCOH Claims-Made Endorsement provision in the AIG umbrella policies. Excess policy insurers Aspen, ACE, and Old Colony also moved for summary judgment against the Trust, while AGLIC moved only for partial summary judgment. Subsequently, the Trust cross-moved for partial summary judgment against all the excess policy insurers.

After a hearing, on March 10, 2025, the circuit court granted the Insurers' motions for summary judgment. The Trust moved to certify the judgment as final and appealable under Rule 74.01(b), which the circuit court granted. This appeal follows.

[3] The Trust's petition names several other defendants who are not parties to this appeal.

Standard of Review

We review the circuit court's grant of summary judgment regarding the interpretation of insurance policies *de novo.* *Karr v. Kansas City Life Ins. Co.*, 702 S.W.3d 1, 15 (Mo. App. W.D. 2024) (citing *Green v. Fotoohighiam*, 606 S.W.3d 113, 115 (Mo. banc 2020)); *Chastain v. United Fire & Cas. Co.*, 653 S.W.3d 616, 620 (Mo. App. S.D. 2022) (quoting *Burns v. Smith*, 303 S.W.3d 505, 509 (Mo. banc 2010)). This Court does not defer to the circuit court's ruling but instead employs the same criteria used to decide the motion. *Chastain*, 653 S.W.3d at 620 (citing *Newton v. Mercy Clinic E. Communities*, 596 S.W.3d 625, 628 (Mo. banc 2020)).

A circuit court properly awards summary judgment "if the moving party establishes there is no genuine issue as to the material facts and the movant is entitled to judgment as a matter of law." *Karr*, 702 S.W.3d at 15 (quoting *Sachtleben v. Alliant Nat'l Title Ins. Co.*, 687 S.W.3d 624, 629 (Mo. banc 2024)). "Summary judgment is frequently used to resolve issues involving the interpretation of insurance policy provisions" as this presents a question of law. *Id.* (internal citation and quotation omitted). Summary judgment is not a drastic and extreme remedy. *Wilkinson v. Farmers Holding Companies*, 732 S.W.3d 93, 96 (Mo. banc 2026).

Analysis

Point One: The circuit court properly granted summary judgment in favor of the Insurers as the bodily injuries the Trust seeks coverage for arose out of Debtors' products

On appeal, the Trust maintains that the bodily injuries it seeks coverage for did not arise out of Debtors' specific products, but rather that those injuries were wholly caused by other companies' opioid products or illicit opioid products, consequently neither the PCOH Exclusion nor the PCOH Claims-Made Endorsement precludes coverage. Moreover, the Trust asserts that even if the phrases "arise out of" and "your products" could be interpreted to include representations made about unbranded opioids this would create an ambiguity in the contract language and that such ambiguities should be interpreted in favor of coverage and against the Insurers.

Conversely, the Insurers argue that the injuries in question do arise out of or originate from Debtors' products. The Insurers contend that the contractual definition of the term "your product" clearly and unambiguously includes warranties and representations, as well as a failure to provide warnings or instructions about opioids generally, and is not limited to statements regarding the Debtors' branded products. Insurers also contend that the PCOH Claims-Made Endorsement independently precludes coverage because the provision's mandatory claims-made-and-reported prerequisites for coverage were not satisfied. We agree with Insurers.

Contract law principles govern insurance policy language interpretation

Contract law governs the interpretation of insurance policies. *Opioid Master Disbursement Tr. II v. ACE American Insurance*, 688 S.W.3d 690, 696 (Mo. App. E.D. 2024) (internal quotation omitted). Thus, we turn to our well-worn rules of contract interpretation when examining the policy language at issue here. In interpreting contracts, we seek to make effective the parties' intent. *Id.* (internal citation omitted). If the contract is unambiguous on its face, this Court will determine the parties' intent from the contract language alone. *Id.* (internal quotation omitted). "We will only resort to canons of construction if the policy language is ambiguous." *Id.* (internal alterations and quotation omitted). A contract contains ambiguous language "if it is reasonably open to different conclusions." *Id.* (internal quotation omitted).

"Where the policy language [in an insurance policy] has already been judicially defined, no ambiguity exists, and the judicial definition assigned to [the] policy term is controlling." *Shelter Mutual Insurance Company v. Hill*, 688 S.W.3d 638, 645 (Mo. App. W.D. 2024) (internal quotation, quotation marks, and alterations omitted). We read insurance policies as a whole by considering the "general insuring agreement as well as the **exclusions** and definitions." *BBX Cap. Corp. v. Scottsdale Ins. Co.*, 713 S.W.3d 590, 602 (Mo. App. W.D. 2025) (internal quotation omitted) (emphasis added). "While the insured bears the burden of proving coverage under an insurance policy, the insurer bears the burden of showing that a policy exclusion precludes coverage for a particular loss." *Messina v. Shelter Ins. Co.*, 585 S.W.3d 839, 843 (Mo. App. W.D. 2019) (internal

citation omitted) (emphasis removed). With this framework in mind, we turn to the parties' arguments.

A policy exclusion containing the term "arising out of" is not ambiguous and only requires a simple causal relationship between the injury and the subject of the exclusion

Contrary to the Trust's argument, "arising out of" and "your product" create no ambiguity. "The term 'arising out of' in an insurance policy is a 'very broad, general and comprehensive term.'" *Adams v. Certain Underwriters at Lloyd's of London*, 589 S.W.3d 15, 35 (Mo. App. E.D. 2019) (quoting *Schmidt v. Utilities Ins. Co.*, 182 S.W.2d 181, 183 (Mo. banc 1944)) (internal alteration omitted). "Missouri courts have judicially defined 'arising out of' as used in insurance contracts to have its plain and ordinarily understood meaning of 'originating from,' 'having its origins in,' 'growing out of,' or 'flowing from.'" *Richards v. Bunkhouse Bar & Grill, LLC*, 719 S.W.3d 810, 819 (Mo. App. W.D. 2025) (internal quotation omitted). "Arising out of" requires only a simple causal causation, not direct and proximate causation. *Walden v. Smith*, 427 S.W.3d 269, 274 (Mo. App. W.D. 2014) (internal quotation omitted). "When interpreting an insurance policy, we give the policy language its plain meaning, or the meaning that would be attached by an ordinary insurance purchaser." *Richards*, 719 S.W.3d at 818. "An insurance policy is not ambiguous merely because the parties disagree over its meaning." *Hall v. UNUM Life Ins. Co. of Am.*, 705 S.W.3d 686, 692 (Mo. App. S.D. 2024) (internal quotation and alterations omitted).

In *Schmidt*, a coal company's liability policy insured against bodily injuries "arising out of use" of its automobiles, including the loading and unloading of the

company's trucks. *Schmidt*, 182 S.W.2d at 182–83. The Supreme Court of Missouri found coverage applied when plaintiff's injuries were caused by tripping over wooden blocks that were used to unload the company's trucks as the injury was one "arising out of use" of the vehicles. *Id.* at 186. In its analysis of the policy language, the Supreme Court found that the policy language did not require a finding that plaintiff's injury be directly and proximately caused by the use of the automobile to apply coverage. *Id.* at 183–84.

"Arising out of" when used in a coverage inclusion provision like in *Schmidt*—provided coverage as there was a sufficient causal connection between the insured's conduct and the covered risk—the inverse is also true. A policy exclusion applies when an injury arises out of conduct that is specifically excluded by the policy's contractual language. *See Richards*, 719 S.W.3d at 818–19 (applying an assault and battery endorsement that capped coverage at $25,000 for any bodily injuries arising out of an assault or battery caused by any insured, insured's employees, or patrons, where a bar patron was punched by the bar's owner and beaten by seven other patrons, and holding that the insurer's liability was strictly limited to that sub-limit).

The definition of "your products" encompasses representations made about opioids generally, and is not limited to statements only pertaining to Debtors' branded products

The Trust's argument that the injuries caused by Debtors' unbranded marketing campaign do not arise out of Debtors' products, and therefore neither the PCOH Exclusion nor the PCOH Claims-Made Endorsement preclude coverage, presents a matter of first impression for Missouri courts. "To receive guidance on matters of first

impression, we may look to cases from our sister states on a comparable issue if based on sound principles and good reason." *Littlefield v. Norman Rigdon Post 5896, Veterans of Foreign Wars of the United States, Inc.*, 723 S.W.3d 874, 883 (Mo. App. E.D. 2025) (internal citation omitted).

We find persuasive on this issue two cases: *The Travelers Prop. Cas. Co. of Am. v. Actavis, Inc.*, 225 Cal. Rptr. 3d 5 (App. 4th Dist. 2017) and *Dundon as Tru. Of Endo Gen. Unsecured Creditors' Tr. v. ACE Prop. & Cas. Ins. Co*., No. CV 24-4221, 2026 WL 374433 (E.D. Pa. Feb 10, 2026). We examine each case in turn.

Actavis

In *Actavis*, the California Court of Appeals found Watson, an opioid manufacturer, ineligible for insurance coverage under a substantially similar exclusion provision as the one at issue here. The State of California and the City of Chicago filed the underlying complaints, alleging Watson engaged in a "common, sophisticated, and highly deceptive marketing campaign designed to expand the market and increase sales of opioid products." *Id.* at 9, 11–12. "Central to the scheme were representations made by Watson that opioids are rarely addictive." *Id.* at 12. The marketing campaign had the purportedly intended effect of making the United States "awash in opioids" leading to the abuse of and addiction to heroin. *Id.*

The policy exclusions in *Actavis* excluded coverage for bodily injury "arising out of" "your product" which was defined as "any goods or products manufactured, sold, handled, distributed or disposed of by: you." *Actavis*, 225 Cal. Rptr. 3d at 11 (internal alterations omitted). The exclusion also precluded coverage for bodily injuries that arose

out of or resulted from "[w]arranties or representations made at any time, or that should have been made, with respect to the fitness, quality, durability, performance, handling, maintenance, operation, safety, or use of such goods or products." *Id.*

The *Actavis* court found that the opioid crisis and the accompanying rise in heroin, arose from Watson's warranties and representations about opioids via its marketing campaign, although heroin was not one of Watson's products. *Id.* at 20–22. Like the Trust, Watson contended that the exclusion was inapplicable because there was no proximate causation between its conduct and the alleged resulting injury. *Id.* at 26. The court rejected this argument as "Watson's alleged liability arises out of allegations that Watson launched a marketing campaign to sell [opioids] for a purpose for which it was unsuited." *Id.* at 25. Consequently, the *Actavis* court found that the claims in the underlying opioid litigation fell within the PCOH Exclusion and were excluded from coverage. *Id.* at 26.

Dundon

The *Dundon* court held that a PCOH Exclusion, containing nearly identical language to the one before this Court, "bar[red] coverage" for liability in certain lawsuits "to the extent [they] involve claims for bodily injury arising from Endo's products, including Endo's **unbranded promotions**." *Dundon*, 2026 WL 374433, at *11 (emphasis added).

Dundon has remarkably similar facts to the case at bar. Endo, an opioid pharmaceutical manufacturer, filed for bankruptcy in the face of massive opioid litigation, and an unsecured creditors' trust sought coverage from Endo's insurers for

liability posed by those underlying lawsuits. *Id.* at *2. The relevant policies contained a PCOH provision that excluded coverage for "'bodily injury' … arising out of 'your product[.]'" *Id.* at *3 (internal quotation marks omitted). The definition of "your product" included "[w]arranties or representations made at any time, or that should have been made, with respect to the fitness, quality, durability, performance, handling, maintenance, operation, safety or use of such goods or products." *Id.*

The insurers argued that the PCOH Exclusion excluded coverage for bodily injuries alleged in the lawsuits because those injuries arose from Endo's products. *Id.* at *11. The trustee in *Dundon* made the same argument as the Trust does here, Endo's unbranded marketing does not have a sufficient connection to the purported injuries caused by other companies' products or illicit opioids. *Id.*

The *Dundon* court began its analysis, as we have, by applying the basic rules of contract law. Pennsylvania and Missouri contract law share two substantive similarities: (1) the plain and ordinary meaning of clear and unambiguous policy language controls and (2) "arising out of" requires only a causal connection, not proximate causation. *Id.* at *11–12; *see also Opioid Master*, 688 S.W.3d at 696; *see also Walden*, 427 S.W.3d at 274. Just as the Trust attempts to do here, the trustee in *Dundon* sought to manufacture an ambiguity in the contractual language, where none existed.

In its evaluation of the underlying lawsuits, the *Dundon* court found them to be replete—like the exemplar suits at issue here—with allegations that Endo used "unbranded marketing as a tool to increase overall sales of its products." *Id.* at *19 (internal quotation marks omitted). The marketing claims allege that unbranded

marketing was used to overstate the benefits of opioids while downplaying its risks; that unbranded marketing was used in order to evade federal oversight; and that manufacturers employed and directed third parties to disseminate false and misleading information to promote opioids for the treatment of chronic pain. *Id.*

Relying in part on the logic employed in *Actavis*, the *Dundon* court found a similarly sufficient causal connection between Endo's unbranded marketing statements and the bodily injuries pled in the underlying opioid lawsuits. *Id.* at *20. The court reached this finding although the unbranded marketing made no specific mention of Endo's products. *Id.* Therefore, the PCOH Exclusion at issue in *Dundon* barred coverage for Endo's liability from the opioid litigation. *Id.*

This Court's holding

We apply the same reasoning from *Actavis* and *Dundon* here. The Insurers' policies do not provide any coverage to the Trust because the PCOH Exclusion and the PCOH Claims-Made Endorsement apply to the bodily injuries at issue as they arise from Debtors' products. All eleven exemplar suits include claims about Debtors' unbranded marketing campaign. These claims allege that Debtors' falsely asserted that opiates were non-addictive, could safely be used to treat chronic pain, and were efficacious at high doses. The suits also claim that Debtors' used seemingly impartial patient advocacy organizations, physicians, publications and other media to widely disseminate these representations. The claimants allege such representations led to the increase in the use of opioids by the general public which in turn allowed Debtors to profit from increased

sales of its branded opioids, generic opioids, and APIs. Consequently, these claims clearly fall within the definition of "your product."

We are unpersuaded by the Trust's argument that the PCOH Exclusion applies only to Debtors' branded products or representations or warranties about those products. The bodily injuries allegedly suffered by the victims of the opioid crisis clearly arise out of, flow from, or have origins in Debtors intentionally orchestrating this fundamental shift in the medical community and public's understanding of opioids.

Additionally, the PCOH Claims-Made Endorsement clearly precludes coverage under the umbrella and excess policies because Debtors did not satisfy the mandatory "claims-made-and-reported" requirements. No party disputes that the exemplar suits were filed years after such policies had expired, and Debtors never reported any claims during the policy periods. Thus, the clear and unambiguous language of the umbrella and excess policies bars the Trust from receiving coverage.

Conclusion

The judgment of the circuit court is affirmed.



Rebeca Navarro-McKelvey, Judge

John P. Torbitzky, Judge., and
Robert M. Clayton, III, Judge., concur.