

REDACTED VERSION OF D.I. 154

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC, *et al.*,

Reorganized Debtors.¹

Chapter 11

Case No. 20-12522 (JTD)

(Jointly Administered)

OPIOID MASTER DISBURSEMENT TRUST II,

Plaintiff,

v.

Adv. Proc. No. 22-50433 (JTD)

COVIDIEN UNLIMITED COMPANY
(formerly known as Covidien Ltd. and Covidien
plc), COVIDIEN GROUP HOLDINGS LTD.
(formerly known as Covidien Ltd.), COVIDIEN
INTERNATIONAL FINANCE S.A., COVIDIEN
GROUP S.À R.L., and DOE DEFENDANTS 1-500,

Defendants.

**DECLARATION OF JOEL MILLAR IN SUPPORT OF
COVIDIEN'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT BASED ON THE SECTION 546(e) SAFE HARBOR**

I, Joel Millar, hereby declare under penalty of perjury that the foregoing is true and correct:

1. I am a Special Counsel at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Defendants Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A. and Covidien Group S.à.r.l. (collectively, the "Covidien Defendants"). I respectfully submit this declaration in support of *Covidien's Reply Brief in*

¹ The Reorganized Debtor in this chapter 11 case is Mallinckrodt plc. On May 3, 2023, the Court entered an order closing the chapter 11 cases of the Reorganized Debtor's debtor affiliates. A complete list of the debtor affiliates in these Chapter 11 cases may be obtained on the website of the Reorganized Debtor's claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtor's mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

Support of its Motion for Summary Judgment Based on the Section 546(e) Safe Harbor filed contemporaneously herewith in the above-captioned adversary proceeding, based on my personal knowledge of the proceedings in the above-captioned adversary proceeding and review of the documents described below.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the transcript of the *30(b)(6) Deposition of Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A., Covidien Group S.A.R.L. Taken November 13, 2024*.²

3. Attached hereto as **Exhibit 2** is a true and correct copy of the *Errata to the 30(b)(6) Deposition of Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A., And Covidien Group S.A.R.L. Taken On November 13, 2024 with respect to Benjamin Wood*.

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the transcript of the *Deposition of Franck Risler, Ph.D., Taken November 11, 2024*.

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from Shani Shamah, *A Foreign Exchange Primer* (2d ed. 2008).

6. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from Alphabet Inc.'s *Annual Report (Form 10-K)* for the fiscal year ended December 31, 2019, which was filed with the U.S. Securities and Exchange Commission ("SEC") on February 4, 2020.

7. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from Apple Inc.'s *Annual Report (Form 10-K)* for the fiscal year ended September 28, 2013, which was filed with the SEC on October 30, 2013.

² For ease of review, highlighting has been added to the relevant portions of Exhibit 1 that are cited in the Reply Brief. Highlighting has similarly been added to the relevant portions of Exhibits 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, and 15.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the *Errata to the 30(b)(6) Deposition of Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A., And Covidien Group S.A.R.L. Taken On November 13, 2024 with respect to Timothy Husnik.*

9. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from John C. Hull, *Options, Futures, and Other Derivatives* (9th ed. 2014).

10. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from the transcript of the *Deposition of Guy A. Davis Taken On November 7, 2024.*

11. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from Federal Housing Finance Agency, *Enterprise Non-Performing Loan Sales Report* (Dec. 2023).

12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from ISDA, *Hidden in Plain Sight? Derivatives Exposures, Regulatory Transparency and Trade Repositories* (Oct. 2023).

13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from *The Handbook of Loan Syndications and Trading* (Lee M. Shaiman & Bridget K. Marsh eds., 2d ed. 2022).

14. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from Peter Fortune, *Margin Requirements Across Equity-Related Instruments: How Level Is the Playing Field?*, New Eng. Econ. Rev. 31 (2003).

15. Attached hereto as **Exhibit 14** is a true and correct copy of the *Errata to the 30(b)(6) Deposition of Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A., And Covidien Group S.A.R.L. Taken On November 13, 2024 with respect to Ron Garber.*

16. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the *Covidien Defendants' Objections and Responses to Plaintiff's First Set of Interrogatories* dated September 23, 2024.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 31, 2025

/s/ Joel Millar

Joel Millar

EXHIBIT 1

FILED UNDER SEAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Chapter 11
MALLINCKRODT PLC, Case No. 20-12522 (JTD)
Reorganized Debtor.

OPIOID MASTER DISBURSEMENT TRUST II,
Plaintiff, Adversary Proceeding
v. No. 22-50433 (JTD)

COVIDIEN UNLIMITED COMPANY
(formerly known as Covidien Ltd. and Covidien plc),
COVIDIEN GROUP HOLDINGS LTD.
(formerly known as Covidien Ltd.), COVIDIEN
INTERNATIONAL FINANCE S.A., COVIDIEN
GROUP S.A.R.L., and DOE DEFENDANTS 1-500.
Defendants.

30(b)(6) DEPOSITION OF COVIDIEN UNLIMITED COMPANY,
COVIDIEN GROUP HOLDINGS LTD., COVIDIEN INTERNATIONAL
FINANCE S.A., COVIDIEN GROUP S.A.R.L.

Taken November 13, 2024, 10:00 a.m.

At:

Nelson Mullins Riley & Scarborough
1600 Utica Avenue South, Suite 600
St. Louis Park, Minnesota 55416

REPORTED BY: KELLEY E. ZILLES, RPR, Job No.: 7021746

APPEARANCES

On Behalf of Opioid Master Disbursement Trust II:

Quincy M. Crawford, III, Esq.

Lucas Self, Esq.

CAPLIN & DRYSDALE, CHARTERED

1200 New Hampshire Avenue NW, 8th Floor

Washington, D.C. 20036

mcrawford@capdale.com lself@capdale.com

On Behalf of Covidien:

Phil Anker, Esq.

Joel Millar, Esq.

WILMER CUTLER PICKERING HALE & DORR LLP

7 World Trade Center, 250 Greenwich Street

New York, New York 10007

philip.anker@wilmerhale.com

joel.millar@wilmerhale.com

NOTE: The original transcript will be provided to Quincy M. Crawford, Esq., as the taking party of the deposition.

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1 A. Yes.

2 Q. Prior to the spin were those Mallinckrodt
3 entities wholly-owned subsidiaries either directly or
4 indirectly of Covidien entities?

5 A. Yes.

6 Q. Do you recollect that Mr. Crawford asked you
7 questions regarding the indenture, base indenture for the
8 5 billion in outstanding notes as of the time of the
9 spin?

10 A. Yes.

11 Q. And so our record is clear, there were 5 billion
12 in outstanding notes, principal amount, right?

13 A. Principal amount.

14 Q. All right. To your understanding did that
15 indenture provide the entity that goes by the acronym
16 CIFSA an option at any time to call and repurchase the
17 notes?

18 A. Yes.

19 Q. Did it give the note holders the option to sell
20 the notes upon a change of control?

21 A. Yes.

22 Q. If CIFSA had wanted to call the notes, to
23 repurchase the notes, would it have had to provide any
24 notice?

25 A. Yes.

1 Q. And when would it have had to make a payment in
2 relation to that notice?

3 A. Typically, again, governed by the agreement,
4 governed by the particulars of the tranche, it would be
5 calling anywhere from I believe 30 to 90 days.

6 Q. Okay. If CIFSA had sent a notice to call and
7 repurchase the notes, to your understanding would it have
8 been legally obligated at that point to in fact pay for
9 them?

10 A. Yes.

11 Q. So if it had sent a notice to call 5 billion in
12 notes, it would have been legally obligated to pay the
13 \$5 billion?

14 A. Just to make sure I understand the question. The
15 indenture of the prospectus supplements by tranche would
16 govern the ability to call.

17 Q. Let me reframe the question.

18 A. Thank you.

19 Q. Let me rephrase the question. I understand the
20 confusion. Let me provide a hypothetical. Imagine CIFSA
21 had sent a notice to call, to repurchase all of the
22 outstanding tranches, so covering all 5 billion in notes,
23 do you have an understanding as to whether it would have
24 then been legally obligated to pay for those notes?

25 MR. CRAWFORD: Objection. You can answer.

1 Q. To your understanding.

2 A. My understanding is at a time that CIFSA has the
3 right to call the bonds and it executes that call option,
4 then it would be obligated to fulfill that obligation and
5 repay the notes called.

6 Q. And the indenture specified the amount it would
7 have to pay to call the notes, correct?

8 A. It specifies the, effectively a calculation
9 methodology at that time to make settlement on that call.

10 Q. And essentially it's the full principal balance
11 plus accrued interest, correct, plus a make-hold premium?

12 A. It is governed by the document and the document
13 uses a quotation agent to do the calculation, and yes, it
14 is basically a calculation of the principal, outstanding
15 interest and any make-hold premium or other kind of
16 calculation to come up with the settlement amount.

17 Q. And the principal balance for all of the notes at
18 least at the time of the separation agreement was
19 \$5 billion?

20 A. That's correct.

21 Q. So had CIFSA sent a notice to call all of the
22 notes, it would have been obligated to pay \$5 billion
23 plus interest plus what is commonly referred to as a
24 make-hold, is that right?

25 A. Yes.

1 Q. Okay. And if it had defaulted on that
2 obligation, is it your understanding that the two
3 Covidien entities that were guarantors would have been,
4 were legally obligated to guaranty that payment?

5 A. Yes.

6 Q. Just give me a moment. At the time of entry into
7 the separation and distribution agreement, I think you
8 testified the outstanding amount of notes issued by
9 CIFSA, subject to the options you've discussed, was
10 \$5 billion, right?

11 MR. CRAWFORD: Objection.

12 A. Yes.

13 Q. That dollar amount gradually was reduced over
14 time, is that right?

15 A. That's right.

16 Q. And was it reduced in part through the actual
17 exercise by CIFSA of its option to repurchase the notes?

18 A. Yes.

19 Q. Nothing further. Thank you.

20 MR. CRAWFORD: There's nothing else I need.
21 Thank you very much, Mr. Wood.

22 MR. ANKER: With respect to all three
23 depositions to occur today, all of which are 30(b)(6)
24 depositions, the Covidien defendants do not waive
25 signature.

1 Q. In your experience on the deals you've worked on,
2 is it typical that there are adjustments to the purchase
3 price?

4 A. Yes, in my experience it's typical. I would say
5 all of the transactions that I've worked on have
6 adjustments.

7 Q. So were the adjustments to the base consideration
8 set forth in the Digital Surgery agreement, Section 3.1
9 of Exhibit 11 to your deposition, consistent with those
10 you have seen in dozens upon dozens of other deals?

11 A. Yes.

12 Q. In fact, the final purchase price has been
13 greater than [REDACTED] million, not less than [REDACTED] million?

14 A. That's correct.

15 Q. Okay. And let me ask whether there is an update
16 that you'd like to provide to the information in your
17 declaration, in particular to the post closing payments
18 that Covidien S.A.R.L. has made to Digital Surgery's
19 shareholders to acquire all of the shares of Digital
20 Surgery?

21 A. Yes. In Paragraph 8 I note that as of the date
22 of my declaration Covidien S.A.R.L. had paid the selling
23 shareholders an additional [REDACTED] million in [REDACTED]
24 consideration. Since the date of the declaration,
25 Covidien S.A.R.L. has paid an additional [REDACTED] million in

1 [REDACTED] consideration. And so that total of
2 [REDACTED] million in [REDACTED] consideration is now
3 [REDACTED] million in [REDACTED] consideration.

4 Q. And the [REDACTED] million is in addition to the [REDACTED]
5 million, so the total consideration paid for the shares
6 is approximately, paid by Covidien S.A.R.L. to the
7 Digital Surgery shareholders, is approximately
8 [REDACTED] million?

9 A. Yes.

10 Q. Okay. At the time of the entry into the Digital
11 Surgery Limited agreement, February 12, 2020, was there
12 any realistic possibility that the adjustments would have
13 caused the purchase price to be less than [REDACTED] million?

14 A. Can you repeat the question.

15 Q. Sure. The purchase agreement is entered into as
16 of February 12, 2020, right?

17 A. Right.

18 Q. The base price is [REDACTED] million, right?

19 A. Right.

20 Q. Was there an expectation that the closing
21 adjustments would increase or decrease the purchase price
22 from [REDACTED] million?

23 A. I understand your first question. As of
24 February 12th, I don't know that there would have been an
25 expectation that the adjustments would have increased or

1 decreased. Well, if we're including the [REDACTED]
2 consideration in the adjustments, we would expect that
3 the consideration would increase materially from [REDACTED]
4 million.

5 Q. So the expectation was that Covidien S.A.R.L.
6 entered into this transaction expecting to pay net north
7 of [REDACTED] million U.S. to buy the shares when you include
8 the [REDACTED] consideration?

9 A. That's correct. And if your previous question
10 was is it possible that the adjustments would have
11 brought the consideration down below [REDACTED] million, I don't
12 want to opine as to what is possible or not possible, but
13 that would have been extraordinarily unlikely and an
14 extraordinarily negative circumstance if that occurred.

15 Q. Okay. I think Mr. Crawford asked you whether the
16 price and terms for the Digital Surgery acquisition were
17 negotiated. Do you recall that?

18 A. Yes.

19 Q. Okay. Did Covidien S.A.R.L. perform due
20 diligence in connection with this transaction?

21 A. Yes.

22 Q. Did it perform due diligence before it agreed to
23 make the purchase price it did?

24 A. Yes.

25 Q. Digital Surgery was based in what country?

1 A. In the United Kingdom.

2 Q. Okay. Did Covidien S.A.R.L. send employees to
3 the offices of Digital Surgery in the United Kingdom to
4 conduct due diligence?

5 A. Yes, it did.

6 Q. In your experience have Covidien and Medtronic
7 sought to negotiate deals that reflected the market value
8 of the shares they were acquiring?

9 MR. CRAWFORD: Objection.

10 Q. You can answer.

11 A. Yes, we seek to heavily negotiate the prices and
12 terms of our deals so that they're consistent with market
13 value.

14 Q. And was the Digital Surgery transaction
15 consistent with the paradigm you just said where Covidien
16 S.A.R.L. sought to negotiate heavily the purchase price
17 so it reflected market terms?

18 A. Yes, it was.

19 MR. CRAWFORD: Same objection.

20 Q. Let's turn to the Medicea, if I'm pronouncing it
21 correct, transaction. First, was Medicea a public or
22 private company?

23 A. It was a public company.

24 Q. Okay. So its shares traded on the Public
25 Exchange?

1 A. Yes, I believe the Euronext Paris Exchange.

2 Q. And Covidien S.A.R.L. entered into a tender offer
3 agreement making a commitment to purchase, if the shares
4 were tendered, up to all the shares of Medicea, correct?

5 A. Correct.

6 Q. And again, was there due diligence done in that
7 deal by -- I'm sorry, let me be more precise. Was due
8 diligence done by Covidien S.A.R.L.?

9 A. Yes.

10 Q. Did Covidien S.A.R.L. seek to mitigate a
11 transaction market value of the shares it would be
12 acquiring?

13 A. Yes, it did.

14 Q. Let's move to [REDACTED] Where was that
15 company based?

16 A. That company was based in [REDACTED], I believe in
17 [REDACTED].

18 Q. Okay. Did Covidien S.A.R.L. send representatives
19 to the offices of [REDACTED] to perform due
20 diligence?

21 A. Yes, it did, I believe on multiple occasions, I
22 think we made multiple trips there.

23 Q. Would you describe the due diligence on the
24 [REDACTED] deal as limited, moderate or extensive?

25 A. I would describe it as rather extensive,

1 consistent with a significant transaction of this type.

2 Q. Okay. There were a lot of questions about the
3 agreement. Let me try to ask you to see if we can get a
4 clear record. Covidien S.A.R.L. entered into, it
5 actually closed an agreement that gave it the option to
6 acquire all of the shares of [REDACTED], right?

7 A. Correct.

8 Q. And the purchase price had it acquired all the
9 shares would have been [REDACTED], or in the range of
10 [REDACTED] million, subject to certain adjustments, right?

11 A. Correct.

12 Q. Okay. And again, did that price reflect from
13 Covidien S.A.R.L.'s perspective the fair market value of
14 the stock it would have been acquiring?

15 MR. CRAWFORD: Objection.

16 Q. Let me ask it differently. How did the price get
17 arrived at?

18 A. So the price would have been negotiated as
19 between our representatives and [REDACTED] and we
20 would have sought to negotiate a price that was
21 consistent with fair market value and on which Covidien
22 S.A.R.L. could generate a return.

23 Q. I apologize on something. I think I asked all of
24 the last set of questions about all three acquisitions
25 using the term Covidien S.A.R.L. These were actually

1 Medtronic acquisitions, correct? I'm sorry, I take it
2 back. I'm now getting confused myself.

3 MR. CRAWFORD: If you want to say they are
4 all Medtronic transactions, that would be great, it would
5 save us all a lot of time.

6 MR. ANKER: My apologies.

7 A. But just to be clear, I mean, Covidien S.A.R.L.
8 was the party to each of these.

9 Q. Right. You were right, my initial questions were
10 right, and then I had a mind melt.

11 A. Okay.

12 Q. My bad.

13 MR. CRAWFORD: It would save us a lot of
14 time, Phil, if we did this.

15 Q. My bad. Within the Medtronic organization, so
16 that includes Covidien S.A.R.L., are there, is there an
17 internal corporate development team?

18 A. Yes.

19 Q. And can you describe to me what that team does.

20 A. Yes. So that's the primary team within the
21 Medtronic organization that the team I lead supports.
22 And it is, I think of it often as an internal investment
23 banking team that provides internal investment banking
24 like services to the organization to help us evaluate,
25 negotiate and execute our corporate development

1 activities, including mergers and acquisitions, joint
2 ventures, divestiture investments.

3 Q. And did the professionals within that team work
4 on each of the three sets of transactions, that is,
5 Digital Surgery, Medicrea and [REDACTED] that we
6 discussed today?

7 A. Yes.

8 Q. The Medicrea deal, did Covidien S.A.R.L. also
9 engage outside investment bankers?

10 A. Yes, it did.

11 Q. And from what banks?

12 A. From Bank of America and from Societe Generale.

13 Q. And Societe Generale is an international bank
14 based primarily in France?

15 A. Yes, I believe so.

16 Q. And Medicrea was based primarily in France,
17 correct?

18 A. Yes, correct.

19 Q. Okay. One second. No further questions.

20 FURTHER EXAMINATION

21 BY MR. CRAWFORD:

22 Q. So the internal corporate development team, is
23 there a leader of that group?

24 A. Yes.

25 Q. Who's the leader of that group?

1 A. The leader of that group is someone named Chris
2 Eso.

3 Q. How do you spell his last name?

4 A. E-S-O.

5 Q. And how many people were on that team?

6 A. I don't know.

7 Q. More than ten?

8 A. Probably.

9 Q. Do you know who the primary contact was at Bank
10 of America for that investment?

11 A. I don't.

12 Q. How about Societe Generale?

13 A. I don't.

14 Q. I don't have any further questions. That's all I
15 need. Thanks.

16 A. Thank you.

17 FURTHER EXAMINATION

18 BY MR. ANKER:

19 Q. I actually have one more question. I think this
20 was probably incorporated in your answers, but let's get
21 a clear record. With respect to each of the three
22 transactions, were the terms including the price
23 negotiated at arm's length?

24 A. Yes.

25 Q. No further questions.

1 Q. And those six trades are still referenced in this
2 chart as being FX forwards?

3 A. That is correct.

4 Q. Mr. Husnik, I have no further questions. Thank
5 you very much.

6 EXAMINATION

7 BY MR. ANKER:

8 Q. I have some questions for you, Mr. Husnik.

9 A. Okay.

10 Q. In your declaration, which is Exhibit 12, you
11 describe your background. I want to just dig in a little
12 bit. For how many years have you been working in the
13 foreign currency treasury function?

14 A. 12 years, since May 2012.

15 Q. Okay. And is it fair to say that is all you do?

16 A. Yes.

17 Q. And it's been all you've done since May 2012?

18 A. Yes.

19 Q. I'm not asking for a precise number.

20 A. Okay.

21 Q. But can you give me a sense of the number of
22 trades, foreign currency forwards and/or swaps you have
23 been involved in over those 12 years?

24 A. 50,000.

25 Q. As of today, not just limited to Covidien

1 S.A.R.L., but all companies within the Medtronic
2 umbrella, do you have a sense of the total dollar amount
3 of just forwards, not swaps.

4 A. Okay.

5 Q. That Medtronic companies are parties to?

6 A. USD value of that would be approximately 26
7 billion.

8 Q. Okay. And just so we have a clear record, USD
9 stands for United States dollars?

10 A. Yes.

11 Q. Okay. Am I right to understand that within the
12 Medtronic series of companies, which has \$26 billion
13 approximately in forwards outstanding U.S., you are the
14 senior person?

15 A. Yes.

16 Q. Okay. Do you ever attend professional
17 associations and meetings of folks who do what you do for
18 a living?

19 A. Yes, quite regularly.

20 Q. Okay. Do you ever speak at these functions?

21 A. Yes.

22 Q. Can you give me an example of maybe one recently?

23 A. So over the years I spoke at about 20, 20
24 conferences, and most recently I spoke at the Association
25 of Finance Professionals, AFP, in Nashville.

1 Q. And when you say recently, when was that?

2 A. That was the third week of October.

3 Q. Okay. And on what subject did you speak?

4 A. I was speaking on FX forward contracts and FX
5 option contracts and how they can be utilized to help a
6 corporation manage and mitigate foreign currency risk.

7 Q. Okay. The counterparties to Covidien S.A.R.L.
8 on these agreements were banks, is that right?

9 A. That's correct.

10 Q. And you identify several of them. If you can
11 turn to Paragraph 8 of your declaration, which is then
12 Exhibit Number 12 to this deposition.

13 A. Yeah.

14 Q. And so the banks were Barclays, BNP Paribas,
15 Citibank, Deutsche Bank, Bank of America, JPMorgan Chase,
16 Goldman Sachs and Mizuho, correct?

17 A. That is correct.

18 Q. Those are among the largest banks in the world,
19 right?

20 A. Yes.

21 Q. Okay. Do you also from time to time speak to
22 your counterparts, so not someone at a bank, but someone
23 whose job it is for a corporation to manage foreign
24 currency risk?

25 A. Yeah. I'm an active member in a treasury peer

1 group where I meet twice a year in person, several times
2 during the year with people like me, foreign currency
3 risk managers at other multinational corporations.

4 Q. Okay. In any of your conversations with
5 counterparts, in any of your conversations with any of
6 the banks, in any of your conversations at any
7 conference, has anyone ever drawn a distinction between
8 no show amount for currency forward and no show principal
9 amount?

10 MR. CRAWFORD: Objection.

11 Q. Has anyone ever said the two terms mean two
12 different things?

13 MR. CRAWFORD: Objection.

14 A. Can I answer?

15 Q. You can answer.

16 A. So those two terms are synonymous, it's as if
17 you're saying the same thing.

18 Q. Okay. As you use them, they're synonymous,
19 right?

20 A. Right, as I use them.

21 Q. All right. Now I want to ask the question
22 slightly differently. Now I'm not going to focus on how
23 you use them.

24 A. Okay.

25 Q. Has anyone else in any conversation with you, in

1 any presentation in the -- how many years have you been
2 in this business?

3 A. 12.

4 Q. 12 years. Has anyone else at any of these banks,
5 any of the other companies ever suggested to you there's
6 a distinction between the two terms?

7 MR. CRAWFORD: Objection.

8 A. No.

9 Q. Okay. By the way, we referred to ISDA's earlier,
10 do you recall that?

11 A. Yes.

12 Q. And ISDA is an acronym for International Swap
13 Dealers Association?

14 A. Yes.

15 Q. Okay. And they are the master agreements
16 pursuant to which trades were executed, the 2 and a half
17 billion we're talking about between Covidien S.A.R.L. on
18 the one hand and these various major banks on the other
19 hand?

20 A. Yes.

21 Q. Who drafted those ISDA master agreements?

22 A. Our side starts by drafting the language that we
23 want in that document based on -- the ISDA group, which
24 is an international body, kind of creates a boilerplate
25 template, but then it's often heavily modified. So our

1 legal team then took that document, modified it into the
2 language that we preferred, and then that, we would send
3 that to the banks to start a negotiation process.

4 Q. Okay. And just so we have some sense, the Court
5 has some sense, what percentage of the revenue of
6 Medtronic today derives from sales that are not in U.S.
7 dollars but in foreign currencies?

8 A. So Medtronic has approximately 30 billion annual
9 sales and about half of that is in dollars, U.S. dollars,
10 and half of that is in a variety of foreign currencies.

11 Q. And so your job is to manage the risk with
12 respect to \$15 billion, give or take, in revenue in
13 foreign currencies, right?

14 A. Yes.

15 Q. Okay. Now in a forward -- and let's try to give
16 an example.

17 A. Sure.

18 Q. Let's imagine we have a forward contract that is
19 entered into today in which Covidien S.A.R.L. is going to
20 buy dollars in three months and in exchange sell Japanese
21 yen. Tell me how the price of that transaction is
22 derived.

23 A. Okay. So a forward contract has a few pricing
24 components in terms of the execution rate that you end up
25 with at the end. So first there's the spot component.

1 The spot rate are available to determine what that is
2 using market data providers like Bloomberg and asking the
3 bank for their price on spot. And then in addition to
4 spot, forward points are added to the spot rate and
5 forward points are derived from the interest rate
6 differentials between the two currencies in the
7 transaction, so the interest rate differentials between
8 the USA and the Japanese yen. And then that is embedded
9 inside of the execution rate. The all-in execution rate
10 then is a component of those two things.

11 Q. Okay. Let me break that down so we have a clear
12 record. By the spot rate, I take it that today,
13 November 13, 2024, I could exchange today U.S. dollars
14 for Japanese yen?

15 A. Right.

16 Q. Indeed if I were traveling to Japan I might get
17 off at the airport and have to change dollars in my
18 pocket to yen, right?

19 A. Right.

20 Q. Is that what the spot rate is today, the exchange
21 rate between the two currencies?

22 A. Yes, the exchange rate as of today.

23 Q. Okay. But if you're engaging in a forward where
24 the two currencies are not going to be exchanged today,
25 but instead are going to be exchanged three months from

1 now or six months from now or a year from now, you don't
2 know what the spot rate is going to be between then and
3 now, right?

4 A. Right.

5 Q. And if I'm trading dollars for yen, I'm having to
6 go forward to trade a dollar in the future for a yen in
7 the future, I don't get the yen today, right?

8 A. Correct.

9 Q. And so I don't get the benefit of earning
10 interest on that yen today, right?

11 A. Mm-hmm.

12 Q. And the counterparty doesn't get the benefit of
13 getting the dollars today, right?

14 A. Right.

15 Q. And different currencies have different interest
16 rates associated with it, right?

17 MR. CRAWFORD: Objection.

18 A. Correct.

19 Q. And who determines those interest rates?

20 MR. CRAWFORD: Objection. Go ahead.

21 A. The interest rate of a foreign market is
22 essentially determined by market participants, but often
23 derived from the central banks of each of the countries.

24 Q. And so for the U.S. would that central bank be
25 the Federal Reserve?

1 A. Yes.

2 Q. So let's assume for the moment, again, you're
3 trading U.S. dollars, you S.A.R.L., and you're getting
4 Japanese yen, but it's three months out. Let's assume
5 the interest rate for a dollar today set by the Fed is
6 2 percent annually and the interest rate set by the
7 Japanese central bank is 4 percent. How will that
8 difference, 2 percent and 4 percent, is that interest
9 difference taken into account in the calculation of the
10 price for the forward trade?

11 A. So the interest rate differential there would be
12 2 percent. So if you were trading one year forward and
13 the spot rate was say 100, it would be 2 percent
14 difference. So depending on if you were buying or
15 selling, it could be, it could be 2 percent higher or
16 2 percent lower.

17 Q. The ultimate price at which the forward is
18 negotiated -- let me change that. Ultimately is
19 imprecise. The price at which the forward contract is
20 set, what is exchanged in the future, does it or does it
21 not have interest as a component?

22 MR. CRAWFORD: Objection.

23 A. So interest rate differential is embedded into
24 the forward points and so you would get 2 percent more or
25 2 percent less relative to the spot rate today.

REPORTER'S CERTIFICATE

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

I hereby certify that I reported the 30(b)(6) deposition transcript on the 13th day of November 2024, in Minneapolis, Minnesota, and that the witnesses were by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witnesses;

That the cost of the original has been charged to the party who noticed the deposition, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witnesses was reserved.

WITNESS MY HAND AND SEAL THIS 13th day of November 2024.



Kelley E. Zilles, RPR
Notary Public, Washington County, Minnesota
My commission expires 1-31-2030

1 Phil Anker, Esq.

2 philip.anker@wilmerhale.com

3 November 20, 2024

4 RE: Opioid Master Disbursement Trust II v. Covidien Unlimite
Company Et Al

5 11/13/2024, 30(b)(6) Wood, Garber, Husnik (#7021746)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 cs-midatlantic@veritext.com.

16 Return completed errata within 30 days from
17 receipt of testimony.

18 If the witness fails to do so within the time
19 allotted, the transcript may be used as if signed.

20
21
22 Yours,

23 Veritext Legal Solutions
24
25

EXHIBIT 2

FILED UNDER SEAL

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC,

Reorganized Debtor.¹

Chapter 11

Case No. 20-12522 (JTD)

OPIOID MASTER DISBURSEMENT TRUST II,
Plaintiff,

v.

COVIDIEN UNLIMITED COMPANY
(formerly known as Covidien Ltd. and Covidien
plc), COVIDIEN GROUP HOLDINGS LTD.
(formerly known as Covidien Ltd.), COVIDIEN
INTERNATIONAL FINANCE S.A., COVIDIEN
GROUP S.À R.L., and DOE DEFENDANTS 1-
500,

Defendants.

Adv. Proc. No. 22-50433 (JTD)

**ERRATA TO THE 30(b)(6) DEPOSITION
OF COVIDIEN UNLIMITED COMPANY, COVIDIEN GROUP HOLDINGS LTD.,
COVIDIEN INTERNATIONAL FINANCE S.A., AND COVIDIEN GROUP S.À R.L.
TAKEN ON NOVEMBER 13, 2024, WITH RESPECT TO BENJAMIN WOOD**

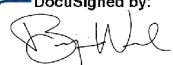
I, Benjamin Wood, have reviewed the transcript of my testimony of November 13, 2024, as corporate designee of Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A., and Covidien Group S.à.r.l. (collectively, the “Covidien Defendants”) with respect to the facts and documents described in my declaration dated July 2, 2024, in support of *Covidien’s Motion for Summary Judgment Based on The Section 546(e) Safe Harbor*

¹ The Reorganized Debtor in this Chapter 11 case is Mallinckrodt plc. On May 3, 2023, the Court entered an order closing the Chapter 11 cases of the Reorganized Debtor’s debtor affiliates. A complete list of the debtor affiliates in these Chapter 11 cases may be obtained on the website of the Reorganized Debtor’s claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtor’s mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

submitted on behalf of the Covidien Defendants in the above-captioned adversary proceeding. In accordance with Rule 30(e)(1) of the Federal Rules of Civil Procedure and Rule 7030 of the Federal Rules of Bankruptcy Procedure, I hereby make the following changes in form and/or substance with respect to the transcript of my testimony:

PAGE	LINE(S)	CHANGE	REASON FOR CHANGE
11	6	“so went” to “so I went”	Missing word
17	13	“in” to “and”	Incorrect word
22	12	“when corporate” to “when a corporate”	Missing word
23	24	“case” to “code”	Incorrect word
33	11	“make-hold” to “make-whole”	Incorrect word
33	15	“make-hold” to “make-whole”	Incorrect word
33	24	“make-hold” to “make-whole”	Incorrect word

I, Benjamin Wood, have read the foregoing deposition and hereby state that the foregoing is true and correct with respect to my testimony, except as noted herein with respect to the foregoing changes.

DocuSigned by:

537DF705067946E...

Benjamin Wood

December 16, 2024

Date

EXHIBIT 3

FILED UNDER SEAL

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

ADV. PROC. NO. 22-50433 (JTD)

IN RE: :

:

MALLINKRODT PLC, et al., :

Reorganize Debtor :

-----x

OPIOID MASTER DISBURSEMENT :

TRUST II, :

Plaintiff, :

:

v. :

:

COVIDIEN UNLIMITED COMPANY, :

COVIDIEN GROUP HOLDINGS, :

LTD., COVIDIEN :

INTERNATIONAL FINANCE :

S.A., COVIDIEN S.A.R.L., :

and Doe Defendants 1-500, :

Defendants. :

-----x

DEPOSITION OF FRANCK RISLER, Ph.D.

NEW YORK, NEW YORK

MONDAY, NOVEMBER 11, 2024

REPORTED BY:

SILVIA P. WAGE, CCR, CRR, RPR

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November 11, 2024

10:00 a.m.

Deposition of FRANCK RISLER, Ph.D., held
at the offices of WilmerHale LLP, Seven
World Trade Center, 250 Greenwich Street,
New York, New York, pursuant to agreement
before SILVIA P. WAGE, a Certified
Shorthand Reporter, Certified Realtime
Reporter, Registered Professional
Reporter, and Notary Public for the
States of New Jersey, New York and
Pennsylvania.

A P P E A R A N C E S:

CAPLIN & DRYSDALE

Attorneys for Plaintiffs

1200 New Hampshire Ave NW #800

Washington, DC 20036

(202) 862-5000

Mcrawford@capdale.com

Lself@capdale.com

BY: QUINCY MONTY CRAWFORD, ESQ.

BY: LUCAS H. SELF, ESQ.

WILMER HALE LLP

Attorneys for Defendants

Seven World Trade Center

250 Greenwich Street, 45th floor

New York, New York 10007

(212) 230-8800

Peter.Neiman@wilmerhale.com

Joel.Millar@wilmerhale.com

BY: PETER G. NEIMAN, ESQ.

BY: JOEL MILLAR, ESQ.

I N D E X

PAGE

WITNESS: FRANCK RISLER, Ph.D.

EXAMINATION BY MR. NEIMAN

6

E X H I B I T S

NO.

DESCRIPTION

PAGE

Exhibit Risler 1 Declaration of
Franck Risler
October 21, 2024

6

Exhibit Risler 2 Appendix B:
Documents Relied
On

13

Exhibit Risler 3 Appendix A:
Curriculum Vitae

16

Exhibit Risler 4 Exhibit 11 File
Under Seal
spreadsheet
marked

61

Confidential -
Subject to
Protective Order

Exhibit Risler 5 Exhibit 9 Filed
Under Seal
Indicative Term
Sheets marked
Confidential -

80

Subject to
Protective Order

Exhibit Risler 6 Exhibit 1 Filed
Under Seal ISDA
2002 Master
Agreement

98

1 (There is a discussion off
2 the record.)

3 Q. Okay. So, sir, one of the
4 things that you have done is you have
5 looked at the bond indentures for the
6 various bonds that a company you called
7 C-I-F-S-A issued, correct?

8 A. That's correct, in the context
9 of the opinion that I'm providing.

10 Q. And those bonds contained
11 certain features that you discuss in your
12 report, right?

13 A. That's correct. I discuss
14 some of the features.

15 Q. And what you're doing is
16 evaluating whether those features will be
17 appropriately described as an option
18 contract?

19 A. That's correct. That's one
20 of the topic I was asked to provide an
21 opinion on.

22 Q. And who asked -- withdrawn.

23 An option you would agree is
24 something that grants the holder of the

1 option the right but not the obligation
2 to buy or sell some asset?

3 A. That's consistent with the
4 typical definition, I believe, I'm
5 providing in 3.7.

6 Q. So you don't disagree with
7 that definition that I just offered?

8 A. Without further context, I
9 think, you're describing what appear to
10 be an option.

11 Q. Okay. And we can talk about
12 put option and a call option.

13 Those are two different kinds of
14 options, right?

15 A. Typically, they are the most
16 common. You have other type, but they
17 are the most common types.

18 Q. Sure.

19 And a put option is an option that
20 gives the holder of the option the right
21 to sell a security at a determined price?

22 A. That's the definition of a
23 put option.

24 Q. And a call option gives the

1 holder of the option the right to buy a
2 security at a specified price?

3 A. That's typical definition of
4 a call option.

5 Q. Okay. And when you reviewed
6 the indentures for these bonds issued by
7 CIFSA, you were looking, in particular,
8 at the option features of those
9 indentures, right?

10 A. That's correct.

11 Q. And what you concluded was
12 that these indentures had things that you
13 described as an embedded call option and
14 an embedded put option, correct?

15 A. That's correct.

16 Q. And so you agree that under
17 the embedded put option, the buyers of
18 these bonds had the option to require
19 CIFSA, C.I.F.S.A., to purchase the bonds
20 at a specified price in the event of a
21 change in control?

22 A. The holder of the bond under
23 certain conditions, yes.

24 Q. It's recorded here as

1 A. I didn't look at that.

2 Q. Okay. And, similarly, on the
3 call option that you found to be embedded
4 in the bond indenture, that option gave
5 CIFSA the right to buy the bonds back
6 from the holders in certain circumstances,
7 right?

8 A. That is correct.

9 Q. CIFSA wasn't obligated to
10 exercise that right, it was an option?

11 A. That is, indeed. That is an
12 option.

13 Q. And you agree that --
14 withdrawn.

15 Another thing you did was look at
16 the guaranties that Covidien Limited and
17 Covidien PLC provided in connection with
18 the bond indentures, right?

19 A. That's one of the opinion
20 that I'm providing.

21 Q. What you concluded was that
22 Covidien Limited and Covidien PLC did
23 guaranty CIFSA's performance of all of
24 its obligations under the bonds?

1 A. From my recollection, I
2 believe, that's what I computed, yes.

3 Q. And that means that you agree
4 that Covidien Limited and Covidien PLC
5 guaranteed CIFSA's obligations under these
6 option features that you've described,
7 right?

8 A. I described the credit
9 enhancement feature of this guaranty.
10 They were providing a guaranty on the
11 debt, including all the feature of this
12 debt.

13 Q. Including the option?

14 A. All the features, including
15 the option.

16 Q. So that means that if the
17 holders exercise the put option and CIFSA
18 didn't pay, Limited and PLC would be
19 obligated to pay under that put option,
20 right?

21 A. Yes.

22 Q. And the same would be true
23 under the call option, if CIFSA exercised
24 the call option and then didn't pay the

1 holders for their notes, Limited and PLC
2 would be required to do so?

3 A. Yes, as a guarantor provide
4 the guaranty of the performance of the
5 bond with all of its features.

6 Q. Including the option feature?

7 A. Including the embedded option
8 features.

9 (Stenographer clarification.)

10 THE WITNESS: Embedded.

11 Q. And if you take a look at
12 Paragraph 1.10 of your report, you
13 describe what you were asked by Counsel
14 to do with regard to these call and put
15 features embedded in the CIFSA indentures,
16 right?

17 A. That's correct. That's how
18 I...

19 Q. And what you were asked to do
20 was to opine on whether these call and
21 put features were, quote, "option
22 contracts"?

23 A. That is correct.

24 Q. And what you did in your

1 asked to provide any legal opinion.

2 Q. Alright. Let's take a look
3 now at the section of your report that
4 talks about the currency forwards.

5 That was another area that you were
6 asked to opine on, correct?

7 A. Yes, that's correct.

8 Q. And to do that, you reviewed
9 the Affidavit that had been submitted by
10 Mr. Husnik, H-U-S-N-I-K?

11 A. Yes, that's correct.

12 Q. And you reviewed the exhibits
13 to his Affidavit?

14 A. That is correct.

15 Q. And you, also, review the
16 documents that were produced in discovery
17 that were relevant to those exhibits?

18 A. We review any document that
19 will provide a description of the FX
20 derivative positions.

21 Q. Okay. And you would agree
22 that S.A.R.L. had a forward agreement
23 related to foreign currency?

24 A. Based on my review, I found a

1 series of FX forward agreement.

2 Q. And these forward agreements
3 require S.A.R.L. to buy a set amount of
4 one currency at a set price in another
5 currency at a specified time in the
6 future?

7 A. That is a definition of an FX
8 forward. Whether you're buying or
9 selling, you have to think about the
10 particular activities together but, yes,
11 that's --

12 Q. Your --

13 A. A commitment of buying or
14 selling a given currency, this is another
15 one in the future at a pre-agreed price.

16 Q. You're agreeing to exchange
17 in the future one currency for another?

18 A. That -- exactly.

19 Q. That's what a forward
20 agreement in currency is?

21 A. Yes.

22 Q. And you found that S.A.R.L.
23 had forward agreements in currency?

24 A. In all the document accessible

1 to me, I only found FX for one, no other
2 product.

3 Q. And you agree those FX
4 forwards are forward agreements?

5 A. I agree with the definition
6 you provided, which is, basically,
7 commitment to buy or sell a given
8 currency versus another in the future at
9 a pre-agreed rate at the time the trade
10 is entered.

11 Q. Okay. And you would agree
12 that the total amount of currency at
13 issue under those forwards peaked at
14 \$2.5 billion in April of 2020?

15 A. I will have to double-check
16 as the amount, but they were very
17 significant. I think the -- for what we
18 reviewed, they were in excess of 1 billion
19 of FX forwards from memory.

20 Q. In excess of 1 billion?

21 A. Of FX forwards.

22 Q. And you agree that that
23 \$1 billion number, more than \$1 billion
24 number could be appropriately described

1 as the notional amount of S.A.R.L.'s FX
2 forward agreements?

3 A. From a market practitioner
4 standpoint, you can describe it as a
5 notional -- what I discuss in my report
6 is that it's different from the principal
7 notional amount.

8 Q. We'll get to that in a
9 second, sir. But I just want to make
10 sure that we have agreement here.

11 You agree that the notional amount
12 of S.A.R.L.'s FX forward agreements was
13 greater than \$1 billion?

14 A. From my recollection, I
15 believe so but -- and, yes, it's in my
16 report, Section 5.1.

17 Q. Okay. And what you're
18 offering an opinion about is whether that
19 notional amount could be referred to as a
20 notional principal amount?

21 A. I'm sorry. Could you repeat
22 the question?

23 Q. I'll try.

24 A. Yes.

1 that you shouldn't use the term notional
2 principal amount in respect of an FX
3 currency forward?

4 A. That's -- if I refer to my
5 report, yes, that's what I discuss in
6 5.6, "For FX forwards, the term 'notional
7 amount,' typically, refers to the amount
8 of currency to be purchased or sold as
9 specified in the contract. Given that FX
10 forwards are noninterest bearing
11 instruments, the notional amount in an FX
12 forward contract should not be construed
13 as notional principal amount, where the
14 latter is used to calculate periodic
15 interest payments for interest bearing
16 instruments."

17 Q. Okay.

18 A. So it was Paragraph 5.6 of...

19 Q. In Paragraph 5.6, that's
20 where you provide the reasoning behind
21 your conclusion that the notional amount
22 in an FX forward agreement "should not be
23 construed as a notional principal
24 amount"?

1 A. Yes. I think, I might be
2 missing the nuance of your question.

3 In Paragraph 5.6, I explain why the
4 notional of FX forward is notional
5 amount, as opposed to principal notional
6 amount. And I articulate why I think so.

7 Q. But that reasoning is
8 contained in Paragraph 5.6 of your report?

9 A. It's summarized in 5.6. There
10 is as well discussion of it in 5.5.

11 Q. Well, 5.5 --

12 A. Explain that FX forward don't
13 pay interest, periodic interest.

14 Q. And then in 5.6 you apply that
15 fact and reason from that fact to your
16 conclusion, correct?

17 A. That's a way to see it, yes.

18 Q. And I noticed that in 5.6 you
19 don't cite any scholarly articles to
20 support your opinion that the total
21 amount -- withdrawn, that the notional
22 amount of a currency forward agreement
23 should not be construed as a notional
24 principal amount?

1 A. No, I don't make reference of
2 academic article.

3 I provide this opinion based on my
4 market knowledge and my view on the
5 weight perceived in the market. And
6 there is an additional reference to a
7 document in Footnote 48.

8 Q. We'll get to Footnote 48 in a
9 second.

10 But you agree that you don't cite
11 any scholarly work to support your
12 opinion?

13 A. I'm not making citation. I'm
14 relying on my experience.

15 Q. Did you look to see whether
16 there were any scholarly works that would
17 support your opinion?

18 A. I'm not sure. We might have
19 looked, but it was after the fact. I --
20 this is my opinion and we may have looked
21 whether or not there were things.

22 Q. Fair enough to say if you
23 found something, you would have put it in
24 your report?

1 A. If we had looked and I had
2 found something, which is simple enough,
3 not subjective misinterpretation, likely,
4 we would have put it in the report.

5 Q. But you didn't?

6 A. As I said, I'm not sure we
7 looked further, cause I provided my
8 opinion based on being a market
9 practitioner.

10 Q. I mean, isn't it a standard
11 practice when an expert like you is
12 providing an opinion to see if there's
13 some scholarship that supports your
14 opinion?

15 A. No. On a lot of markets on
16 topic academic papers, actually, are
17 fairly relevant.

18 Q. Did you take a look and see
19 if there were any financial industry
20 publications that would support your
21 opinion?

22 A. I'm not sure. I would need
23 to double-check.

24 Q. You, certainly, didn't cite

1 second," sir.

2 I just asked you -- you just don't
3 know whether they looked?

4 A. A particular thing if they
5 looked and they didn't find something or
6 they didn't look, I can't recall right
7 now.

8 Q. Okay. And then the one thing
9 that you cite in support for your opinion
10 is this Footnote 48, right?

11 A. Yes. There is this citation.
12 Whether you say it's supporting, it's
13 consistent. It's something that,
14 actually, my team found were looking at
15 -- yeah, my team found.

16 And, again, I'm not a tax expert.
17 I'm not a tax lawyer. I'm not providing
18 legal opinion. It's just having the fact
19 that it seems to be simply defined by a
20 body college regulator.

21 Q. Okay. You don't know what
22 the context is for this IRS regulation
23 that's set in your report?

24 A. What do you mean by

1 "context"?

2 Q. Well, would you consider
3 yourself an expert in that regulation?

4 A. No. As I said, I'm not a tax
5 expert and the purpose was not to provide
6 tax opinion.

7 The purpose was based on an opinion
8 that express supported by industry
9 experience. We refer to something that
10 seems to be a very clear definition from
11 regulator without looking at further tax
12 meaning and so on.

13 Q. Right.

14 So you haven't looked into the
15 circumstances in which this particular
16 regulation comes into play, why it was
17 put in place, what kind of transactions
18 it applies to?

19 A. We've looked at this
20 definition. That's why we're having it.

21 As I said, I'm not a tax expert and
22 I'm not providing opinion on tax matter.

23 Q. You can't give us any
24 information about why the Internal

1 Revenue Service adopted this particular
2 regulation?

3 A. Would you mind precise'ing
4 your question?

5 Q. You can't give us any
6 information about why the Internal
7 Revenue Service adopted this particular
8 regulation?

9 A. You mean the motivation?

10 Q. Yeah.

11 A. That wasn't part of the work
12 I was asked to do.

13 Q. You have no idea whether the
14 purpose of this regulation is similar or
15 completely different from safe harbor
16 provision that's at issue in this case?

17 A. As I said, I haven't looked
18 at and I'm not a tax expert.

19 Q. So you have no idea?

20 A. I haven't looked at it. I
21 don't know.

22 Q. And, sir, fair to say that
23 you didn't send your team out and say,
24 don't look at academic publications,

1 don't look at industry publications, see
2 if you can find something in the tax code
3 about it? That's not an instruction you
4 gave to your team?

5 MR. CRAWFORD: Objection.

6 A. No. We will never work by
7 choosing selectively the sources. If you
8 look at something, you look at the
9 information available.

10 Q. You told them to find anything
11 available that would support or would be
12 consistent with this opinion?

13 A. We would be interested about
14 something which is credible. A regulatory
15 body is credible and ambiguous (phonetic)
16 and that is relevant to the opinion that
17 was expressed based on my industry
18 experience.

19 Q. Alright.

20 A. But not picking and choosing,
21 if that's the question you're asking.

22 Q. Alright. Did you or your
23 team do any research to see if Congress,
24 like, mentioned this tax regulation when

1 THE WITNESS: Yes, of course.

2 MR. CRAWFORD: -- there is not
3 an ambiguity in it.

4 My apologies.

5 A. That's the notation that was
6 used in 5.5.

7 Q. That's the notation you used
8 in 5.5?

9 A. That's correct.

10 Q. Now, I want to see if I can
11 understand how broad this principal that
12 you're articulating here is about when
13 it's proper to refer to something as a
14 "notional principal amount."

15 A. Yes.

16 Q. So let's talk about some
17 other securities that do not involve
18 periodic interest payments, okay?

19 Would you agree with, sir, that a
20 zero coupon bond does not involve periodic
21 interest payments?

22 A. That's correct. Typically, a
23 zero coupon bond does not involve any
24 interest in...

1 Q. Is it your opinion that a
2 zero coupon bond does not have a notional
3 principal amount?

4 A. That's my opinion.

5 Q. Okay. Is it your opinion that
6 a credit default swap does not have a
7 notional principal amount?

8 A. A credit default swap involve
9 the payment of a coupon.

10 Q. It's your opinion that a
11 credit default swap involves the payment
12 of interest?

13 A. Credit default swap involve
14 the payment of -- periodic payment to
15 compensate for the cost of the credit
16 instruments.

17 Q. Is it your view that credit
18 default swaps involve the payment of
19 interest?

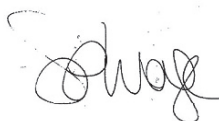
20 A. Not strictly interest. It's
21 interest plus a credit spread, which,
22 basically, compensate for the value of
23 the credit insurance.

24 Q. Okay. And so would you use

1 CERTIFICATE OF REPORTER

2 I, SILVIA P. WAGE, CSR, CRR, RPR, hereby
3 certify that the witness in the foregoing deposition
4 was by me duly sworn to tell the whole truth,
5 nothing but the truth; said deposition was taken
6 down in shorthand by me, a disinterested person,
7 at the time and place therein stated. The testimony
8 of said witness was thereafter reduced to typewriting
9 by computer under my direction and supervision.
10 Before completion of the deposition, review of
11 the transcript [X] was [] was not requested.
12 If requested, any changes made by the deponent (and
13 provided to the reporter) during the period allowed
14 are appended hereto.

15 I further certify that I am not of
16 counsel or attorney for either or any
17 of the parties to the said deposition,
18 nor in any way interested in the event
19 of this cause, and that I am not
20 related to any of the parties thereto.

21
22 
23

24 SILVIA P. WAGE, CSR, CRR, RPR

1 Quincy Crawford, Esq.

2 Mcrawford@capdale.com

3 November 22, 2024

4 Opioid Master Disbursement Trust II v. Covidien Unlimited Co.

5 11/11/2024, Frank Risler (#7021921)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 cs-ny@veritext.com.

16 Return completed errata within 30 days from
17 receipt of testimony.

18 If the witness fails to do so within the time
19 allotted, the transcript may be used as if signed.

20
21
22 Yours,

23 Veritext Legal Solutions
24
25

EXHIBIT 4

FILED UNDER SEAL



Wiley Trading

Second Edition

A Foreign Exchange **Primer**

Shani **Shamah**

11

Non-Deliverable Forwards

A non-deliverable forward (NDF) is a cash settled forward and is conceptually similar to an outright forward foreign exchange transaction.

NDFs are synthetic foreign currency forward contracts on non-convertible currencies or are traded on currencies with very little liquidity in the market place. These derivatives allow corporates and other investors to hedge or take positions to local currency movements without actually dealing in the underlying.

A (notional) principle amount, forward exchange rate and forward date are all agreed at the deal's inception. The difference is that there will be no physical transfer of the principle amount in this transaction. The deal is agreed on the basis that net settlement will be made in American dollars, or another fully convertible currency, to reflect any differential between the agreed forward rate and the actual exchange rate on the agreed forward date. It is a cash-settled outright forward.

The demand for NDFs arises principally out of regulatory and liquidity issues in the underlying currency, where overseas players are essentially barred from access to the domestic market. In most cases, the local authorities actually see NDFs as a natural progression toward a free capital market.

11.1 FIXING METHODOLOGY

When a NDF deal is contracted, a fixing methodology is agreed. It specifies how a fixing spot rate is determined on the fixing date, which is normally two working days before settlement, to reflect the spot value. Generally, the fixing spot rate is based on a reference page on either Reuters or Telerate with a back up of calling between three and five market banks. Settlement is made in the major currency, paid to or by the

Building on a very popular first edition, ***A Foreign Exchange Primer***, Second Edition provides an extremely accessible and up-to-date reference for anyone who wants to work or trade in this unique market.

The book begins with a market overview to introduce readers to this trillion dollar financial market before going on to foreign exchange products such as spot foreign exchange; forward contracts; short- and long-dated contracts; broken-dated contracts; non-deliverable forwards; foreign exchange swaps; currency swaps; foreign exchange options; picturing profit and loss of options; foreign exchange futures and exchange for physical. The book then goes on to discuss essential knowledge required in order to understand the foreign exchange market, with advice on foreign exchange dealing rooms; managing the relationship with an institution; foreign exchange dealings; foreign exchange market orders; electronic foreign exchange trading and margin trading. The book concludes with a discussion on the differences between fundamental and technical analysis, covering their different approaches, key factors impacting currencies and a brand new chapter on market psychology.

Fully revised and updated, ***A Foreign Exchange Primer***, Second Edition provides a clear understanding of how this market functions, from the main products through to the techniques used, coverage of the main participants, details of the various 'players' and an understanding of the 'jargon' used in everyday dealings. It will equip readers with all the practical skills necessary to understand the foreign exchange market today.

 **WILEY**
wiley.com

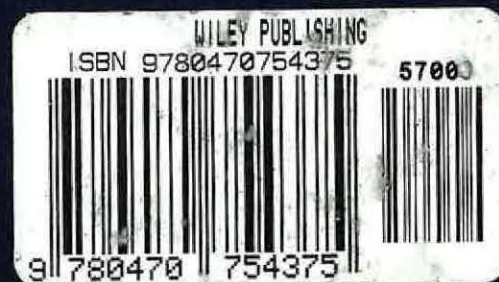


EXHIBIT 5

FILED UNDER SEAL

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark One)



ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2019

OR



TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to .

Commission file number: **001-37580**

Alphabet Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

61-1767919

(I.R.S. Employer Identification No.)

**1600 Amphitheatre Parkway
Mountain View, CA 94043**

(Address of principal executive offices, including zip code)

(650) 253-000

(Registrant's telephone number, including)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, \$0.001 par value	GOOGL	Nasdaq Stock Market LLC (Nasdaq Global Select Market)
Class C Capital Stock, \$0.001 par value	GOOG	Nasdaq Stock Market LLC (Nasdaq Global Select Market)

Securities registered pursuant to Section 12(g) of the Act:

Title of each class

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Equity securities accounted for under the Equity Method

Equity securities accounted for under the equity method had a carrying value of approximately \$1.3 billion as of December 31, 2018 and 2019. Our share of gains and losses including impairment are included as a component of other income (expense), net, in the Consolidated Statements of Income. See Note 7 for further details on other income (expense), net.

Derivative Financial Instruments

We classify our foreign currency and interest rate derivative contracts primarily within Level 2 in the fair value hierarchy as the valuation inputs are based on quoted prices and market observable data of similar instruments.

We recognize derivative instruments as either assets or liabilities in the Consolidated Balance Sheets at fair value. We record changes in the fair value (i.e., gains or losses) of the derivatives in the Consolidated Statements of Income as either other income (expense), net, or revenues, or in the Consolidated Balance Sheets in AOCI, as discussed below. Any components excluded from the assessment of hedge effectiveness are recognized in the same income statement line as the hedged item.

We enter into foreign currency contracts with financial institutions to reduce the risk that our cash flows, earnings, and investment in foreign subsidiaries will be adversely affected by foreign currency exchange rate fluctuations. We also use interest rate derivative contracts to hedge interest rate exposures on our fixed income securities and debt issuances. Our program is not used for trading or speculative purposes.

We enter into master netting arrangements, which reduce credit risk by permitting net settlement of transactions with the same counterparty. To further reduce credit risk, we enter into collateral security arrangements under which the counterparty is required to provide collateral when the net fair value of certain financial instruments fluctuates from contractually established thresholds. We can take possession of the collateral in the event of counterparty default. As of December 31, 2018 and 2019, we received cash collateral related to the derivative instruments under our collateral security arrangements of \$327 million and \$252 million, respectively, which was included in other current assets.

Cash Flow Hedges

We use foreign currency forwards and option contracts, including collars (an option strategy comprised of a combination of purchased and written options), designated as cash flow hedges to hedge certain forecasted revenue transactions denominated in currencies other than the U.S. dollar. The notional principal of these contracts was approximately \$11.8 billion and \$13.2 billion as of December 31, 2018 and 2019, respectively. These contracts have maturities of 24 months or less.

For forwards and option contracts, we exclude the change in the forward points and time value from our assessment of hedge effectiveness. The initial value of the excluded component is amortized on a straight-line basis over the life of the hedging instrument and recognized in revenues. The difference between fair value changes of the excluded component and the amount amortized to revenues is recorded in AOCI. We reflect the gains or losses of a cash flow hedge included in our hedge effective assessment as a component of AOCI and subsequently reclassify these gains and losses to revenues when the hedged transactions are recorded. If the hedged transactions become probable of not occurring, the corresponding amounts in AOCI are immediately reclassified to other income (expense), net.

As of December 31, 2019, the net accumulated loss on our foreign currency cash flow hedges before tax effect was \$82 million, of which \$82 million is expected to be reclassified from AOCI into earnings within the next 12 months.

Fair Value Hedges

We use forward contracts designated as fair value hedges to hedge foreign currency risks for our investments denominated in currencies other than the U.S. dollar. We exclude changes in forward points for the forward contracts from the assessment of hedge effectiveness. We recognize changes in the excluded component in other income (expense), net. The notional principal of these contracts was \$2.0 billion and \$455 million as of December 31, 2018 and 2019, respectively.

Gains and losses on these forward contracts are recognized in other income (expense), net, along with the offsetting gains and losses of the related hedged items.

Net Investment Hedges

We use forward contracts designated as net investment hedges to hedge the foreign currency risks related to our investment in foreign subsidiaries. We exclude changes in forward points for the forward contracts from the assessment of hedge effectiveness. We recognize changes in the excluded component in other income (expense),

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Alphabet Inc.

net. The notional principal of these contracts was \$6.7 billion and \$9.3 billion as of December 31, 2018 and 2019, respectively.

Gains and losses on these forward contracts are recognized in AOCI as part of the foreign currency translation adjustment.

Other Derivatives

Other derivatives not designated as hedging instruments consist of foreign currency forward contracts that we use to hedge intercompany transactions and other monetary assets or liabilities denominated in currencies other than the local currency of a subsidiary. We recognize gains and losses on these contracts, as well as the related costs in other income (expense), net, along with the foreign currency gains and losses on monetary assets and liabilities. The notional principal of the outstanding foreign exchange contracts was \$20.1 billion and \$43.5 billion as of December 31, 2018 and 2019, respectively.

The fair values of our outstanding derivative instruments were as follows (in millions):

		As of December 31, 2018		
	Balance Sheet Location	Fair Value of Derivatives Designated as Hedging Instruments	Fair Value of Derivatives Not Designated as Hedging Instruments	Total Fair Value
Derivative Assets:				
Level 2:				
Foreign exchange contracts	Other current and non-current assets	\$ 459	\$ 54	\$ 513
Total		\$ 459	\$ 54	\$ 513
Derivative Liabilities:				
Level 2:				
Foreign exchange contracts	Accrued expenses and other liabilities, current and non-current	\$ 5	\$ 228	\$ 233
Total		\$ 5	\$ 228	\$ 233
		As of December 31, 2019		
	Balance Sheet Location	Fair Value of Derivatives Designated as Hedging Instruments	Fair Value of Derivatives Not Designated as Hedging Instruments	Total Fair Value
Derivative Assets:				
Level 2:				
Foreign exchange contracts	Other current and non-current assets	\$ 91	\$ 253	\$ 344
Total		\$ 91	\$ 253	\$ 344
Derivative Liabilities:				
Level 2:				
Foreign exchange contracts	Accrued expenses and other liabilities, current and non-current	\$ 173	\$ 196	\$ 369
Total		\$ 173	\$ 196	\$ 369

EXHIBIT 6

FILED UNDER SEAL

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended September 28, 2013

Or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _ to _

Commission file number: 000-10030

APPLE INC.

(Exact name of registrant as specified in its charter)

California

(State or other jurisdiction of incorporation or organization)

94-2404110

(I.R.S. Employer Identification No.)

1 Infinite Loop
Cupertino, California

(Address of principal executive offices)

95014

(Zip Code)

Registrant's telephone number, including area code: (408) 996-1010

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, no par value
(Title of class)The NASDAQ Stock Market LLC
(Name of exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☒ No ☐Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒Non-accelerated filer ☐ (Do not check if a smaller reporting company)Accelerated filer ☐Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes ☐ No ☒

The aggregate market value of the voting and non-voting stock held by non-affiliates of the registrant, as of March 29, 2013, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$416,005,000,000. Solely for purposes of this disclosure, shares of common stock held by executive officers and directors of the registrant as of such date have been excluded because such persons may be deemed to be affiliates. This determination of executive officers and directors as affiliates is not necessarily a conclusive determination for any

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As of September 28, 2013 and September 29, 2012, gross unrealized losses related to individual securities that had been in a continuous loss position for 12 months or longer were not significant.

As of September 28, 2013, the Company considered the declines in market value of its marketable securities investment portfolio to be temporary in nature and did not consider any of its investments other-than-temporarily impaired. The Company typically invests in highly-rated securities, and its investment policy generally limits the amount of credit exposure to any one issuer. The policy requires investments generally to be investment grade, with the primary objective of minimizing the potential risk of principal loss. Fair values were determined for each individual security in the investment portfolio. When evaluating an investment for other-than-temporary impairment, the Company reviews factors such as the length of time and extent to which fair value has been below its cost basis, the financial condition of the issuer and any changes thereto, changes in market interest rates, and the Company's intent to sell, or whether it is more likely than not it will be required to sell, the investment before recovery of the investment's cost basis. During 2013, 2012 and 2011 the Company did not recognize any significant impairment charges.

Derivative Financial Instruments

The Company uses derivatives to partially offset its business exposure to foreign currency and interest rate risk. The Company may enter into forward contracts, option contracts, swaps, or other derivative instruments to offset some of the risk on expected future cash flows, on net investments in certain foreign subsidiaries, and on certain existing assets and liabilities.

To help protect gross margins from fluctuations in foreign currency exchange rates, certain of the Company's subsidiaries whose functional currency is the U.S. dollar hedge a portion of forecasted foreign currency revenue. The Company's subsidiaries whose functional currency is not the U.S. dollar and who sell in local currencies may hedge a portion of forecasted inventory purchases not denominated in the subsidiaries' functional currencies. The Company hedges a portion of its forecasted foreign currency exposure associated with revenue and inventory purchases, typically for up to 12 months.

To help protect the net investment in a foreign operation from adverse changes in foreign currency exchange rates, the Company may enter into **foreign currency forward and option contracts** to offset the changes in the carrying amounts of these investments due to fluctuations in foreign currency exchange rates.

To help protect against adverse fluctuations in interest rates, the Company may enter into interest rate swaps, options, or other instruments to offset a portion of the changes in income or expense due to fluctuations in interest rates.

The Company may also enter into **foreign currency forward and option contracts** to partially offset the foreign currency exchange gains and losses generated by the re-measurement of certain assets and liabilities denominated in non-functional currencies. However, the Company may choose not to hedge certain foreign currency exchange exposures for a variety of reasons including, but not limited to, accounting considerations and the prohibitive economic cost of hedging particular exposures. There can be no assurance the hedges will offset more than a portion of the financial impact resulting from movements in foreign currency exchange rates.

The Company records all derivatives in the Consolidated Balance Sheets at fair value. The Company's accounting treatment of these instruments is based on whether the instruments are designated as hedge or non-hedge instruments. The effective portions of cash flow hedges are recorded in AOCI until the hedged item is recognized in earnings. The effective portions of net investment hedges are recorded in OCI as a part of the cumulative translation adjustment. The ineffective portions of cash flow hedges and net investment hedges are recorded in other income and expense. Derivatives that are not designated as hedging instruments are adjusted to fair value through earnings in the financial statement line item to which the derivative relates.

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The Company had net deferred losses of \$175 million and \$240 million associated with cash flow hedges, net of taxes, recorded in AOCI as of September 28, 2013 and September 29, 2012, respectively. Deferred gains and losses associated with cash flow hedges of foreign currency revenue are recognized as a component of net sales in the same period as the related revenue is recognized, and deferred gains and losses related to cash flow hedges of inventory purchases are recognized as a component of cost of sales in the same period as the related costs are recognized. Deferred gains and losses associated with cash flow hedges of interest income or expense are recognized as a component of other income/(expense), net in the same period as the related income or expense is recognized. The Company's hedged foreign currency transactions and hedged interest rate transactions as of September 28, 2013 are expected to occur within 12 months and five years, respectively.

Derivative instruments designated as cash flow hedges must be de-designated as hedges when it is probable the forecasted hedged transaction will not occur in the initially identified time period or within a subsequent two-month time period. Deferred gains and losses in AOCI associated with such derivative instruments are reclassified immediately into other income and expense. Any subsequent changes in fair value of such derivative instruments are reflected in other income and expense unless they are re-designated as hedges of other transactions. The Company did not recognize any significant net gains or losses related to the loss of hedge designation on discontinued cash flow hedges during 2013, 2012 and 2011.

The Company's unrealized net gains and losses on net investment hedges, included in the cumulative translation adjustment account of AOCI, were not significant as of September 28, 2013 and September 29, 2012. The ineffective portions of and amounts excluded from the effectiveness test of net investment hedges are recorded in other income and expense.

The gain/loss recognized in other income and expense for foreign currency forward and option contracts not designated as hedging instruments was not significant during 2013, 2012 and 2011, respectively. These amounts represent the net gain or loss on the derivative contracts and do not include changes in the related exposures, which generally offset a portion of the gain or loss on the derivative contracts.

The following table shows the notional principal amounts of the Company's outstanding derivative instruments and credit risk amounts associated with outstanding or unsettled derivative instruments as of September 28, 2013 and September 29, 2012 (in millions):

	2013		2012	
	Notional Principal	Credit Risk Amounts	Notional Principal	Credit Risk Amounts
Instruments designated as accounting hedges:				
Foreign exchange contracts	\$35,013	\$ 159	\$41,970	\$ 140
Interest rate contracts	\$ 3,000	\$ 44	\$ 0	\$ 0
Instruments not designated as accounting hedges:				
Foreign exchange contracts	\$16,131	\$ 25	\$13,403	\$ 12

The notional principal amounts for outstanding derivative instruments provide one measure of the transaction volume outstanding and do not represent the amount of the Company's exposure to credit or market loss. The credit risk amounts represent the Company's gross exposure to potential accounting loss on derivative instruments that are outstanding or unsettled if all counterparties failed to perform according to the terms of the contract, based on then-current currency or interest rates at each respective date. The Company's gross exposure on these transactions may be further mitigated by collateral received from certain counterparties. The Company's exposure to credit loss and market risk will vary over time as a function of currency and interest rates. Although the table above reflects the notional principal and credit risk amounts of the Company's derivative instruments, it does not reflect the gains or losses associated with the exposures and transactions that the instruments are intended to hedge. The amounts ultimately realized upon settlement of these financial instruments, together with the gains and losses on the underlying exposures, will depend on actual market conditions during the remaining life of the instruments.

EXHIBIT 7

FILED UNDER SEAL

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC,

Reorganized Debtor.¹

Chapter 11

Case No. 20-12522 (JTD)

OPIOID MASTER DISBURSEMENT TRUST II,
Plaintiff,

v.

COVIDIEN UNLIMITED COMPANY
(formerly known as Covidien Ltd. and Covidien
plc), COVIDIEN GROUP HOLDINGS LTD.
(formerly known as Covidien Ltd.), COVIDIEN
INTERNATIONAL FINANCE S.A., COVIDIEN
GROUP S.À R.L., and DOE DEFENDANTS 1-
500,

Defendants.

Adv. Proc. No. 22-50433 (JTD)

**ERRATA TO THE 30(b)(6) DEPOSITION
OF COVIDIEN UNLIMITED COMPANY, COVIDIEN GROUP HOLDINGS LTD.,
COVIDIEN INTERNATIONAL FINANCE S.A., AND COVIDIEN GROUP S.À R.L.
TAKEN ON NOVEMBER 13, 2024, WITH RESPECT TO TIMOTHY HUSNIK**

I, Timothy Husnik, have reviewed the transcript of my testimony of November 13, 2024, as corporate designee of Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A., and Covidien Group S.à.r.l. (collectively, the “Covidien Defendants”) with respect to the facts and documents described in my declaration dated July 9, 2024, in support of *Covidien’s Motion for Summary Judgment Based on The Section 546(e) Safe Harbor*

¹ The Reorganized Debtor in this Chapter 11 case is Mallinckrodt plc. On May 3, 2023, the Court entered an order closing the Chapter 11 cases of the Reorganized Debtor’s debtor affiliates. A complete list of the debtor affiliates in these Chapter 11 cases may be obtained on the website of the Reorganized Debtor’s claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtor’s mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

submitted on behalf of the Covidien Defendants in the above-captioned adversary proceeding. In accordance with Rule 30(e)(1) of the Federal Rules of Civil Procedure and Rule 7030 of the Federal Rules of Bankruptcy Procedure, I hereby make the following changes in form and/or substance with respect to the transcript of my testimony:

PAGE	LINE(S)	CHANGE	REASON FOR CHANGE
72	21	"committee" to "Covidien"	Incorrect word
77	4	"This a declaration" to "This is a declaration"	Missing word
82	11	"by" to "buying"	Incorrect word
82	12	"swapping" to "swap is"	Incorrect word
94	8	"no show amount" to "notional amount"	Incorrect word
94	8-9	"no show principal amount?" to "notional principal amount?"	Incorrect word
101	18	"pound" to "pounds"	Incorrect word
103	20	"Ron Garber" to "Timothy Husnik"	Incorrect deponent identified for the portion of testimony that was concluded at 2:20 p.m., 11-13-2024

I, Timothy Husnik, have read the foregoing deposition and hereby state that the foregoing is true and correct with respect to my testimony, except as noted herein with respect to the foregoing changes.


 Timothy Husnik

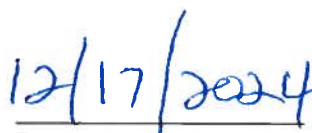
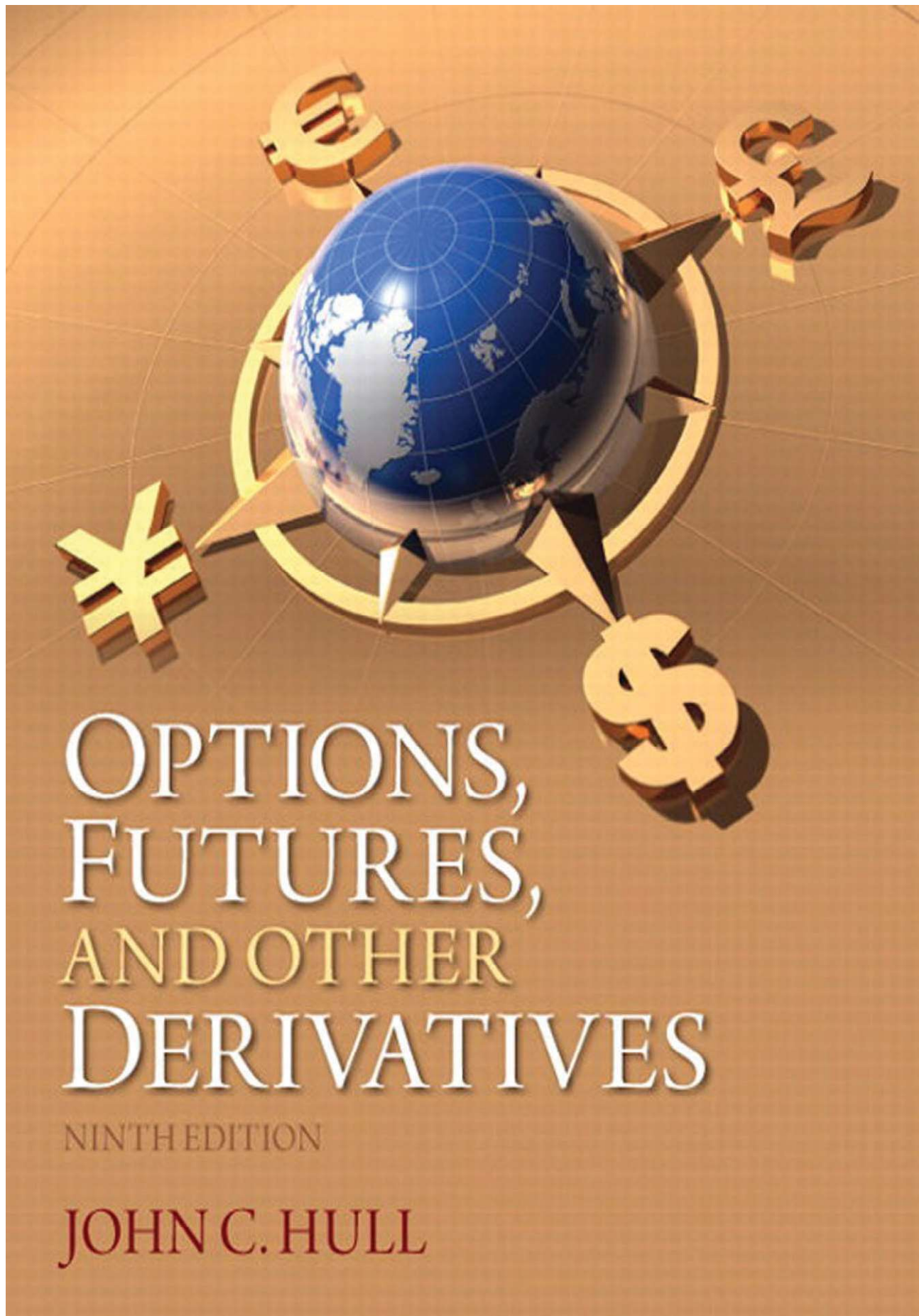

 Date

EXHIBIT 8

FILED UNDER SEAL



specified period. In a *puttable swap*, one party has the option to terminate the swap early. Options on swaps, or *swaptions*, are also available. These provide one party with the right at a future time to enter into a swap where a predetermined fixed rate is exchanged for floating and are discussed in Chapter 29.

Commodity Swaps, Volatility Swaps, and Other Exotic Instruments

Commodity swaps are in essence a series of forward contracts on a commodity with different maturity dates and the same delivery prices. In a *volatility swap* there are a series of time periods. At the end of each period, one side pays a preagreed volatility, while the other side pays the historical volatility realized during the period. Both volatilities are multiplied by the same notional principal in calculating payments. Volatility swaps are discussed in Chapter 26.

Swaps are limited only by the imagination of financial engineers and the desire of corporate treasurers and fund managers for exotic structures. In Chapter 33, we will describe the famous 5/30 swap entered into between Procter and Gamble and Bankers Trust, where payments depended in a complex way on the 30-day commercial paper rate, a 30-year Treasury bond price, and the yield on a 5-year Treasury bond.

SUMMARY

The two most common types of swaps are interest rate swaps and currency swaps. In an interest rate swap, one party agrees to pay the other party interest at a fixed rate on a notional principal for a number of years. In return, it receives interest at a floating rate on the same notional principal for the same period of time. In a currency swap, one party agrees to pay interest on a principal amount in one currency. In return, it receives interest on a principal amount in another currency.

Principal amounts are not usually exchanged in an interest rate swap. In a currency swap, principal amounts are usually exchanged at both the beginning and the end of the life of the swap. For a party paying interest in the foreign currency, the foreign principal is received, and the domestic principal is paid at the beginning of the swap's life. At the end of the swap's life, the foreign principal is paid and the domestic principal is received.

An interest rate swap can be used to transform a floating-rate loan into a fixed-rate loan, or vice versa. It can also be used to transform a floating-rate investment to a fixed-rate investment, or vice versa. A currency swap can be used to transform a loan in one currency into a loan in another currency. It can also be used to transform an investment denominated in one currency into an investment denominated in another currency.

There are two ways of valuing interest rate and currency swaps. In the first, the swap is decomposed into a long position in one bond and a short position in another bond. In the second it is regarded as a portfolio of forward contracts.

When a financial institution enters into a pair of offsetting swaps with different counterparties, it is exposed to credit risk. If one of the counterparties defaults when the financial institution has positive value in its swap with that counterparty, the financial institution is liable to lose money because it still has to honor its swap agreement with the other counterparty. Counterparty risk, collateral, and the impact of netting are discussed in Chapter 24.

Business Snapshot 25.1 Who Bears the Credit Risk?

Traditionally banks have been in the business of making loans and then bearing the credit risk that the borrower will default. However, banks have for some time been reluctant to keep loans on their balance sheets. This is because, after the capital required by regulators has been accounted for, the average return earned on loans is often less attractive than that on other assets. As discussed in Section 8.1, banks created asset-backed securities to pass loans (and their credit risk) on to investors. In the late 1990s and early 2000s, banks also made extensive use of credit derivatives to shift the credit risk in their loans to other parts of the financial system.

The result of all this is that the financial institution bearing the credit risk of a loan is often different from the financial institution that did the original credit checks. As the credit crisis starting in 2007 has shown, this is not always good for the overall health of the financial system.

25.1 CREDIT DEFAULT SWAPS

The most popular credit derivative is a *credit default swap (CDS)*. This was introduced in Section 7.12. It is a contract that provides insurance against the risk of a default by particular company. The company is known as the *reference entity* and a default by the company is known as a *credit event*. The buyer of the insurance obtains the right to sell bonds issued by the company for their face value when a credit event occurs and the seller of the insurance agrees to buy the bonds for their face value when a credit event occurs.¹ The total face value of the bonds that can be sold is known as the credit default swap's *notional principal*.

The buyer of the CDS makes periodic payments to the seller until the end of the life of the CDS or until a credit event occurs. These payments are typically made in arrears every quarter, but deals where payments are made every month, 6 months, or 12 months also occur and sometimes payments are made in advance. The settlement in the event of a default involves either physical delivery of the bonds or a cash payment.

An example will help to illustrate how a typical deal is structured. Suppose that two parties enter into a 5-year credit default swap on March 20, 2015. Assume that the notional principal is \$100 million and the buyer agrees to pay 90 basis points per annum for protection against default by the reference entity, with payments being made quarterly in arrears.

The CDS is shown in Figure 25.1. If the reference entity does not default (i.e., there is no credit event), the buyer receives no payoff and pays 22.5 basis points (a quarter of 90 basis points) on \$100 million on June 20, 2015, and every quarter thereafter until March 20, 2020. The amount paid each quarter is $0.00225 \times 100,000,000$, or \$225,000.² If there is a credit event, a substantial payoff is likely. Suppose that the buyer notifies the seller of a credit event on May 20, 2018 (2 months into the fourth year). If the contract

¹ The face value (or par value) of a coupon-bearing bond is the principal amount that the issuer repays at maturity if it does not default.

² The quarterly payments are liable to be slightly different from \$225,000 because of the application of the day count conventions described in Chapter 6.

Differential Swaps

A *differential swap*, sometimes referred to as a *diff swap*, is an interest rate swap where a floating interest rate is observed in one currency and applied to a principal in another currency. Suppose that the LIBOR rate for the period between t_i and t_{i+1} in currency Y is applied to a principal in currency X with the payment taking place at time t_{i+1} . Define V_i as the forward interest rate between t_i and t_{i+1} in currency Y and W_i as the forward exchange rate for a contract with maturity t_{i+1} (expressed as the number of units of currency Y that equal one unit of currency X). If the LIBOR rate in currency Y were applied to a principal in currency Y, the cash flow at time t_{i+1} would be valued on the assumption that the LIBOR rate at time t_i equals V_i . From the analysis in Section 30.3, a quanto adjustment is necessary when it is applied to a principal in currency X. It is correct to value the cash flow on the assumption that the LIBOR rate equals

$$V_i + V_i \rho_i \sigma_{W,i} \sigma_{V,i} t_i \quad (33.3)$$

where $\sigma_{V,i}$ is the volatility of V_i , $\sigma_{W,i}$ is the volatility of W_i , and ρ_i is the correlation between V_i and W_i .

Example 33.4

In a 3-year diff swap agreement with annual payments, USD 12-month LIBOR is received and sterling 12-month LIBOR is paid with both being applied to a principal of 10 million pounds sterling. LIBOR/swap zero rates are used for discounting and are 5% per annum (with semiannual compounding) for all maturities. The volatility of all 1-year forward rates in the US is estimated to be 20%, the volatility of the forward USD/sterling exchange rate (dollars per pound) is 12% for all maturities, and the correlation between the two is 0.4.

In this case, $V_i = 0.05$, $\rho_i = 0.4$, $\sigma_{W,i} = 0.12$, $\sigma_{V,i} = 0.2$. The floating-rate cash flows dependent on the 1-year USD rate observed at time t_i should therefore be calculated on the assumption that the rate will be

$$0.05 + 0.05 \times 0.4 \times 0.12 \times 0.2 \times t_i = 0.05 + 0.00048t_i$$

This means that the net cash flows from the swap at times 1, 2, and 3 years should be assumed to be 0, 4,800, and 9,600 pounds sterling for the purposes of valuation. The value of the swap is therefore

$$\frac{0}{1.05} + \frac{4,800}{1.05^2} + \frac{9,600}{1.05^3} = 12,647$$

or 12,647 pounds sterling.

33.5 EQUITY SWAPS

In an equity swap, one party promises to pay the return on an equity index on a notional principal, while the other promises to pay a fixed or floating return on a notional principal. Equity swaps enable a fund managers to increase or reduce their exposure to an index without buying and selling stock. An equity swap is a convenient way of packaging a series of forward contracts on an index to meet the needs of the market.

EXHIBIT 9

FILED UNDER SEAL

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

-----:
In re: :
:
MALLINCKRODT PLC, et al., : Chapter 11
: Case No. 20-12522
Reorganized Debtor.: (JTD)
-----:
OPIOD MASTER DISBURSEMENT :
TRUST II, :
:
Plaintiff, :
:
vs. : Adv. Pro. No.
: 22-50433 (JTD)
COVIDIEN UNLIMITED COMPANY, :
(formerly known as Covidien :
ltd, and Covidien plc), :
et al., :
:
Defendants. :

-----:
DEPOSITION OF GUY A. DAVIS

DATE: November 7, 2024
TIME: 9:57 a.m.
LOCATION: WilmerHale, LLP
2100 Pennsylvania Avenue, NW
Washington, D.C. 20037
REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

Veritext Legal Solutions
1250 Eye Street, NW, Suite 350
Washington, D.C. 20005

A P P E A R A N C E S

On behalf of Plaintiff:

QUINCY M. CRAWFORD, ESQUIRE

LUCAS SELF, ESQUIRE

Caplin & Drysdale

1 Thomas Circle, Northwest, Suite 1100

Washington, D.C. 20005

(202) 862-5071

mcrawford@capdale.com

On behalf of Defendants:

PETER G. NEIMAN, ESQUIRE

WilmerHale, LLP

7 World Trade Center

250 Greenwich Street

New York, New York 10007

(212) 295-6487

peter.neiman@wilmerhale.com

- and -

JOEL W. MILLAR, ESQUIRE

WilmerHale, LLP

2100 Pennsylvania Avenue, Northwest

Washington, D.C. 20037

(202) 663-6167

joel.millar@wilmerhale.com

C O N T E N T S

EXAMINATION BY:

PAGE

Counsel for Defendants

4

DEPOSITION EXHIBITS:

PAGE

Exhibit 1 Davis Declaration, 10/21/24

8

Exhibit 2 Exhibit 7 to Declaration (Documents and
information relied upon)

10

Exhibit 3 Exhibit 8 to Declaration (Curriculum Vitae)

15

Exhibit 4 Exhibit 4 to Declaration (Profile of the
206 steps required to execute Mallinckrodt
spinoff)

47

(* Exhibits attached to transcript.)

1 response to my question about mark-to-market value
2 of the stock, you talked about having to know, you
3 know, whether I owned it or not and adjusting its
4 value for presentation purposes and the like.

5 Okay?

6 I want to ask you not a question about
7 what U.S. GAAP requires but just generally about
8 the concept of mark-to-market. Okay?

9 Are you familiar with the concept of
10 mark-to-market outside of the context of U.S. GAAP
11 reporting?

12 A No.

13 Q Do you know whether the concept of
14 marking an asset to market is used outside the
15 context of preparing financial statements in
16 accordance with U.S. GAAP?

17 A It's not. I mean, mark-to-market
18 accounting is U.S. GAAP. It's a process that's --

19 Q Okay.

20 A -- that is defined in U.S. GAAP. So
21 there isn't -- there isn't -- I know of no other
22 use or application of mark-to-market accounting

1 outside U.S. GAAP because it's -- it's contained
2 in U.S. GAAP.

3 Q Well, for example, do you know whether
4 people involved in risk management sometimes use
5 the phrase "mark to market"?

6 A I don't understand your question. In
7 what context?

8 Q That's a very simple question. You can
9 answer it.

10 Do you know whether people involved in
11 risk management sometimes use the phrase "mark to
12 market"?

13 A I don't know.

14 Q Do you know whether regulators sometimes
15 require regulated entities to mark assets to
16 market when they make reports to the regulators?

17 A Can you repeat your question?

18 Q Sure. Do you know whether regulators
19 sometimes require regulated entities to mark
20 assets to market when they make reports to the
21 regulators?

22 A I'm not aware of any circumstances where

1 anyone requires mark-to-market reporting that's
2 not consistent with generally accepted accounting
3 principles. If a -- if a regulator wants to see
4 the assets of a company reported mark -- mark to
5 market, that is going to be consistent with what
6 GAAP requires the company to do. It's a GAAP
7 concept.

8 Q Well, sir, did you in preparing your
9 report do any research into how any regulator uses
10 the term "mark to market"?

11 A No.

12 Q Did you look for example at how the
13 Federal Reserve uses that term?

14 A Not specifically, no.

15 Q Did you look, for example, at how the
16 Chicago Board Options Exchange uses that term?

17 A No.

18 Q Did you look at how the FHFA uses that
19 term?

20 A No.

21 Q Did you look at how ISDA uses that term?

22 A No.

1 Q Fair to say the only thing you looked at
2 was how that term is used in U.S. GAAP?

3 A Mark to market is a U.S. GAAP concept.
4 It was created in U.S. GAAP in order to improve
5 the financial reporting of -- the accuracy of
6 financial reporting of companies that invest in
7 certain types of assets.

8 Q But could you answer my question? Fair
9 to say that the only thing that you looked at in
10 preparing your report was how the term "mark to
11 market" was used in U.S. GAAP?

12 A Yes.

13 Q Okay. Now, I want to make sure I
14 understand the contours of the opinion that you're
15 offering here, sir, with regard to U.S. GAAP, so
16 let's -- so I want to make sure I've got this
17 properly.

18 Your view is that a contract to buy a
19 security is never mark to market under U.S. GAAP;
20 is that fair?

21 A Yes.

22 Q Okay. And that doesn't depend on

1 let me ask you my question again.

2 MR. CRAWFORD: Make sure he finishes his
3 question before you talk because she can't type
4 things down when two people are talking at the
5 same time. So thank you.

6 THE WITNESS: Okay.

7 MR. CRAWFORD: Sorry about that.

8 BY MR. NEIMAN:

9 Q Sure. Mr. Garber's affidavit describes
10 contracts related to the purchase of three
11 securities: The stock of Medicea, the stock of
12 Digital Surgery and the stock of [REDACTED]
13 right?

14 A Yes.

15 Q And you are offering an opinion that
16 related to mark-to-market value, correct?

17 A No.

18 Q Okay. How would you describe the
19 opinion you're offering?

20 A I'm describing the opinion as those
21 contracts do not represent mark-to-market
22 positions. They don't represent an asset that the

1 company owns that needs to be marked to market.

2 Q As a matter of U.S. GAAP accounting?

3 A There's nothing to mark to market from a
4 practical standpoint. There's -- there is --
5 there isn't an asset on the books of the company
6 or anywhere else that you need to mark to market,
7 mark to market being an accounting principle and a
8 process that companies go through to accurately
9 reflect their financial statements, but it's not
10 an asset that they own until the company closes --

11 Q Okay.

12 A -- on the transaction.

13 Q I understand. I'm just trying to see if
14 I can get some clarity here.

15 There is a contract --

16 A Uh-huh.

17 Q -- between S.A.R.L. and each of these
18 three companies, right?

19 A Yes.

20 Q And then each of those contracts relates
21 to stock, correct?

22 A They relate to the potential acquisition

1 of stock, yes.

2 Q And each of those stocks has a market
3 value, right?

4 A Yes.

5 Q And the way we normally define what a
6 market value is, is it's the amount that a willing
7 buyer and a willing seller would agree to pay in
8 an arm's-length transaction, right?

9 A Yes.

10 Q Okay. So the market value of the stock
11 that Covidien S.A.R.L. agreed to purchase from
12 Digital Surgery is the amount that a willing buyer
13 and a willing seller would agree to pay for that
14 stock in an arm's-length transaction, right?

15 A Yes.

16 Q Okay. And you're not questioning
17 whether this agreement between Covidien S.A.R.L.
18 and Digital Surgery was arm's-length?

19 A No.

20 Q And you're not questioning whether the
21 other two agreements discussed in Mr. Garber's
22 affidavit were arm's-length transactions, correct?

1 A Correct.

2 Q So you would agree with me that the
3 purchase prices in those contracts would define
4 the fair value of the stock that was being
5 purchased at the time the contracts were entered
6 into?

7 A It's -- I mean, there -- there may have
8 been other influences that -- that affected what
9 the parties agreed to, but it is a -- it is a
10 representation of fair value, yes. It's -- it's
11 likely a fair value, but --

12 Q Your -- I'm sorry.

13 A -- with additional information, there
14 could be other -- other influences that would
15 cause the price to go up or down from what
16 somebody else would pay. But it's likely a
17 representation of fair value.

18 Q And to be clear, you are not offering an
19 opinion in this case that those purchase prices do
20 not represent fair value?

21 A No, I'm not.

22 Q Am I correct that when you mark

1 is a securities contract within the meaning of the
2 Bankruptcy Code, are you?

3 A I am not.

4 Q Okay. And you note in your report that
5 there were what you call 231 transactions that
6 were executed in connection with the Separation
7 Agreement; is that right?

8 A Yes.

9 Q It's your opinion that each of those
10 transactions was a transaction that was executed
11 in connection with the Separation Agreement?

12 A Yes.

13 Q Okay. And then you offered your opinion
14 as to whether each of those 231 transactions
15 constituted a settlement payment as you understand
16 that term, right?

17 A Can you repeat your question?

18 Q Sure. You offered your opinion as to
19 whether each of those 231 transactions constituted
20 a settlement payment as you understand that term,
21 right?

22 A I think I'm saying the same thing, but

1 MR. CRAWFORD: What page are we on?

2 MR. NEIMAN: The last page, page 23 of
3 23.

4 BY MR. NEIMAN:

5 Q And we look at the transaction 8.1.1,
6 "MIFSA redeemed shares from Covidien PLC (and
7 holds them in treasury) in exchange for cash."

8 Do you see that?

9 A Yes.

10 Q Your conclusion is that was a settlement
11 payment?

12 A Yes.

13 MR. NEIMAN: Okay. That's all I have.

14 MR. CRAWFORD: We needed to take a break
15 for that? I'm sorry.

16 I have no questions, so thank you.

17 (Whereupon, at 11:25 a.m., the
18 deposition of GUY A. DAVIS
19 was concluded.)

20 * * * * *

21

22

CERTIFICATE OF NOTARY PUBLIC

I, SHARI R. BROUSSARD, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



SHARI R. BROUSSARD

Notary Public in and for the
District of Columbia

My commission expires:

August 14, 2025

A C K N O W L E D G E M E N T
O F D E P O N E N T

I, GUY A. DAVIS, do hereby acknowledge

I have read and examined the foregoing pages of

testimony, and the same is a true, correct and

complete transcription of the testimony given by

me, and any changes or corrections, if any, appear

in the attached errata sheet signed by me.

Date

GUY A. DAVIS

Page 61

1 Quincy M. Crawford, Esquire

Caplin & Drysdale

2 1 Thomas Circle, Northwest, Suite 1100

Washington, D.C. 20005

3
IN RE: Opiod Master Disbursement Trust II vs.

4 Covidien Unlimited, et al.

5 Dear Mr. Crawford:

6 Enclosed please find your copy of the
7 deposition of GUY A. DAVIS, along with
8 the original signature page. As agreed, you will
9 be responsible for contacting the witness
10 regarding signature.

11 Within 30 days of November 21, 2022, please
12 forward errata sheet and original signed signature
13 page to counsel for Defendant, Peter G. Neiman.

14 If you have any questions, please do not
15 hesitate to call. Thank you.

16 Yours,

17
18 Veritext Legal Solutions
19
20
21
22

EXHIBIT 10

FILED UNDER SEAL



ENTERPRISE NON-PERFORMING LOAN SALES REPORT

December 2023



Further Enhancements to NPL Sale Requirements

High Loan-to-Value (LTV) loan modification requirements: For borrowers who apply for assistance and have a mark-to-market LTV ratio above 115 percent, servicers will be required to evaluate these borrowers for loan modifications (HAMP or proprietary) that include principal and/or arrearage forgiveness.

Proprietary loan modification standards: Proprietary modifications must either be fixed rate for the term of the modification or limit payment increases consistent with HAMP requirements: the initial period of a reduced interest rate must last for at least 5 years and interest rate increases are limited to 1 percent per year.

No "walk aways": If a property securing a loan is vacant, buyers and servicers may not abandon the lien and "walk away" from the property. Instead, if a foreclosure alternative is not possible, the servicer must complete a foreclosure or must sell or donate the loan, including to a government or nonprofit entity.

Restriction on "contract for deed": NPL buyers must agree that they will not enter into, or allow servicers to enter into, contract for deed or lease to own agreements on REO properties unless the tenant or purchaser is a nonprofit organization.

Restrictions on loans in a forbearance plan: Starting in June 2023, loans that are in a forbearance plan or are within 90 days of exiting a forbearance plan may not be included in a loan sale.



EXHIBIT 11

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Hidden in Plain Sight?

Derivatives Exposures, Regulatory Transparency and Trade Repositories

Recent turbulence in various markets has raised concerns among some policymakers about their ability to see and monitor the risk exposures faced by counterparties from their derivatives transactions. Key data about these exposures is available due to mandated derivatives trade reporting requirements – via derivatives trade repositories – that have been established over the past decade.

But, for a variety of reasons, this information may well be ‘hidden in plain sight’ – not easily understood, not readily functional, not easily shared between policymakers, and therefore not as useful as it should be. This paper highlights relevant data that is available, discusses its value, explains the hurdles policymakers face in effectively using it, and suggests steps that policymakers might take to address and overcome these challenges to improve the usefulness and functionality of the data they currently receive.

REGULATORY TRANSPARENCY AND DERIVATIVES TRADE REPOSITORIES

Key data about derivatives activity and exposures is available due to mandated derivatives trade reporting requirements – via derivatives trade repositories – that have been established over the past decade.

Four key information sets are of particular relevance in this discussion: counterparty identification, notional amounts, valuations and risk metrics (including, for example, deltas and DV01s).

Counterparty Identification: Counterparties to derivatives trades are required to report legal entity identifiers (LEIs) for each transaction to trade repositories¹. Each LEI links to key counterparty reference data (eg, the official name of the legal entity, registered address, country of formation, etc), which essentially answers the question ‘Who is Who?’².

This means LEIs can be used to search for and to aggregate trades and exposures for each individual legal entity. As a result, they can be an important tool for regulators to spot and assess increases in trading activity and market risk.

There are, however, limits to monitoring activity and exposures using LEIs for individual entities. For example, many firms have multiple subsidiaries and operating entities, each of which has its own unique LEI. Policymakers may want to identify increases in and absolute levels of exposure on an aggregated basis across complex corporate structures and hierarchies. In other words, they need to know not just ‘Who is Who’, but also ‘Who Owns Whom’³.

Fortunately, solutions exist for mapping entities in a common structure. As stated by the Global Legal Identifier Foundation, legal entities that have or acquire an LEI report their direct accounting consolidating parent, as well as their ultimate accounting consolidating parent⁴. In addition, there are several solutions available to regulators that map LEIs required in derivatives trade reporting with third-party reference databases⁵. Use and integration of these mapping solutions can significantly enhance the ability of policymakers to flag increased activity and exposures across a firm.

Notional Outstanding: Notional measures the size of a transaction (not its risk) and is required to be reported for each trade. Regulators can aggregate notionals on each LEI/counterparty and monitor large increases or decreases on any frequency they choose, including daily or weekly. The value of this type of analysis is evidenced by a European Securities and Markets Authority (ESMA) report on Archegos, referenced later in this paper, which identified Archegos’s exposures via trade repository data.

Some firms may have multiple LEIs, and policymakers will likely find it valuable to look at notionals across all related counterparties. While mapping notional exposures in this way requires an investment in resources (eg, the use of a third-party service and data staff to implement and integrate it into regulatory operations), it can provide additional insights to assist regulators with their supervisory responsibilities.

Mark-to-market Valuation: A key metric of market risk exposure – the mark-to-market (MtM) value of a trade – is also available to regulators through trade repositories.

The MtM value is the present value of the trade (for example, in fixed-to-floating interest rate swaps, it is the difference between the present value of the fixed payments and the present value of the floating payments). It indicates a counterparty’s gain or loss on a trade at a given point in time. The MtM value of a transaction is updated in reporting to repositories on a daily basis⁶.

¹ Trades that are cleared in the EU also require legal entity identifiers to be provided to clearing houses

² www.gleif.org/en/lei-data/access-and-use-lei-data/level-1-data-who-is-who#

³ www.gleif.org/en/lei-data/access-and-use-lei-data/level-2-data-who-owns-whom

⁴ www.gleif.org/en/lei-data/access-and-use-lei-data/level-2-data-who-owns-whom

⁵ www.gleif.org/en/lei-data/lei-mapping

⁶ In the US, registered swap dealers and major swap participants are required to report valuations daily. In the EU/UK, the daily valuation reporting requirement pertains to financial counterparties and firms designated as non-financial counterparties +

EXHIBIT 12

FILED UNDER SEAL

THE HANDBOOK OF LOAN SYNDICATIONS AND TRADING

Second Edition

Editors:

LEE M. SHAIMAN

BRIDGET K. MARSH



New York Chicago San Francisco Athens London
Madrid Mexico City Milan New Delhi
Singapore Sydney Toronto

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CHAPTER 8

The Secondary Loan Market

Overview of the Secondary Loan Market

Theodore Basta

Executive Vice President of Market Analytics and
Investor Strategy
Loan Syndications and Trading Association

The U.S. Leveraged Loan Market Through the Lens of the S&P/LSTA Leveraged Loan Index

Marina Lukatsky

Senior Director
S&P Global Market Intelligence
Leveraged Commentary and Data

The Secondary Loan Market: Settling Loan Transactions

Sheryl Fulton

Associate Manager
IHS Markit

leveraged lending activity. For that reason, most trades in the secondary market occurred on the distressed side, as banks looked to clear their books of loans that had declined in value since their initial syndication. But the market was clearly changing, and in 1995 the Loan Syndications and Trading Association (LSTA) was formed, with a mandate to promote the orderly development of a fair, efficient, liquid, and professional trading market for corporate loans. In those early years, standardized documentation was the most significant contributor to the rise in liquidity in the leveraged loan market. Because loans are not securities, no single authority regulates their sale and trading. As the LSTA began delivering on its mandate to create and improve loan trading documentation and standard market practices, the availability of secondary market pricing information became of the utmost importance.

By the mid-1990s, a growing class of asset managers were recognizing bank loans as a relatively stable, senior secured asset class. However, many of these nonbank lenders wanted (or needed) to value their loan investments on a regular (often daily) basis. In the early days of loan trading, there was no service that provided valuations. Initially, originating banks (which came to be thought of as primary dealers, or brokers, as in the bond market) were increasingly asked by their nonbank clients to provide "indicative quotes," known as the indicative "bid" (the level at which the dealer might buy the loan) and the indicative "ask" (the level at which the dealer might sell the loan). This process was typically accomplished by faxing individual "ax sheets" containing indicative prices back and forth between clients and dealers. Clients would then need to manually aggregate prices from several dealers to value their portfolio holdings. Because this was clearly a cumbersome and inefficient process, pricing services developed to meet the market's need for a reliable, independent source of secondary loan prices. At the same time, auditors and comptrollers of the many banks that were participating in secondary trading demanded an independent third-party provider of secondary market prices to validate the levels at which loan traders were marking their loan positions "to market." In early 1996, the LSTA established a dealer quote-based secondary mark-to-market (MTM) process to value loans at a price indicative of where they would presumably trade, providing the broker-dealer community with a standard pricing methodology. The LSTA began collecting monthly dealer quotes (indicative bid and ask values reflective of where a loan would be expected to trade) on roughly

EXHIBIT 13

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Margin Requirements Across Equity-Related Instruments: How Level Is the Playing Field?

When interest rates rose sharply in 1994, a number of derivatives-related failures occurred, prominent among them the bankruptcy of Orange County, California, which had invested heavily in structured notes called “inverse floaters.”¹ These events led to vigorous public discussion about the links between derivative securities and financial stability, as well as about the potential role of new regulation. In an effort to clarify the issues, the Federal Reserve Bank of Boston sponsored an educational forum in which the risks and risk management of derivative securities were discussed by a range of interested parties: academics; lawmakers and regulators; experts from nonfinancial corporations, investment and commercial banks, and pension funds; and issuers of securities. The Bank published a summary of the presentations in Minehan and Simons (1995).

In the keynote address, Harvard Business School Professor Jay Light noted that there are at least 11 ways that investors can participate in the returns on the Standard and Poor’s 500 composite index (see Box 1). Professor Light pointed out that these alternatives exist because they differ in a variety of important respects: Some carry higher transaction costs; others might have higher margin requirements; still others might differ in tax treatment or in regulatory restraints.

The purpose of the present study is to assess one dimension of those differences—margin requirements. The adoption of different margin requirements for otherwise identical risk and reward positions might create an uneven playing field that shifts traders and investors from high-margin to low-margin instruments as they seek greater leverage or lower carrying costs. This can result in inefficient trading, as when traders pay

Peter Fortune

The author is Senior Economist and Advisor to the Director of Research at the Federal Reserve Bank of Boston. He is grateful to Michelle Barnes, Jeffrey Fuhrer, and Richard Kopcke for constructive comments.

The exchanges on which the stock is traded set “exchange” margin requirements.⁹ Currently, the exchange margin requirements for common stock traded on the New York Stock Exchange, the American Stock Exchange, and Nasdaq are uniform: NYSE Rule 431 and NASD Rule 2520 require maintenance margin of at least 25 percent of the value of stock held long and 30 percent of the value of stock sold short. Specific hedged positions are subject to different requirements. For example, stocks sold short against the box (a long position offset by a short position) must maintain margin equal to 5 percent of the long position. The settlement period for exchange margins is daily, that is, the value of, and margin in, an account are computed at the close of trading, and any margin calls are immediately issued. Rule 431 requires satisfaction of exchange margin calls within 15 days. The collateral allowed by NYSE is that allowed by Regulation T: Margin calls can be satisfied by deposit of cash, exempted securities, or margin securities, or by a transfer from the SMA. Again, only the loan value of securities can be used to meet a margin call. For example, with an exchange margin of 25 percent, only 75 percent of the deposit of margin stock can be used to meet an exchange margin call.

Brokers also set “house” margin requirements using portfolio-based margin systems. House margins can be no lower, and are often higher, than exchange margin requirements. Recent indications suggest that house margin requirements have typically been 35 percent of the value of margin securities, although during the stock market bubble of the late 1990s some brokers set house margin requirements on specific classes of stock as high as 100 percent (no loan value). While stock exchange rules require that margin calls must be met within 15 days, brokers rarely allow that much time: House margin calls are rarely outstanding for more than five business days,¹⁰ and brokers can require immediate payment or unilaterally liquidate under-margined positions at their discretion. Variation margin is not mandated by federal, exchange, or house margin requirements. Thus, daily price fluctuations do not give rise to margin calls unless the margin falls below the level required by the house or by the exchange.

Transactions in common stocks and many other securities are cleared through the Depository Trust and Clearing Corporation (DTCC), created by a recent merger of the National Security Clearing Corporation (NSCC), which provided clearing and settlement services, and the Depository Trust Corporation (DTC), which maintains the electronic registry of stock owner-

ship. While DTCC has membership criteria and uses capital standards and other methods of ensuring that its members make the payments that transactions require, it does not set margin requirements for common stocks.

Margin Requirements for Equity or Equity Index Options

Once the terms of, and parties to, a trade are verified, the obligation to deliver and make payment for option contracts is assumed by the clearinghouse. In the case of exchange-traded equity options, all clearing is done by the Options Clearing Corporation (OCC). The OCC establishes margin requirements to ensure that the risk it acquires from performance guarantees is minimal.

The options exchanges establish both initial and maintenance margin requirements, specify the payment period within which margin must be paid, and dictate the instruments that are acceptable for satisfaction of margin requirements. The CBOE’s Rule 12.2 follows the federal and exchange standards for common stock payment periods by specifying that initial margin must be obtained as promptly as possible but no later than five days after the trade, and that maintenance margin must be obtained as promptly as possible but within 15 days of the margin deficiency. The CBOE requires that option contracts be marked to market daily: At the end of each trading day, margin surplus or deficiency is calculated, and margin calls are issued by 7:00 a.m. the following day. Margin calls must be satisfied by 9:00 a.m. unless a waiver is granted. Margin can be paid in cash or in “cash equivalents” as defined in Regulation T’s section 220.2: U.S. Treasury securities, negotiable bank CDs, bankers acceptances issued by U.S. banks and payable in the United States, and money market mutual funds.

Table 2 shows the CBOE’s minimum margin requirements for naked options—options that are not used as hedges or in combination with other options—as well as for several option spreads and combinations. For example, under CBOE Rule 12.3, the buyer of a CBOE-listed option less than nine months to expi-

⁹ Exchanges also have the authority to set initial margin requirements if they do not violate the requirements of Regulation T. This authority is rarely used, although there are some prominent examples of exchanges setting 100 percent initial margins for some highly volatile stocks.

¹⁰ The SEC’s Rule 15c3-1 requires a charge against a broker-dealer’s net capital for margin calls outstanding for more than five days. This discourages brokers from extending calls beyond that time.

EXHIBIT 14

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC,

Reorganized Debtor.¹

Chapter 11

Case No. 20-12522 (JTD)

OPIOID MASTER DISBURSEMENT TRUST II,
Plaintiff,

v.

COVIDIEN UNLIMITED COMPANY
(formerly known as Covidien Ltd. and Covidien
plc), COVIDIEN GROUP HOLDINGS LTD.
(formerly known as Covidien Ltd.), COVIDIEN
INTERNATIONAL FINANCE S.A., COVIDIEN
GROUP S.À R.L., and DOE DEFENDANTS 1-
500,

Defendants.

Adv. Proc. No. 22-50433 (JTD)

**ERRATA TO THE 30(b)(6) DEPOSITION
OF COVIDIEN UNLIMITED COMPANY, COVIDIEN GROUP HOLDINGS LTD.,
COVIDIEN INTERNATIONAL FINANCE S.A., AND COVIDIEN GROUP S.À R.L.
TAKEN ON NOVEMBER 13, 2024, WITH RESPECT TO RON GARBER**

I, Ron Garber, have reviewed the transcript of my testimony of November 13, 2024, as corporate designee of Covidien Unlimited Company, Covidien Group Holdings Ltd., Covidien International Finance S.A., and Covidien Group S.à.r.l. (collectively, the “Covidien Defendants”) with respect to the facts and documents described in my declaration dated June 28, 2024, in support of *Covidien’s Motion for Summary Judgment Based on The Section 546(e) Safe Harbor*

¹ The Reorganized Debtor in this Chapter 11 case is Mallinckrodt plc. On May 3, 2023, the Court entered an order closing the Chapter 11 cases of the Reorganized Debtor’s debtor affiliates. A complete list of the debtor affiliates in these Chapter 11 cases may be obtained on the website of the Reorganized Debtor’s claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtor’s mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

submitted on behalf of the Covidien Defendants in the above-captioned adversary proceeding. In accordance with Rule 30(e)(1) of the Federal Rules of Civil Procedure and Rule 7030 of the Federal Rules of Bankruptcy Procedure, I hereby make the following changes in form and/or substance with respect to the transcript of my testimony:

PAGE	LINE(S)	CHANGE	REASON FOR CHANGE
42	3	“issue” to “issued”	Incorrect word
43	9	“surgical” to “surgical robotics”	Missing word
56	18	“close unless” to “close, and thus”	Incorrect word
66	10	“mitigate” to “negotiate”	Incorrect word
69	2	“divestiture investments” to “divestitures and minority investments”	Missing words
69	12	“From Bank of America” to “Bank of America”	Extraneous word

I, Ron Garber, have read the foregoing deposition and hereby state that the foregoing is true and correct with respect to my testimony, except as noted herein with respect to the foregoing changes.



Ron Garber

12/19/24

Date

EXHIBIT 15

FILED UNDER SEAL

**REUNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

MALLINCKRODT PLC,

Reorganized Debtor.¹

Chapter 11

Case No. 20-12522 (JTD)

OPIOID MASTER DISBURSEMENT TRUST II,
Plaintiff,

v.

COVIDIEN UNLIMITED COMPANY
(formerly known as Covidien Ltd. and Covidien
plc), COVIDIEN GROUP HOLDINGS LTD.
(formerly known as Covidien Ltd.), COVIDIEN
INTERNATIONAL FINANCE S.A., COVIDIEN
GROUP S.À.R.L., and DOE DEFENDANTS 1-
500,

Defendants.

Adv. Proc. No. 22-50433 (JTD)

**COVIDIEN DEFENDANTS' OBJECTIONS AND RESPONSES TO
PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure (the "Federal Rules") and Rules 7026 and 7033 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Defendants Covidien Limited ("Covidien Limited"), Covidien Group Holdings Ltd., Covidien International Finance S.A., and Covidien Group S.à.r.l. (collectively, the "Covidien Defendants"), by and through their undersigned counsel, hereby set forth their objections and responses (the

¹ The Reorganized Debtor is Mallinckrodt plc. On May 3, 2023, the Court entered an order closing the Chapter 11 cases of the Reorganized Debtor's affiliates. A complete list of those Debtor affiliates (the "Additional Debtors") may be obtained on the website of the Reorganized Debtor's claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Reorganized Debtor's mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042. As used in these Objections and Responses, the term "Debtors" refers to Mallinckrodt plc and the Additional Debtors in the Bankruptcy Cases (as that term is defined below).

“Objections and Responses”) to the *First Set of Interrogatories to Defendants*, dated August 22, 2024 (the “Interrogatories”) from the Opioid Master Disbursement Trust II (the “Trust”), including the definitions and instructions therein.

These Objections and Responses are based upon information reasonably available and specifically known to the Covidien Defendants and their attorneys as of the date of service. As discussed elsewhere in these Objections and Responses, the Spinoff (defined below) at the heart of this lawsuit occurred more than a decade ago, and the Covidien Defendants are continuing to inquire regarding the relevant facts. The Covidien Defendants reserve the right to supplement, amend, or otherwise modify these Objections and Responses pursuant to Federal Rule 26(e) and Bankruptcy Rule 7026, including after considering information obtained through further investigation and discovery, including but not limited to the Trust’s productions. Further, these Objections and Responses are based upon the allegations in the amended complaint [Adv. D.I. 59]² (the “Amended Complaint”), which is subject to a motion for summary judgment that has been filed by the Covidien Defendants [Adv. D.I. 103] (the “Summary Judgment Motion”). The Covidien Defendants reserve the right to amend, modify, limit, or correct their Objections and/or Responses, subject to and based on the outcome of that motion and any other motions filed (or other developments) in this Adversary Proceeding. Nothing in these Objections and Responses should be construed as waiving any rights, claims or defenses that otherwise might be available to the Covidien Defendants, nor should the Covidien Defendants’ response to any Interrogatory be deemed an admission of the existence, relevance, authenticity, or admissibility in evidence of the documents requested or these Objections and Responses.

² References to “Adv. D.I.” herein refer to docket numbers on the above captioned adversary proceeding (the “Adversary Proceeding”). References to “D.I.” herein refer to docket numbers in the main bankruptcy proceedings, jointly administered under Bankr. Case No. 20-12522.

Set of Requests for Production of Documents, in which the Covidien Defendants have agreed to produce documents, to the extent such documents exist and can be located after a reasonable search, some of which may contain information responsive to this Interrogatory. The Covidien Defendants further state that responsive information may be contained in the Third Party Productions, to which the Covidien Defendants do not have access. The Covidien Defendants further refer the Trust to their Federal Rule 26(a) Initial Disclosures, served on the Trust on June 14, 2024. In addition to any advisors identified in any of the foregoing sources, the Covidien Defendants also identify Arthur Cox LLP, which advised Covidien plc's board of directors in its consideration of the Spinoff and Covidien plc in its planning and execution of the Spinoff, with respect to issues of Irish law.

INTERROGATORY NO. 5:

Identify and describe in detail any payments or transfers based on or attributable to Pre-2007 Spinoff Tax Liabilities that Post-Spin Covidien has sought from, received from, or imposed on Post-Spin Mallinckrodt under the Tax Matters Agreement, including the date(s) and dollar amounts of the payments or transfers to Post-Spin Covidien or to any governmental entity.

RESPONSE TO INTERROGATORY NO. 5:

The Covidien Defendants object to this Interrogatory to the extent that it calls for legal conclusions and/or legal analysis. The Covidien Defendants further object to this Interrogatory as vague and ambiguous, not relevant to any party's claim or defense, not proportional to the needs of the case, and overly burdensome and expensive compared to the likely benefit, including to the extent that it requests that the Covidien Defendants "[i]dentify and describe in detail any payments or transfers based on or attributable to Pre-2007 Spinoff Tax Liabilities" and to the extent that it calls for information unrelated to, or outside of the time period relevant to, the claims asserted in the Amended Complaint. The Covidien Defendants also object to this Interrogatory to the extent that it calls for information protected by any privilege belonging to the Covidien Defendants,

including the attorney-client privilege, the attorney work-product doctrine, the common interest privilege, and/or any other additional available privilege, immunity, or protection.

Subject to and without waiving its General Objections, pursuant to Federal Rule 33(d), made applicable to these proceedings through Bankruptcy Rule 7033, the Covidien Defendants refer the Trust to the Prior Productions as well as the *Objections and Responses to Plaintiff's First Set of Requests for Production of Documents*, in which the Covidien Defendants have agreed to produce documents, to the extent such documents exist and can be located after a reasonable search, some of which may contain information responsive to this Interrogatory. The Covidien Defendants further state that responsive information may be contained in the Third Party Productions, to which the Covidien Defendants do not have access. The Covidien Defendants further state that, in connection with the Tax Matters Agreement and the Separation Agreement, and based on the review of applicable records, Post-Spin Mallinckrodt has paid Covidien Ventures Ltd. approximately \$252,944 in net tax liabilities attributable to the period 2007 or earlier.

INTERROGATORY NO. 6:

Identify and describe in detail any discussions or plans by Pre-Spin Covidien to sell any part of, or all of, the Opioids Business, including any bids, offers, or indications of interest to purchase any portion of the Opioids Business and the Persons involved, including, but not limited to, the identity of the potential purchasers and the primary contacts at the potential purchasers at the time.

RESPONSE TO INTERROGATORY NO. 6:

The Covidien Defendants object to this Interrogatory as vague and ambiguous, not relevant to any party's claim or defense, not proportional to the needs of the case, and overly burdensome and expensive compared to the likely benefit, including to the extent that it requests that the Covidien Defendants "[i]dentify and describe in detail any discussions or plans by Pre-Spin Covidien to sell any part of, or all of, the Opioids Business, including any bids, offers, or indications of interest to purchase[.]" The Covidien Defendants further object to the term

Dated: September 23, 2024

/s/ Philip D. Anker

Philip D. Anker (*pro hac vice*)

Peter G. Neiman (*pro hac vice*)

Ryanne E. Perio (*pro hac vice*)

Allyson Pierce (*pro hac vice*)

**WILMER CUTLER PICKERING HALE
AND DORR LLP**

7 World Trade Center

250 Greenwich Street

New York, N.Y. 10007

Telephone: (212) 230-8890

Facsimile: (212) 230-8888

Howard M. Shapiro (*pro hac vice*)

Joel Millar (*pro hac vice*)

**WILMER CUTLER PICKERING HALE
AND DORR LLP**

1875 Pennsylvania Ave. NW

Washington, D.C. 20006

Telephone: (202) 663-6167

Facsimile: (202) 663-6363

and

R. Craig Martin (DE 5032)

DLA PIPER LLP (US)

1201 North Market Street, Suite 2100

Wilmington, DE 19801

Telephone: (302) 468-5700

Facsimile: (302) 394-2341

Email: craig.martin@us.dlapiper.com

*Attorneys for Covidien Limited, Covidien
Group Holdings Ltd., Covidien International
Finance S.A., and Covidien Group S.à.r.l.*