

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

In re: MALLINCKRODT PLC, ¹ Reorganized Debtor.	Chapter 11 Case No. 20-12522 (JTD)
OPIOID MASTER DISBURSEMENT TRUST II, Plaintiff, vs. THESYS TECHNOLOGIES LLC, Defendant.	Adversary Proceeding No. 22-50435 (JTD)

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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Dated: November 22, 2024

¹ The Reorganized Debtor in this chapter 11 case is Mallinckrodt plc ("Mallinckrodt"). 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.

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

NATURE AND STAGE OF PROCEEDING 1

SUMMARY OF ARGUMENT 4

STATEMENT OF FACTS 5

ARGUMENT 7

CONCLUSION..... 9

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	7, 8
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).....	7
<i>In re DSI Renal Holdings, LLC</i> , 617 B.R. 496 (Bankr. D. Del. 2020)	8
<i>In re Foamex Int'l, Inc.</i> , 491 B.R. 100 (Bankr. D. Del. 2013)	8
<i>Intel Corp. v. Broadcom Corp.</i> , 173 F. Supp. 2d 201 (D. Del. 2001).....	7
Statutes, Rules & Regulations	
11 U.S.C. § 548.....	9
11 U.S.C. § 550(a)	<i>passim</i>
Fed. R. Bankr. P. 7056.....	7
Fed. R. Civ. P. 56(a)	7
Fed. R. Civ. P. 56(c)	7

Defendant Thesys Technologies LLC (“Thesys”) submits this memorandum of law in support of its motion for summary judgment (the “Motion”) regarding Counts I, II, III, and IV of the Opioid Master Disbursement Trust’s (the “Trust”)² *Amended Complaint* (the “Complaint”). In further support of the Motion, Thesys relies on the *Declaration of Mike Beller in Support of Defendant’s Motion for Summary Judgment* (the “Beller Declaration”), which is being filed concurrently herewith, and respectfully states as follows:

PRELIMINARY STATEMENT

1. Thesys is entitled to summary judgment because the claims against it are misplaced. To prevail on the Share Repurchase Claims in its Complaint, the Trust must prove that the defendant at issue sold Mallinckrodt stock to the Debtors between 2015 and 2018 under the Debtors’ Share Repurchase Program and received a transfer in exchange for that stock. Because Thesys ***never owned any shares*** of Mallinckrodt stock or any other stock, the Trust cannot meet its burden of proof.

NATURE AND STAGE OF PROCEEDING

2. The Trust commenced this adversary proceeding by filing its *Complaint* [Adv. D.I. 2] against numerous parties (the “Defendants”), including Thesys, on October 12, 2022. The Complaint asserts fraudulent conveyance claims against each of the Defendants related to share repurchases Mallinckrodt made and seeks recovery of the funds Mallinckrodt allegedly transferred to each Defendant between 2015 and 2018. *See* Adv. D.I. 4, ¶ 1.

3. The Trust served the Defendants with the *Summons and Notice of Pretrial Conference* [Adv. D.I. 14] on November 18, 2022, and set February 28, 2023, as the date for the

² Capitalized terms not defined herein shall have the meanings ascribed to them in the Amended Complaint. Unless otherwise noted, citations to “Adv. D.I. ___” shall refer to the above-captioned adversary proceeding.

initial pretrial conference (the “Initial Conference”).

4. Thereafter, on December 2, 2022, the Trust filed its *Motion for Entry of an Order Enlarging the Time to Effectuate Service of Process and Approving Preliminary Case Management Procedures* [Adv. D.I. 20] (the “Motion to Approve”). Amongst other relief, the Motion to Approve contemplated using the Initial Conference to address five specific agenda items, including:

- a. the fixing of a uniform deadline for filing of answers or responsive pleadings to the Complaint;
- b. whether the Defendants that intend to raise common issues or defense to challenge the Complaint should be required to file a single motion to dismiss;
- c. the establishment of a uniform briefing schedule for any motion(s) to dismiss the Complaint;
- d. the appointment of a Defendants’ steering committee, lead counsel, and liaison counsel; and
- e. any other matters that are appropriate to address at the Initial Conference.

See Adv. D.I. 20 ¶ 16.

5. This Court granted the Motion to Approve on December 28, 2022, in its *Order Enlarging the Time to Effect Service of Process and Approving Preliminary Case Management Procedures* [Adv. D.I. 93] (the “Case Management Order”), which, among other things, (i) extended and enlarged the Trust’s time for effectuating service of the summons and complaint in this Adversary Proceeding up to and through April 11, 2023, (ii) indefinitely extended and enlarged each Defendant’s time to file an answer or a motion in response to the Complaint or any amended complaint (the “Response Deadline”), pending further order of the Court to be entered after the Initial Conference, and (iii) identified the specific relief contemplated in paragraph 16 of the Motion to Approve as matters to address at the Initial Conference. See Adv. D.I. 93.

6. The Trust and various Defendants negotiated a protocol to expeditiously resolve the Share Repurchase Claims for the first seven months of this Adversary Proceeding. Such negotiations culminated in an order from this Court (the “Protocol Order”) on May 15, 2023, setting forth a protocol (the “Protocol”) for Defendants to seek voluntary dismissal by the Trust based on certain defenses established under the Protocol. Adv. D.I. 185.

7. Since the entry of the Protocol Order, the Trust has, in an attempt to identify the appropriate defendants for the Share Repurchase Claims, (i) sought and received multiple extensions of time to effectuate service of the summons and complaint in this Adversary Proceeding, *see* Adv. D.I. 192, 196, 199, 222, and 237, and (ii) engaged in substantial protocol-based motion practice.

8. The Initial Conference scheduled for February 28, 2023, came and went without the parties addressing the agenda items contemplated in the Motion to Approve and ordered in the Case Management Order. Instead, the Trust indicated to the Court that consideration of those agenda items was premature and proposed to continue such agenda items “until 60 days after the Trust completes its investigation, identifies all of the defendants to the share repurchase claims – and that includes defendants that are identified through the protocol process – and files its amended complaint naming those additional defendants.” *See* Adv. D.I. 121 at 8-10. As such, the agenda items were not ruled on at the Initial Conference.

9. On October 24, 2023, the Trust filed its amended complaint (the “Amended Complaint”) which named additional defendants and asserted nearly the same claims as the *Complaint*. Adv. D.I. 205, 209. Nevertheless, the Trust then filed its *Fifth Motion for Entry of an Order Further Enlarging the Time to Effectuate Service of Process* on January 5, 2024, Adv. D.I. 237, suggesting that the Trust has not completed its investigation in identifying “all of the

defendants to the Share Repurchase Claims.”

10. The pretrial conference scheduled for February 13, 2024, was canceled. Adv. D.I. 246.

11. On March 21, 2024, Thesys filed its answer (the “Answer”) to the Amended Complaint. Adv. D.I. 387.

12. On May 21, 2024, the Court denied the fifth and sixth motions to extend the deadline to effectuate service of process. Adv. D.I. 420; Adv. D.I. 421.

13. Notably, none of the relief sought by the Trust or granted in any order of this Court prevents a Defendant from seeking summary judgment at this juncture.

SUMMARY OF ARGUMENT

14. Thesys seeks summary judgment on each of the four Share Repurchase Claims asserted against it in the Amended Complaint (the “Thesys Claims”) because the Trust cannot establish its prima facie case for those claims.

15. Under 11 U.S.C. § 550(a), the Trust can only recover fraudulent transfers from an initial, immediate, or mediate transferee, or a person for whose benefit the initial transfer was made. Thesys cannot be liable for the alleged intentional or constructive fraudulent transfers as a matter of law because it never owned any shares of stock and did not receive any of the Share Repurchase Transfers. In other words, it was not an initial, immediate, or mediate transferee, nor was it a person for whose benefit the initial transfer was made.

16. Summary judgment in favor of Thesys is appropriate because there are no disputed issues of material fact related to the Thesys Claims. The sole issue for the Court to decide is whether Thesys received a Share Repurchase Transfer. It did not. Accordingly, based upon the undisputed fact that Thesys never owned a share of stock, let alone Mallinckrodt stock (and

therefore never received a Share Repurchase Transfer), the Court should grant the Motion.

STATEMENT OF FACTS

17. Mallinckrodt describes itself as a “global pharmaceutical enterprise that, among other things, is the largest supplier of opioid medications in the United States, and one of the largest in the world.” Adv. D.I. 209, ¶ 101. Beginning in the mid-1990s, manufacturers, such as Mallinckrodt, “engaged in aggressive and deceptive marketing and promotion campaigns” to induce health care providers to prescribe opioids in “mass quantities.” *Id.* ¶ 95. The resulting over-prescription of opioid drugs led to addiction, abuse, serious injury, and death, and has shattered thousands of lives and communities across the country. *Id.*

18. Mallinckrodt has manufactured, developed, marketed, promoted, and/or sold opioid pharmaceutical products since 1898. *Id.* ¶ 103. In the early 2000s, Mallinckrodt manufactured, marketed, and promoted more than a dozen opioid products. *Id.* In fact, Mallinckrodt became the most significant manufacturer, marketer, and producer of opioids in the United States. *Id.* ¶ 104.

19. By June of 2017, thousands of lawsuits (the “Opioid Lawsuits”) had been filed against Mallinckrodt as a result of its opioid-related conduct (and alleged misconduct) spanning over a decade. *Id.* ¶ 253. In July 2017, Mallinckrodt entered into a settlement with the DOJ that required Mallinckrodt to pay millions of dollars in relation to alleged violations of the Controlled Substances Act and failure to implement certain controls. *Id.* ¶ 256.

20. The Debtors filed for bankruptcy protection on October 12, 2020, to shield themselves from the mounting liabilities arising from these opioid lawsuits. *Id.* ¶ 257. The Debtors’ Plan was confirmed on March 2, 2022. *Id.* ¶ 1, n.2.

21. The Debtors' Plan created the statutory Trust that initiated this avoidance action and funded the Trust with certain assets including certain claims or Causes of Action including the Share Repurchase Claims it asserts against Defendants in this proceeding. *Id.* at 1. The Trust seeks to recover transfers, the Share Repurchase Transfers, to parties that previously held Mallinckrodt stock and sold that stock back to Mallinckrodt on the open market between 2015 and 2018. *Id.* ¶¶ 7, 9.

22. Mallinckrodt created and used its Share Repurchase Program—a program to repurchase its own shares from various shareholders on the open market—from 2015 through 2018. *Id.* ¶ 7. In total, Mallinckrodt repurchased approximately 36 million shares for close to \$1.6 billion. *Id.* According to the Trust, Mallinckrodt received no value in return for the Share Repurchase Transfers. *Id.*

23. The Trust named dozens of Defendants in the Amended Complaint who allegedly received the Share Repurchase Transfers. The details of these transfers are attached to the *Amended Complaint* in a redacted exhibit.³ Thesys is one of the Defendants named in the Amended Complaint.

24. Thesys is a financial technology company that provided trading technologies and big data solutions to participants in the capital markets, including banks and other financial institutions and funds. Beller Decl. ¶ 5. But Thesys itself is not a financial market participant and has never owned or transacted in *any* stock. Beller Decl. ¶¶ 7–9.

25. The Trust alleges that Thesys received Share Repurchase Transfers between 2015 and 2018. *See Amended Complaint*. This is incorrect; Thesys never received a transfer of funds

³ Upon request, the Trustee shared details about the transfers allegedly involving Thesys, but Thesys has not received an unredacted version of the exhibit.

from Mallinckrodt as a result of the Share Repurchase Program. Beller Decl. ¶ 9. Again, Thesys has never owned any stock, let alone Mallinckrodt stock. *Id.*

ARGUMENT

26. Federal Rule of Civil Procedure 56(a) (made applicable by Federal Rule of Bankruptcy Procedure 7056) provides that summary judgment shall be granted if the movant shows “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Thesys “may satisfy its burden on summary judgment by demonstrating that there is an absence of evidence to support the case of the nonmoving party.” *Intel Corp. v. Broadcom Corp.*, 173 F. Supp. 2d 201, 222 (D. Del. 2001) (internal citations omitted). And if the non-moving party’s evidence “is merely colorable, or is not significantly probative, summary judgment may be granted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986) (internal citations omitted).

27. Here, Thesys is entitled to summary judgment on each of the Trust’s claims because the Trust has insufficient evidence to meet its burden of proof as to one or more elements of its claims. As the Supreme Court has explained

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. In such a situation, there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986).

28. When the moving party meets its burden, as Thesys has here, the nonmoving party must present specific facts showing that there is a genuine issue for trial. *Id.* at 324. Stated another

way, “the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Anderson*, 477 U.S. at 247–48. “Thus, a non-moving party cannot defeat a summary judgment motion based on conclusory allegations and denials, but instead must provide supporting arguments or facts that show the necessity of trial.” *In re Foamex Int’l, Inc.*, 491 B.R. 100, 105 (Bankr. D. Del. 2013); *see also In re DSI Renal Holdings, LLC*, 617 B.R. 496, 502, 506 n.40 (Bankr. D. Del. 2020) (“[S]ummary judgment is essentially put up or shut up time for the non-moving party” (quotation omitted)).

29. The Trust cannot point to any arguments or facts that create a genuine dispute and necessitate trial because none exist; Thesys never owned Mallinckrodt stock to sell to the Debtors in exchange for the Share Repurchase Transfers. In fact, Thesys never owned any stock. Thesys is a financial technology company that provided trading technologies and big data solutions to participants in the capital markets, including banks and other financial institutions, but Thesys has never owned or transacted in any stock.

30. The Trust’s Amended Complaint seeks a judgment against Thesys finding that the Share Repurchase Transfers constitute intentionally and/or constructively fraudulent transfers. But in order for a fraudulent transfer to have occurred, a *transfer* from a Debtor to the Defendant must have occurred. Thesys has never owned or transacted in any stock, let alone Mallinckrodt stock. Therefore, Thesys could not have, and in fact did not, receive proceeds from the Debtors in exchange for Mallinckrodt stock. The undisputed facts establish that Thesys received no Share Repurchase Transfers, which means that the Trust’s attempts to avoid these nonexistent transfers must also fail.

31. The Trust seeks to recover the value of the alleged transfers to Thesys under section 550(a) for the benefit of the Debtors’ estate. Section 550(a) of the Bankruptcy Code

provides that “to the extent a transfer is avoided” as either actually or constructively fraudulent under section 548, “the trustee may recover . . . from (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or (2) any immediate or mediate transferee of such initial transferee.” 11 U.S.C. § 550(a). Once again, because Thesys received no transfer, Thesys does not qualify as a transferee, nor were any of the transfers made for Thesys’ benefit, and as such, no recovery can be obtained from Thesys under section 550(a) of the Bankruptcy Code.

32. Despite its bald assertions that Thesys received Share Repurchase Transfers, the Trust has provided no evidence and can provide no evidence to substantiate this claim. Therefore, the undisputed, material facts demonstrate that Thesys did not receive Share Repurchase Transfers. As such, the Court should dismiss the Trust’s claims against Thesys.

CONCLUSION

For the reasons set forth herein, Thesys respectfully requests that the Court enter a judgment in Thesys’ favor, dismissing the Trust’s claims against Thesys and holding that Thesys is not liable to the Trust for any allegation asserted in the Amended Complaint.

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Dated: November 22, 2024
Wilmington, Delaware

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