

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

In re:

MALLINCKRODT PLC, et al.,
Debtors.¹

Chapter 11

Case No. 20-12522 (JTD)

(Jointly Administered)

**NOTICE OF FILING OF PERIODIC REPORT OF THE
OPIOID MASTER DISBURSEMENT TRUST II**

TO OPIOID CREDITOR TRUSTEES, THE FUTURE CLAIMANTS' REPRESENTATIVE,
AND ALL OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE that, in accordance with Section 3.02(b) of the Opioid Master Disbursement Trust II Trust Agreement dated as of June 16, 2022 (the "Trust Agreement"), Jennifer E. Peacock, Michael Atkinson, and Anne Ferazzi, in their capacities as the Opioid Master Disbursement Trust II Trustees (the "Trustees"), have filed a periodic report (the "Periodic Report"), attached hereto as Exhibit 1. As further required by Section 3.02(c) of the Trust Agreement, the Periodic Report will be posted on the Opioid Master Disbursement Trust II website at www.opioidmasterdisbursementtrust.com/Mallinckrodt.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://restructuring.ra.kroll.com/Mallinckrodt>. The Debtors' mailing address is 675 McDonnell Boulevard, Hazelwood, Missouri 63042.

Dated: July 5, 2023

Respectfully submitted,

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EXHIBIT 1

Periodic Report for Period Ending May 31, 2023

Opioid Master Disbursement Trust II
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For the Reporting Period Ending May 31, 2023

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Opioid Master Disbursement Trust II

Report for Period February 1, 2023, through May 31, 2023

Introduction

Pursuant to Section 3.02 of the MDT II Trust Agreement, the Opioid Master Disbursement Trust II (“MDT II” or “the Trust”) is obligated to report to each of the Opioid Creditor Trusts and the Future Claimants’ Representative,¹ at least every four months, on topics including the Trust’s:

- Assets;
- Expenditures;
- Distributions;
- Forward-looking projections; and
- Litigation proceedings.

The following report, for the period beginning February 1, 2023, and ending May 31, 2023 (the “Period”),² fulfills such obligation. Further background on the Trust is provided in Exhibit A.

Reporting Period Activity

During the Period, various stakeholders began an aggressive campaign to dissuade Mallinckrodt from making the \$200,000,000 Opioid Deferred Cash Payment due to MDT II on June 16, 2023 (i.e., the first anniversary of the Effective Date).

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Chapter 11 Plan confirmed in the bankruptcy cases of Mallinckrodt plc, *In re Mallinckrodt plc*, Case No. 20-12522 (Bankr. D. Del.) (the “Plan”).

² MDT II’s prior reports, for the periods ending September 30, 2022, and January 31, 2023, are available on both the *In re Mallinckrodt* docket (filed Oct. 14, 2022, and Feb. 10, 2023) (Docket Nos. 8270 and 8554) and the MDT II website (<https://www.opioidmasterdisbursementtrust.com/Mallinckrodt/PeriodicReports>).

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These stakeholders include certain holders of Mallinckrodt's (i) terms loans due 2027 issued under the Credit Agreement, dated as of June 16, 2022, (ii) 10% first lien senior secured notes due 2025, (iii) 11.5% first lien senior secured notes due 2028, (iv) 10% second lien senior secured notes due 2025, and (v) 10% second lien senior secured notes due 2029 (such holders described in clauses (i) through (v), collectively, the "Holders"). These Holders sent various unsolicited letters to the company during the Period, the first of which was received by the company on May 17, 2023.

Prior to the Holders' letter-writing campaign, the company had approached MDT II about a possible restructuring of the company's obligations under the Opioid Deferred Cash Payments Agreement. Upon consideration of the best interests of MDT II's beneficiaries, and the reality of the company's spiraling financial predicament, including the possibility of a second chapter 11 filing,³ the MDT II Trustees began negotiations with the company and the Holders during the latter portion of the Period.

As of the date of the filing of this report, these negotiations remain on-going.

Financial Update

During the Period, the Trust began with a cash balance of \$136,023,970, received \$5,537,502 of interest and other income and disbursed \$9,880,854, resulting in a \$131,680,618 ending Trust cash balance.

The Trust's receipts during the Period were comprised of (i) \$2,037,502 of interest income (~5.15% annualized rate) and (ii) \$3,500,000 received on account of a settlement agreement. The Trust's disbursements during the Period were comprised of \$9,880,854 on account of Trust expenses.

The Trust's ending cash balance was \$131,680,618, comprised of the Operating Reserve (\$120,033,569) and the amounts set aside (and still held) for the Municipal and Tribe Opioid Attorneys' Fee Fund (\$11,647,049). At this time all assets are held in short term

³ See Mallinckrodt plc. (June 5, 2023). *Form 8-K*. Retrieved from <https://www.mallinckrodt.com/investors/sec-filings> ("There can be no assurance of the outcome of [discussions with various stakeholders], including whether or not the Company may make a filing in the near term or later under the U.S. Bankruptcy Code or analogous foreign bankruptcy or insolvency laws.").

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U.S. Government obligations.

Legal Matters Update

Under the Plan, the Trust was assigned certain claims against third parties. The claims being pursued are described in greater detail below.

1. Insurance Action (*Opioid Master Disbursement Trust II a/k/a Opioid MDT II v. Ace American Insurance Company, et al.*, Case No. 22SL-CC02974 (Mo. Cir. Ct.))

On June 16, 2022, the Trust filed a lawsuit in St. Louis County, Missouri against insurers that had issued certain policies under which rights were transferred to the Trust pursuant to the Plan, seeking insurance coverage with respect to the opioid-related claims that were channeled to the Trust and Opioid Creditor Trusts under the Plan.

On October 11, 2022, most insurers answered the Petition. Certain insurers, however, moved to dismiss the lawsuit with respect to some or all of their policies, representing about half the coverage at issue. On March 22, 2023, the Court granted motions to dismiss certain policies that the insurers contend mandate exclusive jurisdiction over any coverage disputes in the courts of England or Wales. The Trust disagrees with the Court's ruling and successfully sought leave of the Court to pursue an interlocutory appeal, which is not automatic. The Trust filed a notice of appeal on May 25, 2023. The Trust also moved the Court to enter a preliminary injunction barring the moving insurers from pursuing during the pendency of the appeal anti-suit-injunction actions they had filed against the Trust in an English Court. Such anti-suit-injunctions would enjoin the Trust from pursuing litigation, including the appeal, against the moving insurers in the Missouri action. On May 18, 2023, the Court granted the Trust's preliminary-injunction motion over the insurers' objections. On May 12, 2023, the Court denied a separate motion by one insurer to dismiss the Trust's claims against it or for a more definite statement based on the alleged insufficiency of the Trust's petition (complaint).

The Trust has served discovery requests on the insurers seeking information and documents related to the insurers' policies, alleged defenses, and other matters, and

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has also served third-party subpoenas on certain of Mallinckrodt's predecessor entities and insurance brokers seeking information about other coverage that may be applicable to the opioid liabilities channeled to the various trusts under the Plan. A number of the insurers likewise have served discovery requests on the Trust, primarily focused on the underlying opioid claims, and the Trust is in the process of responding to these requests. To the extent the parties have discovery disputes that they cannot resolve consensually, they will bring them before the Court. Review of the vast number of documents related to these claims, including those documents produced under the Opioid MDT II Cooperation Agreement, is ongoing.

The next scheduled hearing in the case is a case management conference on July 28, 2023. The close of fact discovery currently is set for December 15, 2023.

2. Covidien Spinoff Action (*Opioid Master Disbursement Trust II v. Covidien Unlimited Co., et al.*, Adv. Pro. No. 22-50433 (Bankr. D. Del.))

On October 11, 2022, the Trust commenced an adversary proceeding in the U.S. Bankruptcy Court for the District of Delaware against Covidien Unlimited Company, Mallinckrodt's former parent, and three of its subsidiaries, hereinafter referred to, collectively, as "Covidien." On December 23, 2022, Covidien moved to dismiss the Trust's complaint. The Trust filed its opposition to the motion to dismiss on February 28, 2023. Following the end of the Period, and prior to the publishing of this report, the Trust filed a motion to amend the complaint on June 15, 2023. The amended complaint contains, among other things, further allegations tying the Mallinckrodt and Covidien enterprises together, and in doing so, reinforces the strength of the fraudulent transfer claims alleged in the original complaint. The Bankruptcy Court held a status conference on June 27, 2023, during which the parties discussed timing on hearing a motion to dismiss the complaint.

The Trust asserts causes of action for intentional and constructive fraudulent transfers, as well as claims for breach of fiduciary duty as a promoter; reimbursement, indemnification, or contribution; equitable subordination; equitable disallowance; and disallowance under the Bankruptcy Code.

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The Trust seeks to avoid and recover (a) the value of the entire Covidien enterprise (without the Mallinckrodt business) at the time of the 2013 spinoff of Mallinckrodt from Covidien; (b) the approximately \$867 million in net cash transfers paid to Covidien from 2010 through 2012; and (c) the approximately \$721 million in Mallinckrodt note proceeds that Covidien received before completing the spinoff. In addition, the Trust seeks to avoid (i) the putative indemnification obligations that Covidien imposed on Mallinckrodt under the spinoff agreement and (ii) certain pre-spin tax liabilities in the hundreds of millions of dollars that were imposed on Mallinckrodt in connection with the spinoff, and to recover from Covidien (iii) the value of any payments made by Mallinckrodt on account of those pre-spin tax liabilities. Review of the vast number of documents related to these claims, including those documents produced under the Opioid MDT II Cooperation Agreement, is ongoing.

3. Share Repurchase Program Action (*Opioid Master Disbursement Trust II v. Argos Capital Appreciation Master Fund LP, et al.*, Adv. Pro. No. 22-50435 (Bankr. D. Del.))

On October 12, 2022, the Trust commenced an adversary proceeding in the U.S. Bankruptcy Court for the District of Delaware against 72 defendant participants in Mallinckrodt plc's share repurchase program (the "SRP").

The Trust asserts causes of action for intentional and constructive fraudulent transfers through which it seeks to avoid and recover some of the over \$1 billion in cash transfers Mallinckrodt plc paid to its equity owners through the SRP between 2015 and 2018. The Trust asserts that the shares Mallinckrodt purchased through the SRP were worthless because Mallinckrodt was deeply insolvent at the time of the repurchases due to massive liabilities incurred from the manufacture, promotion, and distribution of opioid products. The Trust asserts that the cash paid to Mallinckrodt shareholders through the SRP was wrongly diverted and should be recouped for the benefit of Mallinckrodt's creditors.

The Court has granted an extension until July 10, 2023, to identify additional SRP defendants and to amend and serve the SRP complaint. Following the end of the Period, and prior to the publishing of this report, the Trust filed a motion to further extend this

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deadline until October 9, 2023. The discovery needed to continue identifying defendants is ongoing and includes the time-consuming process of gathering and analyzing vast amounts of trade data, a process which has been further complicated by production delays at various points by certain entities.

On May 15, 2023, the Court approved a protocol whereby Defendants may assert individual affirmative defenses to the claims alleged in the SRP action, including that a given Defendant is protected by the safe-harbor provisions of 11 U.S.C. § 546(e) or received the proceeds of share repurchase transactions as a mere conduit.

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Exhibit A

Opioid Master Disbursement Trust II Background

The Opioid Master Disbursement Trust II was established pursuant to the chapter 11 Plan confirmed in the bankruptcy cases of Mallinckrodt plc, *In re Mallinckrodt plc*, Case No. 20-12522 (Bankr. D. Del.). The Plan was confirmed by order dated March 2, 2022, and the Plan and MDT II both became effective June 16, 2022. The MDT II is a “hub” trust in a “hub & spoke” trust design, created to receive distributions (from funds to be paid by Mallinckrodt and any litigation recoveries) and then make distributions to the “spoke” beneficiary trusts: the Public Creditor Trusts (for the U.S. States and Territories and local governments within U.S. States and Territories, as well as the federally-recognized American Indian and Alaska Native Tribes) and the Private Creditor Trusts (for, e.g., personal injury victims, persons afflicted by neonatal abstinence syndrome, hospitals).

The MDT II’s primary responsibilities are to: (i) receive the opioid settlement funds from Mallinckrodt; (ii) investigate and pursue claims against third parties that are assigned to the MDT II; (iii) fix a bar date and administer Other Opioid Claims that were not resolved as part of the Plan; and (iv) make distributions to the Public and Private Creditor Trusts per the allocations in the Plan. These Opioid Creditor Trusts disburse funds received from MDT II to their respective creditors to be used for approved opioid abatement strategies or, in the case of the PI Trust, to compensate individuals for damages because of opioid-related bodily injuries.

More information about the Trust, including important documents, biographies of the MDT II Trustees (Jenni Peacock, Michael Atkinson, and Anne Ferazzi), and answers to frequently asked questions, can be found on the Trust’s website: <https://www.opioidmasterdisbursementtrust.com/Mallinckrodt>.

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Appendix⁴

⁴ Note: Warrant sale proceeds are not included in financial appendices; historical expenses in financial appendices are adjusted for the refund of certain legal expenses.

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Appendix 1: Trust Financial Summary

Trust Activity Summary for Third Reporting Period (Feb 1, 2023 – May 31, 2023)⁵:

| (\$ in actuals) | Beginning Balance | MDT II Period Receipts | | | MDT II Period Disbursements | | | Ending Balance |
|--|----------------------|-------------------------------|--|--------------------|-----------------------------|--|----------------------|----------------------|
| | | Opioid Deferred Cash Payments | Interest and Other Income ⁶ | Total Receipts | Distributions | Expenses (Litigation & Administrative) | Total Disbursements | |
| Operating Reserve | \$124,551,569 | - | \$5,362,854 | \$5,362,854 | - | (\$9,880,854) | (\$9,880,854) | \$120,033,569 |
| Third-Party Payor Reserve | - | - | - | - | - | - | - | - |
| Municipal and Tribe Opioid Attorneys' Fee Fund | 11,472,401 | - | 174,648 | 174,648 | - | - | - | 11,647,049 |
| Ratepayer Account | - | - | - | - | - | - | - | - |
| Opioid MDT II Total | \$136,023,970 | - | \$5,537,502 | \$5,537,502 | - | (\$9,880,854) | (\$9,880,854) | \$131,680,618 |

Trust Activity Cumulative Summary (June 16, 2022 – May 31, 2023)⁵:

| (\$ in actuals) | Beginning Balance | MDT II Period Receipts | | | MDT II Period Disbursements | | | Ending Balance |
|--|----------------------|-------------------------------|--|--------------------|-----------------------------|--|-----------------------|----------------------|
| | | Opioid Deferred Cash Payments | Interest and Other Income ⁶ | Total Receipts | Distributions | Expenses (Litigation & Administrative) | Total Disbursements | |
| Operating Reserve | \$134,953,403 | - | \$7,940,940 | \$7,940,940 | - | (\$22,860,774) | (\$22,860,774) | \$120,033,569 |
| Third-Party Payor Reserve | 29,363,667 | - | - | - | (29,363,667) | - | (29,363,667) | - |
| Municipal and Tribe Opioid Attorneys' Fee Fund | 11,276,655 | - | 370,394 | 370,394 | - | - | - | 11,647,049 |
| Ratepayer Account | 3,000,000 | - | - | - | (3,000,000) | - | (3,000,000) | - |
| Opioid MDT II Total | \$178,593,724 | - | \$8,311,335 | \$8,311,335 | (\$32,363,667) | (\$22,860,774) | (\$55,224,441) | \$131,680,618 |

⁵ Reflects Trust activity subsequent to the receipt and disbursement of the Initial Opioid Deferred Cash Payment; expenses exclude fees incurred during the Period but unpaid as of May 31, 2023.

⁶ Reflects interest and payment received on account of a settlement agreement.

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Trust Operating Reserve Additional Detail⁷:

(\$ in actuals)

| | Actual | Actual | Actual | Total |
|--|---------------------------|-------------------------|-------------------------|----------------------------|
| | Jun - Sep (3.5 months) | Oct - Jan (4 months) | Feb - May (4 months) | Jun - May (11.5 months) |
| Beginning Cash | \$134,953,403 | \$129,961,429 | \$124,551,569 | \$134,953,403 |
| Professional Fees - Legal & Litigation Support | (\$5,161,547) | (\$6,599,008) | (\$9,374,690) | (\$21,135,246) |
| Trustee Fees & Expenses | (271,042) | (259,238) | (258,333) | (788,613) |
| Professional Fees - Financial & Tax | (150,000) | (200,000) | (150,000) | (500,000) |
| Insurance | (263,200) | - | - | (263,200) |
| Other | (26,154) | (49,731) | (97,831) | (173,716) |
| Total Trust Expenses | (\$5,871,943) | (\$7,107,977) | (\$9,880,854) | (\$22,860,774) |
| Interest and Other Income | 879,969 | 1,698,117 | 5,362,854 | 7,940,940 |
| Ending Cash | \$129,961,429 | \$124,551,569 | \$120,033,569 | \$120,033,569 |

⁷ Reflects Trust activity subsequent to the receipt and disbursement of the Initial Opioid Deferred Cash Payment; expenses exclude fees incurred during the Period but unpaid as of May 31, 2023.

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Appendix 2: Trust Forecast

Pursuant to the Plan, Mallinckrodt is obligated to make 9 cash payments over 8 years on account of the Opioid Deferred Cash Payments. The scheduled payments total \$1,725,000,000, of which ~\$1,718,000,000 is to be paid to the Trust.⁸ However, given recent financial performance, there is significant uncertainty around the Company's ability to make all scheduled payments. To date, Mallinckrodt has made 1 payment of \$450,000,000, of which \$443,291,078 was paid to the Trust.⁸ The Trust may receive additional amounts on account of assigned litigation claims and interest income, but none of these amounts are certain nor can they be estimated at this time.

In the second year of its operations, the Trust is projected to disburse approximately \$31,981,200 on account of its expenses (i.e., excluding disbursements to creditor trusts) comprised of \$29,904,000 for legal and litigation support, \$775,000 for trustee fees and expenses, \$631,000 for financial and tax advisory services, \$263,200 for insurance, and \$408,000 for other expenses.

⁸ Amounts not paid to the Trust were paid directly to beneficiaries or were used to satisfy certain pre-Effective Date expenses.

Opioid Master Disbursement Trust II

Trust Period Expense and Operating Reserve Forecast:

(\$ in actuals)

| | Forecast | Forecast | Forecast | Total |
|--|-------------------------|-------------------------|-------------------------|--------------------------|
| | Jun - Sep (4 months) | Oct - Jan (4 months) | Feb - May (4 months) | Jun - May (12 months) |
| Beginning Cash | \$120,033,569 | \$110,930,929 | \$101,960,426 | \$120,033,569 |
| Professional Fees - Legal & Litigation Support | (\$9,968,000) | (\$9,968,000) | (\$9,968,000) | (\$29,904,000) |
| Trustee Fees & Expenses | (258,333) | (258,333) | (258,333) | (775,000) |
| Professional Fees - Financial & Tax | (207,000) | (207,000) | (217,000) | (631,000) |
| Insurance | (263,200) | - | - | (263,200) |
| Other | (138,000) | (134,000) | (136,000) | (408,000) |
| Total Trust Expenses | (\$10,834,533) | (\$10,567,333) | (\$10,579,333) | (\$31,981,200) |
| Interest and Other Income | 1,731,894 | 1,596,830 | 1,461,225 | 4,789,949 |
| Ending Cash | \$110,930,929 | \$101,960,426 | \$92,842,318 | \$92,842,318 |

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