

**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: October 13, 2023

Respectfully submitted,

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II*

EXHIBIT 1

Periodic Report for Period Ending September 30, 2023

Opioid Master Disbursement Trust II
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For the Reporting Period Ending September 30, 2023

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Opioid Master Disbursement Trust II

Report for Period June 1, 2023, through September 30, 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 June 1, 2023 and ending September 30, 2023 (the “Period”),² fulfills such obligation. Further background on the Trust is provided in Exhibit A.

Reporting Period Activity

1. Renegotiation of the Opioid Deferred Cash Payments

During the Period, and in response to the company’s deteriorating financial predicament and aggressive lobbying by other stakeholders, MDT II reached an agreement with

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, January 31, 2023, and May 31, 2023, are available on both the *In re Mallinckrodt* docket (filed Oct. 14, 2022, Feb. 10, 2023, and July 5, 2023) (Docket Nos. 8270, 8554, and 8889) and the MDT II website (<https://www.opioidmasterdisbursementtrust.com/Mallinckrodt/PeriodicReports>).

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Mallinckrodt to reduce the remaining Opioid Deferred Cash Payments (totaling \$1.275 billion) due to MDT II.

The company did not pay the Opioid Deferred Cash Payment of \$200 million that was due on June 16, 2023. Instead, and as discussed in MDT II's prior report (for the period ending May 31, 2023), the company engaged various stakeholders during late-Spring 2023, seeking options (including a second bankruptcy) to reduce the company's total funded debt.

Following weeks of intensive negotiations, MDT II, along with other key stakeholders, signed a restructuring support agreement ("RSA") with the company on August 23, 2023, setting forth the terms of a prepackaged financial restructuring plan. The key components of the RSA, related to MDT II, are as follows:

1. MDT II received a one-time payment of \$250 million in full satisfaction of the remaining Opioid Deferred Cash Payments;
2. The Company agreed to provide enhanced cooperation under the Cooperation Agreement to facilitate the prosecution of the three MDT II third-party litigations (reducing costs for the Trust); and
3. MDT II will receive contingent value rights ("CVR"), essentially warrants, in the company (which will provide some value if the performance of the company dramatically improves).

MDT II received the \$250 million payment on August 24, 2023, and (as further detailed in the Appendix of this report), disbursed the full amount to the Public and Private Opioid Creditor Trusts, per the waterfall under the Plan, on August 29, 2023.

The company commenced bankruptcy proceedings on August 28, 2023. On October 10, 2023, following the end of the Period and prior to the publishing of this report, Judge Dorsey confirmed this second Plan of Reorganization. At this time, it is anticipated that this second Plan of Reorganization will go effective sometime before the end of the calendar-year.

The MDT II Trustees made a difficult decision in agreeing to this resolution, but in the end felt that this was the best alternative to obtain much needed funds for opioid

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abatement and victim compensation on a very accelerated time frame – even though the amounts received were almost \$1 billion less than originally promised by Mallinckrodt just last year. Given Mallinckrodt's downwards spiraling financial performance and MDT II's status as an unsecured creditor in a bankruptcy (in which approximately \$3.5 billion in debt would be ahead of the Trust in priority), the Opioid MDT II Trustees believed this deal was the best possible outcome. The Opioid MDT II Trustees were very cognizant of the effects of the Opioid Crisis on states, cities, counties, tribes, individuals, babies born with NAS, and others. This was a bittersweet result that the amounts that these victims received from Mallinckrodt were substantially reduced.

2. Extension of the Other Opioid Claims Objection Deadline

During the Period, on July 31, 2023, MDT II filed a motion with the bankruptcy court to extend the objection deadline for Other Opioid Claims (which, at the time of the motion, was set for August 15, 2023). The court granted the motion on August 10, 2023. The new objection deadline is later of: (a) December 13, 2023, or (b) one hundred twenty (120) days following the date that a proof of Other Opioid Claim is amended in writing by or on behalf of a holder of such Other Opioid Claim.

MDT II continues to engage with those entities having filed Other Opioid Claims to resolve these claims as efficiently as possible. At this time, it is not anticipated that any of these claims will have a material impact on the assets of the Trust.

Financial Update

During the Period, the Trust began with a cash balance of \$131,680,618, received \$256,162,772 and disbursed \$249,779,931, resulting in a \$138,063,459 ending Trust cash balance.

The Trust's receipts during the Period were comprised of (i) \$250,000,000 on account of the final Opioid MDT II payment from Mallinckrodt, (ii) \$3,627,804 transferred from an affiliated entity that was holding proceeds from the sale of the New Opioid Warrants in December, 2022, and (iii) \$2,534,968 of interest income (~5.23% annualized rate). The

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Trust's disbursements during the Period were comprised of (i) \$7,455,916 on account of Trust expenses and (ii) \$242,324,015 paid out to the Public and Private Opioid Creditor Trusts.

The Trust's ending cash balance was \$138,063,459, comprised of the Operating Reserve (\$114,859,220) and the amounts set aside (and still held) for the Municipal and Tribe Opioid Attorneys' Fee Fund (\$23,204,239). At this time, all assets are held in short term 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, some of the insurers answered the Petition. Other insurers moved to dismiss the lawsuit with respect to some or all of their policies, representing about half the coverage at issue. A number of the insurers contended that a forum-selection clause in or incorporated in their policies mandates exclusive jurisdiction over any coverage disputes in the courts of England or Wales. One insurer moved 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 opposed the insurers' motions. On March 22, 2023, the Court granted the motions to dismiss the forum-selection-clause policies. On May 12, 2023, the Court denied the motion to dismiss based on the alleged insufficiency of the petition. Regarding the forum-selection-clause issue, the Trust disagrees with the Court's ruling and successfully sought leave of the Court to

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pursue an interlocutory appeal, which is not automatic. Briefing on the appeal is under way, with oral argument scheduled for December 5, 2023.

To ensure that the appeal could proceed without interference, 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.

The Trust has served discovery requests on the insurers seeking information and documents related to the insurers' policies, alleged defenses, and other matters, and 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 November 3, 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

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Trust's complaint. The Trust filed its opposition to the motion to dismiss on February 28, 2023. 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 hearing on the motion to dismiss and motion to amend on August 16, 2023. The Bankruptcy Court has taken both motions under advisement.

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.

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.

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

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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 October 9, 2023, to identify additional SRP defendants and to amend and serve the SRP complaint. The Trust has filed a motion to further extend this deadline until January 8, 2024, and a bridge order is in place in the interim. 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. The Trust is responding to Defendants who assert defenses under the protocol as they are submitted.

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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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Appendix³

³ Note: Figures herein marked “ * ” reflect 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 September 30, 2023.

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Appendix 1: Trust Financial Summary

August 29, 2023 Opioid Deferred Cash Payment Distribution Summary:

| | Amount | Notes |
|---|------------------------|---|
| Opioid MDT II Distributable Value | \$253,627,804 | ■ \$250mm final Opioid Deferred Cash Payment & \$3.6mm net New Opioid Warrant Sale proceeds |
| <u>Trust Beneficiary Disbursements</u> | | |
| National Opioid Abatement Fund (NOAT) II | (\$179,606,938) | ■ NOAT II received residual amounts after payment of the below |
| Tribal Abatement Fund Trust (TAFT) II | (5,364,162) | ■ Received a variable percentage of funds otherwise available for NOAT II |
| PI Trust (PI & NAS PI Opioid Claims Share) | (25,172,560) | ■ Received 9.925% of Trust receipts after deducting litigation expenses |
| Third-Party Payor Trust | (13,877,288) | ■ Received negotiated amount in full settlement of remaining payments |
| Hospital Trust | (9,054,513) | ■ Received 3.570% of Trust receipts after deducting litigation expenses |
| State Opioid Attorneys' Fee Fund | (9,248,555) | ■ Received 4.5% of amounts otherwise available for NOAT II / TAFT II, capped at \$90mm |
| FHCA Opioid Claims (DOJ) | - | ■ Was paid in full at emergence (\$15mm) |
| Emergency Room Physicians Trust | - | ■ Was paid in full at emergence (\$4.5mm) |
| NAS Monitoring Trust | - | ■ Was paid in full at emergence (\$1.5mm) |
| Total Beneficiary Disbursements | (\$242,324,015) | |
| <u>Trust Reserves Funding</u> | | |
| MDT II Operating Reserve | - | ■ Reserve fully funded at emergence |
| MDT II Third-Party Payor Reserve | - | ■ Third-Party Payors paid in full |
| Municipal & Tribe Opioid Attorneys' Fee Fund | (11,303,789) | ■ Received 5.5% of amounts otherwise available for NOAT II / TAFT II; capped at \$110mm |
| Ratepayer Account | - | ■ Was paid in full near-emergence (\$3mm) |
| Total Trust Reserves Funding | (\$11,303,789) | |
| Total Disbursements & Trust Reserves Funding | (\$253,627,804) | |

Trust Activity Summary for Fourth Reporting Period (June 1, 2023 – September 30, 2023)*:

| | Beginning Balance | MDT II Period Receipts | | | MDT II Period Disbursements | | | Ending Balance |
|--|----------------------|-------------------------------|---------------------------|---------------------|-----------------------------|--|----------------------|----------------------|
| | | Opioid Deferred Cash Payments | Interest and Other Income | Total Receipts | Distributions | Expenses (Litigation & Administrative) | Total Disbursements | |
| <i>(\$ in actuals)</i> | | | | | | | | |
| Operating Reserve | \$120,033,569 | - | \$2,281,567 | \$2,281,567 | - | (\$7,455,916) | (\$7,455,916) | \$114,859,220 |
| Third-Party Payor Reserve | - | - | - | - | - | - | - | - |
| Municipal and Tribe Opioid Attorneys' Fee Fund | 11,647,049 | 11,303,789 | 253,401 | 11,557,190 | - | - | - | 23,204,239 |
| Ratepayer Account | - | - | - | - | - | - | - | - |
| Opioid MDT II Total | \$131,680,618 | \$11,303,789 | \$2,534,968 | \$13,838,757 | - | (\$7,455,916) | (\$7,455,916) | \$138,063,459 |

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Trust Activity Cumulative Summary (June 16, 2022 – September 30, 2023)*:

| (\$ in actuals) | Beginning Balance | MDT II Period Receipts | | | MDT II Period Disbursements | | | Ending Balance |
|--|----------------------|-------------------------------|---------------------------|---------------------|-----------------------------|--|-----------------------|----------------------|
| | | Opioid Deferred Cash Payments | Interest and Other Income | Total Receipts | Distributions | Expenses (Litigation & Administrative) | Total Disbursements | |
| Operating Reserve | \$134,953,403 | - | \$10,222,507 | \$10,222,507 | - | (\$30,316,691) | (\$30,316,691) | \$114,859,220 |
| Third-Party Payor Reserve | 29,363,667 | - | - | - | (29,363,667) | - | (29,363,667) | - |
| Municipal and Tribe Opioid Attorneys' Fee Fund | 11,276,655 | 11,303,789 | 623,795 | 11,927,584 | - | - | - | 23,204,239 |
| Ratepayer Account | 3,000,000 | - | - | - | (3,000,000) | - | (3,000,000) | - |
| Opioid MDT II Total | \$178,593,724 | \$11,303,789 | \$10,846,302 | \$22,150,092 | (\$32,363,667) | (\$30,316,691) | (\$62,680,357) | \$138,063,459 |

Trust Operating Reserve Additional Detail*:

| (\$ in actuals) | Actual Jun - Sep (4 months) |
|--|-----------------------------------|
| Beginning Cash | \$120,033,569 |
| Professional Fees - Legal & Litigation Support | (\$6,797,793) |
| Trustee Fees & Expenses | (260,399) |
| Professional Fees - Financial & Tax | (58,980) |
| Insurance | (263,200) |
| Other | (75,545) |
| Total Trust Expenses | (\$7,455,916) |
| Interest and Other Income | 2,281,567 |
| Ending Cash | \$114,859,220 |
| <u>Memo: Trust Operating Reserve Detail</u> | |
| Total Fees: Litigation | 6,678,473 |
| Total Fees: Administrative | 777,443 |
| Total Fees | \$7,455,916 |

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Appendix 2: Trust Forecast

Pursuant to the Plan, Mallinckrodt was 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 was to be paid to the Trust. However, given the Company's recent financial performance, an agreement was reached between the Company, its financial creditors and the Trust to settle all remaining Opioid Deferred Cash Payments for a final payment prior to its Chapter 11 filing. The Trust received a second and final payment of \$250,000,000 on August 24, 2023. 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 \$28,402,583 on account of its expenses (i.e., excluding disbursements to creditor trusts) comprised of \$26,733,793 for legal and litigation support, \$777,065 for trustee fees and expenses, \$282,980 for financial and tax advisory services, \$263,200 for insurance, and \$345,545 for other expenses.

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Trust Period Expense and Operating Reserve Forecast:*

(\$ in actuals)

| | Actual | Forecast | Forecast | Total |
|--|--------------------------------|--------------------------------|--------------------------------|---------------------------------|
| | Jun - Sep <i>(4 months)</i> | Oct - Jan <i>(4 months)</i> | Feb - May <i>(4 months)</i> | Jun - May <i>(12 months)</i> |
| Beginning Cash | \$120,033,569 | \$114,859,220 | \$104,491,886 | \$120,033,569 |
| Professional Fees - Legal & Litigation Support | (\$6,797,793) | (\$9,968,000) | (\$9,968,000) | (\$26,733,793) |
| Trustee Fees & Expenses | (\$260,399) | (258,333) | (258,333) | (777,065) |
| Professional Fees - Financial & Tax | (\$58,980) | (7,000) | (217,000) | (282,980) |
| Insurance | (\$263,200) | - | - | (263,200) |
| Other | (\$75,545) | (134,000) | (136,000) | (345,545) |
| Total Trust Expenses | (\$7,455,916) | (\$10,367,333) | (\$10,579,333) | (\$28,402,583) |
| Interest and Other Income | 2,281,567 | [TBD] | [TBD] | 2,281,567 |
| Ending Cash | \$114,859,220 | \$104,491,886 | \$93,912,553 | \$93,912,553 |