

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

In re:

MALLINCKRODT PLC, *et al.*,

Debtors.<sup>1</sup>

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](http://www.opioidmasterdisbursementtrust.com/Mallinckrodt).

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<sup>1</sup> 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: February 10, 2023

Respectfully submitted,

**COLE SCHOTZ P.C.**

*/s/ Justin R. Alberto*

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II*

**EXHIBIT 1**

Periodic Report for Period Ending January 31, 2023

**Opioid Master Disbursement Trust II**  
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## Opioid Master Disbursement Trust II

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### Report for Period October 1, 2022, through January 31, 2023

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#### **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,<sup>1</sup> 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 October 1, 2022, and ending January 31, 2023 (the “Period”),<sup>2</sup> fulfills such obligation. Further background on the Trust is provided in Exhibit A.

#### **Reporting Period Activities**

##### **1. Monetization of the New Opioid Warrants**

On December 8, 2022, the MDT II Trustees, in their capacities as Managers of the MNK Opioid Abatement Fund, LLC (“MOAF”), monetized the New Opioid Warrants (the “Warrants”) via an agreement between MOAF (the entity which held the Warrants) and

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<sup>1</sup> 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”).

<sup>2</sup> MDT II’s prior report, for the period ending September 30, 2022, is available on both the *In re Mallinckrodt* docket (filed Oct. 14, 2022) (Docket No. 8270) and the MDT II website (<https://www.opioidmasterdisbursementtrust.com/Mallinckrodt/PeriodicReports>).

## Opioid Master Disbursement Trust II

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Mallinckrodt.<sup>3</sup> By the terms of the agreement, MOAF agreed to cancel the Warrants in exchange for a payment of \$4,000,000 from Mallinckrodt.

MDT II's financial advisor, Houlihan Lokey ("Houlihan"), supported the transaction, as, in Houlihan's opinion, \$4,000,000 represented a fair price for the Warrants. No superior bids were received during Houlihan's outreach process to alternative potential buyers. Upon consideration of the circumstances, including the significant spread between the current trading price of Mallinckrodt's stock and the strike price at which the Warrants would be in the money, the MDT II Trustees accepted Mallinckrodt's offer. The transaction closed and was funded on December 8, 2022.

The gross proceeds of \$4,000,000 are being held by MDT II, as disbursement agent, on behalf of MOAF. Distribution of the net proceeds of this sale to the equity holders in MOAF, namely, the National Opioid Abatement Trust II, the Tribal Abatement Fund Trust II, the Personal Injury Trust, and the Hospital Trust, will be calculated as if the distribution had been made to such entities at the MDT II level. The distribution is expected to be made simultaneously with MDT II's next distribution, which will be made in connection with the receipt of the next Opioid Deferred Cash Payment from Mallinckrodt (scheduled for June 16, 2023). Since the proceeds of the sale are an asset of MOAF (and not MDT II) they are *not* included in the "Financial Update" section below or the attached Appendix containing the "Trust Financial Summary."

### **2. Other Opioid Claims Bar Date**

November 16, 2022, was the bar date (the "Bar Date") to submit Other Opioid Claims. A total of 233 claims were filed. After de-duplicating for both affiliated entities and for claims by a single entity against multiple debtors, a total of 14 unique claims were filed. These claims broadly break down into the following categories:

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<sup>3</sup> By way of background, the New Opioid Warrants gave the Trust the right to buy a fixed number of shares of Mallinckrodt's stock (equal to a 19.99% equity interest) at a set "strike price" (\$103.40 per share; equating to \$1.551 billion of total implied equity value for Mallinckrodt) over a set time period (6 years after the Effective Date; i.e., expiring June 15, 2028). If, at expiration, Mallinckrodt's stock price were above the strike price of \$103.40, the Warrants would be worth the difference between the stock price and the strike price. If, however, at expiration Mallinckrodt's stock price were less than the strike price, the Warrants would be worth zero. On the day of closing the Warrant transaction, December 8, 2022, the trading price of Mallinckrodt's stock was \$9.87 per share.

## Opioid Master Disbursement Trust II

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- Three claims were filed by personal injury victims. The Trust has already provided these claimants with a written request to withdraw these claims.
- One claim was filed by McKesson to protect its direct co-insurance rights. This claim appears to be appropriately filed under the Plan and should not have an impact on MDT II's corpus.
- Three claims were filed by parties who released such claims under the Plan. The Trust intends to ask these parties to withdraw these released claims.
- Six claims assert contingent and unliquidated claims against the Trust. The Trust intends to ask these parties to agree to defer any objection to their claims at this time until such time (if ever) as these claims actually need to be liquidated.
- One claim was filed by Covidien, asserting contingent and unliquidated claims. The Trust intends to ask Covidien to agree to defer any objection to its claims at this time until such time (if ever) as these claims actually need to be liquidated.

The Trust will continue to refine its analysis of these claims. At this time, the Trust does not believe there is any reason to expect that any of these claims will result in any material delay or reduction in future distributions to the Trust's beneficiaries.

The current objection deadline to each of the above claims is August 15, 2023, which may be extended upon request and further court order. Should any of these claims not be withdrawn as set forth above, the Trust will file an objection seeking to disallow and expunge the claims.

### 3. Fee Examiner

On December 1, 2022, the MDT II Trustees engaged the services of Robert Keach, Esq.,<sup>4</sup> of Bernstein, Shur, Sawyer & Nelson, P.A., to serve as fee examiner for certain trust professionals. The MDT II Trustees are keenly aware of the need to efficiently use the

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<sup>4</sup> Currently, Mr. Keach serves as the chapter 11 trustee in the railroad reorganization case of *Montreal Maine & Atlantic Railway, Ltd.*, a cross-border restructuring case. Mr. Keach is also the fee examiner in the *Exide Technologies* case in Delaware; he was also the fee examiner in *In re AMR Corporation* (the chapter 11 cases of American Airlines and its parent and certain affiliates). Further information on Mr. Keach can be found here: <https://www.bernsteinshur.com/who/attorney-directory/robert-j-keach/>.

## Opioid Master Disbursement Trust II

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Trust's limited funds, while at the same time vigorously pursue three large, complex litigations. The MDT II Trustees are confident that Mr. Keach will aid in striking the balance between these competing interests, to the ultimate benefit of MDT II's beneficiaries.

### **4. Other**

During the Period, MDT II resolved a dispute with one of the law firms MDT II retained as litigation counsel. The resolution included a payment to MDT II. The agreement reflecting the resolution was signed after the end of the Period. Thus, the payment to MDT II (scheduled to be paid before the end of February 2023) will be included in the financial information in the MDT II Trustees' next report.

The law firm is no longer engaged by MDT II.

### ***Financial Update***

During the Period, the Trust began with a cash balance of \$170,661,561, received \$1,834,054 of interest income (~3.59% annualized rate) and disbursed \$36,471,644, resulting in a \$136,023,970 ending Trust cash balance.

The Trust's disbursements during the Period were comprised of (i) \$7,107,977 on account of Trust litigation and administrative expenses and (ii) \$29,363,667 from the Third-Party Payor Reserve to the Third-Party Payor Trust, in accordance with Article III.B.9.a.ii of the Plan.

The Trust's ending cash balance was \$136,023,970, comprised of the Operating Reserve (\$124,551,569)<sup>5</sup> and the amounts set aside (and still held) for the Municipal and Tribe Opioid Attorneys' Fee Fund (\$11,472,401). 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.

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<sup>5</sup> For illustrative purposes, Operating Reserve includes amounts to be used to offset Trust expenses but held in different Trust sub-accounts as of January 31, 2023.

## Opioid Master Disbursement Trust II

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### 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, arguing among other things that those policies mandated exclusive jurisdiction to litigate any coverage disputes in the United Kingdom. The Trust filed oppositions to these motions on November 23, 2022, and the Court heard argument on January 27, 2023, after which the Court took the motions under submission. Pending a ruling on the motions, the Court, at the Trust's request, entered a temporary restraining order barring the moving insurers from proceeding with anti-suit injunction actions against the Trust in the United Kingdom, by which certain of the insurers sought to have an English court bar the Trust from proceeding with the Missouri litigation if the pending motions to dismiss are denied. If the Court denies the insurers' motions to dismiss, it will schedule a hearing on the Trust's request to convert the TRO into a permanent injunction.

Separately, 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 subpoenas on certain third parties seeking information about other potentially applicable coverage. A number of the insurers have likewise 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.

## **Opioid Master Disbursement Trust II**

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The next scheduled hearing in the case is a case management conference on April 28, 2023. The close of fact discovery 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 filed a lawsuit in the U.S. Bankruptcy Court for the District of Delaware against Covidien Unlimited Company, Mallinckrodt plc's former parent, and three of its subsidiaries, hereinafter referred to, collectively, as Covidien. The Trust asserts causes of action for intentional and constructive fraudulent transfers, as well as claims for breach of fiduciary duty; 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 Mallinckrodt 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 2013. 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. Furthermore, the Trust has asked the Court to award reimbursement, indemnification or contribution by or from Covidien for various costs and payments made by Mallinckrodt pre-bankruptcy and post-petition. Review of the vast number of documents related to these claims is ongoing.

On December 23, 2022, Covidien filed a motion to dismiss the complaint. The Trust's response to the motion to dismiss is due on February 28, 2023.

## Opioid Master Disbursement Trust II

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### **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 filed a lawsuit in the U.S. Bankruptcy Court for the District of Delaware against seventy-two 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 and promotion of its 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 April 11, 2023, to identify additional SRP defendants and to amend the SRP complaint. The discovery needed to continue identifying defendants is ongoing. During the Period, the Trust successfully prosecuted motions to compel production of shareholder information against J.P. Morgan, Morgan Stanley and Goldman Sachs. The Trust will continue to take an active role in pursuing necessary information.

The Court scheduled a pretrial conference for February 28, 2023, at which time the parties will discuss scheduling motions to dismiss and other case management procedures.

## Opioid Master Disbursement Trust II

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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; (iv) make distributions to the Public and Private Creditor Trusts per the allocations in the Plan; and (v) monetize the New Opioid Warrants. 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>.

## Opioid Master Disbursement Trust II

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# *Appendix*<sup>6</sup>

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<sup>6</sup> Note: As previously discussed, Warrant sale proceeds are not included in financial appendices.

## Opioid Master Disbursement Trust II

### Appendix 1: Trust Financial Summary

#### Trust Activity Summary for Second Reporting Period (Oct 1, 2022 – Jan 31, 2023)<sup>7</sup>:

(\$ in actuals)	Beginning Balance	MDT II Period Receipts			MDT II Period Disbursements			Ending Balance
		Opioid Deferred Cash Payments	Interest Income	Total Receipts	Distributions	Expenses (Litigation & Administrative)	Total Disbursements	
Operating Reserve	\$129,961,429	-	\$1,698,117	\$1,698,117	-	(\$7,107,977)	(\$7,107,977)	\$124,551,569
Third-Party Payor Reserve	29,363,667	-	-	-	(29,363,667)	-	(29,363,667)	-
Municipal and Tribe Opioid Attorneys' Fee Fund	11,336,464	-	135,937	135,937	-	-	-	11,472,401
Ratepayer Account	-	-	-	-	-	-	-	-
<b>Opioid MDT II Total</b>	<b>\$170,661,561</b>	<b>-</b>	<b>\$1,834,054</b>	<b>\$1,834,054</b>	<b>(\$29,363,667)</b>	<b>(\$7,107,977)</b>	<b>(\$36,471,644)</b>	<b>\$136,023,970</b>

#### Trust Activity Cumulative Summary (June 16, 2022 – Jan 31, 2023)<sup>7</sup>:

(\$ in actuals)	Beginning Balance	MDT II Cumulative Receipts			MDT II Cumulative Disbursements			Ending Balance
		Opioid Deferred Cash Payments	Interest Income	Total Receipts	Distributions	Expenses (Litigation & Administrative)	Total Disbursements	
Operating Reserve	\$134,953,403	-	\$2,578,086	\$2,578,086	-	(\$12,979,920)	(\$12,979,920)	\$124,551,569
Third-Party Payor Reserve	29,363,667	-	-	-	(29,363,667)	-	(29,363,667)	-
Municipal and Tribe Opioid Attorneys' Fee Fund	11,276,655	-	195,746	195,746	-	-	-	11,472,401
Ratepayer Account	3,000,000	-	-	-	(3,000,000)	-	(3,000,000)	-
<b>Opioid MDT II Total</b>	<b>\$178,593,724</b>	<b>-</b>	<b>\$2,773,833</b>	<b>\$2,773,833</b>	<b>(\$32,363,667)</b>	<b>(\$12,979,920)</b>	<b>(\$45,343,587)</b>	<b>\$136,023,970</b>

<sup>7</sup> Reflects Trust activity subsequent to the receipt and disbursement of the Initial Opioid Deferred Cash Payment; for illustrative purposes, Operating Reserve includes amounts to be used to offset Trust expenses but held in different Trust sub-accounts as of January 31, 2023; expenses exclude fees incurred during the Period but unpaid as of January 31, 2023.

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### *Trust Operating Reserve Additional Detail<sup>8</sup>:*

	Actual	Actual	YTD
	Jun - Sep <i>(3.5 months)</i>	Oct - Jan <i>(4 months)</i>	Jun - Jan <i>(7.5 months)</i>
<i>(\$ in actuals)</i>			
<b>Beginning Cash</b>	<b>\$134,953,403</b>	<b>\$129,961,429</b>	<b>\$134,953,403</b>
Professional Fees - Legal & Litigation Support	(\$5,161,547)	(\$6,599,008)	(\$11,760,555)
Trustee Fees & Expenses	(271,042)	(259,238)	(530,280)
Professional Fees - Financial & Tax	(150,000)	(200,000)	(350,000)
Insurance	(263,200)	-	(263,200)
Other	(26,154)	(49,731)	(75,885)
<b>Total Trust Expenses</b>	<b>(\$5,871,943)</b>	<b>(\$7,107,977)</b>	<b>(\$12,979,920)</b>
Interest Income	879,969	1,698,117	2,578,086
<b>Ending Cash</b>	<b>\$129,961,429</b>	<b>\$124,551,569</b>	<b>\$124,551,569</b>
<i>Memo: Trust Operating Reserve Detail</i>			
Total Fees: Litigation	4,922,006	6,342,587	11,264,594
Total Fees: Administrative	949,936	765,390	1,715,326
<b>Total Fees</b>	<b>\$5,871,943</b>	<b>\$7,107,977</b>	<b>\$12,979,920</b>

<sup>8</sup> Reflects Trust activity subsequent to the receipt and disbursement of the Initial Opioid Deferred Cash Payment; for illustrative purposes, Operating Reserve includes amounts to be used to offset Trust expenses but held in different Trust sub-accounts as of September 30, 2022, and January 31, 2023; expenses exclude fees incurred during the Period but unpaid as of January 31, 2023.

## Opioid Master Disbursement Trust II

### 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.<sup>9</sup> To date, Mallinckrodt has made 1 payment of \$450,000,000, of which \$443,291,078 was paid to the Trust.<sup>9</sup> 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. Additionally, the total amount of payments may be reduced if Mallinckrodt elects to exercise the prepayment option provided for under the Plan (during the first 18 months following the Effective Date).

From the Effective Date through May 2023, the Trust is projected to disburse \$21,861,690 on account of its expenses (i.e., excluding disbursements to creditor trusts) comprised of \$20,139,055 for legal and litigation support, \$795,886 for trustee fees and expenses, \$566,782 for financial and tax advisory services, \$263,200 for insurance, and \$96,767 for other expenses.

### Trust Expense and Operating Reserve Forecast<sup>10</sup>:

(\$ in actuals)

	Actual	Actual	Forecast	Total
	Jun - Sep (3.5 months)	Oct - Jan (4 months)	Feb - May (4 months)	Jun - May (11.5 months)
<b>Beginning Cash</b>	<b>\$134,953,403</b>	<b>\$129,961,429</b>	<b>\$124,551,569</b>	<b>\$134,953,403</b>
Professional Fees - Legal & Litigation Support	(\$5,161,547)	(\$6,599,008)	(\$8,378,500)	(\$20,139,055)
Trustee Fees & Expenses	(271,042)	(259,238)	(265,606)	(795,886)
Professional Fees - Financial & Tax	(150,000)	(200,000)	(216,782)	(566,782)
Insurance	(263,200)	-	-	(263,200)
Other	(26,154)	(49,731)	(20,882)	(96,767)
<b>Total Trust Expenses</b>	<b>(\$5,871,943)</b>	<b>(\$7,107,977)</b>	<b>(\$8,881,770)</b>	<b>(\$21,861,690)</b>
Interest Income	879,969	1,698,117	[TBD]	2,578,086
<b>Ending Cash</b>	<b>\$129,961,429</b>	<b>\$124,551,569</b>	<b>\$115,669,800</b>	<b>\$115,669,800</b>

<sup>9</sup> Amounts not paid to the Trust were paid directly to beneficiaries or were used to satisfy certain pre-Effective Date expenses.

<sup>10</sup> June through September (actual) reflects Trust activity subsequent to the receipt and disbursement of the Initial Opioid Deferred Cash Payment; for illustrative purposes, Operating Reserve includes amounts to be used to offset Trust expenses but held in different Trust sub-accounts as of September 30, 2022, and January 31, 2023; total Trust expenses during the Period exclude fees incurred but unpaid as of January 31, 2023.