

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

In re:

MALLINCKRODT PLC,

Reorganized Debtor.<sup>1</sup>

Chapter 11

Case No. 20-12522 (JTD)

**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> 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 (together with Mallinckrodt, "**Debtors**"). A complete list of the Debtors 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.

Dated: February 22, 2024

Respectfully submitted,

**COLE SCHOTZ P.C.**

/s/ Justin R. Alberto

Justin R. Alberto (No. 5126)  
500 Delaware Avenue, Suite 1410  
Wilmington, DE 19801  
Telephone: (302) 652-3131  
Facsimile: (302) 652-3117  
jalberto@coleschotz.com

Anthony De Leo, Esq.  
1325 Avenue of the Americas  
19th Floor  
New York, NY 10019  
Telephone: (212) 752-8000  
Facsimile: (212) 752-8393  
adeleo@coleschotz.com

-and-

**BROWN RUDNICK LLP**

David J. Molton, Esq.  
Gerard T. Cicero, Esq.  
Seven Times Square  
New York, NY 10036  
Telephone: (212) 209-4800  
Facsimile: (212) 209-4801  
dmolton@brownrudnick.com  
gcicero@brownrudnick.com

*Co-Counsel to the Opioid Master Disbursement  
Trust II*

**EXHIBIT 1**

Periodic Report Ending January 31, 2024

**Opioid Master Disbursement Trust II**  
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### Report for Period October 1, 2023, through January 31, 2024

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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, 2023 and ending January 31, 2024 (the “Period”),<sup>2</sup> fulfills such obligation. Further background on the Trust is provided in Exhibit A.

#### ***Reporting Period Activity***

##### **Extension of the Other Opioid Claims Objection Deadline**

During the Period, on December 7, 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 December 13, 2023). The court granted the motion on December 27, 2023. The new objection deadline is later of: (a) March 13, 2024, or (b) one hundred

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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 reports are available on both the *In re Mallinckrodt* docket and the MDT II website (<https://www.opioidmasterdisbursementtrust.com/Mallinckrodt/PeriodicReports>).

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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 \$138,063,459, received \$2,401,644 of interest and other income and disbursed \$5,787,902, resulting in a \$134,677,201 ending Trust cash balance.

The Trust's receipts during the period were comprised of (i) \$2,401,644 of interest income (~3.59% annualized rate). The Trust's disbursements during the Period were comprised of \$5,787,902 account of Trust expenses.

The Trust's ending cash balance was \$134,677,201, comprised of the Operating Reserve (\$111,061,997) and the amounts set aside (and still held) for the Municipal and Tribe Opioid Attorneys' Fee Fund (\$23,615,204). 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 December 20, 2023, the Trust filed a separate but related lawsuit involving certain

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additional insurance policies that it discovered through a third-party subpoena. Upon the Trust's motion, these two lawsuits were consolidated on January 30, 2024. The insurers named in the second-filed, now-consolidated lawsuit had until February 16, 2024 to respond to the consolidated lawsuit.

The Trust has served discovery requests on the insurers, as well as additional third-party subpoenas on certain of Mallinckrodt's predecessor entities and insurance brokers, seeking information and documents related to the insurers' policies, alleged defenses, and other matters. 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 still ongoing.

The Trust is also currently awaiting a decision on an interlocutory appeal related to certain insurers' motion to dismiss the lawsuit with respect to some or all of their policies, which the trial court granted on March 22, 2023. These insurers contend 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; the Trust contends that the subject provision merely provides a safe harbor that would allow, but does not compel, coverage litigation to proceed in England or Wales. A three-judge panel for the Missouri Court of Appeals heard oral argument on 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 have enjoined 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.

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The next scheduled hearing in the case is a case management conference on March 1, 2024. The close of fact discovery currently is set for September 18, 2024.

### **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, and then moved to amend its complaint on June 15, 2023. The amended complaint contains, among other things, further allegations tying the Mallinckrodt and Covidien enterprises together and demonstrating Covidien's dominion and control over Mallinckrodt, 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.

On January 18, 2024, the Trust won a key, opening victory, surviving Covidien's motion to dismiss. The Court allowed the majority of the Trust's claims, namely for intentional fraudulent transfer, reimbursement, indemnification, contribution, equitable subordination, and disallowance pursuant to Sections 502(d) and 502(e) of the Bankruptcy Code, to proceed. The Court dismissed the claims for constructive fraudulent transfer, breach of fiduciary duty as a promoter, and equitable disallowance. The Court also granted the motion to amend with respect to the claims that it allowed to proceed.

Through the surviving claims, 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) approximately \$867 million in net cash transfers that Mallinckrodt paid to Covidien from 2010 through 2012; and (c) 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



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tax liabilities in the hundreds of millions of dollars that Covidien imposed on Mallinckrodt in connection with the spinoff, and to recover from Covidien (iii) the value of any payments that Mallinckrodt made on account of those pre-spinoff tax liabilities.

The Trust anticipates that the litigation will proceed to the discovery phase after Covidien answers the amended complaint on or before March 25, 2024.

### **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"). On October 24, 2023, the Trust amended its complaint to add 43 additional Defendants that were identified during the Trust's investigation. To date, the Trust has also voluntarily dismissed 28 Defendants.

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, sale, 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 had granted an extension until January 8, 2024, to serve the SRP complaint and identify any additional defendants. The Trust has filed a motion to further extend this deadline until April 8, 2024 due to additional delays by certain parties in producing data pursuant to subpoenas issued in 2022. This motion automatically extends the deadline while it is pending. The Trust has also filed a motion to serve limited interrogatories on Defendants to identify any Defendants who intend to assert that they were not the ultimate transferees of the SRP funds, so that the Trust could name any such ultimate transferees

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as defendants in a future amended complaint.

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 has been analyzing submissions and responding to Defendants who have asserted defenses under the protocol, particularly to request additional information. To date, following meet-and-confers, Defendants have filed five motions to dismiss pursuant to the protocol with the Court. The Court will hear arguments on three of the motions on March 5, 2024.

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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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***Appendix<sup>3</sup>***

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<sup>3</sup> 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 January 31, 2024.

## Opioid Master Disbursement Trust II

### Appendix 1: Trust Financial Summary

#### Trust Activity Summary for Fifth Reporting Period (October 1, 2023 – January 31, 2024)\*:

(\$ 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	\$114,859,220	-	\$1,990,679	\$1,990,679	-	(\$5,787,902)	(\$5,787,902)	\$111,061,997
Third-Party Payor Reserve	-	-	-	-	-	-	-	-
Municipal and Tribe Opioid Attorneys' Fee Fund	23,204,239	-	410,965	410,965	-	-	-	23,615,204
Ratepayer Account	-	-	-	-	-	-	-	-
<b>Opioid MDT II Total</b>	<b>\$138,063,459</b>	<b>-</b>	<b>\$2,401,644</b>	<b>\$2,401,644</b>	<b>-</b>	<b>(\$5,787,902)</b>	<b>(\$5,787,902)</b>	<b>\$134,677,201</b>

#### Trust Activity Cumulative Summary (June 16, 2022 – January 31, 2024)\*:

(\$ in actuals)	Beginning Balance	MDT II Cumulative Receipts			MDT II Cumulative Disbursements			Ending Balance
		Opioid Deferred Cash Payments	Interest and Other Income <sup>3</sup>	Total Receipts	Distributions	Expenses (Litigation & Administrative)	Total Disbursements	
Operating Reserve	\$134,953,403	-	\$12,213,187	\$12,213,187	-	(\$36,104,592)	(\$36,104,592)	\$111,061,997
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	1,034,760	12,338,549	-	-	-	23,615,204
Ratepayer Account	3,000,000	-	-	-	(3,000,000)	-	(3,000,000)	-
<b>Opioid MDT II Total</b>	<b>\$178,593,724</b>	<b>\$11,303,789</b>	<b>\$13,247,947</b>	<b>\$24,551,736</b>	<b>(\$32,363,667)</b>	<b>(\$36,104,592)</b>	<b>(\$68,468,259)</b>	<b>\$134,677,201</b>

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### *Trust Operating Reserve Additional Detail\*:*

(\$ in actuals)

	Actual	Actual	Total
	Jun 23 - Sep 23 <i>(4 months)</i>	Oct 23 - Jan 24 <i>(4 months)</i>	Jun 23 - Jan 24 <i>(8 months)</i>
<b>Beginning Cash</b>	<b>\$120,033,569</b>	<b>\$114,859,220</b>	<b>\$120,033,569</b>
Professional Fees - Legal & Litigation Support	(\$6,797,793)	(\$5,475,578)	(\$12,273,371)
Trustee Fees & Expenses	(260,399)	(259,616)	(520,014)
Professional Fees - Financial & Tax	(58,980)	(2,120)	(61,100)
Insurance	(263,200)	-	(263,200)
Other	(75,545)	(50,588)	(126,133)
<b>Total Trust Expenses</b>	<b>(\$7,455,916)</b>	<b>(\$5,787,902)</b>	<b>(\$13,243,818)</b>
Interest and Other Income	2,281,567	1,990,679	4,272,247
<b>Ending Cash</b>	<b>\$114,859,220</b>	<b>\$111,061,997</b>	<b>\$111,061,997</b>
 <i>Memo: Trust Operating Reserve Detail</i>			
Total Fees: Litigation	6,678,473	5,392,696	12,071,169
Total Fees: Administrative	777,443	395,194	1,172,637
<b>Total Fees</b>	<b>\$7,455,916</b>	<b>\$5,787,890</b>	<b>\$13,243,806</b>

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### **Appendix 2: Trust Forecast**

Pursuant to the 2022 Plan, Mallinckrodt was obligated to make 9 cash payments over 8 years on account of the Opioid Deferred Cash Payments. The scheduled payments totalled \$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 2023 Chapter 11 filing. The Trust received a second and final payment of \$250,000,000 on August 24, 2023 which it then distributed to the opioid creditor trusts per the 2022 Plan.<sup>5</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.

In the second year of its operations, the Trust is projected to disburse approximately \$23,823,140 on account of its expenses (i.e., excluding disbursements to creditor trusts) comprised of \$22,241,371 for legal and litigation support, \$778,348 for trustee fees and expenses, \$278,100 for financial and tax advisory services, \$263,200 for insurance, and \$262,121 for other expenses.

### **Trust Period Expense and Operating Reserve Forecast\*:**

(\$ in actuals)

	Actual	Actual	Forecast	Total
	Jun 23 - Sep 23 (4 months)	Oct 23 - Jan 24 (4 months)	Feb 24 - May 24 (4 months)	Jun 23 - May 24 (12 months)
<b>Beginning Cash</b>	<b>\$120,033,569</b>	<b>\$114,859,220</b>	<b>\$111,061,997</b>	<b>\$120,033,569</b>
Professional Fees - Legal & Litigation Support	(\$6,797,793)	(\$5,475,578)	(\$9,968,000)	(\$22,241,371)
Trustee Fees & Expenses	(\$260,399)	(\$259,616)	(258,333)	(778,348)
Professional Fees - Financial & Tax	(\$58,980)	(\$2,120)	(217,000)	(278,100)
Insurance	(\$263,200)	\$0	-	(263,200)
Other	(\$75,545)	(\$50,588)	(136,000)	(262,133)
<b>Total Trust Expenses</b>	<b>(\$7,455,916)</b>	<b>(\$5,787,902)</b>	<b>(\$10,579,333)</b>	<b>(\$23,823,151)</b>
Interest and Other Income	2,281,567	1,990,679	[TBD]	4,272,247
<b>Ending Cash</b>	<b>\$114,859,220</b>	<b>\$111,061,997</b>	<b>\$100,482,664</b>	<b>\$100,482,664</b>

<sup>5</sup> The Trust also received contingent value rights ("CVR"), essentially warrants, in the company (which will provide some value if the performance of the company dramatically improves).