

**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)

Re: ECF No. 2200

**THE OFFICIAL COMMITTEE OF OPIOID RELATED CLAIMANTS'
STATEMENT AND RESERVATION OF RIGHTS REGARDING
THE DEBTORS' SOLICITATION PROCEDURES MOTION**

The Official Committee of Opioid Related Claimants (the “OCC”) appointed in the chapter 11 cases (collectively, the “Chapter 11 Cases”) of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through its undersigned counsel, hereby submits this statement and reservation of rights (the “Statement & Reservation of Rights”)² regarding the *Motion of Debtors for Entry of Order (I) Approving the Disclosure Statement and Form and Manner of Noticing of Hearing Thereon, (II) Establishing Solicitation Procedures, (III) Approving the Form and Manner of Notice to Attorneys and Solicitation Directive, (IV) Approving the Form of Ballots, (V) Approving Form, Manner, and Scope of Confirmation Notice, (VI) Establishing Certain Deadlines in Connection with Approval of Disclosure Statement, and Confirmation of Plan, and (VII) Granting Related Relief* [ECF No. 2200] (the “Solicitation Procedures Motion” and any

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://restructuring.primeclerk.com/Mallinckrodt>.

² Contemporaneously herewith, the OCC has filed *The Official Committee of Opioid Related Claimants’ Objection to Debtors’ Motion Seeking Approval of the Disclosure Statement* (the “DS Objection”). This Statement and Reservation of Rights addresses solely the Debtors’ proposed solicitation and notice procedures, while the DS Objection addresses the OCC’s concerns regarding the adequacy of the Disclosure Statement and the confirmability of the Plan.

order approving same, the “Solicitation Procedures Order”).³ In support of this Statement & Reservation of Rights, the OCC respectfully represents as follows.

STATEMENT & RESERVATION OF RIGHTS

1. Since the Debtors filed the Solicitation Procedures Motion, the OCC—the Court-appointed fiduciary for all Opioid Claimants⁴ in these cases—has been working diligently and in good faith with the Debtors to address certain deficiencies regarding the Debtors’ proposed solicitation and noticing program for Opioid Claimants. To that end, the OCC has suggested various modifications to such procedures aimed at improving (i) the Debtors’ proposed Additional Opioid Notice Plan (which as of the date hereof, has not been publicly filed, but has only been shared on a confidential basis for review and comment), (ii) the Opioid Claimants Notice (and any shortened forms thereof) and (iii) the Solicitation Procedures (including the proposed forms of ballots), to ensure that notice to Opioid Claimants is reasonably calculated to apprise such claimants not only of the voting deadline (like in any traditional chapter 11 case), but also—given that there is no bar date for Opioid Claimants—of the Chapter 11 Cases generally, the Debtors’ proposed Plan (and potential procedures for recovery) and Opioid Claimants’ rights to cast a vote on the Plan and be heard in connection with the same.

2. Indeed, the noticing and due process issues and concerns that permeate the Debtors’ proposed solicitation process are particularly magnified in light of the Debtors’ decision not to

³ Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Solicitation Procedures Motion.

⁴ As used herein, “Opioid Claimants” refers to all holders (both public and private) of claims arising directly or indirectly from exposure to the Debtors’ opioid products or the Debtors’ role in perpetuating the opioid crisis. Opioid Claimants include no fewer than 11 distinct constituencies: (i) the federal government; (ii) the 50 States and other political subdivisions of the United States; (iii) political subdivisions of the States; (iv) Native American tribes; (v) personal injury victims (including children diagnosed upon birth with neonatal abstinence syndrome due to fetal opioid exposure (the “NAS Children”)); (vi) a putative class representing the interests of NAS Children seeking a medical monitoring fund; (vii) hospitals; (viii) third party payors, including health insurance companies; (ix) purchasers of private insurance; (x) emergency room physicians; and (xi) independent public school districts.

establish a bar date for Opioid Claimants, which would have helped identify the universe of known Opioid Claimants and established a fixed creditor pool. As a result, the vast majority of Opioid Claimants in these cases will be solicited for voting purposes indirectly (as opposed to through direct mailing) through the various publications, advertisements and media communications placed pursuant to the Additional Opioid Notice Plan. In other words, most Opioid Claimants will only find out about the Mallinckrodt cases, their potential rights in the Mallinckrodt cases, the fact that a Plan could affect those rights, and the fact that the Plan is now being voted on, etc., through the type of *constructive notice* that parties usually receive notice of the bar date.

3. As of the filing of this Statement, the Debtors have not filed the Additional Opioid Notice Plan, a revised Opioid Claimants Notice nor a proposed Solicitation Procedures Order. Thus, although the OCC and the Debtors have had numerous discussions regarding proposed changes these materials—which the Debtors have stated they are comfortable with—the OCC and its constituents will not know for certain that such changes have been accepted (and thus the OCC’s issues are resolved) until the proposed forms of these documents are filed on the docket. Recognizing that the OCC cannot reasonably object to materials that have not been publicly filed, the Debtors agreed to extend the OCC’s deadline to object to the Solicitation Procedures Motion to this Sunday, May 23 at 12:00 p.m. (ET). The OCC therefore intends to supplement this Statement & Reservation of Rights with additional objections (if any) once the relevant documents are filed (or otherwise let the Debtors know at that time that the OCC has no further comments on these documents).

4. Regardless of any modifications to the noticing plan in these cases, however, one thing is certain. The Debtors’ proposed solicitation timeline—which spans a maximum of 62 days from the Solicitation Deadline to the Voting Deadline—is insufficient to provide the potentially

hundreds of thousands of unknown Opioid Claimants with notice of the proposed Plan and a meaningful opportunity to cast an informed vote. This is true for at least two reasons. *First*, this will be the first time many of the unknown Opioid Claimants will receive *any* notice of their rights in these Chapter 11 Cases (or the cases generally) in light of the absence of a traditional bar date and noticing program. *Second*, the Solicitation Procedures currently require Opioid Claimants to affirmatively request a Ballot upon receiving notice of the Plan (whether directly or indirectly)—a two-step process (or more, because Opioid Claimants will probably have further questions about the case, how recoveries work, etc.). Accordingly, the OCC submits that the solicitation of Opioid Claimants should commence no less than 90 days before the Voting Deadline, and the OCC should have the right to seek an extension of the Voting Deadline in the event the OCC determines that additional noticing is required to comport with due process or Opioid Claimants need additional time to submit their Ballots.⁵

5. Similarly, the OCC objects to the Debtors' proposed timeline for filing the Plan Supplement, which will contain critical information regarding the Opioid Trust—including, most importantly, the proposed trust distribution procedures applicable to various categories of Opioid Claims—that is critical to Opioid Claimants' evaluation of their treatment and anticipated recoveries under the Plan.⁶ In order to ensure that Opioid Claimants have the ability to make an informed voting decision regarding the proposed Plan, the Plan Supplement must be filed

⁵ The OCC recognizes that for certain Opioid Claimants, Plan voting solicitation will *not* be the first time that they are made aware of the Mallinckrodt chapter 11 cases. Rather, for some claimants – *and predominantly the Opioid Claimants that executed the RSA* – they are fully aware of the case and the Plan. The OCC trusts that the Debtors are not trying to set up a situation where most of the Opioid Claimants that vote on the Plan are governmental opioid claimants who signed the RSA.

⁶ The OCC's concerns regarding the Debtors' failure to include the documents governing the Opioid Trust distribution procedures is addressed in more detail in the DS Objection.

sufficiently far in advance of the hearing on the Solicitation Procedures Motion, and the proposed trust distribution procedures should be included in the Debtors' Solicitation Package.

RESERVATION OF RIGHTS

6. As noted above, the Debtors intend to file revised solicitation and noticing documents on May 22 and have agreed that the OCC may file any further objection to such documents by noon on Sunday May 23. The OCC further reserves all rights with respect to the Plan, the Disclosure Statement and the Solicitation Procedures Motion, including, without limitation, the right to (i) amend or supplement this Statement, submit additional briefing (including a sur-reply should the Debtors produce additional evidence in support of the Solicitation Procedures Motion or alter the terms of the Solicitation Procedures Order), (ii) further object to approval of the Disclosure Statement and confirmation of the Plan on any additional grounds whatsoever and (iii) participate in any discovery and be heard at any hearing related to the Disclosure Statement, the Plan or the Solicitation Procedures Motion. For the avoidance of doubt, the OCC also reserves all rights to seek to compel the Debtors to establish a bar date for Opioid Claimants.

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Dated: May 21, 2021
Wilmington, Delaware

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