



Levy County Board of County Commissioners Agenda Item Summary Form

1. **Name:** Heather Encinosa
2. **Organization/Title/Telephone:** Interim County Attorney
3. **Meeting Date:** Tuesday, October 5, 2021
4. **Requested Motion/Action:**

Authorize Shayna Sacks of Napoli Shkolnik, PLLC to vote in favor of the proposed Mallinckrodt plc bankruptcy plan on behalf of Levy County in the pending bankruptcy action *In re: Mallinckrodt plc*, Case No. 20-12552, U.S. Bankruptcy Court District of Delaware.

5. **Agenda Presentation:** Yes No N/A
6. **Time Requested:** 10 minutes
7. **Is this Item Budgeted (If Applicable):** Yes No N/A
8. **If no, State Action Required:**
a. **Budget Action:** N/A
b. **Financial Impact Summary Statement:** No financial impact
c. **Detailed Analysis Attached:** N/A
d. **Budget Officer Approval:** N/A

9. **Background: (Why is the action necessary, and what action will be accomplished) (All supporting documentation must be attached if any)**

Shayna Sacks of Napoli Shkolnik, PLLC has been representing Levy County in the ongoing opioid litigation. As part of that litigation Mallinckrodt, which operates a business known as Specialty Generics, filed bankruptcy and a Plan has now been provided which requires action by all creditors holding opioid-related claims. It is the recommendation of outside counsel that the County accept the Plan for resolution of the pending bankruptcy (*In re: Mallinckrodt plc*, Case No. 20-12552, U.S. Bankruptcy Court District of Delaware) and allow Napoli Shkolnik to cast the vote in favor of the plan on the County's behalf. The approval must be provided to Ms. Sacks prior to October 8, 2021. It is expected that the bankruptcy court will consider approval of the proposed plan sometime this year. In order for the Plan to be approved a majority of each class of claimants by number and 2/3rds of the claimants by dollar value of claims must vote to approve the plan. Levy County is a member of the public creditors – all state, local, and tribal governments.

In summary, the Plan, which is still subject to court approval provides as follows: the Plan proposes to establish the opioid plaintiff recovery trust (the "Opioid Trust") that, among other things, would establish an abatement fund to offset the costs of combatting opioid addiction and providing support to communities impacted by opioid abuse. The structure of the Opioid Trust, which includes sub-trusts for the benefit of: non-federal governments, tribal nations, and various private creditors, is substantially similar to the trust structure proposed in the *Purdue Pharma L.P.* bankruptcy cases. The restructuring plan would also grant Mallinckrodt the benefit of a "channeling injunction" that would provide for the "release" of all opioid-related claims asserted against Mallinckrodt or its subsidiaries and many other Protected Parties (as defined under the Plan) related to Specialty Generics' manufacture and sale of opioids prior to the Plan effective date, regardless of whether the holder of any opioid claim votes to accept the plan, or opposes providing the release. Mallinckrodt will also retain ownership of the Specialty Generics business.

At a high-level, the consideration to be provided to the Opioid Trusts, will be: (i) \$1.6 billion in cash paid over seven (7) years (with a right to prepay at a discount); (ii) an additional \$125 million paid on the eighth



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anniversary of the Effective Date (with a right to prepay at a discount) on account of rights under certain insurance policies; (iii) claims against certain third- parties that are of uncertain valuation; and (iv) warrants to acquire 19.99% of the reorganized equity, subject to dilution from equity reserved under the Management Incentive Plan, at a strike price per share corresponding to a total equity value of \$1.551 billion (the “Opioid Trust Consideration”). The ultimate distributable value to opioid creditors is subject to change based on a number of variables – namely, prepayment of the deferred cash payments, recovery, if any, on claims against third parties), and the value of “New Opioid Warrants” subject to dilution under the anticipated management incentive plan.

After payments are made to any private creditors, the balance of Opioid Trust will be allocated to the public creditors. The ultimate value of the bankruptcy estate is unknown because it depends in part on the realization of warrant value and recovery on third party claims transferred to the trust. In general, approximately \$1.725 billion will be provided to public and private creditor trusts with a mission to fund abatement of the opioid crisis. All value distributed to the public creditors trust will be exclusively dedicated to programs designed to abate the opioid crisis and for no other purpose, other than to fund administration of the programs themselves and to pay fees and costs, including the funding of the Opioid Attorneys’ Fee Fund, which will be established. Pursuant to the terms of the Plan the funds distributed to the public creditor’s trust will be allocated to each State for use within that State. The distribution methodology is grounded in, among other things, prescription opioid sales, the prevalence of pain reliever use disorder, overdose deaths, population, and other factors. Florida’s allocation is expected to be 7.0259134409%. Within-state allocations of those funds to local governments will be determined either by a default allocation mechanic or a “Statewide Abatement Agreement,” such as the AG MOU recently approved by Levy County.

It is impossible to determine at this time how much will be provided to Levy County locally, but it is important to note that any funds will be used either locally or regionally to fund approved abatement uses to counter the opioid epidemic and ancillary treatment services.

10. Recommended Approval

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| a. Department Director: | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| b. County Attorney: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| c. County Coordinator: | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| d. Other: | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |