



MEMORANDUM

TO: Mayor Mary Katherine Greenlaw and Fredericksburg City Council
FROM: Kathleen Dooley, City Attorney
SUBJECT: Mallinckrodt Settlement of Opioid Claims
DATE: September 9, 2021 (for the September 14, 2021 Council Meeting)

ISSUE

Shall City Council authorize its litigation team to vote to approve the Mallinckrodt bankruptcy plan?

RECOMMENDATION

Yes, the City's outside counsel recommend approval as in the City's and public's interest.

DISCUSSION

Mallinckrodt (MNK) is an opioid manufacturer that the City has sued for its role in creating the opioid epidemic. MNK has filed for bankruptcy protection in the face of the liabilities it faces as a result of its opioid-related conduct. A proposed plan for the disposition of MNK's assets is scheduled for a vote on September 17, 2021. Certain points of the MNK bankruptcy plan remain the subject of active negotiation but the plan as a whole has reached a point over the Labor Day weekend that allows outside counsel to make the recommendation that follows.

The MNK bankruptcy plan follows form in many respects with the recently-approved Purdue bankruptcy plan and is more straightforward because it does not contain the third-party Sackler releases that were so controversial in Purdue. Major components of the Mallinckrodt bankruptcy plan are as follows:

- The bankruptcy estate is valued at approximately \$1.6 billion. Of that total, approximately \$1.25 billion will be allocated to public claimants (states and their localities). The remaining amounts will be allocated among other claimants, such as Native American Tribes, third party payors, public & private hospitals, children affected by Neonatal Abstinence Syndrome, and personal injury claimants.
- Virginia's share of the public claimant funds is approximately \$28.5 million. That money will be allocated within Virginia pursuant to the terms of our recently finalized Virginia Opioid Abatement Fund and Settlement Allocation Memorandum of Understanding with the Attorney General's Office.

- Localities in Virginia will receive approximately \$11 million that will be allocated pursuant to the allocation model created by Professor Christopher Ruhm of UVA. This money may be spent at localities' discretion, with the caveat that the expenditures must be related in a broad sense to opioid abatement.
- Localities will also be eligible to benefit from an additional \$13 to \$14 million that is allocated for award by the Opioid Abatement Authority throughout Virginia.
- The time period for payment of the funds is not yet finalized.

FISCAL IMPACT

The City's share of the \$11 million allocated to Virginia localities, pursuant to the allocation model, is \$57,640, to be paid out in installments over the time period yet to be finalized. Of this amount, one-quarter (\$14,410) will be set aside in the Deficiency Fund to cover potential attorney fee claims.



September 14, 2021
Regular Meeting
Resolution 21-

MOTION:

SECOND:

RE: Authorizing the City's Outside Counsel to Vote on the City's Behalf to Support the Proposed Mallinckrodt Bankruptcy Plan

ACTION: APPROVED: Ayes: 0; Nays: 0

Mallinckrodt is an opioid manufacturer that the City has sued for its role in creating the opioid epidemic. It has filed for bankruptcy protection in the face of the liabilities it faces as a result of its opioid-related conduct. The City has filed a Proof of Claim in the Mallinckrodt bankruptcy proceeding and is a creditor in said proceeding.

All creditors in the Mallinckrodt bankruptcy are entitled to vote, on or before September 17, 2021, on whether to accept a plan that has been proposed to resolve the Mallinckrodt bankruptcy proceeding. The City's outside opioid litigation counsel has recommended that the City approve the proposed bankruptcy plan. The City Attorney has reviewed the available information about the proposed bankruptcy plan and concurs with the recommendation of outside counsel.

Therefore, the City Council hereby resolves that:

- The City Attorney is authorized to direct the City's outside opioid litigation counsel to cast the vote of the City in favor of the proposed bankruptcy plan as recommended by outside counsel.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Clerk's Certificate

I certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Resolution No. 21- , adopted at a meeting of the City Council held Date, 2021, at which a quorum was present and voted.

Tonya B. Lacey, MMC
Clerk of Council