

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

In re:

MALLINCKRODT PLC, *et al.*,<sup>1</sup>

Debtors.

MALLINCKRODT PLC, *et al.*,

Plaintiffs,

v.

State of Connecticut, *et al.*,<sup>2</sup>

Defendants.

Chapter 11

Case No. 20-12522 (JTD)

(Jointly Administered)

Adv. Pro. No. 20-50850 (JTD)

**Re: Adv. D.I. 184**

**MEMORANDUM ORDER**

Debtors filed this Adversary Proceeding seeking a preliminary injunction extending the automatic stay to certain actions filed in various state and federal courts against the Debtors and certain third parties. [Adv. D.I. 1, 2, 16]. The actions included one brought by the Canadian Elevator Industry Pension Trust Fund (the “Trust”) against the Debtors and certain current and former officers and directors of the Debtors. The Trust opposed the injunction. [Adv. D.I. 104]. Following a three-day hearing, I issued an oral ruling granting the preliminary injunction on November 23, 2020. [Adv. D.I. 168]. An order giving effect to the ruling was entered on December 4, 2020. [Adv. D.I. 180]. The Trust filed a Motion for Reconsideration (the

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<sup>1</sup> 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>. The Debtors’ mailing address is 675 McDonnell Blvd., Hazelwood, Missouri 63042.

<sup>2</sup> A complete list of the Defendants is set forth in the caption of the Debtors’ *Amended Adversary Complaint for Injunctive Relief Pursuant to 11 U.S.C. § 105* [Adv. D.I. 15] (“Amended Complaint”) and in Exhibits 1 and 2 thereto.

“Motion”) on December 14, 2020 asserting that the Debtors had taken inconsistent positions regarding certain director and officer insurance policies (the “D&O Policies”) and, therefore, the injunction was based upon a misapprehension of a material fact. [Adv. D.I. 184]. In the event the Motion is denied, the Trust seeks clarification that the preliminary injunction period began to run on November 23, 2020 rather than December 4, 2020 when the order was entered on the docket. [*Id.*]. For the reasons detailed below the Motion is denied. In addition, the injunction period began to run upon entry of the order, not the oral ruling.

### **JURISDICTION**

The Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1409(a).

### **BACKGROUND**

On October 12, 2020, the Debtors filed voluntary chapter 11 petitions in this Court. [D.I. 1]. Simultaneously, the Debtors commenced this adversary proceeding seeking a preliminary injunction extending the automatic stay to certain government lawsuits. [Adv. D.I. 2 at ¶1]. On October 22, 2020, the Debtors filed a Supplemental Motion also seeking a preliminary injunction extending the automatic stay to non-debtor entities and individuals who are co-defendants with the Debtors in certain actions. [Adv. D.I. 16 at ¶1]. The Supplement Motion included *Strougo v. Mallinckrodt plc, et al.*, No. 20-10100 (D.N.J.). The Trust opposed the injunction through a letter filed on the docket [Adv. D.I. 104] which I treated as an objection and addressed in my November 23, 2020 ruling. [Adv. D.I. 168 at 43:8-12].

A hearing on the motions for preliminary injunctions was held on November 16, 17, and 18, 2020. After taking the matter under advisement, I issued an oral ruling granting the

preliminary injunction on November 23, 2020, overruling all objections. [*Id.* at 43:8-12, 44:6-10]. The order giving effect to the ruling was entered on the docket on December 4, 2020. [Adv. D.I. 180]. The Trust filed this Motion on December 14, 2020. [Adv. D.I. 184]. The Debtors responded, opposing the Motion [Adv. D.I. 192] and the Trust filed a reply in further support. [Adv. D.I. 193].

### **STANDARD OF REVIEW**

The Trust brings this Motion for Reconsideration pursuant to the Federal Rules of Bankruptcy Procedure 9023 and 9024 which incorporate the Federal Rules of Civil Procedure 59 and 60 by reference. Fed. R. Bankr. P. 9023, 9024. Since the Motion is styled as a motion for reconsideration, I will analyze the Motion as one under Rules 9023 and 59.

“A motion for reconsideration under Rule 9023 may be granted where (i) there has been an intervening change in controlling law; (ii) new evidence has become available; or (iii) there is a need to prevent manifest injustice or to correct a clear error of fact or law.” *In re Energy Future Holdings Corp.*, 575 B.R. 616, 628 (Bankr. D. Del. 2017). To support an order for reconsideration there must be a “finding that the error is plain and indisputable...amount[ing] to a complete disregard of the controlling law or the credible evidence in the record.” *Id.* at 629 (alteration in original) (citation omitted).

### **DISCUSSION**

The Trust alleges that the Debtors presented facts that were “incomplete and confusing” and my reliance on such facts resulted in a clear error. [Adv. D.I. 185 at 7, 9]. They assert that the preliminary injunction was based solely on a finding that the D&O Policies are property of the estate and that continuation of the *Strougo* action would deplete those assets. [*Id.* at 7]. They argue that this determination is incorrect because the Debtors’ officers and directors asserted in a

separate filing that the proceeds of the D&O Policies are not property of the estate and that inconsistent treatment of the D&O Policies is irreconcilable. [*Id.* at 8].

The Trust's argument fails on two fronts. First, the allegedly inconsistent treatment of the D&O Policies is reconcilable. I granted the limited motion of the directors and officers to access the D&O Policies "solely to the extent necessary to permit the underwriters to pay and/or to advance the *defense costs* up to the amount of \$500,138.55 incurred by the directors and officers in connection with the *Strougo* Action before the date of this Order." [D.I. 895 at ¶2]. Nothing in the order states or implies that the D&O Policies or their proceeds are not property of the estate or that depletion of them would not cause irreparable harm. Rather, the order is offering limited relief while leaving the stay primarily in place. The Trust is merely attempting to rehash its argument that the proceeds of the D&O policy are not property of the estates and, therefore, cannot support the preliminary injunction. However, I considered and rejected this argument, and it is not proper grounds for a motion for reconsideration.

Second, even if I were to accept that my findings regarding the D&O Policies were erroneous, the Trust fails to allege that any of the other independent grounds upon which the preliminary injunction rests should likewise be set aside. The Trust asserts that I did not clearly state any grounds for granting the preliminary injunction as it applies to the *Strougo* action other than the depletion of the D&O Policies. [Adv. D.I. 193 at 6]. To the contrary, I explicitly ruled:

"[As] to the *Strougo* securities action...the debtors argue that there would still be some distraction to management in dealing with the motion if it goes forward. Indeed, several senior members of management are the third parties to that litigation. But there are no guarantees when the District Court might decide the motion to dismiss, and once decided, the debtors would be forced to come back to this Court to seek a stay of the action if it was appealed or to stop discovery from going forward if it was not, causing further distraction and cost to the estate in seeking a second injunction. Moreover, if the case proceeded only against the non-debtor defendants, issues of collateral estoppel, record taint, indemnification, and depletion of insurance proceeds to which the debtor is a co-insured with the non-

debtors would create further issues of irreparable harm to the estates. Therefore, I agree with the debtors and overrule the Strougo objection.”

[Adv. D.I. 168 at 55:6; 56:6-22]. Since the preliminary injunction was based on multiple, independent grounds, the Trust failed to show that granting the Motion on a singular issue (the D&O Policies) would affect the ultimate outcome or prevent manifest injustice.

Turning to the question of when the period of the preliminary injunction began to run, I find that it began upon entry of the order, not the oral ruling. Federal Rules of Civil Procedure 58 and 65, made applicable to these proceedings through Federal Rules of Bankruptcy Procedure 7058 and 7065, govern the procedural entry of an order for a preliminary injunction. An order granting a preliminary injunction must be set out in writing and entered on the docket to take effect. Fed. R. Civ. Pro. 65(d), 58(c). For this reason, I reject the Trust’s contention that the injunction period began before the entry of the order on December 4, 2020.<sup>3</sup>

### **CONCLUSION**

The issue raised by the Trust in the Motion for Reconsideration does not support a finding of clear error of law or fact nor a finding of manifest injustice as is necessary to grant the Trust’s Motion. Therefore, the Trust’s Motion for Reconsideration is denied. In addition, the injunction period began to run upon entry of the order, not the oral ruling.

SO ORDERED.

Dated: January 27, 2021

  
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JOHN T. DORSEY, U.S.B.J.

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<sup>3</sup> Ironically, if I accepted the Trust’s position about the effective date of the preliminary injunction, then this Motion would be untimely under Federal Rules of Bankruptcy Procedure 9023 as it was filed more than 14 days after the oral ruling.