

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. NO. 1884-CV-01808-BLS2

COMMONWEALTH OF MASSACHUSETTS,

v.

PURDUE PHARMA L.P., PURDUE PHARMA INC.,
RICHARD SACKLER, THERESA SACKLER,
KATHE SACKLER, JONATHAN SACKLER,
MORTIMER D.A. SACKLER, BEVERLY SACKLER,
DAVID SACKLER, ILENE SACKLER LEFCOURT,
PETER BOER, PAULO COSTA, CECIL PICKETT,
RALPH SNYDERMAN, JUDITH LEWENT, CRAIG
LANDAU, JOHN STEWART, MARK TIMNEY,
and RUSSELL J. GASDIA

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
THE OUTSIDE DIRECTORS' MOTION TO DISMISS**

As set out in the Individual Directors' Motions to Dismiss, the Commonwealth's attempt to assert personal jurisdiction over—and impose personal liability on—the Individual Directors¹ is a major overreach that runs afoul of corporate jurisdictional and governance law on which companies and their directors have long relied. That overreach is magnified by the AGO's unjustifiable decision to name Peter Boer, Paulo Costa, Judith Lewent, Cecil Pickett and Ralph Snyderman (the "Outside Directors") personally as defendants. None of the Outside Directors has ever been employed by or had a direct or indirect ownership interest in the Purdue Defendants. They have no case-specific contacts with Massachusetts of any kind, and there is no basis for the Commonwealth to have dragged them into these proceedings based on their service

¹ The defined terms and citation conventions used in the Individual Defendants' accompanying Personal Jurisdiction Memorandum and 12(b)(6) Memorandum are used in this brief.

as outside directors on a corporate Board. The AGO's assertion of claims against them personally—with no allegation of personal wrongdoing of any kind, let alone wrongdoing in Massachusetts—cannot and should not stand.

Each of the Outside Directors is a distinguished and skilled professional. Massachusetts' courts presume that an outside director acts in good faith unless a plaintiff can “plead and prove that the directors making the determination were not independent or did not act in good faith after reasonable inquiry.” *Pinchuck v. State St. Corp.*, No. 09-2930BLS2, 2011 WL 477315, at *13 (Mass. Super. Jan. 19, 2011). *See also Harhen v. Brown*, 431 Mass. 838, 730 N.E.2d 859, 864–65 (2000) (recognizing that “disinterested directors ... can exercise their business judgment in the best interests of the corporation, free from significant contrary personal interests”); *Johnston v. Box*, 453 Mass. 569, 579, 903 N.E.2d 1115, 1124 (2009) (same). The FAC fails to plead any such allegations.

Far from alleging any facts that, if true, would prove that the Outside Directors did not act appropriately, the FAC asserts conclusory that the Outside Directors “did not act independently” in the exercise of their duties as board members. (¶500). But the FAC is bereft of any allegation that the Outside Directors benefitted from any transactions with the Purdue Defendants or any other Individual Directors; were beholden to the Purdue Defendants or any other Individual Directors; or was otherwise motivated by anything other than good faith. They were not. The only benefit Board service allegedly conferred on the Outside Directors was payment of their board fees (¶¶867-68), which the FAC deems “handsome[];” but not even the FAC impugns the Outside Directors for the receipt of garden-variety board fees in exchange for board service.

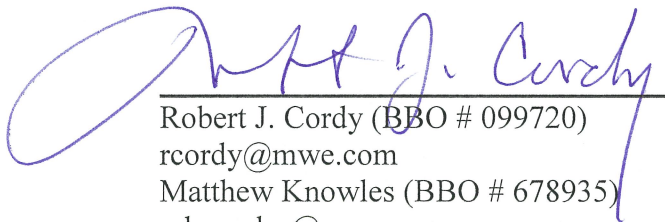
More importantly, because none of the Outside Directors is alleged personally to have done anything wrongful, their independence (or alleged lack thereof) is not sufficient to give rise to any liability. If directors were subject to being haled into court solely by virtue of serving on the board of a corporate defendant based on a bare allegation of non-independent status, no one would agree to be a director – to the detriment of all companies. The unprecedented implications of permitting the claims against the Outside Directors to proceed on this basis should have given the AGO great pause. The fact that this action addresses the opioid epidemic does not mean that governing law and precedent do not apply. Because the Outside Directors are not alleged to have done anything other than serve as board members of the Purdue Defendants, the claims against them should all be dismissed with prejudice.

Dated: April 1, 2019

Respectfully submitted,

DEFENDANTS PETER BOER, PAULO
COSTA, JUDITH LEWENT, CECIL
PICKETT AND RALPH SNYDERMAN

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