

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA**  
**COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER**  
**LOCAL RULES OF CIVIL PROCEDURE**

CASE CAPTION: County of Delaware

CIVIL CASE NO. 2017-008095

v.

Purdue Pharma, L.P., et al.

NATURE OF MATTER FILED: *(please check one)*

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Petition Pursuant to Rule 206.1                   | <input type="checkbox"/> Response to Petition | <input type="checkbox"/> Motion for Judgment on the Pleadings Pursuant to Rule 1034(a) |
| <input checked="" type="checkbox"/> Motion Pursuant to Rule 208.1          | <input type="checkbox"/> Response to Motion   | <input type="checkbox"/> Summary Judgment Pursuant to Rule 1035.2                      |
| <input type="checkbox"/> Family Law Petition/Motion Pursuant to Rule 206.8 |   |  |

**FILING PARTY IS RESPONSIBLE FOR SERVICE OF THE RULE RETURNABLE  
DATE OR HEARING DATE UPON ALL PARTIES**

A motion or petition was filed in the above captioned matter on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which:

Requires you, Respondent, to file an Answer within twenty (20) days of the above date to this notice, or risk the entry of an Order in favor of the Petitioner. Answers must be filed and time stamped by the Office of Judicial Support by 4:30 PM on the following date \_\_\_\_\_.

Requires all parties, to appear at a hearing/conference on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_ in Courtroom \_\_\_\_, Delaware County Courthouse, Media, Pennsylvania. At this hearing/conference you must be prepared to present all testimony and/or argument, and must ensure that your witnesses will be present.

Was timely answered, thus requiring the scheduling of the following hearing in the above captioned matter on: \_\_\_\_\_, \_\_\_\_\_ at 10:00 AM in Courtroom \_\_\_\_\_.

At this hearing, all parties must be prepared to present all testimony and/or argument and **must ensure that their witnesses will be present.**

Qualifies as an Uncontested Motion or Petition, and as such requires neither an answer from the Respondent nor the scheduling of a hearing in this matter.

Has been assigned to Judge The Honorable Charles B. Burr, II.

**FOR OFFICE USE ONLY**

Mailing date: \_\_\_\_\_

Processed by: \_\_\_\_\_

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
CIVIL DIVISION**

DELAWARE COUNTY,  
PENNSYLVANIA,

Plaintiff,

v.

PURDUE PHARMA, L.P., *et al.*

Defendants.

CIVIL ACTION

No. 2017-008095

**[PROPOSED] ORDER APPOINTING LEADERSHIP STRUCTURE**

AND NOW, to wit, this \_\_\_\_ of \_\_\_\_\_, 2018, pursuant to Pa. R. Civ. P. 213.1 (d)(3), upon consideration of the Motions of the various Plaintiffs in these proceedings for the Appointment of Leadership Structure and all responses thereto and for good cause shown, it is hereby ORDERED and DECREED that the leadership structure of Plaintiffs' counsel in the Coordinated Cases shall be as follows:

1. The following attorneys, and their associated law firms, shall serve as Co-Lead Counsel in the Pennsylvania Coordinated Cases:

(a) Paul J. Hanly, Jr., Esquire  
SIMMONS HANLY CONROY LLC  
112 Madison Avenue  
New York, NY 10016  
212-784-6401  
[phanly@simmonsfirm.com](mailto:phanly@simmonsfirm.com)

(b) Daniel Berger, Esquire  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
215-875-3000  
[danberger@bm.net](mailto:danberger@bm.net)

- (c) Tobias Millrood, Esquire  
POGUST BRASLOW & MILLROOD, LLC  
161 Washington Street, Suite 940  
Conshohocken, PA 19428  
610-941-4204  
[tmillrood@pbmattorneys.com](mailto:tmillrood@pbmattorneys.com)
  
- (d) Joseph J. Cappelli, Esquire  
MARC J. BERN & PARTNERS, LLP  
101 West Elm Street, Suite 215  
Conshohocken, PA 19428  
610-941-4444  
[jcappelli@bernllp.com](mailto:jcappelli@bernllp.com)

2. The following attorney, and his associated law firm, shall serve as Plaintiffs' Liaison Counsel in the Pennsylvania Coordinated Cases:

- (a) Carmen P. Belefonte, Esquire  
SALTZ MONGELUZZI BARRETT & BENDESKY, P.C.  
20 West Third Street  
P.O. Box 1670  
Media, PA 19063  
610-627-9777  
[cbelefonte@smbb.com](mailto:cbelefonte@smbb.com)

3. Co-Lead Counsel shall have the following responsibilities:

- a. To prepare agendas for court conferences and periodically reports regarding the status of the case;
- b. To appear at periodic court-noticed conferences and hearings and act as spokespersons on behalf of Plaintiffs in the Coordinated Cases at those conferences and hearings;
- c. To coordinate the drafting, signing and filing of amended pleadings relating to all actions, including pleadings filed on behalf of all Plaintiffs;
- d. To coordinate the briefing and argument of motions;
- e. To develop and propose, to Defendants and the Court, schedules for the Coordinated proceedings, including case management orders, as well as the filing of any amended pleadings and dispositive motions;

f. To develop and propose, to Defendants and the Court, a detailed discovery plan and carry out that plan in a coordinated and consolidated manner on behalf and for the benefit of all Plaintiffs;

g. To coordinate pretrial discovery on behalf of Plaintiffs in the Coordinated Cases, including, without limitation, coordination of discovery with Defendants' counsel, the preparation of requests for production of documents, interrogatories, requests for admission, subpoenas pertaining to witnesses and documents needed to properly prepare for the pretrial of relevant issues; and all other written pretrial discovery;

h. To coordinate the taking and/or delegation of witnesses for fact and expert depositions;

i. To establish committees, as appropriate, and delegate work assignments to the members of those committees;

j. To delegate specific work assignments, such as common corporate discovery, expert identification, deposition preparation, motion practice and brief writing, identifying trial teams and other similar matters, including certain administrative functions, to such committee or members of a committee best suited to handle a given task;

k. To establish and maintain a document/data storage depository, real or virtual, available to all participating Plaintiffs' counsel;

l. To coordinate, negotiate, and enter into stipulations with Defendants;

m. To explore, develop, and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation;

n. And to perform such other duties as may be reasonably necessary to carry out their functions and responsibilities as Co-Lead Counsel for the Plaintiffs under Pa. R. Civ. P.

4. The Court Liaison Counsel shall be responsible for receiving, on behalf of all Plaintiffs, notices and orders of the Court and maintaining all documents served upon Plaintiffs' counsel and making such documents reasonably available to all Counsel for Plaintiffs upon request. In addition, Plaintiffs' Liaison Counsel will be a liaison between leadership and Plaintiffs' counsel in the Coordinated Cases and this Court, including serving as the primary point of contact for Plaintiffs' counsel.

BY THE COURT:

\_\_\_\_\_  
Hon. Charles B. Burr, II

Copying Prohibited

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2017 JUN 20 AM 9:19  
CLERK OF COURT  
DELAWARE COUNTY

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
CIVIL DIVISION**

DELAWARE COUNTY,  
PENNSYLVANIA,  
  
Plaintiff,  
  
v.  
  
PURDUE PHARMA, L.P., *et al.*  
  
Defendants.

CIVIL ACTION

No. 2017-008095

**MOTION TO VACATE AND RECONSIDER THE ORDER DATED JUNE 13, 2018  
APPOINTING LEADERSHIP STRUCTURE OF PLAINTIFFS, THE COUNTIES OF  
ARMSTRONG, BEAVER, BRADFORD, CAMBRIA, CARBON, CLARION, FAYETTE,  
HUNTINGDON, GREENE, LACKAWANNA, LAWRENCE, MONROE,  
WASHINGTON, AND WESTMORELAND AND THE TOWNSHIP OF BENSLEM**

1. Plaintiffs, the Pennsylvania Counties of Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette, Huntingdon, Greene, Lackawanna, Lawrence, Monroe, Washington, and Westmoreland, and the Township of Bensalem (hereinafter "Movants"), respectfully submit this Motion to Vacate and Reconsider the Order Appointing Leadership Structure, dated June 13, 2018 (hereinafter "Order").

2. That Order appointed Paul J. Hanly, Jr. Esquire and his firm of SIMMONS HANLY CONROY LLC, Daniel Berger, Esquire and his firm of BERGER & MONTAGUE, P.C., and Tobias Millrood, Esquire and his firm of POGUST BRASLOW & MILLROOD, LLC, as Co-Lead Counsel, while naming Carmen P. Belefonte, Esquire and his firm of SALTZ

MONGELUZZI BARRETT & BENDESKY, P.C., as the sole Plaintiffs' Liaison Counsel in the Pennsylvania Coordinated Cases.

3. The Order was entered without due consideration for the effect that these specific appointments would have on the overwhelming majority of Plaintiffs and their Pennsylvania residents left without representation in the leadership structure of these Coordinated Cases.

4. As the ultimate consequence of this Order represents a manifest injustice on the Plaintiffs and millions of residents of the Commonwealth of Pennsylvania, Movants request that it be vacated and reconsidered so that Movant's counsel, Marc J. Bern & Partners, LLP (hereinafter "Bern & Partners"), be added as Co-Lead Counsel to ensure that the leadership structure of the Coordinated Proceedings truly represents the diverse interests of the many Plaintiffs and their Pennsylvania residents. In support thereof, Movants allege as follows:

**I. INTRODUCTORY STATEMENT OF THE CASE**

5. On April 3, 2018, Plaintiffs the City of Philadelphia, the Commonwealth of Pennsylvania Acting By and Through the Philadelphia District Attorney, and the Pennsylvania counties of Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette, Greene, Lackawanna, Lawrence, Washington, and Westmoreland (collectively, "Leadership Movants") filed a Joint Motion for Appointment of a Leadership Structure (hereinafter "Joint Motion") in the coordinated Pennsylvania state court proceedings involving claims on behalf of governmental entities within the Commonwealth of Pennsylvania (the "Coordinated Proceedings").

6. In their Joint Motion, Leadership Movants proposed a structure comprised of four Co-Lead Counsel, a Federal-State Court Liaison Counsel, and an Executive Committee consisting of each law firm representing each plaintiff in the Coordinated Proceedings.

7. The Leadership Movants further proposed that the Co-Lead Counsel group be comprised of (i) Berger & Montague, P.C., counsel for plaintiffs the City of Philadelphia and the Philadelphia District Attorney (collectively, the "Philadelphia Plaintiffs"); (ii) Dilworth Paxson LLP,

counsel for the Philadelphia Plaintiffs; (iii) Marc J. Bern & Partners, LLP, counsel for Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette, Greene, Lackawanna, Lawrence, Washington, and Westmoreland Counties;<sup>1</sup> and (iv) one of the law firms serving as co-counsel for plaintiff Delaware County ("Delaware County").

8. The Leadership Movants further proposed that Simmons Hanly Conroy LLC, counsel for Delaware and Dauphin Counties,<sup>2</sup> be appointed as Federal-State Court Liaison Counsel because it and its shareholder, Paul J. Hanly, Jr., are also court-appointed co-lead counsel in the federal Multidistrict Litigation.<sup>3</sup>

9. As proposed, Leadership Movants' Co-Lead Counsel would have represented 19 out of 26 Plaintiff Counties, or 57% of all Pennsylvania residents represented, on a pure population basis, in the Coordinated Proceedings.<sup>4</sup>

10. On April 13, 2018, the Plaintiff Counties of Delaware, Cumberland, and York (hereinafter "Joint Respondents") submitted a Motion for Appointment of Leadership Structure (hereinafter "Joint Response") that was corrected to an incorporated response to Leadership Movants' Joint Motion on April 18, 2018.

11. In the Joint Response, Joint Respondents proposed a leadership structure consisting solely of themselves with the Co-lead Counsel being comprised of Paul J. Hanly, Jr., Esquire of Simmons Hanly Conroy LLC, Hunter Shkolnik, Esquire of Napoli Shkolnik PLLC, and Tobias Millrood, Esquire of Pogust Braslow & Millrood, LLC (hereinafter "Pogust Braslow").

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<sup>1</sup> Since the Joint Motion was filed, Bern & Partners has filed suit on behalf of three more Pennsylvania government entities: Huntingdon County, Monroe County, and the Township of Bensalem.

<sup>2</sup> Simmons Hanly Conroy, LLC has recently filed a similar case on behalf of Pike County.

<sup>3</sup> As Co-Lead Counsel of the Coordinated proceedings, Simmons Hanly Conroy, LLC is in a position to potentially compel the Plaintiff Counties to subvert their interests to the MDL, restrict the ability of Plaintiff Counties to conduct their own discovery, and limit Plaintiff Counties to the discovery materials produced through the MDL. The direct effect of such participation in the MDL discovery may be that the MDL plaintiffs, including Simmons Hanly Conroy LLC, seek the payment of legal fees by the Plaintiff Counties to Simmons Hanly Conroy, LLC and the other MDL co-lead counsel – which would be an undeniable conflict of interest, and a usurpation of sovereignty, for a Co-Lead Counsel in the Coordinated Proceedings who has been entrusted to represent the interests of Plaintiff Counties that have purposely avoided participating in the MDL.

<sup>4</sup> Movants have not included third-party payor plaintiffs in these calculations.



12. Joint Respondents further proposed Carmen P. Belefonte, Esquire of Saltz Mongeluzzi Barrett & Bendesky, P.C (hereinafter “Saltz Mongeluzzi”), as Plaintiff’s Liaison Counsel in the Pennsylvania Coordinated Proceedings.

13. Joint Respondents’ proposed leadership structure would have represented only 5 out of the 26 Plaintiff Counties, or a mere 20.6% of all Pennsylvania residents represented in the Coordinated Proceedings.

14. On June 13, 2018, the Court entered the instant Order, which named Paul J. Hanly, Jr., Esquire, Tobias Millrood, Esquire, and Daniel Berger, Esquire, and their associated firms, as Co-Lead Counsels, while appointing Carmen P. Belefonte, Esquire and his firm of Saltz Mongeluzzi as Plaintiff’s Liaison Counsel.

15. Thus, as of the filing of this Motion, the Leadership Structure of the Pennsylvania Coordinated Proceedings approved by this Court is comprised of counsel for the Plaintiff Counties of Delaware, Dauphin, Pike, and Philadelphia – a group that represents only 4 out of the 26 current government entity Plaintiffs, and merely 31% of the total population of Pennsylvanians residing within the jurisdictions of those 26 entities.

16. Furthermore, this Court’s Order appointing counsel for Delaware County to three of the four leadership positions renders it impossible for a majority of Plaintiffs to have their interests represented if those interests do not perfectly coincide with the interests of Delaware County.

17. If not supplemented by the appointment of Bern & Partners as Co-Lead Counsel, the Court’s Order will result in a severe lack of representation of the interests of the majority of Plaintiffs in the Pennsylvania Coordinated Proceedings and their millions of residents.

18. More importantly, it will result in a leadership structure consisting of federal MDL counsel Simmons Hanly Conroy LLC and will be inherently biased toward the interests of Plaintiff Delaware County.

19. Most concerning, the current leadership structure all but guarantees a manifestly unjust outcome for all other Plaintiffs, including the City of Philadelphia, which represents three times more Pennsylvania residents than Delaware County but will be outvoted on each and every contentious issue.

20. Therefore, Movants respectfully request that this Honorable Court reconsider its Order of June 13, 2018 to prevent a manifest injustice.

## II. STANDARD FOR VACATION AND RECONSIDERATION

21. In considering a Motion for Reconsideration, a trial court is invested with broad discretion as to whether or not it will modify or rescind a prior order entered within thirty (30) days of said Motion for Reconsideration. 42 Pa. C.S.A. § 5505; *PNC Bank, N.A. v. Unknown Heirs*, 2007 PA Super 212, 929 A.2d 219 (Pa. Super. 2007).

22. A trial court always has the inherent authority to reconsider its own rulings. The question of whether or not to exercise that authority is left to the sound discretion of the trial court. *Moore v. Moore*, 535 Pa. 18, 25, 634 A.2d 163, 167 (1993); *Hutchison v. Luddy*, 417 Pa. Super. 93, 108, 611 A.2d 1280, 1288 (1992).

23. The statute limiting the time for reconsideration of orders to thirty (30) days does not apply to an order that does not effectively place the litigant out of court or end the lawsuit. *Hutchison*, 417 Pa. Super. at 108, 611 A.2d at 1.

24. In addition, the proper grounds for granting reconsideration are new and material evidence or facts, a change in the controlling law, or a clear error in applying the facts or law to the case at hand so that it is necessary to correct a clear error and prevent a manifest injustice from occurring. See generally, *Cox v. Monica*, 2008 U.S. Dist. LEXIS 1720, 2008 WL 111991 (M.D. PA. 2008) and *Ellenbogen v. PNC Bank, N.A.*, 1999 PA Super 131, 731 A.2d 175 (Pa. Super. 1999).

25. Movants respectfully submit that these standards are satisfied here.

### III. ARGUMENT

#### A. **The current composition of the Co-Lead Counsel severely under-represents the interests of Plaintiffs.**

26. At the time of this filing, 26 Pennsylvania government entities representing approximately 7,588,218 Pennsylvania residents are subject to the Pennsylvania Coordinated Proceedings in Delaware County Court of Common Pleas.<sup>5</sup>

27. Of those 26 government entities, Co-Lead Counsel represent only four government entities with a total population of 3,639,800 residents, with all but 325,469 of those residents residing in either Philadelphia or Delaware County. To put that in context, the Co-Lead Counsel will only represent 6.5% of the government entity Plaintiffs and 31.8% of the total population, nearly all of whom are located in the southeast corner of the Commonwealth.

28. It is inherently unfair for the interests of the majority of Plaintiffs and the majority of the residents located within the political boundaries of those Plaintiffs to have no voice whatsoever in the decisions of the Co-Lead Counsel.

#### B. **It is manifestly unjust to appoint Delaware County's counsel to two out of three Co-Lead Counsel positions in the Coordinated Proceedings.**

29. It is manifestly unjust to remove the ability to self-determine for the majority of Plaintiffs in the Pennsylvania Coordinated Proceedings. Despite the fact that Delaware County's population is only 7.4% of the total population of all residents located within the political boundaries of the Plaintiffs, this Court has appointed its counsel to two of three Co-Lead Counsel positions.

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<sup>5</sup> All population data is based on the 2010 U.S. Census figures published at: <https://www.census.gov/prod/cen2010/cph-2-40.pdf> (Published August 2012 and last accessed June 18, 2018).

30. As a consequence, Delaware County, a single county out of the 26 government entity Plaintiffs, representing a fraction of the total population, now controls 75% of the leadership positions and has a veto-proof ability to dictate the terms of litigation for its fellow Plaintiffs through the Co-Lead Counsel.

31. Furthermore, Delaware County's two-thirds majority of the Co-Lead Counsel guarantees that the City of Philadelphia, which represents 20.1% of the total population, is overruled on every contentious issue and will have no voice unless speaking in agreement with Delaware County's counsel.

32. By extension, this Court's Order has virtually guaranteed that no other Plaintiff will have any voice in the decisions of the Co-Lead Counsel if that Plaintiff's interests do not align with the interests of Delaware County, as Delaware County's counsel will outvote even Philadelphia.

**C. It is manifestly unjust for a majority vote of the Co-Lead Counsel to represent a minority of the Plaintiffs.**

33. It is manifestly unjust for a small minority of Plaintiffs to hold incontestable power over the vast majority of the Plaintiffs and their Pennsylvania residents.

34. As stated above, the appointed Co-Lead Counsel represents neither a majority of Plaintiffs nor a majority of Pennsylvania residents. When the Co-Lead Counsel votes unanimously on any issue, at best its decision will represent the voting interests of only 4 out of 26 of the Plaintiffs and 31% of the Pennsylvania residents subject to these Coordinated Proceedings.

35. When the Co-Lead Counsel votes on any disputed issue, the City of Philadelphia will cast the losing vote every single time. Consequently, every majority decision by the Co-Lead Counsel will, in effect, be decided by 3.8% of the Plaintiffs representing 11.7% of the Pennsylvania residents subject to these Coordinated Proceedings.

36. This representation disparity is the very reason that the City of Philadelphia sought to have this Court appoint Bern & Partners together with counsel selected by Delaware County as Co-Lead Counsel in the Leadership Movants' Joint Motion and continues to support such an appointment following entry of the Court's Order.

**37. By contrast, counsel for Movants, Marc J. Bern & Partners, LLP currently represent 16 out of 26 Government Entity Plaintiffs and their 1,881,026 Pennsylvania residents, or approximately 24.8% of the total population of Pennsylvania residents currently represented in these Coordinated Proceedings.**

38. Absent reconsideration and appointment of Movant's counsel as the fourth Co-Lead Counsel, these same 16 Plaintiffs and their 1,881,026 Pennsylvania residents will effectively be shut out from all key decision-making.

39. Respectfully, excluding these Plaintiffs would be clear error and work a manifest injustice in the circumstances compelling reconsideration and the limited relief the Movants now seek --adding Bern & Partners as a fourth Co-Lead.

40. Indeed, if the Court had adopted the proposed leadership structure in the Joint Motion, a unanimous vote of the Co-Lead Counsel would have represented the interests of at least 18 out of 26 Government Entity Plaintiffs representing 3,969,992 of the Pennsylvania residents subject to these Coordinated Proceedings, or 52.3% of the total included population.<sup>6</sup>

41. Instead, absent reconsideration, the likely outcome of virtually every leadership vote will only represent the interests of a small minority of Pennsylvania residents located in Delaware County.

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<sup>6</sup> At the time the Joint Motion was filed, a unanimous vote would have represented the interests of more than 60% of the total population.

#### IV. CONCLUSION

42. The Court's Order of June 13, 2018 Appointing Leadership Structure has appointed a Co-Lead Counsel that, at best, represents the interests of a minority of the Plaintiffs in the Coordinated Proceedings.

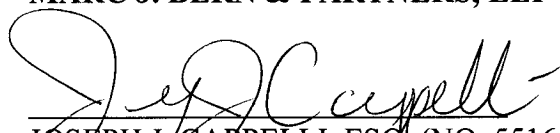
43. The practical effect of the Court's Order is that Delaware County has a veto-proof vote on every single issue determined by the Co-Lead Counsel in the Coordinated Proceedings.

44. As a consequence, the vast majority of Plaintiffs and their residents are locked out of the decision-making process and their interests are not represented by the Co-Lead Counsel.

45. Therefore, this Honorable court should reconsider its Order and appoint Marc J. Bern & Partners, LLP as the fourth Co-Lead counsel.

**WHEREFORE**, the Movants, the Pennsylvania Counties of Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette, Huntingdon, Greene, Lackawanna, Lawrence, Monroe, Washington, and Westmoreland, and the Township of Bensalem, respectfully request that this Honorable Court reconsider its Order Appointing Leadership Structure and add counsel for Movants, Marc J. Bern & Partners LLP, as a fourth Co-Lead Counsel.

Respectfully submitted,  
**MARC J. BERN & PARTNERS, LLP**



JOSEPH J. CAPPELLI, ESQ. (NO. 55166)  
CARMEN A. De GISI, ESQ. (NO. 208989)  
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*Counsel for the Pennsylvania Counties of  
Armstrong, Beaver, Bradford, Cambria,  
Carbon, Clarion, Fayette, Huntingdon,  
Greene, Lackawanna, Lawrence, Monroe,  
Washington, and Westmoreland, and  
Township of Bensalem*

Dated: June 19, 2018

Joseph J. Cappelli, Esquire (PA I.D. No. 55166)  
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**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
CIVIL DIVISION**

DELAWARE COUNTY,  
PENNSYLVANIA,

Plaintiff,

v.

PURDUE PHARMA, L.P., *et al.*

Defendants.

CIVIL ACTION

No. 2017-008095

**PLAINTIFFS' MEMORANDUM IN LAW IN SUPPORT OF THEIR MOTION TO  
VACATE AND RECONSIDER THE ORDER APPOINTING LEADERSHIP  
STRUCTURE**

Plaintiffs, the Pennsylvania Counties of Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette, Huntingdon, Greene, Lackawanna, Lawrence, Monroe, Washington, and Westmoreland, and the Township of Bensalem (hereinafter "Movants"), respectfully submit this Motion to Vacate and Reconsider the Order Appointing Leadership Structure, dated June 13, 2018 (hereinafter "Order"). That Order appointed Paul J. Hanly, Jr. Esquire and his firm of SIMMONS HANLY CONROY LLC, Daniel Berger, Esquire and his firm of BERGER & MONTAGUE, P.C., and Tobias Millrood, Esquire and his firm of POGUST BRASLOW & MILLROOD, LLC, as Co-Lead Counsel, while naming Carmen P. Belefonte, Esquire and his firm of SALTZ MONGELUZZI BARRETT & BENDESKY, P.C., as the sole Plaintiffs' Liaison Counsel in the Pennsylvania Coordinated Cases. The Order was entered without due consideration for the effect that these specific appointments would have on the overwhelming majority of Plaintiffs and their

Pennsylvania residents left without representation in the leadership structure of these Coordinated Cases.

As the ultimate consequence of this Order represents a manifest injustice on the Plaintiffs and millions of residents of the Commonwealth of Pennsylvania, Movants request that it be vacated and reconsidered so that Movant's counsel, Marc J. Bern & Partners, LLP (hereinafter "Bern & Partners"), be added as Co-Lead Counsel to ensure that the leadership structure of the Coordinated Proceedings truly represents the diverse interests of the many Plaintiffs and their Pennsylvania residents. In support thereof, Movants allege as follows:

**I. STATEMENT OF THE CASE**

On April 3, 2018, Plaintiffs the City of Philadelphia, the Commonwealth of Pennsylvania Acting By and Through the Philadelphia District Attorney, and the Pennsylvania counties of Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette, Greene, Lackawanna, Lawrence, Washington, and Westmoreland (collectively, "Leadership Movants") filed a Joint Motion for Appointment of a Leadership Structure (hereinafter "Joint Motion") in the coordinated Pennsylvania state court proceedings involving claims on behalf of governmental entities within the Commonwealth of Pennsylvania (the "Coordinated Proceedings").

In their Joint Motion, Leadership Movants proposed a structure comprised of four Co-Lead Counsel, a Federal-State Court Liaison Counsel, and an Executive Committee consisting of each law firm representing each plaintiff in the Coordinated Proceedings. The Leadership Movants further proposed that the Co-Lead Counsel group be comprised of (i) Berger & Montague, P.C., counsel for plaintiffs the City of Philadelphia and the Philadelphia District Attorney (collectively, the "Philadelphia Plaintiffs"); (ii) Dilworth Paxson LLP, counsel for the Philadelphia Plaintiffs; (iii) Marc J. Bern & Partners, LLP, counsel for Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette,



Greene, Lackawanna, Lawrence, Washington, and Westmoreland Counties;<sup>7</sup> and (iv) one of the law firms serving as co-counsel for plaintiff Delaware County ("Delaware County"). The Leadership Movants further proposed that Simmons Hanly Conroy LLC, counsel for Delaware and Dauphin Counties,<sup>8</sup> be appointed as Federal-State Court Liaison Counsel because it and its shareholder, Paul J. Hanly, Jr., are also court-appointed co-lead counsel in the federal Multidistrict Litigation.<sup>9</sup> As proposed, Leadership Movants' Co-Lead Counsel would have represented 19 out of 26 Plaintiff Counties, or 57% of all Pennsylvania residents represented, on a pure population basis, in the Coordinated Proceedings.<sup>10</sup>

On April 13, 2018, the Plaintiff Counties of Delaware, Cumberland, and York (hereinafter "Joint Respondents") submitted a Motion for Appointment of Leadership Structure (hereinafter "Joint Response") that was corrected to an incorporated response to Leadership Movants' Joint Motion on April 18, 2018. In the Joint Response, Joint Respondents proposed a leadership structure consisting solely of themselves with the Co-lead Counsel being comprised of Paul J. Hanly, Jr., Esquire of Simmons Hanly Conroy LLC, Hunter Shkolnik, Esquire of Napoli Shkolnik PLLC, and Tobias Millrood, Esquire of Pogust Braslow & Millrood, LLC (hereinafter "Pogust Braslow"). Joint Respondents further proposed Carmen P. Belefonte, Esquire of Saltz Mongeluzzi Barrett & Bendesky, P.C (hereinafter "Saltz Mongeluzzi"). as Plaintiff's Liaison Counsel in the Pennsylvania Coordinated Proceedings. Joint Respondents' proposed leadership structure would have represented only 5 out of

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<sup>7</sup> Since the Joint Motion was filed, Bern & Partners has filed suit on behalf of three more Pennsylvania government entities: Huntingdon County, Monroe County, and the Township of Bensalem.

<sup>8</sup> Simmons Hanly Conroy, LLC has recently filed a similar case on behalf of Pike County.

<sup>9</sup> As Co-Lead Counsel of the Coordinated proceedings, Simmons Hanly Conroy, LLC is in a position to potentially compel the Plaintiff Counties to subvert their interests to the MDL, restrict the ability of Plaintiff Counties to conduct their own discovery, and limit Plaintiff Counties to the discovery materials produced through the MDL. The direct effect of such participation in the MDL discovery may be that the MDL plaintiffs, including Simmons Hanly Conroy LLC, seek the payment of legal fees by the Plaintiff Counties to Simmons Hanly Conroy, LLC and the other MDL co-lead counsel – which would be an undeniable conflict of interest, and a usurpation of sovereignty, for a Co-Lead Counsel in the Coordinated Proceedings who has been entrusted to represent the interests of Plaintiff Counties that have purposely avoided participating in the MDL.

<sup>10</sup> Movants have not included third-party payor plaintiffs in these calculations.

the 26 Plaintiff Counties, or a mere 20.6% of all Pennsylvania residents represented in the Coordinated Proceedings.

On June 13, 2018, the Court entered the instant Order, which named Paul J. Hanly, Jr., Esquire, Tobias Millrood, Esquire, and Daniel Berger, Esquire, and their associated firms, as Co-Lead Counsels, while appointing Carmen P. Belefonte, Esquire and his firm of Saltz Mongeluzzi as Plaintiff's Liaison Counsel. Thus, as of the filing of this Motion, the Leadership Structure of the Pennsylvania Coordinated Proceedings approved by this Court is comprised of counsel for the Plaintiff Counties of Delaware, Dauphin, Pike, and Philadelphia – a group that represents only 4 out of the 26 current government entity Plaintiffs, and merely 31% of the total population of Pennsylvanians residing within the jurisdictions of those 26 entities. Furthermore, this Court's Order appointing counsel for Delaware County to three of the four leadership positions renders it impossible for a majority of Plaintiffs to have their interests represented if those interests do not perfectly coincide with the interests of Delaware County.

If not supplemented by the appointment of Bern & Partners as Co-Lead Counsel, the Court's Order will result in a severe lack of representation of the interests of the majority of Plaintiffs in the Pennsylvania Coordinated Proceedings and their millions of residents. More importantly, it will result in a leadership structure consisting of federal MDL counsel Simmons Hanly Conroy LLC and will be inherently biased toward the interests of Plaintiff Delaware County. Most concerning, the current leadership structure all but guarantees a manifestly unjust outcome for all other Plaintiffs, including the City of Philadelphia, which represents three times more Pennsylvania residents than Delaware County but will be outvoted on each and every contentious issue. Therefore, Movants respectfully request that this Honorable Court reconsider its Order of June 13, 2018 to prevent a manifest injustice.

## **II. STANDARD FOR VACATION AND RECONSIDERATION**

In considering a Motion for Reconsideration, a trial court is invested with broad discretion as to whether or not it will modify or rescind a prior order entered within thirty (30) days of said Motion for Reconsideration. 42 Pa. C.S.A. § 5505; *PNC Bank, N.A. v. Unknown Heirs*, 2007 PA

Super 212, 929 A.2d 219 (Pa. Super. 2007). A trial court always has the inherent authority to reconsider its own rulings. The question of whether or not to exercise that authority is left to the sound discretion of the trial court. *Moore v. Moore*, 535 Pa. 18, 25, 634 A.2d 163, 167 (1993); *Hutchison v. Luddy*, 417 Pa. Super. 93, 108, 611 A.2d 1280, 1288 (1992). The statute limiting the time for reconsideration of orders to thirty (30) days does not apply to an order that does not effectively place the litigant out of court or end the lawsuit. *Hutchison*, 417 Pa. Super. at 108, 611 A.2d at 1.

In addition, the proper grounds for granting reconsideration are new and material evidence or facts, a change in the controlling law, or a clear error in applying the facts or law to the case at hand so that it is necessary to correct a clear error and prevent a manifest injustice from occurring. See generally, *Cox v. Monica*, 2008 U.S. Dist. LEXIS 1720, 2008 WL 111991 (M.D. PA. 2008) and *Ellenbogen v. PNC Bank, N.A.*, 1999 PA Super 131, 731 A.2d 175 (Pa. Super. 1999). Movants respectfully submit that these standards are satisfied here.

### III. ARGUMENT

#### A. **The current composition of the Co-Lead Counsel severely under-represents the interests of Plaintiffs.**

At the time of this filing, 26 Pennsylvania government entities representing approximately 7,588,218 Pennsylvania residents are subject to the Pennsylvania Coordinated Proceedings in Delaware County Court of Common Pleas.<sup>11</sup> Of those 26 government entities, Co-Lead Counsel represent only four government entities with a total population of 3,639,800 residents, with all but 325,469 of those residents residing in either Philadelphia or Delaware County. To put that in context, the Co-Lead Counsel will only represent 6.5% of the government entity Plaintiffs and

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<sup>11</sup> All population data is based on the 2010 U.S. Census figures published at: <https://www.census.gov/prod/cen2010/cph-2-40.pdf> (Published August 2012 and last accessed June 18, 2018).

31.8% of the total population, nearly all of whom are located in the southeast corner of the Commonwealth. It is inherently unfair for the interests of the majority of Plaintiffs and the majority of the residents located within the political boundaries of those Plaintiffs to have no voice whatsoever in the decisions of the Co-Lead Counsel.

**B. It is manifestly unjust to appoint Delaware County's counsel to two out of three Co-Lead Counsel positions in the Coordinated Proceedings.**

It is manifestly unjust to remove the ability to self-determine for the majority of Plaintiffs in the Pennsylvania Coordinated Proceedings. Despite the fact that Delaware County's population is only 7.4% of the total population of all residents located within the political boundaries of the Plaintiffs, this Court has appointed its counsel to two of three Co-Lead Counsel positions. As a consequence, Delaware County, a single county out of the 26 government entity Plaintiffs, representing a fraction of the total population, now controls 75% of the leadership positions and has a veto-proof ability to dictate the terms of litigation for its fellow Plaintiffs through the Co-Lead Counsel. Furthermore, Delaware County's two-thirds majority of the Co-Lead Counsel guarantees that the City of Philadelphia, which represents 20.1% of the total population, is overruled on every contentious issue and will have no voice unless speaking in agreement with Delaware County's counsel. By extension, this Court's Order has virtually guaranteed that no other Plaintiff will have any voice in the decisions of the Co-Lead Counsel if that Plaintiff's interests do not align with the interests of Delaware County, as Delaware County's counsel will outvote even Philadelphia.

**C. It is manifestly unjust for a majority vote of the Co-Lead Counsel to represent a minority of the Plaintiffs.**

It is manifestly unjust for a small minority of Plaintiffs to hold incontestable power over the vast majority of the Plaintiffs and their Pennsylvania residents. As stated above, the appointed Co-Lead Counsel represents neither a majority of Plaintiffs nor a majority of Pennsylvania residents. When the Co-Lead Counsel votes unanimously on any issue, at best its decision will

represent the voting interests of only 4 out of 26 of the Plaintiffs and 31% of the Pennsylvania residents subject to these Coordinated Proceedings. When the Co-Lead Counsel votes on any disputed issue, the City of Philadelphia will cast the losing vote every single time. Consequently, every majority decision by the Co-Lead Counsel will, in effect, be decided by 3.8% of the Plaintiffs representing 11.7% of the Pennsylvania residents subject to these Coordinated Proceedings. This representation disparity is the very reason that the City of Philadelphia sought to have this Court appoint Bern & Partners together with counsel selected by Delaware County as Co-Lead Counsel in the Leadership Movants' Joint Motion and continues to support such an appointment following entry of the Court's Order.

**By contrast, counsel for Movants, Marc J. Bern & Partners, LLP currently represent 16 out of 26 Government Entity Plaintiffs and their 1,881,026 Pennsylvania residents, or approximately 24.8% of the total population of Pennsylvania residents currently represented in these Coordinated Proceedings.** Absent reconsideration and appointment of Movant's counsel as the fourth Co-Lead Counsel, these same 16 Plaintiffs and their 1,881,026 Pennsylvania residents will effectively be shut out from all key decision-making. Respectfully, excluding these Plaintiffs would be clear error and work a manifest injustice in the circumstances compelling reconsideration and the limited relief the Movants now seek —adding Bern & Partners as a fourth Co-Lead. Indeed, if the Court had adopted the proposed leadership structure in the Joint Motion, a unanimous vote of the Co-Lead Counsel would have represented the interests of at least 18 out of 26 Government Entity Plaintiffs representing 3,969,992 of the Pennsylvania residents subject to these Coordinated Proceedings, or 52.3% of the total included population.<sup>12</sup> Instead, absent

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<sup>12</sup> At the time the Joint Motion was filed, a unanimous vote would have represented the interests of more than 60% of the total population.

reconsideration, the likely outcome of virtually every leadership vote will only represent the interests of a small minority of Pennsylvania residents located in Delaware County.

#### IV. CONCLUSION

The Court's Order of June 13, 2018 Appointing Leadership Structure has appointed a Co-Lead Counsel that, at best, represents the interests of a minority of the Plaintiffs in the Coordinated Proceedings. The practical effect of the Court's Order is that Delaware County has a veto-proof vote on every single issue determined by the Co-Lead Counsel in the Coordinated Proceedings. As a consequence, the vast majority of Plaintiffs and their residents are locked out of the decision-making process and their interests are not represented by the Co-Lead Counsel. Therefore, this Honorable court should reconsider its Order and appoint Marc J. Bern & Partners, LLP as the fourth Co-Lead counsel.

**WHEREFORE**, the Movants, the Pennsylvania Counties of Armstrong, Beaver, Bradford, Cambria, Carbon, Clarion, Fayette, Huntingdon, Greene, Lackawanna, Lawrence, Monroe, Washington, and Westmoreland, and the Township of Bensalem, respectfully request that this Honorable Court reconsider its Order Appointing Leadership Structure and add counsel for Movants, Marc J. Bern & Partners LLP, as a fourth Co-Lead Counsel.

Respectfully submitted,  
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**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
CIVIL DIVISION**

DELAWARE COUNTY,  
PENNSYLVANIA,

Plaintiff,

v.

PURDUE PHARMA, L.P., *et al.*

Defendants.

CIVIL ACTION

No. 2017-008095

**CERTIFICATE OF SERVICE**

I, Joseph J. Cappelli, Esquire, hereby certify that on the 19<sup>th</sup> day of June, 2018, a true and correct copy of the foregoing MOTION TO VACATE AND RECONSIDER THE ORDER DATED JUNE 13, 2018 APPOINTING LEADERSHIP STRUCTURE OF PLAINTIFFS, THE COUNTIES OF ARMSTRONG, BEAVER, BRADFORD, CAMBRIA, CARBON, CLARION, FAYETTE, HUNTINGDON, GREENE, LACKAWANNA, LAWRENCE, MONROE, WASHINGTON, AND WESTMORELAND AND THE TOWNSHIP OF BENSLEM and the MEMORANDUM OF LAW IN SUPPORT THEREOF, was served via electronic mail and by First Class Mail upon all counsel of record in this matter per the below schedule.

By:   
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