

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 121 MD 2011

SHERYL SEARS; RONALD J. GUINEY; FLORENCE SPANOS; BARBARA L. MILLER; RANDELL DEVLIN; KATHLEEN DEVLIN; SALLYE D. FISCUS; NICHOLAS BALANDIAT; LORETTA E. MAIERHOFER; MARY GALLAGHER; DANIEL CECCHETTI; MICHELE YAMSHON; VICKI L. MAZZAFERRO; MADELINE MARTUCCI; GARY CARPINELLO; KAREN CARPINELLO; DIANE HOLBERT; ARTHUR W. CUNNINGHAM, JR.; DANA CUNNINGHAM; DOLORES LOBIONDO; MICHAEL LOBIONDO; CAROL KUHN; TAMMY BEVAN; ALICIA RAGER; TERESA LIBERATO; VALERIE BENKO; JOHN C. EGAN; TAMMY GROSS; BLANCHE HOOVER; JOSEPH D. STEINER; CYNTHIA BRAZEN; SUSAN ANTOSZEWSKI; ANGELA STETZ; BONNIE ZUZO; CAROL WEISS; LINDA SAUNDERS; LOUISE SCHNEIDER; LINDA GORSUCH; ALEX J. DERITIS, SR.; SHARON THIR; BECKY THIR; BARBARA SIMS; FRANK SIMS; CAROL L. DEVERS; DEBBIE A. KRAFT; DEBORAH A. McGRADY; JEFF C. MILLER; DAVID LIPSTEIN; BONNIE LIPSTEIN; THOMAS R. HABERMAN; WILLIAM A. ROTH; DAVID DAWSON; VICTORIA D. HARTSEK; JEANINE RICHARDS; KELLY RICHARDS; WILLIAM AINSWORTH; WILLIAM BRIGGS; LORRAINE CAPALBO; CHRIS IAMS; RONALD KAPLAN; JOAN O'SHEA; KIMBERLY THOMAS; BIANCA WILLIS; SHAWN WILLIS; PAMELA R. ALWINE; BARBARA A. BEAM; BEVERLY A. CORCORAN; JAMES J. CORCORAN; KRISTYN L. CORCORAN; BILLYE GLENN; DAVID McKEE; CHRISTINA A. MILLER; PATRICIA VARGULISH; DORA M. ALEXANDER; and, JODA L. SCHENA, on behalf of themselves and all others similarly situated,

vs.

Petitioners,

TOM CORBETT AS GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA; CHARLES ZOGBY AS SECRETARY OF BUDGET OF THE COMMONWEALTH OF PENNSYLVANIA; HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF PENNSYLVANIA; SAMUEL H. SMITH AS SPEAKER OF THE HOUSE; SENATE OF THE COMMONWEALTH OF PENNSYLVANIA; JOSEPH B. SCARNATI, III, AS PRESIDENT PRO TEMPORE OF THE SENATE; and DEPARTMENT OF TREASURY OF THE COMMONWEALTH OF PENNSYLVANIA,

Respondents.

**PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY
INJUNCTION AGAINST RESPONDENT DEPARTMENT OF THE TREASURY OF THE
COMMONWEALTH OF PENNSYLVANIA AND FOR A SHORTENED TIME FOR
ANSWERING APPLICATION**

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Petitioners, Sheryl Sears, Ronald J. Guiney, Florence Spanos, Barbara L. Miller, Randell Devlin, Kathleen Devlin, Sallye D. Fiscus, Nicholas Balandiat, Loretta E. Maierhofer, Mary Gallagher, Daniel Cecchetti, Michele Yamshon, Vicki L. Mazazaferro, **Madeline Martucci**, Gary Carpinello, Karen Carpinello, Diane Holbert, Arthur W. Cunningham, Jr., **Dana Cunningham**, Dolores Lobiondo, Michael Lobiondo, Carol Kuhns, Tammy Bevan, Alicia Rager, Teresa Liberato, Valerie Benko, John C. Egan, Tammy Gross, Blanche Hoover, Joseph D. Steiner, Cynthia Brazen, Susan Antoszewski, Angela Stetz, Bonnie Zuzo, Carol Weiss, Linda Saunders, Louise Schneider, Linda Gorsuch, Alex J. Dertis, Sr., Sharon Thir, Becky Thir, Barbara Sims, Frank Sims, Carol L. Devers, Debbie A. Kraft, Deborah A. Mcgrady, Jeff C. Miller, David Lipstein, Bonnie Lipstein, Thomas R. Haberman, William A. Roth, David Dawson, Victoria D. Hartsek, Jeanine Richards, Kelly Richards, William Ainsworth, William Briggs, Lorraine Capalbo, Chris Iams, Ronald Kaplan, Joan O'shea, Kimberly Thomas, Bianca Willis, Shawn Willis, Pamela R. Alwine, Barbara A. Beam, Beverly A. Corcoran, James J. Corcoran, Kristyn L. Corcoran, Billye Glenn, David Mckee, Christina A. Miller, Patricia Vargulish, Dora M. Alexander, and, Joda L. Schena, on behalf of themselves and all others similarly situated, by and through their attorneys, CAROSELLI BEACHLER MCTIERNAN & CONBOY, respectfully apply to this Court for Special Relief in the nature of a preliminary injunction pursuant to Pa. R. App. P. 123 and 1532 and Pa. R. Civ. P. 1531 against Respondent Department of Treasury of the Commonwealth of Pennsylvania, enjoining it from dispersing the tobacco settlement monies for fiscal year 2011 - 2012 and maintaining such funds within its accounts until such time as this Court rules upon the merits of the Amended Petition for Review, in addition, Petitioners respectfully move this Court for a shortened period of time to Answer said Application for Special Relief pursuant to Pa. R. App. P. 123(b) due to the exigency of this matter, and, in support thereof, avers the following:

I. PARTIES TO THIS APPLICATION

1. Applicants are Sheryl Sears, Ronald J. Guiney, Florence Spanos, Barbara L. Miller, Randell Devlin, Kathleen Devlin, Sallye D. Fiscus, Nicholas Balandiat, Loretta E. Maierhofer, Mary Gallagher, Daniel Cecchetti, Michele Yamshon, Vicki L. Mazazaferro, Madeline Martucci, Gary Carpinello, Karen Carpinello, Diane Holbert, Arthur W. Cunningham, Jr., Dana Cunningham, Dolores Lobiondo, Michael Lobiondo, Carol Kuhns, Tammy Bevan, Alicia Rager, Teresa Liberato, Valerie Benko, John C. Egan, Tammy Gross, Blanche Hoover, Joseph D. Steiner, Cynthia Brazen, Susan Antoszewski, Angela Stetz, Bonnie Zuzo, Carol Weiss, Linda Saunders, Louise Schneider, Linda Gorsuch, Alex J. Deritis, Sr., Sharon Thir, Becky Thir, Barbara Sims, Frank Sims, Carol L. Devers, Debbie A. Kraft, Deborah A. Mcgrady, Jeff C. Miller, David Lipstein, Bonnie Lipstein, Thomas R. Haberman, William A. Roth, David Dawson, Victoria D. Hartsek, Jeanine Richards, Kelly Richards, William Ainsworth, William Briggs, Lorraine Capalbo, Chris Iams, Ronald Kaplan, Joan O'shea, Kimberly Thomas, Bianca Willis, Shawn Willis, Pamela R. Alwine, Barbara A. Beam, Beverly A. Corcoran, James J. Corcoran, Kristyn L. Corcoran, Billye Glenn, David Mckee, Christina A. Miller, Patricia Vargulish, Dora M. Alexander, and, Joda L. Schena, on behalf of themselves and all others similarly situated, Petitioners in the above captioned action.

2. Respondent is the Department of Treasury of the Commonwealth of Pennsylvania, one of the Respondents in the above captioned action.

II. FACTUAL AND PROCEDURAL BACKGROUND

3. On March 14, 2011 Applicants filed a verified Petition for Review in the Nature of a Class Action Complaint for Declaratory, Mandamus and Injunctive Relief, naming the Department of Treasury of the Commonwealth of Pennsylvania, one of the respondents.

4. Service of the Petition for Review was perfected upon Respondent Department of the Treasury of the Commonwealth of Pennsylvania (“Treasury” or “Department of Treasury”) by certified mail on or about March 16, 2011.

5. Thereafter, on March 29, 2011 Applicants filed a Motion for Leave to file an Amended Petition for Review. By Order dated March 31, 2011, **this Court** granted the Motion to Amend.

6. Contemporaneously herewith, Applicants have **filed their** verified Amended Petition for Review in the Nature of a Class Action Complaint for Declaratory, Mandamus and Injunctive Relief. *See* verified Amended Petition for Review in the Nature of a Class Action Complaint for Declaratory, Mandamus and Injunctive Relief, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit “A.”

7. The Amended Petition for Review added additional representative class members as named Petitioners, bringing the total number of Petitioners from three to 74, representing 20 Counties in the Commonwealth of Pennsylvania. *See* Exhibit “A.”

8. In addition, the Amended Petition for Review added additional factual allegations which provide details regarding the history of the Tobacco Settlement Act and the documented intentions of then Governor Tom Ridge as well as the House of Representatives and the Senate to insure that the monies received from the Master Tobacco Settlement were to be used to better the health of Pennsylvanians. *See* Exhibit “A.”

9. Applicants also amended Count III of the Petition to (1) address that Count to Respondents Governor Corbett and the Secretary of Budget in addition to the Respondents to which the Count was originally addressed; (2) to add an additional allegation that the conduct of the named Respondents in Count III not only violated Article III, Sections 1, 2, 3 and 4 of the

Pennsylvania Constitution, but also Article III Section 6 of the Pennsylvania Constitution. *See* Exhibit “A.”

10. Finally, Applicants amended their Prayer for Relief as to Counts I, II, III and IV so that subparagraph (e) now reads:

That the Court order the re-establishment of the adultBasic insurance coverage program and that the program be reinstated retroactively to provide coverage on or after March 1, 2011.

See Exhibit “A.”

11. Applicants incorporate herein by reference their Amended Petition for Review as fully as though set forth at length. *See* Exhibit “A.”

12. At all times relevant hereto, Applicants were participants in the Pennsylvania adultBasic Insurance Coverage Program until February 28, 2011, when said program terminated due to the cessation of funding by Respondents in the above captioned action.

13. On or about November 23, 1998, Pennsylvania, along with 48 other states jointly settled a lawsuit against five major tobacco companies to recover monies which the state had expended in paying for health care related expenses of citizens of Pennsylvania with tobacco related illnesses. *See* Exhibit “A” at ¶ 85.

14. The Attorney General for the Commonwealth of Pennsylvania on behalf of the citizens of Pennsylvania entered into a Master Settlement Agreement which obligated the tobacco companies to pay monies to the Commonwealth of Pennsylvania beginning in 2000 and on an ongoing annual basis believed to be for a minimum of 25 years. *See* Exhibit “A” at ¶ 86.

The actual payments so far received by the Commonwealth of Pennsylvania are as follows:

Tobacco Company Settlement Agreement Payments to Pennsylvania

Actual Payments by Fiscal Year

1998-99	\$142,262,000
1999-00	\$464,554,000
2000-01	\$345,013,000
2001-02	\$433,529,000
2002-03	\$416,918,000
2003-04	\$370,857,000
2004-05	\$366,258,000
2005-06	\$336,227,000
2006-07	\$351,928,000
2007-08	\$382,003,000
2008-09	\$419,238,000
2009-10	\$349,843,000
Total Actual Payments	\$4,378,630,000

See Exhibit "A" at ¶ 110.

16. Pursuant to the terms of the Tobacco Master Settlement Agreement, the litigation commenced against the named tobacco companies sought to obtain equitable relief and damages in order to further Pennsylvania's policies regarding public health. See Exhibit "A" at ¶ 87. See also Tobacco Master Settlement Agreement, Section I, Recitals, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "B" at 1 – 3.

17. Pursuant to the terms of the Master Settlement Agreement, Pennsylvania, as one of forty-eight settling states agreed that the settlement was necessary in order to "further the Settling

States' policies designed to reduce Youth smoking, to promote the public health and to secure monetary payments to the Settling States.” See Exhibit “A” at ¶ 88. See also Exhibit “B” at 1 – 3. (Emphasis added).

18. Moreover, Pennsylvania as a settling party to the Master Settlement Agreement, agreed that the terms of the settlement would achieve for the “Settling States and their citizens significant funding for the advancement of public health” See Exhibit “A” at ¶ 89. See also Exhibit “B” at 1 – 3.

19. The intent, as set forth in the Recital paragraphs to the Master Settlement Agreement, that the settlement funds from the Master Settlement Agreement would further Pennsylvania’s public health policies and to promote public health were overriding factors which were central in the state’s decisions regarding how the monies obtained from the Tobacco Settlement Agreement were to be spent. See Exhibit “A” at ¶ 90. See also Exhibit “B” at 1 – 3.

20. In January of 2000, then Governor, Tom Ridge, issued *Pennsylvania’s Health Investment Plan* that proposed initiatives to be funded by the annual tobacco settlement monies. This statement from that plan was included in the Governor’s executive budget for 2001-2002:

Pennsylvania has positioned itself as a national leader by proposing that the use of tobacco settlement proceeds be limited to initiatives designed to improve the health status of its citizens.

See Exhibit “A” at ¶ 91. See also 2000 – 01 Commonwealth of Pennsylvania Budget in Brief, true and correct copies of the relevant pages are attached hereto, made a part hereof and marked Exhibit “C” at 35.

21. The *Health Investment Plan* contained several principles to guide the Commonwealth in using the tobacco settlement proceeds. These principles included proposals that the monies were to be used to make Pennsylvanians healthier and to fund the health of future

generations of Pennsylvanians. *See* Exhibit “A” at ¶ 92. *See also* Exhibit “C” at 35.

22. The *Health Investment Plan* proposed the largest share of the Tobacco Settlement Fund, 40%, would be used to provide low cost health insurance for up to one hundred thousand uninsured Pennsylvania citizens. *See* Exhibit “A” at ¶ 93. *See also* March 2011 Special Report of Auditor General Jack Wagner, a true and correct copy of which is attached hereto, made a part hereof and marked Exhibit “D.”

23. On or about July, 2001, the Pennsylvania General Assembly passed the Tobacco Settlement Act, 35 P.S. §5701-102, et seq. which provides that the tobacco settlement monies would be used to make Pennsylvanians healthier and provide for the health of future generations of Pennsylvanians. *See* Exhibit “A” at ¶ 94.

24. The Bill that became the Tobacco Settlement Act began in the House of Representatives. On the House Floor, before the Bill was sent to the Senate, the Majority Leader of the House at that time, John Perzel, stated:

[w]e are beginning the final stages of the process to putting the final touches on Pennsylvania’s plan to use the tobacco settlement money. The most important thing that we have said here today is that Pennsylvania is going to use ever dollar of the tobacco settlement fund for health care. Every dollar will go to improve health and the lives of Pennsylvanians for generations to come

Legislative Journal-House, p. 218 (Remarks of Representative Perzel). *See* Exhibit “A” at ¶ 95.

25. In the Senate, before the Senate passed its version of the Bill, Senator Harold Mowery commented on the history of the Bill and stated:

[t]wo years ago the Senate Committee on Public Health and Welfare began a series of public hearings to solicit suggestions and recommendations on how we could use tobacco settlement funds to improve the health of all Pennsylvanians. We started with a premise, articulated by the Governor, that all of these funds would be dedicated to health care. That premise became a promise, and today that promise is fulfilled. In our hearings we heard of need, the need to help our seniors

with prescriptions and long-term care alternatives that will allow for those who need nursing home care to remain in their homes, to reduce the number of uninsureds, and to help hospitals that provide care to those who cannot afford to pay for their care, to fund health care research so that the many fine research institutions that Pennsylvania is privileged to have within its borders can lead the nation towards medical breakthroughs and new cures, to invest in tobacco prevention and cessation programs, and we heard that we need to set aside some of the tobacco money in case future funds were reduced or eliminated. With the passage of this legislation, will have addressed each of these needs.

Legislative Journal-Senate, p. 832 (Remarks of Senator Mowery). See Exhibit “A” at ¶ 96.

26. From the Senate, the Bill returned to the House of Representatives, and prior to the final passage of the Bill by the House, the following statements were made by Representative Baker:

[t]his is hallmark, historic legislation that could lead to the expenditure of hopefully, over 25 years, \$11.3 billion to help out senior citizens as well as many others uninsured and all our health-care clinics [The Bill] is expected to help about 60,000 people that heretofore did not have health insurance, and this is going a long way in helping those very needy families and children age 19 to 64. We have never had this before. This is a very innovative, forward-thinking type of program that is going to reach out to the needs of people in our community.

Legislative Journal-House, p. 1646 (Remarks of Representative Matt Baker). See Exhibit “A” at ¶ 97.

27. On June 26, 2001, then Governor Tom Ridge signed the Tobacco Settlement Act into law and in doing so, he stated:

[t]his new law ensures that every dollar received in the national tobacco settlement will be spent to make Pennsylvanians healthier.

See Exhibit “A” at ¶ 98.

28. The Tobacco Settlement Act created a Tobacco Settlement Fund as an account to receive and distribute the annual tobacco settlement payments. 35 P.S. §5701.303. The Act’s language specifically states:

There is hereby established a special fund known as the Tobacco Settlement Fund. Except as provided in subsection (b), all payments received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited by the Treasury Department in the fund.

35 P.S. §5701.303. *See* Exhibit “A” at ¶ 99.

29. The Tobacco Settlement Act mandated that the annual tobacco settlement payments would be distributed in accordance with the specific allocations set forth in the statute. The statute provided for allocations as follows::

- a. 8% to be put aside in the Health Endowment Account for Long Term Hope (hereinafter “Health Account”) for use for future health programs;
- b. 92% to be used for current health programs, which would include:
 - i. 30% to share between adultBasic Insurance and Medicaid for workers with disabilities;
 - ii. 18% for health research;
 - iii. 13% for home and community based services for the elderly;
 - iv. 12% for tobacco use prevention and cessation programs;
 - v. 10% to reimburse hospitals for uncompensated care they provide;
 - vi. 8% to expand PACENET, the Pharmaceutical Assistance Contract for the Elderly (PACE), needs enhancement tier;
 - vii. 1% for cancer-specific health research.

See 35 P.S. §5701.306 (a) and (b). *See also* Exhibit “A” at ¶ 100.

30. Pursuant to Subsection b of 35 P.S. §5701.303 a Health Endowment Account for

Long Term Hope was established within the Fund. The statute provided that the following amounts would be deposited by the Treasury Department into the Health Account:

- (1) The jurisdictional payment received by the Commonwealth pursuant to the Master Settlement Agreement.
- (2) The strategic contribution payments received by the Commonwealth pursuant to the Master Settlement Agreement.
- (3) Earnings derived from the investment of the money in the fund after deduction of investment expenses, including such earnings as may have accrued prior to the effective date of this Chapter.
- (4) Earnings derived from the investment of money in the Health Account after deduction of investment expenses and the approved expenses of the board.
- (5) Money received as a result of investment from the Health Venture Investment Account.

35 P.S. §5701.306(b). *See* Exhibit “A” at ¶ 101.

31. The purpose of the Health Endowment Account was to provide a means to keep health care programs operating in the future if the annual settlement payments decreased or stopped. *See* Exhibit “A” at ¶ 102.

32. On or about April 15th of each year since 2000, the state has and will receive monies pursuant to the Tobacco Master Settlement Agreement with such payments expected to continue until 2025. *See* Exhibit “A” at ¶ 103.

33. Pursuant to the Tobacco Settlement Act these monies were to be deposited by the Treasury Department into the Tobacco Settlement Fund and Health Account. *See* 35 P.S. §5701.303. *See also* Exhibit “A” at ¶ 104.

34. On February 28, 2011, due to a lack of funding the adultBasic program ceased. *See* Exhibit “A” at ¶ 105.

35. All of the Respondents herein, except the Department of the Treasury, failed to take any action to ensure the funding of the adultBasic Insurance Coverage Program beyond February 28, 2011. These failures included the failure to direct monies to the Tobacco Settlement Fund for the adultBasic Insurance Program as required by law and their failure to secure other alternative sources of funding to ensure the adultBasic Insurance Program would be funded beyond February 28, 2011. *See* Exhibit “A” at ¶ 106.

36. As well as redirecting tobacco settlement monies away from the Tobacco Settlement Fund, monies were also redirected away from the Health Account. *See* Exhibit “A” at ¶ 107.

37. The Tobacco Settlement Act provides that the Health Account could be used for health care needs in certain situations. The law states:

Whenever the Governor determines that money from the health account is necessary to meet the extraordinary or emergency health care needs of the citizens of this Commonwealth. . . [t]he General Assembly may . . . appropriate money from the health account to meet the needs identified in the Governor’s request.

35 P.S. §5701.307. *See* Exhibit “A” at ¶ 108.

38. Because of the redirection of settlement monies away from the Health Account, the Health Account has only limited funds which would be insufficient to provide funding on an ongoing basis for the adultBasic program. *See* Exhibit “A” at ¶ 109.

39. Pursuant to the Tobacco Master Settlement Agreement, on or about April 15 of each year from the year 2000 forward, for a minimum of 25 years, a settlement payment is to be forwarded to the Commonwealth of Pennsylvania. *See* Exhibit “A” at ¶ 146. *See also* Exhibits “B” and “D.”

40. Upon information and belief, the Commonwealth of Pennsylvania will be entitled to

a payment of between \$338,600,000 and \$360,000,000 based upon the Tobacco Master Settlement Agreement on or about April 15, 2011. Cf Exhibit “D” at 2 with The Governor’s Executive Budget 2011-2012 (“The Governor’s Budget Book”) at C11.2, a true and correct copy of which is attached hereto, made a part hereof and marked Exhibit “E.”

41. In direct contradiction to the Tobacco Settlement Act, the Governor’s Budget Book proposes that *all* tobacco funded programs and tobacco revenue be moved to the Commonwealth’s “General Fund.” Furthermore, that all future payments from the Tobacco Master Settlement Agreement, including annual payments, strategic payments and related revenue be deposited into the Commonwealth’s General Fund in perpetuity. See Exhibit “E” at C11.2.

42. Respondent Department of Treasury and the Treasurer are vested with powers imposed by the Pennsylvania Constitution and the laws of the Commonwealth. See 71 P.S. § 247. In addition, the Department of Treasury “**shall** exercise its powers and perform its duties as provided in the Fiscal Code and **other applicable laws.**” See 71 P.S. § 321 (emphasis added, footnote omitted).

43. Accordingly, the Department of Treasury is not merely the “check writer” for the executive and legislative branches of government, but instead has separate powers and duties conferred by the Pennsylvania Constitution and the laws of the Commonwealth.

44. One such law is the Tobacco Settlement Act, 35 P.S. § 5701.101, *et seq.*, which establishes a special fund known as the Tobacco Settlement Fund (“TSF”) and establishes within the TSF a “Health Account.” See 35 P.S. § 5701.303. In addition, section 5701.303 requires the Department of Treasury to deposit *all* funds received by the Commonwealth pursuant to the Tobacco Master Settlement Agreement in to either the TSF or the Health Account. *Id.* Accordingly, the Department of Treasury is not authorized to deposit *any* of the funds received by

the Commonwealth on account of the Tobacco Master Settlement Agreement in to the Commonwealth's General Fund. *Id.*

45. If the Department of Treasury is requested by either the Governor, the House or the Senate to deposit the April 15, 2011 payment or any future payments from the Tobacco Master Settlement Agreement in to the Commonwealth's General Fund, the Department of the Treasury will be violating the Tobacco Settlement Act, 71 P.S. § 321, and ultimately its Constitutional obligations to exercise its powers and duties consistently with the laws of this Commonwealth.

46. Because the payment to the Commonwealth of its 2011 share of the funds from the Tobacco Master Settlement Agreement is expected on or about April 15, 2011 and because as more fully alleged in the Amended Petition for Review and the Governor's Budget Book, it is believed that the Department of the Treasury will be required by the remaining Respondents herein, to redirect said funds to the Commonwealth's General Fund unless this Court issues an injunction requiring that the Department of Treasury deposit the funds consistent with the provisions of the Tobacco Settlement Act, specifically, 35 P.S. § 5701.303, Applicants seek to enjoin the Department of Treasury from dispersing any of the Tobacco Settlement funds in to the General Fund. *See* Exhibit "A" at ¶ 147 and Exhibit "E" at C11.2.

III. STANDARD FOR GRANT OF SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY INJUNCTION

47. Pursuant to Pa. R. App. P. 1532(a) this Court may order special relief, including a preliminary or special injunction. The standard for obtaining a preliminary injunction under this rule is the same as that for the grant of a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 499 Pa. 39, 451 A.2d 434 (1982); *Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201 (Pa. Cmwlth 2004). Preliminary injunctive relief may be granted at any time following the filing of a Petition for

Review. *See* Pa. R. App. P. 1532(a).

48. Pursuant to Pennsylvania Rule of Civil Procedure 1531, a court may issue a preliminary injunction. The factors for a court to consider before issuing a preliminary injunction are as follows: (1) whether the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) whether greater injury would result from refusing the injunction than from granting it; (3) whether the injunction will restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) whether plaintiff is likely to prevail on the merits; (5) whether the injunction is reasonably suited to abate the offending activity; and (6) whether the injunction will not adversely affect the public interest. *See Free Speech LLC v. Philadelphia*, 884 A.2d 966, 970 (Pa. Cmwlth 2005). *See also Kessler v. Broder, et al*, 851 A.2d 944 (Pa. Super 2004) *citing Summit Towne Centre, Inc. v. Shoe Show of Rocky Mt., Inc.*, 573 Pa. 637, 828 A.2d 995 (2003).

IV. ARGUMENT

49. As a result of the expiration of the adultBasic program and the stated goal of Respondent Corbett not to continue to fund the program with funds from the Tobacco Master Settlement Agreement, Applicants suffered and continue to suffer irreparable harm in that they can not recover the ongoing period of time by which they were statutorily entitled to participate in the program and have health insurance coverage and benefits. As such, Applicants with illnesses will go untreated and other Applicants will fail to be diagnosed and treated for life-threatening illnesses, if these funds are redirected to the Commonwealth's General Fund.

50. Unless the requested preliminary injunction is granted pending resolution of the issues presented in the Applicants' verified Amended Petition for Review, Applicants will suffer further irreparable harm which can not be compensated by monetary damages, namely the

continued loss of their health insurance coverage and benefits.

51. If the requested preliminary injunction is denied, a greater harm will occur, *i.e.*, dissipation of the April 15, 2011 Tobacco Master Settlement Agreement funds and continued lack of insurance benefits for more than 40,000 Pennsylvanians, then if the injunction is granted.

52. The wrongful conduct of Respondents, other than the Department of Treasury, is actionable and the requested preliminary injunction is reasonably suited to abate said wrongful conduct. Applicants are likely to succeed on the merits of their claim for injunctive relief.

53. Applicants have no adequate remedy at law for their claim for loss of health insurance coverage and benefits.

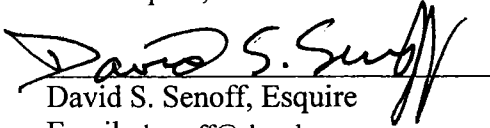
54. Pursuant to Pa. R. App. P. 123(b), Respondent has 14 days after service to respond to this Application. Nevertheless, this Court may shorten that time period. *Id.* Applicants respectfully request that the time to respond to the present Application for preliminary injunction be shortened so as to avoid the dissipation of the April 15, 2011 payment from the Tobacco Master Settlement Agreement.

V. CONCLUSION

WHEREFORE, for all of the foregoing reasons, Applicants respectfully request that this Honorable Court grant their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order enjoining Respondent Department of Treasury of the Commonwealth of Pennsylvania from dispersing any funds received on or about April 15, 2011 from the Tobacco Master Settlement Agreement and maintain such funds within its accounts, until such time as this Honorable Court rules upon the merits of the Amended Petition for Review. Furthermore, Applicants respectfully request that this Honorable Court shorten the time for Respondent's Answer to said Application pursuant to Pa. R. App. P. 123(b).

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 121 MD 2011

SHERYL SEARS; RONALD J. GUINEY; FLORENCE SPANOS; BARBARA L. MILLER; RANDELL DEVLIN; KATHLEEN DEVLIN; SALLYE D. FISCUS; NICHOLAS BALANDIAT; LORETTA E. MAIERHOFER; MARY GALLAGHER; DANIEL CECCHETTI; MICHELE YAMSHON; VICKI L. MAZZAFERRO; MADELINE MARTUCCI; GARY CARPINELLO; KAREN CARPINELLO; DIANE HOLBERT; ARTHUR W. CUNNINGHAM, JR.; DANA CUNNINGHAM; DOLORES LOBIONDO; MICHAEL LOBIONDO; CAROL KUHN; TAMMY BEVAN; ALICIA RAGER; TERESA LIBERATO; VALERIE BENKO; JOHN C. EGAN; TAMMY GROSS; BLANCHE HOOVER; JOSEPH D. STEINER; CYNTHIA BRAZEN; SUSAN ANTOSZEWSKI; ANGELA STETZ; BONNIE ZUZO; CAROL WEISS; LINDA SAUNDERS; LOUISE SCHNEIDER; LINDA GORSUCH; ALEX J. DERITIS, SR.; SHARON THIR; BECKY THIR; BARBARA SIMS; FRANK SIMS; CAROL L. DEVERS; DEBBIE A. KRAFT; DEBORAH A. McGRADY; JEFF C. MILLER; DAVID LIPSTEIN; BONNIE LIPSTEIN; THOMAS R. HABERMAN; WILLIAM A. ROTH; DAVID DAWSON; VICTORIA D. HARTSEK; JEANINE RICHARDS; KELLY RICHARDS; WILLIAM AINSWORTH; WILLIAM BRIGGS; LORRAINE CAPALBO; CHRIS IAMS; RONALD KAPLAN; JOAN O'SHEA; KIMBERLY THOMAS; BIANCA WILLIS; SHAWN WILLIS; PAMELA R. ALWINE; BARBARA A. BEAM; BEVERLY A. CORCORAN; JAMES J. CORCORAN; KRISTYN L. CORCORAN; BILLYE GLENN; DAVID McKEE; CHRISTINA A. MILLER; PATRICIA VARGULISH; DORA M. ALEXANDER; and, JODA L. SCHENA, on behalf of themselves and all others similarly situated,

vs.

Petitioners,

TOM CORBETT AS GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA; CHARLES ZOGBY AS SECRETARY OF BUDGET OF THE COMMONWEALTH OF PENNSYLVANIA; HOUSE OF REPRESENTATIVES OF THE COMMONWEALTH OF PENNSYLVANIA; SAMUEL H. SMITH AS SPEAKER OF THE HOUSE; SENATE OF THE COMMONWEALTH OF PENNSYLVANIA; JOSEPH B. SCARNATI, III, AS PRESIDENT PRO TEMPORE OF THE SENATE; and DEPARTMENT OF TREASURY OF THE COMMONWEALTH OF PENNSYLVANIA,

Respondents.

ORDER

AND NOW, this day of , 2011, upon consideration of Petitioners'

Application for Special Relief in the Nature of a Preliminary Injunction, it is hereby **ORDERED**
that said Application is **GRANTED**.

IT IS FURTHER ORDERED that Respondent Department of Treasury of the Commonwealth of Pennsylvania is hereby **ENJOINED** from dispersing any funds received on or about April 15, 2011 on account of the Tobacco Master Settlement Agreement and said funds shall remain in either the Tobacco Settlement Fund or the Health Account pursuant to 35 P.S. § 5701.303 until further Order of this Court.

BY THE COURT:

_____ J.

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vs.

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Respondents.

ORDER

AND NOW, this day of , 2011, upon consideration of Petitioners'

Application for a shortened time for Answering Petitioners' Application for Special Relief, it is hereby **ORDERED** that said Application is **GRANTED**.

IT IS FURTHER ORDERED that Respondent Department of Treasury of the Commonwealth of Pennsylvania shall respond to Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction on or before _____, _____, 2011.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

I hereby certify that I am this 4th day of April, 2011 serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121 and 1514(c):

Service by first class mail addressed as follows:

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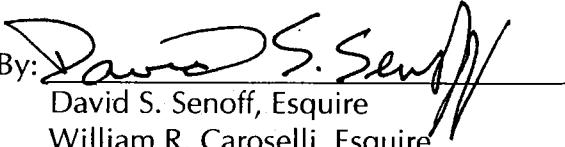
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