

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SHERYL SEARS; RONALD J. GUINEY;
FLORENCE SPANOS; on behalf of themselves
and all others similarly situated,
Petitioners,

No.

vs.

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.

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COMMONWEALTH COURT
OF PENNSYLVANIA

PETITION FOR REVIEW IN THE NATURE OF A CLASS ACTION COMPLAINT
FOR DECLARATORY, MANDAMUS AND INJUNCTIVE RELIEF

Filed on behalf of Petitioners
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SHERYL SEARS, et al.,)	CIVIL DIVISION
)	
Petitioners,)	
vs.)	No. _____
)	
TOM CORBETT, ET AL.)	
)	
Respondents.)	

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 North Front Street
Harrisburg, PA 17101
(717)232-7536

NOTICE
CONCERNING MEDIATION OF ACTIONS PENDING
BEFORE THE COURT OF COMMON PLEAS OF DAUPHIN
COUNTY

The Judges of the Court of Common Pleas of Dauphin County believe that mediation of lawsuits is a very important component of dispute resolution. Virtually all lawsuits can benefit in some manner from mediation.

The Court has adopted Dauphin County Local Rule 1001 to encourage the use of mediation. This early alert enables litigants to determine the best time during the life of their lawsuit for a mediation session. The intent of this early alert is to help the parties act upon the requirement to consider good faith mediation at the optimal time.

The Dauphin County Bar Association provides mediation services and can be reached at 717-232-7536. Free mediation sessions for pro bono cases referred by MidPenn Legal Services are available through the DCBA.

AVISO

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE
213 North Front Street Harrisburg, PA 17101
(717)232-7536

An adequate supply of forms containing the bilingual notices required by these Rules shall be furnished by the Dauphin County Bar Association to the office of the Prothonotary and shall be available for use by litigants and their attorneys.

AVISO
REFERENCIAS A LA MEDIACIÓN DE LAS ACCIONES PENDIENTES ANTES LA
CORTE DE SOPPLICAS COMUNES DEL CONDADO DE DAUPHIN

Los jueces de la corte de súplicas comunes del condado de Dauphin creen que la mediación de pleitos es un componente muy importante de la resolución del conflicto. Virtualmente todos los pleitos pueden beneficiar de cierta manera de la mediación.

La code ha adoptado la regla local de condado de Dauphin 1001 para animar el use de la mediación. Esta alarma temprana permite a litigantes determinar la mejor época durante la vida de su pleito para una sesión de la mediación. El intento de esta alarma temprana es actuar sobre la mediación de la buena fe en el tiempo óptimo.

La asociación de la barra del condado de Dauphin proporciona servicios de la mediación y se puede alcanzar en 717-232-7536. La sesión libre de la mediación para los favorables casos del bono se refinio por MidPenn que los servicios juridicos están disponibles con el DCBA.

An adequate supply of forms containing the bilingual notices required by these Rules shall be furnished by the Dauphin County Bar Association to the Office of the Prothonotary and shall be available for use by litigants and their attorneys.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

SHERYL SEARS, et al.,)
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Petitioners,) No. _____
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vs.)
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TOM CORBETT, et al.,)
)
)
Respondents.)

PETITION FOR REVIEW IN THE NATURE OF A CLASS ACTION COMPLAINT
FOR DECLARATORY, MANDAMUS AND INJUNCTIVE RELIEF

AND NOW, come the Petitioners, Sheryl Sears and Florence Spanos, individually
and on behalf of all others similarly situated, by and through their attorneys, CAROSELLI
BEACHLER McTIERNAN & CONBOY, LLC and William R. Caroselli, Esquire, David S.
Senoff, Esquire and Susan A. Meredith, Esquire, and file this Petition for Review in the
Nature of a Class Action Complaint for Declaratory, Mandamus and Injunctive Relief:

INTRODUCTION

1. Petitioners on behalf of themselves individually and all others similarly situated, bring
this class action seeking declaratory, mandamus and injunctive relief for violations of
the Pennsylvania Tobacco Settlement Act, 35 e.s. §5701-1-2, et. seq. and the
Pennsylvania Constitution. Petitioners are all adult residents of Pennsylvania, who
were participants until February 28, 2011 in the Pennsylvania adultBasic Insurance
Coverage Program, which allowed low income workers to purchase health care
insurance at a minimal cost. Petitioners have been irreparably harmed by the illegal

redirection of tobacco settlement monies from their intended and mandated purpose to improve the health status of Pennsylvania citizens and to fund current and future health care programs for Pennsylvania citizens. The illegal redirection of the tobacco settlement monies have directly impacted the funding of the adultBasic Insurance Coverage Program such that on February 28, 2011 the program ended leaving approximately 41,000 Pennsylvania citizens and enrollees without necessary health care coverage and an additional approximately 500,000 Pennsylvania citizens on the waiting list for coverage.

JURISDICTION

2. This action has been commenced within the original jurisdiction of the Commonwealth Court of Pennsylvania pursuant to 42 Pa. C.S.A. §761. Petitioners request the Court exercise its jurisdiction over this action.

PARTIES

3. Petitioner, Sheryl Sears is an adult individual and resident of Pennsylvania who was a participant in the Pennsylvania adultBasic Insurance Coverage Program until February 28, 2011. Ms. Sears currently resides at 1729 Beach Street, McKeesport, Pennsylvania 15132.
4. Petitioner, Ronald J. Guiney is an adult individual and resident of Pennsylvania who was a participant in the Pennsylvania adultBasic Insurance Coverage Program until February 28, 2011. Mr. Guiney currently resides at 518 Oneida Valley Road, Butler, Pennsylvania 16001.

5. Petitioner, Florence Spanos is an adult individual and resident of Pennsylvania who was a participant in the Pennsylvania adultBasic Insurance Coverage Program until February 28, 2011. Ms. Spanos currently resides at 1255 Wisconsin Avenue, Pittsburgh, Pennsylvania, 16508.
6. Defendant Governor Tom Corbett is the current Governor of the Commonwealth of Pennsylvania and is responsible pursuant to Article IV, Section 2 of the Pennsylvania Constitution, to ensure that the laws of Pennsylvania are faithfully executed and pursuant to Article VIII, Section 12, is obligated to submit to the General Assembly an operating budget for the state which must set forth in detail proposed expenditures and estimated revenue. Governor Corbett maintains an office at 225 Main Capitol Building, Harrisburg, PA 17120.
7. Defendant, Charles Zogby, is the current Secretary of the Budget for the Commonwealth of Pennsylvania and is responsible along with the Governor to prepare the annual state budget for the State of Pennsylvania and to implement the budget after it is passed by the General Assembly and signed by the Governor. Mr. Zogby maintains an office at 238 Main Capitol Building, Harrisburg, PA 17120.
8. Defendant, House of Representatives of the Commonwealth of Pennsylvania, is an elected representative body which pursuant to Article II, Section 1 of the Pennsylvania Constitution is vested with the legislative power of the Commonwealth of Pennsylvania.
9. Defendant, Samuel H. Smith, is the current Speaker of the House of Representatives of the Commonwealth of Pennsylvania and as Speaker of the House is responsible for presiding over the House of Representatives and signing all bills and joint resolutions

passed by both Houses. Mr. Smith maintains an office at 139 Main Capitol Building, Harrisburg, PA 17120-2066.

10. Defendant, Senate of the Commonwealth of Pennsylvania, is an elected representative body which pursuant to Article II, Section 1 of the Pennsylvania Constitution is vested with the legislative power of the Commonwealth of Pennsylvania.

11. Defendant, Joseph B. Scarnati, III, is the current President Pro Tempore of the Senate and has the responsibility for presiding over the Senate in case of an absence or disability of the President of the Senate. Mr. Scarnati maintains an office at 292 Capitol Building, Harrisburg, PA 17120.

12. Defendant, Department of the Treasury for the Commonwealth of Pennsylvania, is a state agency and is obligated pursuant to the Tobacco Settlement Act, 35 P.S. §5701.303 to deposit annual tobacco settlement monies into the Tobacco Settlement Fund and Health Endowment Account for Long Term Hope (hereinafter "Health Account"). The Department maintains an office at 129 Finance Building, Harrisburg, PA 17120.

FACTS

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.

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.
15. 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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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).

21. 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).

22. The purpose of the Health Endowment Account was to provide a means to keep health care programs going in the future if the annual settlement payments decreased or stopped.
23. 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.
24. 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.
25. On February 28, 2011, due to a lack of funding the adultBasic program ceased.
26. 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.

27. As well as redirecting tobacco settlement monies away from the Tobacco Settlement Fund, monies were also redirected away from the Health Account.

28. 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.

29. 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.

CLASS ACTION ALLEGATIONS

30. Petitioners bring this action on behalf of themselves and as members of the class defined below, as a class under the provisions of Pa. R.C.P. §1711(a).

31. The class on whose behalf this action is brought by Petitioners is defined as follows:

All enrollees in Pennsylvania's adultBasic Insurance Coverage Program as of February 28, 2011, adversely affected by Respondents' illegal redirection of tobacco settlement monies from their intended and mandated purpose of improving the health status of Pennsylvania citizens and funding current and future health care programs for Pennsylvania citizens, including the aforementioned adultBasic Insurance Coverage Program.

32. Certification of the class defined above is proper in that:

- a. The proposed class of enrollees in adultBasic is so numerous that joinder of all members is impractical. In particular, there are

approximately 41,000 enrollees in the program. Their exact number and identities are currently unknown to the Petitioners, but are known or knowable to the Respondents; and,

- b. There are common questions of law and fact common to the class, including, but not limited to, whether the redirection of tobacco settlement monies from their intended and mandated purpose was in violation of the Tobacco Settlement Act and the Pennsylvania Constitution.

33. Petitioners are members of the class and their claims, as described earlier, are typical of the claims of class members.

34. The representative parties will fairly and adequately protect the interests of the class under the criteria set forth in Pa. R.C.P. §1709, in particular:

- a. Petitioners and their attorneys will adequately represent the interests of the class;
- b. The representative parties do not have any conflict of interest in the maintenance of a class action; and,
- c. The representative parties have adequate financial resources to ensure that the interest of the class will not be harmed.

35. The class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Pa. R.C.P. §1708, in particular:

- a. Common questions of law and fact predominate over any questions affecting only individual members, including pleading and factual issues relating to liability and damages;
- b. The matter can appropriately be managed as a class action;
- c. The prosecution of separate actions would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Respondents;
- d. There is no pending litigation already commenced addressing these issues; and,

e. This court is the appropriate forum for litigation of the claims of the entire case.

36. The class action is superior to all other available methods for the fair and efficient adjudication of this controversy. The class is readily definable and prosecution as a class action will eliminate the possibility of repetitious litigation, while also providing redress for claims that may be too small to support the expense of individual, complex litigation. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and would result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

37. In this action Petitioners seek relief for Respondents' redirection of the tobacco settlement monies away from their intended and mandated purpose of improving the health status of Pennsylvania citizens and funding current and future health care programs for Pennsylvania citizens, including the adultBasic Insurance Coverage Program.

COUNT I

Declaratory Judgment- Violations of the Tobacco Settlement Act **Petitioners v. All Respondents**

38. Petitioners incorporate by reference as though fully set forth herein the allegations of Paragraphs 1 through 36 above.

39. The actions of the Respondents in redirecting tobacco settlement monies intended for the Tobacco Settlement Fund violated the Tobacco Settlement Act. Specifically, by redirecting settlement monies, Respondents violated §5701.303 (a) which provides as follows:

§5701.303 Establishment of special fund and account

(a) Tobacco Settlement Fund. - - 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(a) (emphasis added).

40. The actions of the Respondents in redirecting tobacco settlement monies also violated §5701.303(b) of the Pennsylvania Tobacco Settlement which was intended to provide funding for the Health Account to keep health care programs going in the future if the annual settlement payments decreased or stopped. Section 5701.303(b) provides as follows:

(b) Health Account.— There is hereby established within the fund the Health Endowment Account for Long-Term Hope. The following amounts shall be deposited by the Treasury Department into the 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. §5701.303(b).

41. The Respondents should not have and cannot continue to redirect such funds which were intended for and mandated to be deposited into the Tobacco Settlement Fund and Health Account.
42. Pursuant to the Tobacco Settlement Act, the funds from the Master Settlement Agreement should have been deposited either into the Tobacco Settlement Fund and the Health Account pursuant to the allocations set forth in §5701.306 of the Tobacco Settlement Act. The statute's mandatory allocation of the monies requires that 30% of the monies received by the Tobacco Settlement Fund be shared between the adultBasic program and Medicaid program for workers with disability.
43. The Respondents' failure to have the tobacco settlement monies appropriately deposited within the Tobacco Settlement Fund and the Health Account is a clear violation of the statute and was directly responsible for the loss of funding for the adultBasic Program.

WHEREFORE, Petitioners respectfully request that judgment be entered against the Respondents pursuant to the Declaratory Judgment Act, 42 Pa. C.S.A. §7531 et seq., and Pa. R.C.P. 1602, to redress the violations of Pennsylvania's Tobacco Settlement Act and that the Court award the following relief:

- a. An Order declaring that this action is properly maintained as a class action;
- b. An Order declaring that the Respondents have violated the Pennsylvania Tobacco Settlement Act by redirecting tobacco settlement money away from the Tobacco Settlement Fund and Health Account;
- c. That this Court order that such other and further relief as may be appropriate under the circumstances including, but not limited to, issuing a declaration requiring that tobacco settlement

monies to be received by the Department of Treasury on or about April 15, 2011 and into the future be appropriately deposited into the Tobacco Settlement Fund and Health Account;

- d. An Order declaring that the Tobacco Settlement Fund and the Health Account be reimbursed by the Commonwealth for tobacco settlement monies which were not but should have been deposited with the Tobacco Settlement Fund and Health Account;
- e. That the Court order the reestablishment of the adultBasic Insurance Coverage Program;
- f. An Order requiring the Respondents to provide an accounting of the tobacco settlement monies received since 2000 as well as an account of the Tobacco Settlement Fund and Health Account from 2000 to the present;
- g. That the Court award to the Petitioners' attorneys for the class reasonable attorneys' fees from the amounts determined to be inappropriately redirected away from the Tobacco Settlement Fund and Health Account; and,
- h. That this Court award to the Petitioners in the class such other relief as the Court deems appropriate.

COUNT II

Mandamus- Violations of Pennsylvania's Tobacco Settlement Act

Petitioners v. All Respondents

- 44. Petitioners incorporate by reference as though fully set forth herein at length the allegations in Paragraphs 1 through 43 above.
- 45. The actions of the Respondents in redirecting tobacco settlement monies intended for the Tobacco Settlement Fund and the Health Account violate Pennsylvania's Tobacco Settlement Act and specifically, 35 P.S. §5701.303(a) and (b).

46. The Respondents should not have and cannot continue to redirect such funds which were intended for and mandated to be deposited into the Tobacco Settlement Fund and the Health Account.
47. Respondents' failure to have the tobacco settlement monies appropriately deposited within the Tobacco Settlement Fund and the Health Account is a clear violation of the statute and was directly responsible for the loss of the funding for the adultBasic program.
48. The Petitioners have a clear right to the performance by the Respondents of the statutorily mandated duty that requires that the tobacco settlement monies be deposited with the Tobacco Settlement Fund and the Health Account and that 30% of such monies be shared between the adultBasic Program and the Medicaid program for workers with disability. The Petitioners have no other appropriate or adequate remedy in order to obtain the requested relief.

WHEREFORE, Petitioners respectfully request that a writ of mandamus be issued to redress the violations of the Pennsylvania Tobacco Settlement Act and that the Court award the following relief:

- a. An Order declaring that this action is properly maintained as a class action;
- b. An Order declaring that the Respondents have violated the Pennsylvania Tobacco Settlement Act by redirecting tobacco settlement money away from the Tobacco Settlement Fund and Health Account;
- c. That this Court order that such other and further relief as may be appropriate under the circumstances including, but not limited to, issuing a writ of mandamus requiring that tobacco settlement monies to be received by the Department of Treasury on or about April 15, 2011 and into the future be appropriately deposited into the Tobacco Settlement Fund and Health Account;

- d. An Order declaring that the Tobacco Settlement Fund and the Health Account be reimbursed by the Commonwealth for tobacco settlement monies which were not but should have been deposited with the Tobacco Settlement Fund and Health Account;
- e. That the Court order the reestablishment of the adultBasic Insurance Coverage Program;
- f. An Order requiring the Respondents to provide an accounting of the tobacco settlement monies received since 2000 as well as an account of the Tobacco Settlement Fund and Health Account from 2000 to the present;
- g. That the Court award to the Petitioners' attorneys for the class reasonable attorneys' fees from the amounts determined to be inappropriately redirected away from the Tobacco Settlement Fund and Health Account; and,
- h. That this Court award to the Petitioners in the class such other relief as the Court deems appropriate.

COUNT III

Declaratory Judgment and Mandamus- Violation of Article III Section 1, 2, 3 and 4 of the Pennsylvania Constitution

**Petitioners v. House of Representatives of the Commonwealth of Pennsylvania;
Samuel H. Smith; Senate of the Commonwealth of Pennsylvania;
Joseph B. Scarnati, III**

- 49. Petitioners incorporate by reference as though fully set forth herein at length the allegations in Paragraphs 1 through 47 above.
- 50. Pursuant to Article III, Section 1 of the Pennsylvania Constitution, no law shall be passed except by Bill, and no Bill shall be so altered or amended, on its passage through either House, as to change its original purpose. PA. CONST. Art. 111, 31.

51. Pursuant to Article III, Section 2 of the Pennsylvania Constitution, no Bill shall be considered unless referred to a committee, printed for the use of the members and returned there from. PA. CONST. Art. 111, §2.
52. Pursuant to Article III, Section 3 of the Pennsylvania Constitution, no Bill shall be passed containing more than one subject, which shall be clearly expressed in the title, except a general appropriation bill or a bill codifying or complying the law or a part thereof. PA. CONST. Art. III, §3.
53. Pursuant to Article III, Section 4 of the Pennsylvania Constitution, every Bill shall be considered on three different days in each House. All amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill and before the final vote is taken, upon written request addressed to the presiding officer of the House by at least twenty-five percent of the members elected to the House, any bill shall be read at length in the House. No Bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor. PA. CONST. Art. 111, §4.
54. The House of Representatives and Samuel H. Smith, as Speaker of the House, the Senate of the Commonwealth of Pennsylvania and Joseph B. Scamati, III as President Pro Tempore (hereinafter "Legislative Respondents") violated Article II, Sections 1, 2, 3 and 4 of the Pennsylvania Constitution by seeking to amend the requirements of the Tobacco Settlement Act without appropriately passing a law by way of a Bill to change the requirements of the Tobacco Settlement Act.

55. The Legislative Respondents illegally and unconstitutionally redirected monies received from the Master Settlement Agreement which should have been deposited into the Tobacco Settlement Fund and the Health Account.
56. The Legislative Respondents by redirecting the tobacco settlement monies by way of mandates to the Annual Budget Acts have violated the procedures set forth in Article II Sections 1, 2, 3 and of the Pennsylvania Constitution.

WHEREFORE, Petitioners respectfully request that judgment be entered against the Respondents to redress their violations of Pennsylvania's Constitution and that the Court award the following relief:

- a. An Order declaring that this action is properly maintained as a class action;
- b. An Order declaring that the Respondents have violated the Pennsylvania Constitution by redirecting tobacco settlement money away from the Tobacco Settlement Fund and Health Account;
- c. That this Court order that such other and further relief as may be appropriate under the circumstances including, but not limited to, issuing a declaration requiring that tobacco settlement monies to be received by the Department of Treasury on or about April 15, 2011 and into the future be appropriately deposited into the Tobacco Settlement Fund and Health Account;
- d. An Order declaring that the Tobacco Settlement Fund and the Health Account be reimbursed by the Commonwealth for tobacco settlement monies which were not but should have been deposited with the Tobacco Settlement Fund and Health Account beginning in 2006 through the present;
- e. That the Court order the reestablishment of the adultBasic Insurance Coverage Program;
- f. An Order requiring the Respondents to provide an accounting of the tobacco settlement monies received since 2000 as well as an account of the Tobacco Settlement Fund and Health Account;

- g. That the Court award to the Petitioners' attorneys for the class reasonable attorneys' fees from the amounts determined to be inappropriately redirected away from the Tobacco Settlement Fund and Health Account; and,
- h. That this Court award to the Petitioners in the class such other relief as the Court deems appropriate.

COUNT IV.

**Declaratory Judgment and Mandamus - Violation of the Pennsylvania
Constitution Article IV, Section 2**

**Petitioners v. Tom Corbett, Governor of the Commonwealth of Pennsylvania and Charles Zogby,
Secretary of the Budget for the Commonwealth of Pennsylvania**

57. Petitioners incorporate by reference as though fully set forth herein at length the allegations in Paragraphs 1 through 55 above.

58. The Governor and the Office of the Budget by submitting to the Legislature an annual budget for 2011 which redirected the 2011 tobacco settlement monies away from the Tobacco Settlement Fund and Health Account violated Article IV, Section 2 of the Pennsylvania Constitution which requires that pursuant to the executive power vested in the Governor, the Governor shall insure that the laws of Pennsylvania are faithfully executed.

59. By requesting that the tobacco settlement monies be redirected, the Governor and the Secretary of Budget were knowingly acting in violation of the Tobacco Settlement Act which requires that such monies be deposited into the Tobacco Settlement Fund and the Health Account.

WHEREFORE, Petitioners respectfully request that judgment be entered against the Respondents to redress their violations of Pennsylvania's Constitution and that the Court award the following relief:

- a. An Order declaring that this action is properly maintained as a class action;

- b. An Order declaring that the Respondents have violated the Pennsylvania Constitution by redirecting tobacco settlement money away from the Tobacco Settlement Fund and Health Account;
- c. That this Court order that such other and further relief as may be appropriate under the circumstances including, but not limited to, issuing a declaration requiring that tobacco settlement monies to be received by the Department of Treasury on or about April 15, 2011 and into the future be appropriately deposited into the Tobacco Settlement Fund and Health Account;
- d. An Order declaring that the Tobacco Settlement Fund and the Health Account be reimbursed by the Commonwealth for tobacco settlement monies which were not but should have been deposited with the Tobacco Settlement Fund and Health Account beginning in 2006 through the present;
- e. That the Court order the reestablishment of the adultBasic Insurance Coverage Program;
- f. An Order requiring the Respondents to provide an accounting of the tobacco settlement monies received since 2000 as well as an account of the Tobacco Settlement Fund and Health Account from 2000 to the present;
- g. That the Court award to the Petitioners' attorneys for the class reasonable attorneys' fees from the amounts determined to be inappropriately redirected away from the Tobacco Settlement Fund and Health Account; and,
- h. That this Court award to the Petitioners in the class such other relief as the Court deems appropriate.

COUNT V.
Injunctive Relief

Petitioners v. Department of Treasury

60. Petitioners incorporate by reference as though fully set forth herein at length the allegations in Paragraphs 1 through 58 above.

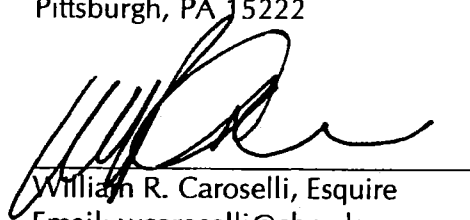
61. The Department of Treasury has failed to deposit with the Tobacco Settlement Fund and the Health Account the appropriate monies from the Master Settlement Agreement as required under 35 P.S. §5701.303 (a) and (b)
62. The Tobacco Settlement Fund and the Health Account, which were intended to manage funds which would make Pennsylvanians healthier and to fund the health of future generations of Pennsylvanians have been unlawfully reduced and their monies have been diverted to other purposes in violation of the Tobacco Settlement Act.
63. Pursuant to the Tobacco Master Settlement Agreement, on or about April 15 of each year from 2000 onward for a minimum of 25 years, a settlement payment is to be forwarded to the Commonwealth of Pennsylvania.
64. Because such settlement monies are expected to be received by the Commonwealth on or about April 15, 2011 and because as more fully alleged in this Petition it is believed that these monies will be redirected by the Respondents away from the Tobacco Settlement Fund and the Health Account, it is requested that this Court issue injunctive relief to require that the Department of Treasury upon receipt of tobacco settlement monies for the year 2011 maintain such funds within its accounts until such time as the Court rules on the merits of this Petition for Review.

WHEREFORE, Petitioners respectfully request that an injunction be entered against the Defendant, Department of Treasury, and that an Order be issued requiring the Department of Treasury to maintain within its accounts any tobacco settlement monies received pursuant to the Master Settlement Agreement until such time as the Court rules on the merits of this Petition for Review.

Respectfully submitted,

CAROSELLI BEACHLER McTIERNAN
& CONBOY LLC
20 Stanwix Street, 7th Floor
Pittsburgh, PA 15222

By:



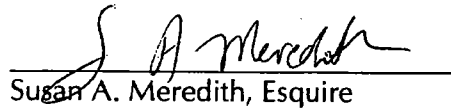
William R. Caroselli, Esquire

Email: wcaroselli@cbmclaw.com

Pa ID: 00452

Telephone: 412-391-9860

By:



Susan A. Meredith, Esquire

Email: smeredith@cbmclaw.com

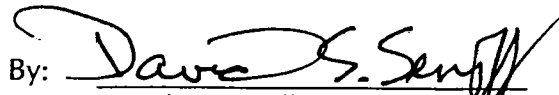
Pa ID: 76767

Telephone: 412-391-9860

- And -

CAROSELLI BEACHLER McTIERNAN
& CONBOY LLC
1500 Walnut Street, Suite 507
Philadelphia, PA 19102

By:



David S. Senoff, Esquire

Email: dsenoff@cbmclaw.com

Pa ID: 65278

Telephone: 215-609-1350

VERIFICATION

The undersigned Plaintiff, Sheryl Sears, herein avers that the statements of fact contained in the foregoing PETITION FOR REVIEW are true and correct to the best of HER information, knowledge and belief and are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

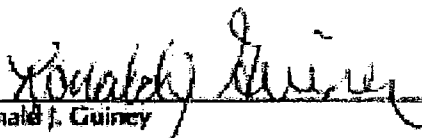
DATE: 3-14-'11

Sheryl Sears
Sheryl Sears

VERIFICATION

The undersigned Plaintiff, RONALD GUINEY, herein avers that the statements of fact contained in the foregoing PETITION FOR REVIEW are true and correct to the best of HIS information, knowledge and belief and are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

DATE: March 14, 2011



Ronald J. Guiney

VERIFICATION

The undersigned Plaintiff, FLORENCE SPANOS, herein avers that the statements of fact contained in the foregoing PETITION FOR REVIEW are true and correct to the best of HER information, knowledge and belief and are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

DATE: March 13, 2011

Florence Spanos
Florence Spanos

CERTIFICATE OF SERVICE

I hereby certify that I am this 14th day of March, 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:

Governor Tom Corbett
225 Main Capitol Building
Harrisburg, PA 17120

Charles Zogby, Secretary of the Budget
Commonwealth of Pennsylvania
238 Main Capitol Building
Harrisburg, PA 17120

The Office of the Chief Clerk
House of Representatives
Commonwealth of Pennsylvania
129 Main Capitol Building
Harrisburg, PA 17120

Samuel H. Smith
Speaker of the House of Representatives
139 Main Capitol Building
Harrisburg, PA 17120

The Office of the Chief Clerk
Senate of the Commonwealth of Pennsylvania
89E Capitol East Wing
Harrisburg, PA 17120

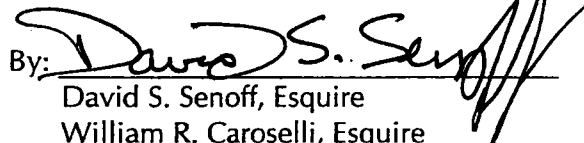
Joseph B. Scarnati, III, President Pro Tempore
Senate of the Commonwealth of Pennsylvania
292 Capitol Building
Harrisburg, PA 17120

Department of the Treasury
Commonwealth of Pennsylvania
129 Finance Building
Harrisburg, PA 17120

PA Office of the Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

CAROSELLI BEACHLER McTIERNAN &
CONBOY
20 Stanwix Street, 7th Floor
Pittsburgh, Pennsylvania 15222

By:

A handwritten signature in black ink, appearing to read "David S. Senoff", is written over a horizontal line. The signature is stylized and includes a large, sweeping flourish at the end.

David S. Senoff, Esquire
William R. Caroselli, Esquire
Susan A. Meredith, Esquire
Attorneys for Petitioners

