

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF	:	
PENNSYLVANIA BY JOSH SHAPIRO,	:	
Attorney General, et al.,	:	
	:	
Petitioners,	:	NO. 334 MD 2014
v.	:	
	:	
UPMC, A Nonprofit Corp, et al.,	:	
	:	
Respondents.	:	

**THE GOVERNOR’S OFFICE, THE PENNSYLVANIA DEPARTMENT OF HEALTH,
AND THE PENNSYLVANIA INSURANCE DEPARTMENT’S APPLICATION TO
QUASH AND FOR A PROTECTIVE ORDER**

Pursuant to Rules 234.4, 4011, and 4012(a) of the Pennsylvania Rules of Civil Procedure and Rule 123 of the Pennsylvania Rules of Appellate Practice, the Governor’s Office, the Pennsylvania Department of Health (“DOH”), and the Pennsylvania Insurance Department (“PID”) (collectively the “PA Agencies”) file this Application to Quash and for a Protective Order to UPMC’s Subpoenas *Duces Tecum* served on the PA Agencies (the “Subpoenas”). The PA Agencies respectfully ask the Court to grant the application, quash the subpoenas, and issue a protective order prohibiting UPMC from taking the depositions of their custodians of record (currently set for April 3, 2019) or seeking further discovery from the PA Agencies in this matter. In support of this application, the PA Agencies state as follows:

INTRODUCTION

1. On March 13, 2019, UPMC served the Subpoenas on the PA Agencies in connection with the Petition to Modify Consent Decree (the “Petition”) recently filed by the Commonwealth acting as *parens patriae* through its Attorney General, Josh Shapiro (the “Attorney

General”). True and correct copies of the Subpoenas to the Governor’s Office, DOH, and PID are attached to this Application as **Exhibits A-C**, respectively.

2. The Petition raises issues relating to whether UPMC is fully and faithfully meeting its mission and fulfilling its charitable responsibilities. Yet, UPMC’s vast, expansive, and all-encompassing Subpoenas are procedurally improper, seek information that is not relevant to the claims raised in the Petition, are not narrowly tailored to the now severed claim before this Court, and implicate numerous privileges.

3. Given the claims raised in the Petition and the legal arguments raised in UPMC’s *Answer in the Nature of a Motion to Dismiss or Preliminary Objections* (“Motion to Dismiss”), this Court should grant the PA Agencies’ Application to Quash and for a Protective Order to prevent UPMC’s inappropriate fishing expedition and harassing discovery tactics.

BACKGROUND

4. The dispute currently before this Court is narrow. It is limited solely to the issues raised in the Petition to Modify the Consent Decrees, and in recent weeks, has been further limited by the Court to Count I of the Attorney General’s Petition, which alleges that modification of the Consent Decrees of both UPMC and Highmark is needed to protect the public’s interest. While PID and DOH were signatories to the Consent Decrees in 2014, they (and the Governor’s Office) are not parties to the Petition. The only current parties to the merits of the Petition are the Attorney General, UPMC and Highmark.¹

¹ Apparently, UPMC questions whether Highmark is even a party at this stage. Indeed, at the status conference before this Court, UPMC’s counsel objected to Highmark’s counsel taking the lectern to be heard and argued that Highmark is not a party to the current Petition. However, the Attorney General has served discovery requests on Highmark and is therefore treating Highmark as a party.

5. In response to the Petition, on February 21, 2019, UPMC filed its Motion to Dismiss raising numerous legal arguments as to why the Petition is improper.

6. On February 25, 2019, the Court issued an order providing that discovery may commence immediately and must be completed prior to May 1, 2019 (“Scheduling Order I”). Scheduling Order I made no reference to any non-party discovery.

7. As such, on March 1, 2019, UPMC served its First Set of Interrogatories and Requests for Production of Documents upon the Attorney General. True and correct copies of UPMC’s First Set of Interrogatories and Requests for Production served upon the Attorney General are attached to this Application as **Exhibit D**.

8. The Requests for Production of Documents to the Attorney General consisted of 52 requests, which are substantially similar to the documents UPMC is now seeking from the PA Agencies. *Compare* Ex. A-C *with* Ex. D.

9. Moreover, UPMC served a similar set of Request for Production of Documents on the Attorney General in the overlapping federal court injunction UPMC brought against the Attorney General. *See UPMC Pinnacle et al. v. Joshua D. Shapiro*, 1:19-cv-00298 (M.D. Pa., filed Feb. 21, 2019).

10. On March 12, 2019, this Court issued a supplemental scheduling order (“Scheduling Order II”), which severed Count I of the Petition and ordered the Attorney General, UPMC, and Highmark to litigate Count I of Petition separately and expeditiously, as set forth therein.

11. As part of the expedited schedule for Count I, the Court limited the number of depositions to be taken by each side and ordered that all written discovery requests shall be answered within 30 days of service. As with Scheduling Order I, and despite UPMC’s statements

during the status conference with this Court that it sought “third-party” discovery of PID, DOH and others, the Court does not mention or allow for non-party discovery in Scheduling Order II.

12. On March 13, 2019, UPMC served the Subpoenas on the PA Agencies, directing their respective custodian of records to attend separately noticed depositions on March 28, 2019 at 12:30 p.m. (PID), 1:00 p.m. (DOH), and 1:30 p.m. (Governor’s Office), and to bring voluminous discovery outlined in each Addendum A. *See* Ex. A-C. The substance of the document requests appended to the Subpoenas is identical, and the substance contained in the Subpoenas is similar to that contained in the discovery requests issued to the Attorney General. *See* Ex. A-D.

13. On March 20, 2019, counsel for the PA Agencies asked UPMC to withdraw the Subpoena, and on March 22, 2019, UPMC refused, but did agree to extend the dates for the custodian of records’ depositions to April 3, 2019. *See* Email from A. Bailey to A. Coles dated March 22, 2019, attached hereto as **Exhibit E**. Despite good faith attempts by counsel for UPMC and the PA Agencies to meet and confer regarding the Subpoenas, no agreement could be reached, and the PA Agencies are forced to seek this Court’s intervention.

ARGUMENT

A. The Non-Party Discovery Sought by UPMC is Improper and Not Contemplated by the Court in its Scheduling Orders.

14. While PID and DOH were parties to the original Consent Decrees, they are not parties to the Attorney General’s Petition, and therefore are non-parties for purposes of the ongoing discovery. Accordingly, PID and DOH (and the Governor’s Office) did not actively participate in the Court’s March 7, 2019 Status Conference or have any input in the Court’s scheduling orders regarding discovery limitations.

15. While the rules governing Petitions allow for discovery at the Court’s discretion, these same rules do not allow *carte blanche* discovery. *See* Pa. R. Civ. Pro. 206.6 at *note*.

Moreover, this Court's own Internal Operating Procedures establish that it may tailor discovery in the manner it sees fit through pre-trial orders such as those issued here. *See* IOP § 313 (“To govern the expeditious disposition of substantial trials, pretrial orders may regulate discovery . . .”).

16. Here, the Court recognized that the current discovery between the Attorney General, UPMC, and Highmark would be limited solely to Count I and would be completed by the parties on an expedited basis. *See* Scheduling Order II.

17. In Count I of the Petition, the Attorney General alleges that modification of the Consent Decrees of both UPMC and Highmark is needed to protect the public's interest and seeks modification through a single combined consent decree, “to ensure that the benefits of In-Network access to their health care programs and services are available to the public at large and not just to those patients acceptable to them based upon their competitive strategic and financial considerations.” Petition, at ¶¶ 71-84.

18. UPMC's response to Count I, via its Motion to Dismiss, is that the Petition's claims are (1) released by the Consent; (2) precluded under the doctrine of claim preclusion; (3) legally insufficient based on speculative future conduct; (4) an invalid modification; and (5) barred because the Attorney General lacks the authority to “second guess” UPMC's charitable mission. *See* Motion to Dismiss at 13-39.

19. None of these defenses implicate or are relevant to the documents UPMC is seeking from the PA Agencies or even implicate each of their respective mandates as administrative agencies of Pennsylvania. For example, UPMC's defenses have no relevancy to PID's mandate to administer the laws of Pennsylvania as they relate to regulation of the business of insurance in the Commonwealth. *See generally Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1026 (Pa. Super.

2006) (“[A] court can prohibit discovery of matters which have been stated too broadly or without proper specification, and would amount to a ‘fishing expedition.’”).²

20. Furthermore, neither Scheduling Order I nor Scheduling Order II contemplated non-party discovery—let alone the type of voluminous discovery sought by UPMC in the Subpoenas, which is also duplicative of the discovery UPMC is seeking from the Attorney General—a party to the instant dispute before this Court.

21. Even recognizing the expeditious nature of resolving Count I of the Petition, the Court, in Scheduling Order II, still afforded the parties with 30 days to respond to any written discovery requests, and set a discovery deadline of May 1, 2019. *See* Scheduling Order II.

22. Notwithstanding, UPMC served the Subpoenas on the PA Agencies, seeking the production of voluminous documents and correspondence, and the depositions of their record custodians merely 15 days later. *See* Ex. A-C. In what appears to be an end-run around the discovery deadlines set by the Court in Scheduling Order II, UPMC’s Subpoenas would require the non-parties to provide discovery responses well in advance of the parties’ exchange of discovery.

23. This non-party discovery is particularly troubling in light of UPMC’s pending Motion to Dismiss, which could completely moot the need for any of the requested discovery. *See, e.g., Deans v. Pollock-Timblin Co., Inc.*, 14 Pa. D. & C.2d 455, 455-57 (Pa. Com. Pl. 1958) (entering protective order barring noticed deposition while motion to dismiss was pending because if motion sustained, deponent “will not have been needlessly annoyed by being required to give [discovery] that will never be used”).

² *See In re Superior-Pacific Fund, Inc.*, 693 A.2d 248, 253 (Pa. Cmwlth. 1997) (“While recognizing that decisions of our sister Superior Court are not binding upon this Court, we always give great deference to their persuasive wisdom and logic . . .”).

24. Accordingly, the Subpoenas are entirely improper in these circumstances, and should be quashed for this reason alone.

B. The Subpoenas are Overly Burdensome and Any Relevant Discovery is Available via Less Oppressive Methods or is already in UPMC's Possession.

(i) The Subpoenas Thrust an Intolerable Burden on the PA Agencies.

25. Besides their irrelevancy and contravention to the Scheduling Orders, UPMC's Subpoenas, on their face, are also impermissible because they would place an extreme burden and expense on the PA Agencies.

26. It is well-established that "a party's right to require the production of a non-party's documents is not unlimited." *Woods v. Dunlop*, 334 A.2d 619, 623 n.9 (Pa. 1975).

27. Rule 4011 of the Pennsylvania Rules of Civil Procedure provides that "No discovery shall be permitted which (a) is sought in bad faith; (b) would cause unreasonable annoyance, embarrassment, oppression, burden, or expense to the deponent or to any person or party; (c) is beyond the scope of discovery permitted by Rule 4003.1 through 4003.6; . . . or (e) would require the making of an unreasonable investigation by the deponent or any party or witness." Pa. Rule Civ. P. 4011.

28. An entity seeking to limit discovery may move for a protective order under Pa. R. Civ. P. 4012, which provides, in relevant part, that "upon motion by a party . . . and for good cause shown, the court may make any order which justice requires to protect a party from unreasonable . . . burden or expense." Pa. R. Civ. P. 4012(a).

29. The Subpoenas ask for the PA Agencies to search through records dating back over 8 years. *See* Ex. A-C at Instruction 4. And UPMC has not tailored the requests in a fashion that would allow for a reasonable investigation and production to occur.

30. For example, UPMC’s definition of the “Governor” in the Subpoenas is so broadly worded to include the “Governor’s Office” and “any and all persons or entities acting or purporting to act on his or its behalf,” would presumably include every current and former employee over the past 8 years who works in an executive agency.

31. By way of further example, UPMC’s Document Request No. 2 asks, in part, for “[a]ll communications and documents exchanged with the OAG concerning any of the following subject matters . . . (1) UPMC; (2) Highmark . . . (9) AHN and its predecessors including their financial condition” and 17 other broad categories. *See* Ex. A-C at Req. No. 2. UPMC also requests “[a]ll assessments, analyses, or documents otherwise concerning any” of 16 similarly-broad categories. *See id.* at Req. No. 3; *cf. Brownstein v. Philadelphia Trans. Co.*, 46 Pa. D. & C.2d 463, 464 (Pa. Com. Pl. 1969) (finding interrogatory seeking names and addresses “of all persons known” “who have any knowledge of any facts of this accident, the surrounding circumstances, the plaintiff’s injuries and/or the plaintiff’s damages resulting therefrom” to be impermissibly overbroad); *see generally In re Modern Plastics Corp.*, 890 F.3d 244, 252 (6th Cir. 2018) (affirming sanctions against party serving non-party subpoena seeking documents from “36 broad categories” spanning nine years); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 635-38 (C.D. Cal. 2005) (quashing document subpoena as imposing undue burden on non-party where subpoena contained seven document requests each seeking “any and all documents” pertaining to category and spanning approximately ten-year time period or greater); *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 46-51 (S.D.N.Y. 1996) (quashing subpoena as facially overbroad and unduly burdensome where requests sought “all documents” relating to defendant’s financial condition).

32. The burden UPMC is placing on the PA Agencies is transparent and obvious. The far-reaching requests would require the PA Agencies to sift through millions of pages of

documents in the possession of hundreds of employees, including high level executive staff. And that would just be the resources required for the initial step of determining the documents' *potential* responsiveness to the Subpoenas.

33. The PA Agencies have limited administrative tools and resources to slog through the requested mass of documents to try to make an expedited discovery to meet UPMC's demand. UPMC's Subpoenas would place a tremendous strain on the PA Agencies and divert time and resources from their daily business functions to the Commonwealth's detriment. *See generally Koken*, 911 A.2d at 1025 (noting that discovery requests must be reasonable, "which is 'to be adjudged on the facts and circumstances of each case'"). Placing such an oppressive burden on a non-party provides grounds to quash. *See generally Simon v. Simon*, 6 Pa. D. & C. 3d 196, 205 (Pa. Com. Pl. 1977) (observing "rule of thumb" that "a person should be compelled to undergo greater burdens relative to a lawsuit to which he is a party than a stranger should be asked to undertake").

(ii) The Subpoenas Are Improper Because They Are Available through Less Intrusive Means.

34. The Subpoenas are also improper because UPMC can obtain any potentially relevant information concerning Count I of the Petition and UPMC's legal arguments raised in the Motion to Dismiss through less intrusive means.

35. UPMC has already served expansive discovery on the Attorney General, including voluminous interrogatories, requests for admissions, and document requests. *See, e.g., Ex. D; see also Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 410 (C.D. Cal. 2014) (noting that "court may prohibit a party from obtaining discovery from a non-party if that same information is available from another party to the litigation") (citation and internal quotation marks omitted).

36. Some of the document requests served on the Attorney General are identical to the discovery UPMC seeks from the non-parties in the Subpoenas, including one request that seeks communications between the Office of Attorney General and each of the PA Agencies on any of 19-enumerated topics, during a more than **8-year** time period. *Compare* Ex. A-C *with* Ex. D.

37. For example, Request Number 2 of the Subpoenas requests “all communications and documents exchanged with the OAG” concerning various subject matter. As the OAG would necessarily have these documents, and they have already been requested by UPMC, there is no reason to burden the PA Agencies with a request for their disclosure.

38. In addition, UPMC also attempted to subpoena an Executive Deputy Attorney General, a subpoena that this Court stayed pending further briefing on the Attorney General’s application to quash.

39. Furthermore, UPMC could attempt to obtain the documents from Highmark, who, unlike the PA Agencies, is a party to the Petition. To the PA Agencies’ knowledge, UPMC has not served any discovery requests upon Highmark, which provides further evidence of UPMC’s motive here: to unnecessarily harass the PA Agencies.

40. Based on the discovery demands served on the Attorney General, and the way the claims are framed in the Petition and Motion to Dismiss, this Court should require UPMC to exhaust other avenues of discovery before burdening non-parties with duplicative and exhaustive document requests.

(iii) The Subpoenas Are Improper Because the Discovery Sought is Already in UPMC’s Possession or Publicly Available.

41. The purpose of discovery is to provide a party the opportunity discover evidence unknown to the party and to seek possession of evidence of which the party is aware. *Com v. Hussmann*, 485 A.2d 58, 61 (Pa. Super. 1984).

42. “It is not a purpose of discovery for a party to supply, at its own expense, information already under the control or readily available to the opposing party.” *Boyle v. Steiman*, 631 A.2d 1025, 1031 (Pa. Super. 1993).

43. It is an abuse of discovery for a party already in possession of documents to turn around and request the product of the same documents. *Schultz v. Schultz*, 184 A.3d 168, 184 (Pa. Super. 2018). Such discovery is vexatious and unreasonable and amounts to nothing more than gamesmanship. *Boyle*, 631 A.2d at 1031; *In re 1958 Assessment of Glen Alden Corp.*, 17 Pa. D. & C.2d 624, 626 (Pa. Com. Pl. 1959).

44. Here, countless potentially responsive documents are already in UPMC’s possession and, therefore, not subject to discovery. For instance, Request Number 3(1) contained in the Subpoenas requests information pertaining to “UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts.” UPMC is already in possession of its own provider contracts as well as communications with the PA Agencies relevant thereto.

45. Likewise, Request Number 3(2) requests “consumer complaints about UPMC” and Request Number 3(4) requests “consumer complaints about UPMC/Highmark provider contraction.” But these are also already in UPMC’s possession because when PID receives any such complaint, that complaint is routinely forwarded to UPMC for review and response.

46. Request Number 3(10) requests documents related to “UPMC’s charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets.” And Request Numbers 3(14) and (15) request documents related to insurance competition and provider competition in Western Pennsylvania.

47. These Requests are objectionable because, among other things, countless potentially responsive documents to Request Numbers 3(10), (14), and (15) are contained in UPMC's Enterprise Risk Management Report ("ERM Report") and UPMC's Own Risk Solvency Assessment ("OSRA").

48. UPMC's ERM Report and ORSA are prepared, drafted, analyzed and submitted by UPMC and are therefore clearly in the possession of UPMC.

49. Furthermore, UPMC's charitable mission, tax exemptions, compensation, benefits, perquisites, and office space, are within UPMC's knowledge to a greater extent than the PA Agencies.

50. UPMC's Subpoenas also request broad categories of information such as emails and correspondence, which is potentially responsive to nearly every discovery request. UPMC is in possession of all relevant communications, including emails, between it and the PA Agencies.

51. In addition, provider contracts are publicly available documents, available through the National Association of Insurance Commissioners ("NAIC") SERFF Filing Access system—<https://filingaccess.serff.com/sfa/home/PA>.

52. Accordingly, the Subpoenas are improper for these additional reasons and should be quashed.

C. In Addition to Being Improper and Irrelevant, the Discovery Sought is Protected by Numerous Privileges.

53. Even if the non-party discovery was appropriate and relevant to Count I of the Petition (which it is not), the broad documents requested fall under numerous privileges that prevent their disclosure.

54. Pennsylvania Rule of Civil Procedure 4003.1 permits discovery “regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action.” Pa. R. Civ. P. No. 4003.1 (emphasis added).

55. Even a cursory review of the categories of discovery sought reveals that the majority of the items potentially responsive to the Subpoenas are privileged and protected from disclosure under various common law and statutory provisions that explicitly provide that information and documents are *not* subject to subpoena.

(i) The Attorney-Client and Work Product Privileges Protect Internal Communications and Documents Between Officials Within the Respective PA Agencies.

56. Pennsylvania courts apply the attorney-client and attorney-work product privileges broadly to protect those documents from discovery. The attorney-client privilege protects “confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice.” *Gillard v. AIG Ins., Co.*, 15 A.3d 44, 59 (Pa. 2011). And the attorney-work product privilege—which in Pennsylvania is not limited to documents prepared in anticipation of litigation—protects “mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties.” *Estate of Paterno v. NCAA*, 168 A.3d 187, 201 (Pa. Super. 2017).

57. The impermissibly broad requests contained in the Subpoenas necessarily would capture privileged attorney-client communications and work product generated within the Governor’s Office, DOH, or PID.

58. For example, Request Number 3 in the Subpoenas seeks “[a]ll assessments, analyses, or documents” concerning matters such as “the Consent Decree,” “the Proposed Modifications,” and “the Mediated Agreement or the Second Mediated Agreement.” *See Ex. A-*

C. Similarly, request Number 5 seeks “[a]ll notes, memoranda, or other documents concerning meetings, conversations, or communications . . . concerning the Proposed Modifications, AHN’s financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.” *Id.*

59. Those Requests could implicate legal staff memoranda, communications with the Office of General Counsel, or legal communications with executive staff at the PA Agencies, all of which are shielded from production. *See Sedat, Inc. v. Dep’t of Environ. Resources*, 641 A.2d 1243, 1243-46 (Pa. Cmwlth. 1994) (holding that memoranda prepared by agency attorneys protected from disclosure under attorney-client and attorney-work product privileges).

(ii) Deliberative Process Privilege Protects Internal Communications.

60. The deliberative process privilege permits the government to withhold documents containing confidential deliberations of law or policymaking, reflecting opinions, recommendations, or advice. *See, e.g., Ario v. Deloitte & Touche LLP*, 934 A.2d 1290, 1293 (Pa. Cmwlth. 2007) (citing *Commonwealth v. Vartan*, 733 A.2d 1258 (Pa. 1999) (citations omitted)); *Leber v. Stretton*, 928 A.2d 262, 267-68 (Pa. Super. 2007).

61. Therefore, any non-public documents that UPMC seeks to obtain from the PA Agencies that cannot be learned from the Attorney General, Highmark, or other sources, is likely protected by the deliberative process privilege.

62. For example, Request Number 3 seeks “assessments” and “analyses” of a laundry list of matters; Request Number 5 seeks “all notes, memoranda, or other documents” concerning communications with parties; and Request Number 6 seeks all documents that “relate to” Highmark’s compliance or noncompliance with paragraph 22 of the PID’s Approving Determination and Order, Order No. ID-RC-13-06 (the “UPE Approving Order”). *See Ex. A-C.*

63. These communications between officials acting in their regulatory capacity contain information that is both pre-decisional and deliberative, and it is axiomatic that such material is protected from disclosure. *See Ario*, 934 A.2d at 1291-92.

64. Furthermore, UPMC cannot establish the “extraordinary circumstance[s]” that would allow for the deliberative process privilege to be stripped. *See id.* at 1294.

65. As such, to the extent UPMC’s Subpoenas seek documents relating to the PA Agencies’ communications or deliberations that implicate their respective policymaking function, the Subpoenas should be quashed.

(iii) Executive Privilege Protects Internal Communications.

66. Similar to the deliberative process privilege, the executive privilege permits the government to withhold documents that would seriously hamper the function of the government or contravene the public interest. *Van Hine v. Dep’t of State*, 856 A.2d 204, 208 (Pa. Cmwlth. 2004).

67. In determining whether executive privilege applies, courts perform a balancing function weighing the interest of the government against the need of the private party to obtain discovery. *League of Women Voters v. Commonwealth*, 177 A.3d 1010, 1017 (Pa. Cmwlth. 2017).

68. In weighing the interests of the government against the need of the private party, the court may consider several factors, including:

- (1) The extent to which disclosure will thwart governmental process by discouraging citizens from giving the government information;
- (2) The impact upon persons who have given information of having their identities disclosed;
- (3) The degree to which governmental self-evaluation and consequent program involvement will be chilled by disclosure;
- (4) Whether the information sought is factual data or evaluative summary;

- (5) Whether the party seeking the discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question;
- (6) Whether the police investigation has been completed;
- (7) Whether any intradepartmental disciplinary proceedings have arisen or may arise from the investigation;
- (8) Whether the petitioner's suit is non-frivolous and brought in good faith;
- (9) Whether the information sought is available through other discovery or from other sources; and
- (10) The importance of the information sought to the petitioner's case.

Id. (citing *Frankenhauser v. Rizzo*, 59 F.R.D. 339, 342 (E.D. Pa. 1973)).

69. Here, the factors weigh heavily against disclosure. Applying the first factor, as to PID for example, many of the documents sought relate to confidential PID investigations regarding financial market conduct examinations and communications incident thereto. If such communications were discoverable this would thwart the ability of the PID to conduct its examinations confidentially and chill regulated entities' willingness to cooperate in such examinations.

70. As to the second factor, and particularly relating to PID's market conduct examination into continuity of care, such a market conduct examination would result in PID obtaining thousands of pages of medical records containing personally identifiable medical information of Commonwealth residents, the release of which could have a serious negative impact on said individuals.

71. Regarding the third factor, the requested documents—such as “all assessments” and “analyses” of numerous categories of documents (Req. No. 3)—strikes to the heart of PID's ability

to evaluate countless numbers of programs of particular importance to the Department's regulatory mission.

72. Similar to the considerations for factor 3, the Subpoenas' demand for "all assessments" and "analyses" is a clear and intentional attempt to obtain discovery of information other than factual data or executive summaries. To the extent that factual data is encompassed in UPMC's broad and sweeping discovery request, such information is not severable from the underlying confidential deliberations. *League of Woman Voters*, 177 A.3d at 1018.

73. As to the next factor, UPMC is not now, nor is reasonably likely to be subject to criminal proceedings which follow from the case *sub judice*.

74. Also, as has been discussed before, and relevant to the eighth factor, the information sought is available both as public documents and already in UPMC's possession and, therefore, is available from other sources. Lastly, as also discussed, the information is irrelevant to Count I of the Petition.

75. Accordingly, the factors weigh in favor of the PA Agencies and against disclosure under the against executive privilege.

D. PID's Documents are also Protected by Confidentiality Provisions in Various Statutes and the Insurance Code.

(i) Documents Obtained Through the PID Examination Process are to be Given Confidential Treatment and are not Subject to Subpoena.

76. Pursuant to 40 P.S. § 323.5(f), "[a]ll working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the department or any other person in the course of an examination made under this article shall be given confidential treatment and are *not subject to subpoena* and may not be made public by the department or any other person..." except in circumstances not applicable here (emphasis added).

77. There are several categories of documents requested that are not subject to subpoena because they are directly related to the examination process and thereby protected.

78. On February 26, 2015, PID issued Examination Warrant 15-C21-004, involving an on-going examination of Highmark's claims processes relating to the Continuity of Care Provision—section (IV)(A)—of the Consent Decree entered into between OAG, Highmark, UPMC, PID, and DOH.

79. Documents relating to this Examination Warrant are potentially responsive to Request Numbers 3(1) through (5), (14) and (15) of the Subpoenas in that they are relevant to the PID's regulatory responsibilities in overseeing paragraph 22 of the UPE Approving Order as well as the Consent Decrees, which outline the parties' responsibilities pertaining to the original UPMC and Highmark contract termination. Further, the information necessarily contains information about consumers which may be construed as a "consumer complaint."

80. Because these documents and investigative materials were generated pursuant to the examination process, they are to be given "confidential treatment" pursuant to 40 P.S. § 323.5(f) and are not "subject to subpoena." As such, the Subpoenas should be quashed to the extent they request those assessments, analyses, and documents relating to Examination Warrant No. 15-C21-004.

(ii) Information Related to the UPE Approving Order and Highmark's Duty to Provide "updated financial documentation" to the PID is Protected by Article XIV (relating to Insurance Holding Companies) of the Insurance Company Law of 1921 (Act of May 17 1922 P.L. 682 (as amended)).

81. The Subpoenas request two categories of information regarding the financial condition of Highmark and Allegheny Health Network as it relates to the UPE Approving Order, both of which fall under the confidentiality provisions of Article XIV of the Insurance Company Law of 1921 (IHCA) (40 P.S. § 991.1401- 991.1413).

82. First, several provisions of the Subpoenas contain broad language that reaches back to the UPE Approving Order. Specifically, Request Number 3(7) seeks “all assessments, analyses or documents” concerning “AHN and its predecessors including their financial condition.” Request Number 4 seeks “all communications with Highmark concerning...AHN’s financial condition.” Request Number 5 seeks “all notes memoranda or other documents...concerning AHN’s financial condition.” Finally, Request Number 6 seeks “all documents concerning ¶ 22 of the [2013 Order].”

83. Second, Request Number 1 seeks to require the PA Agencies produce documents regarding “Highmark’s duty to provide updated financial documentation in ...¶ 22 of the UPE Approving Order.”

84. As an initial matter, it is noteworthy that all of the public information relating to the UPE Approving Order and subsequent financial filings is available on the PID’s website. *See infra.*

85. On the other hand, non-public documents relevant to the Requests referenced above are held by PID as confidential pursuant to 31 Pa. Code § 25.12(c).

86. Additionally, the information that is disclosed to PID so that PID can perform its critical financial analysis functions, such as the review filings made pursuant to 40 P.S. § 991.1405 and 40 P.S. §991.1404, is confidential and not subject to subpoena pursuant to 40 P.S. § 991.1407 (providing that all information, documents, materials and copies thereof ... “shall be privileged and given confidential treatment” and shall not be “subject to subpoena”).

(iii) Information Submitted to the PID in an Enterprise Risk Report and the PID's Analysis Thereof Pursuant to 40 P.S. § 991.1404(k.1) is Confidential and not Subject to Subpoena.

87. The PID Subpoena, in several places, requests information that may be contained in the Enterprise Risk Reports (ERR) filed by Highmark or UPMC pursuant to 40 P.S. §991.1404(k.1), as well as the Department's analysis thereof.

88. Specifically, the Subpoenas request information pertaining to provider contracting (Req. No. 1), insurance and provider competition (Req. No. (3)(14), (15)), and financial condition of affiliates (Req. No. (4)), which are items that may be found in an ERR.

89. To the extent that the PID Subpoena requests Highmark's ERR filings, it must be quashed because the ERR and related information, documents or materials are not subject to subpoena pursuant to 40 P.S. § 991.1407(a)(2).

90. Although UPMC is in possession of its own ERR, it is certainly not entitled to obtain PID's analysis of it.

(iv) ORSA Summary Reports and ORSA-Related Information are not Subject to Subpoena.

91. Pursuant to 40 P.S. § 991.2605, a domestic insurer or an insurer that is a member of an insurance group must submit an ORSA summary report to PID once per year.

92. This report, as well as "ORSA-related information" is privileged and given confidential treatment and "shall not be subject to subpoena." 40 P.S. § 991.2608.

93. The PID Subpoena requests information pertaining to provider contracting (Req. No. 1), insurance and provider competition (Req. No. (3)(14), (15)), and financial condition of affiliates (Req. No. (4)), which are items that may be found in an ORSA or in ORSA-related information.

94. To the extent that the PID Subpoena requests Highmark's ORSA-related information, it must be quashed because the ORSA-related information is not subject to subpoena pursuant to 40 P.S. § 991.2608(a)(2). And, like the ERR discussed above, UPMC is in possession of its own ORSA, but it is not entitled to receive PID's analysis of it.

(v) Other Information Potentially Responsive to the Requested Discovery from PID is not Subject to Subpoena under a Patchwork of Confidentiality Provisions.

95. Additionally, there are other potentially responsive documents other than those discussed herein that could be subject to the above enumerated statutory confidentiality provisions.

96. Beyond the statutory confidentiality provisions discussed above, numerous documents potentially responsive to the sweeping non-party discovery requests are subject to a body of confidentiality provisions contained in the Insurance Code.

97. By way of example, 40 P.S. § 443 provides that all documents, material and information received by PID in the review of an annual statements shall be privileged. Countless documents potentially responsive to the PID Subpoena would fall within this privilege.

98. Similarly, 40 Pa. C.S. § 3801.309 provides that provider contracts filed with the PID that contain payment rates and fees shall be privileged and not subject to subpoena, which would encompass numerous potentially responsive documents.

99. In the same vein, 40 P.S. § 459.8 provides the information furnished to PID regarding the disposition or distribution of unassigned funds is not subject to subpoena, which could encompass potentially responsive documents related to items including, but not limited to, AHN's financial condition, the UPE Approving Order, and UPMC's business operations.

100. Given the sweeping nature of the non-party discovery requests, possibly responsive documents may be subject to the above privileges, as well as a host of others which form the body of confidentiality under Pennsylvania's insurance laws.

101. In light of the multitude of privileges and confidentiality provisions implicated by UPMC's broad discovery requests, the Court should grant the application and quash the Subpoenas.

E. The Use of the Subpoenas Duces Tecum to Circumvent the Rule 4009.21's Notice Requirements is an Improper Abuse of Rules 234.1 and 4007.1(d)(2).

102. Finally, the Subpoenas should be quashed because they clearly were intended to circumvent the twenty-day notice requirement in Rule 4009.21 of the Pennsylvania Rules of Civil Procedure.

103. Rule 4009.21 provides that a party seeking production from a non-party must give written notice to every party of its intent to serve a subpoena at least twenty days before the date of service. Pa. R. Civ. P. 4009.21(a).

104. The twenty-day notice requirement is meant to provide parties to an action reasonable time to object to a proposed document subpoena, and it bars service of a document subpoena on the non-party should any party lodge an objection. Pa. R. Civ. P. 4009.21(d)(1).

105. The Rules do allow a limited exception to the twenty-day notice requirement for a subpoena duces tecum for documents to be produced in connection with a deposition. Pa. R. Civ. P. 234.1 & 4007.1(d)(2).

106. But the language of and comments to those Rules show that the intent behind that exception is that the subpoenaed documents would be produced in connection with a deposition that was noticed legitimately and in good faith. *See, e.g.*, Note to Pa. R. Civ. P. 234.1 (explaining that twenty-day notice requirement not required in deposition context because reasonable notice is

ensured by Rule 4007.1(d)(2)'s requirement that documents "shall be produced at the deposition and not earlier, except upon the consent of all parties to the action"); Pa R. Civ. P. 234.1(b)(1)-(2) (providing that subpoena "may be used to command a person to attend and to produce documents or things **only at**" (1) a trial or hearing; or (2) a deposition) (emphasis added).

107. That is not the case here. UPMC's communications to the subpoenaed non-parties betray UPMC's true motive: to manipulate the Rules to end-around the twenty-day notice requirement for a document subpoena.

108. Despite issuing the identical far-reaching document requests to PID, DOH, and the Governor's Office, UPMC scheduled all three Records Custodian depositions to be taken on the same day to be conducted between 12:30 p.m. to 1:30 p.m. *See* Exs. A-C. Such a tight time window itself reveals the sham nature of the depositions. But to remove any doubt, UPMC went a step further and admitted that it "was willing to accept production of the documents requested in lieu of a deposition." *See id.*

109. UPMC should not be allowed to play games with the Rules to achieve this end result. Such a result would allow the exception to swallow the rule. *See Tollari v. General Motors Corp.*, 40 D. & C. 4th 339, 347 (Pa. Com. Pl. 1998) (noting that "under Rule 4007.1" defendants "were not permitted to give [subpoenaed non-party] the option of furnishing documents by mail in lieu of travelling" to attend noticed deposition).

110. Accordingly, the Application to Quash UPMC's Subpoenas should be granted for this additional basis.

CONCLUSION

111. For the foregoing reasons, the PA Agencies respectfully request that the Court grant the Application to Quash the Subpoenas and for a Protective Order to UMPC's Subpoenas *Duces Tecum* served on the PA Agencies.

BLANK ROME LLP

/s/ Amy Joseph Coles _____

Amy Joseph Coles

PA Bar No. 89482

Kevin M. Eddy

PA Bar No. 92904

Union Trust Building

501 Grant Street, Suite 850

Pittsburgh, PA 15219

Tel: (412) 932-2802

acoles@blankrome.com

keddy@blankrome.com

Dated: March 28, 2019

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2019, I caused a true and correct copy of this document to be served on all counsel of record via PACFile.

/s/ Amy Joseph Coles

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Amy Joseph Coles

Dated: March 28, 2019

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

	:	
COMMONWEALTH OF	:	
PENNSYLVANIA BY JOSH SHAPIRO,	:	
Attorney General, et al.,	:	
	:	
Petitioners,	:	NO. 334 MD 2014
v.	:	
	:	
UPMC, A Nonprofit Corp, et al.,	:	
	:	
Respondents.	:	
	:	

ORDER

AND NOW on this _____ day of _____, 2019, upon consideration of non-party/movants the Governor’s Office, the Pennsylvania Department of Health, and the Pennsylvania Insurance Department’s (collectively the “PA Agencies”) Application to Quash and for a Protective Order and any responses thereto, it is **HEREBY ORDERED** that the PA Agencies’ Application is **GRANTED**. It is **FURTHER ORDERED** that the subpoenas directed to the PA Agencies, that was subject to the PA Agencies’ Application are quashed and the PA Agencies are not required to provide any documents or attend any noticed deposition in connection with the Subpoenas.

BY THE COURT

EXHIBIT

A

JONES DAY

500 GRANT STREET, SUITE 4500 • PITTSBURGH, PENNSYLVANIA 15219.2514

TELEPHONE: +1.412.391.3939 • FACSIMILE: +1.412.394.7959

DIRECT NUMBER: (412) 394-7250
ATBAILEY@JONESDAY.COM

March 13, 2019

VIA HAND DELIVERY

Governor's Office
Office of Counsel to Governor
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

Re: Commonwealth of Pennsylvania, By Joshua Shapiro, Attorney General, et al. v. UPMC, et al., No. 334 M.D. 2014

Dear Custodian of Records:

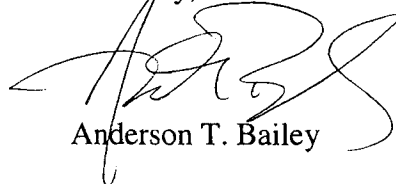
Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on March 28, 2019 at 1:30 p.m. at the Office of Cozen O'Connor, 17 North Second Street, Suite 1410, Harrisburg, Pennsylvania, which directs you to produce at that time the documents identified in Addendum A to the subpoena.

If the other parties to the case consent, UPMC is willing to accept production of the documents requested in lieu of a deposition. By copy of this letter, UPMC requests that all parties consent by close of business on March 20, 2019. In light of the Attorney General's request that this matter be resolved by June 30, 2019, UPMC will presume all parties consent unless specific communication is received to the contrary.

Any deposition that may take place pursuant to this subpoena will not inquire into any of the underlying facts. UPMC will separately seek a fact deposition consistent with the Court's March 13, 2019 Order.

Please let me know if you have any questions.

Sincerely,



Anderson T. Bailey

Enclosure

March 13, 2019

Page 2

Cc: (via email; w/encl.)

James A. Donahue, III
Mark A. Pacella
Tracy Wright Wertz
Joseph Betsko
Michael T. Foerster
Heather Vance-Rittman
Jonathan Goldman
Keli Neary
Douglas E. Cameron
Daniel I. Booker
Kim M. Watterson
Jeffrey M. Weimer
Amy Daubert
Kenneth Joel
Victoria S. Madden
Yvette Kostelec

No. 334 MD 20 14

COMMONWEALTH COURT
OF PENNSYLVANIA

Commonwealth of Pennsylvania, By
Joshua Shapiro, Attorney General,
et al.; Petitioners,

vs.

UPMC, A Nonprofit Corp., et al.;
Respondents.

TO The Pennsylvania Governor's Office, Custodian of Records

1. You are ordered by the Court to come to Network Deposition Services, 200 Linglestown Rd.,
Suite 102 at Harrisburg, Pennsylvania on March 28, 2019 at 1:30 P.M.

to testify on behalf of Respondent, UPMC in the above case, and to remain until
excused.

2. And to bring with you the following: See Addendum A attached hereto

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Anderson T. Bailey, Jones Day, 500 Grant St., Ste. 4500, Pittsburgh, PA
15219
(State attorney's name, address, telephone number and identification number)

Tel: 412-394-7250
PA Id#: 206485

Date: March 8, 2019

BY THE COURT,

By



Chief Clerk

Seal of the Court

Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, with the consent of all parties, the documents may be produced to all parties at an agreed time in lieu of the deposition (but only with the consent of all parties).

I. INSTRUCTIONS

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.

3. The conjunctions "and" and "or" shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the "relevant time period."

II. DEFINITIONS

1. "Documents" whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term "documents" includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts,

diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term "concerning" means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

3. The term "OAG" shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.

4. The term "Petition" shall refer to the "Commonwealth's Petition to Modify Consent Decrees" filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.).

5. The term "UPMC" shall refer to UPMC and its subsidiaries and affiliates.

6. The term "Highmark" shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

7. The term “Governor” shall refer to the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

8. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term “AHN” shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

12. The term “Mediated Agreement” shall refer to the Mediated Agreement agreed to by UPMC and Highmark on or about May 1, 2012.

13. The term “Second Mediated Agreement” shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term “UPE Approving Order” shall refer to the Pennsylvania Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re*

Application of UPE, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

III. REQUESTS FOR PRODUCTION

1. All documents during the time period from July 1, 2014 through the present concerning Highmark’s duty to provide updated financial documentation in anticipation of any new provider contract with UPMC and/or ¶ 22 of the UPE Approving Order.

2. All communications and documents exchanged with the OAG concerning any of the following subject matters—

- (1) UPMC;
- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;
- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the Second Mediated Agreement;
- (11) the UPE Approving Order;

- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania;
- (19) provider competition in western Pennsylvania; or
- (20) the Expiration Date Litigation.

—during the relevant time period.

3. All assessments, analyses, or documents otherwise concerning any of the following subject matters—

- (1) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (2) consumer complaints about UPMC;
- (3) consumer complaints about Highmark;
- (4) consumer complaints about UPMC/Highmark provider contracting;
- (5) the Consent Decree and/or expiration of the Consent Decree;
- (6) the Proposed Modifications and/or the Petition;
- (7) AHN and its predecessors including their financial condition;
- (8) the Mediated Agreement or the Second Mediated Agreement;
- (9) the Petition for Review that was resolved by way of the Consent Decree;

(10) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;

(11) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;

(12) tiering and steering by Highmark regarding UPMC;

(13) assessment or evaluation of whether/how the Proposed Modifications further the public interest;

(14) insurance competition in western Pennsylvania;

(15) provider competition in western Pennsylvania; or

(16) the Expiration Date Litigation.

—during the relevant time period.

4. All communications or correspondence with Highmark concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with the OAG, Highmark, or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

7. Communications with Highmark and/or the OAG regarding the PID's FAQs for End of Consent Decree Between Highmark and UPMC, available at <https://www.insurance.pa.gov/Companies/Documents/FAQ%20for%20End%20of%20Consent%20Decree%20Final.pdf>.

EXHIBIT

B

JONES DAY

500 GRANT STREET, SUITE 4500 • PITTSBURGH, PENNSYLVANIA 15219.2514

TELEPHONE: +1.412.391.3939 • FACSIMILE: +1.412.394.7959

DIRECT NUMBER: (412) 394-7250
ATBAILEY@JONESDAY.COM

March 13, 2019

VIA HAND DELIVERY

Department of Health
Office of Chief Counsel
8th Floor West, Health and Welfare Building
Harrisburg, Pennsylvania 17108

Re: Commonwealth of Pennsylvania, By Joshua Shapiro, Attorney General, et al. v. UPMC, et al., No. 334 M.D. 2014

Dear Custodian of Records:

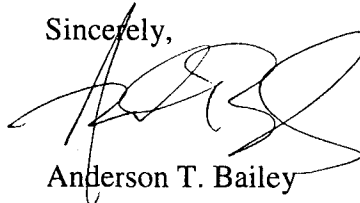
Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on March 28, 2019 at 1:00 p.m. at the Office of Cozen O'Connor, 17 North Second Street, Suite 1410, Harrisburg, Pennsylvania, which directs you to produce at that time the documents identified in Addendum A to the subpoena.

If the other parties to the case consent, UPMC is willing to accept production of the documents requested in lieu of a deposition. By copy of this letter, UPMC requests that all parties consent by close of business on March 20, 2019. In light of the Attorney General's request that this matter be resolved by June 30, 2019, UPMC will presume all parties consent unless specific communication is received to the contrary.

Any deposition that may take place pursuant to this subpoena will not inquire into any of the underlying facts. UPMC will separately seek a fact deposition consistent with the Court's March 13, 2019 Order.

Please let me know if you have any questions.

Sincerely,



Anderson T. Bailey

Enclosure

March 13, 2019

Page 2

Cc: (via email; w/encl.)

James A. Donahue, III
Mark A. Pacella
Tracy Wright Wertz
Joseph Betsko
Michael T. Foerster
Heather Vance-Rittman
Jonathan Goldman
Keli Neary
Douglas E. Cameron
Daniel I. Booker
Kim M. Watterson
Jeffrey M. Weimer
Amy Daubert
Kenneth Joel
Victoria S. Madden
Yvette Kostelec

No. 334 MD 20 14

COMMONWEALTH COURT
OF PENNSYLVANIA

Commonwealth of Pennsylvania, By
Joshua Shapiro, Attorney General,
et al.; Petitioners,

vs.

UPMC, A Nonprofit Cor., et al.;

Respondents.

TO The Pennsylvania Dept. of Health, Custodian of Records

1. You are ordered by the Court to come to Network Deposition Services, 200 Linglestown Rd.,
Suite 102 at Harrisburg, Pennsylvania on March 28, 2019 at 1:00 P M.

to testify on behalf of Respondent, UPMC in the above case, and to remain until
excused.

2. And to bring with you the following: See Addendum A attached hereto

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Anderson T. Bailey, Jones Day, 500 Grant St., Ste. 4500, Pittsburgh, PA
15219 (State attorney's name, address, telephone number and identification number)

Tel: 412-394-7250
PAId# 206485

BY THE COURT,

Date: March 8, 2019

By 
Chief Clerk

Seal of the Court

Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, with the consent of all parties, the documents may be produced to all parties at an agreed time in lieu of the deposition (but only with the consent of all parties).

I. INSTRUCTIONS

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.

3. The conjunctions "and" and "or" shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the "relevant time period."

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diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term "concerning" means relating to, referring to, describing, evidencing, memorializing, and/or constituting.
3. The term "OAG" shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.
4. The term "Petition" shall refer to the "Commonwealth's Petition to Modify Consent Decrees" filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.).
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6. The term "Highmark" shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

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8. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term “AHN” shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

12. The term “Mediated Agreement” shall refer to the Mediated Agreement agreed to by UPMC and Highmark on or about May 1, 2012.

13. The term “Second Mediated Agreement” shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term “UPE Approving Order” shall refer to the Pennsylvania Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re*

Application of UPE, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

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- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;
- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the Second Mediated Agreement;
- (11) the UPE Approving Order;

- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania;
- (19) provider competition in western Pennsylvania; or
- (20) the Expiration Date Litigation.

—during the relevant time period.

3. All assessments, analyses, or documents otherwise concerning any of the following subject matters—

- (1) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (2) consumer complaints about UPMC;
- (3) consumer complaints about Highmark;
- (4) consumer complaints about UPMC/Highmark provider contracting;
- (5) the Consent Decree and/or expiration of the Consent Decree;
- (6) the Proposed Modifications and/or the Petition;
- (7) AHN and its predecessors including their financial condition;
- (8) the Mediated Agreement or the Second Mediated Agreement;
- (9) the Petition for Review that was resolved by way of the Consent Decree;

(10) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;

(11) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;

(12) tiering and steering by Highmark regarding UPMC;

(13) assessment or evaluation of whether/how the Proposed Modifications further the public interest;

(14) insurance competition in western Pennsylvania;

(15) provider competition in western Pennsylvania; or

(16) the Expiration Date Litigation.

—during the relevant time period.

4. All communications or correspondence with Highmark concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with the OAG, Highmark, or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

7. Communications with Highmark and/or the OAG regarding the PID's FAQs for End of Consent Decree Between Highmark and UPMC, available at <https://www.insurance.pa.gov/Companies/Documents/FAQ%20for%20End%20of%20Consent%20Decree%20Final.pdf>.

EXHIBIT

C

JONES DAY

500 GRANT STREET, SUITE 4500 • PITTSBURGH, PENNSYLVANIA 15219.2514
TELEPHONE: +1.412.391.3939 • FACSIMILE: +1.412.394.7959

DIRECT NUMBER: (412) 394-7250
ATBAILEY@JONESDAY.COM

March 13, 2019

VIA HAND DELIVERY

Insurance Department
Office of Chief Counsel
13th Floor—Strawberry Square
Harrisburg, Pennsylvania 17120

Re: Commonwealth of Pennsylvania, By Joshua Shapiro, Attorney General, et al. v. UPMC, et al., No. 334 M.D. 2014

Dear Custodian of Records:

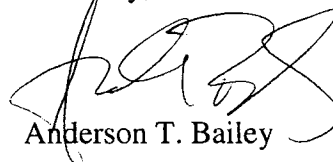
Enclosed please find a custodian of records deposition subpoena directed to you for a deposition on March 28, 2019 at 12:30 p.m. at the Office of Cozen O'Connor, 17 North Second Street, Suite 1410, Harrisburg, Pennsylvania, which directs you to produce at that time the documents identified in Addendum A to the subpoena.

If the other parties to the case consent, UPMC is willing to accept production of the documents requested in lieu of a deposition. By copy of this letter, UPMC requests that all parties consent by close of business on March 20, 2019. In light of the Attorney General's request that this matter be resolved by June 30, 2019, UPMC will presume all parties consent unless specific communication is received to the contrary.

Any deposition that may take place pursuant to this subpoena will not inquire into any of the underlying facts. UPMC will separately seek a fact deposition consistent with the Court's March 13, 2019 Order.

Please let me know if you have any questions.

Sincerely,



Anderson T. Bailey

Enclosure

March 13, 2019

Page 2

Cc: (via email; w/encl.)

James A. Donahue, III
Mark A. Pacella
Tracy Wright Wertz
Joseph Betsko
Michael T. Foerster
Heather Vance-Rittman
Jonathan Goldman
Keli Neary
Douglas E. Cameron
Daniel I. Booker
Kim M. Watterson
Jeffrey M. Weimer
Amy Daubert
Kenneth Joel
Victoria S. Madden
Yvette Kostelec

No. 334 MD 20 14

COMMONWEALTH COURT
OF PENNSYLVANIA

Commonwealth of Pennsylvania, By
Joshua Shapiro, Attorney General,
et al.; Petitioners,

vs.

UPMC, A Nonprofit Corp., et al.;
Respondents.

TO The Pennsylvania Insurance Dept., Custodian of Records

1. You are ordered by the Court to come to Network Deposition Services, 200 Linglestown Rd.,
Suite 102 at Harrisburg, Pennsylvania on March 28, 2019 at 12:30 P.
M.

to testify on behalf of Respondent, UPMC in the above case, and to remain until
excused.

2. And to bring with you the following: See Addendum A attached hereto

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions autho-
rized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

Issued by: Anderson T. Bailey, Jones Day, 500 Grant St., Ste. 4500, Pittsburgh, PA

15219

(State attorney's name, address, telephone number and identification number)

Tel: 412-394-7250

PA Id# 206485

Date: March 8, 2019

BY THE COURT,

By



Chief Clerk

Seal of the Court

Addendum A to Subpoena

You are directed to produce the documents and things identified below at the time of the custodian of records deposition. Alternatively, with the consent of all parties, the documents may be produced to all parties at an agreed time in lieu of the deposition (but only with the consent of all parties).

I. INSTRUCTIONS

1. Furnish all documents and things that are available to you, including documents in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of each such claim. Any such objection or claim of privilege must be substantiated by a privilege log.

3. The conjunctions "and" and "or" shall not be interpreted disjunctively to exclude any information otherwise within the scope of any request.

4. Unless otherwise provided, the relevant time period for these requests for production is January 1, 2011 through and including the present, which is also referred to in these requests as the "relevant time period."

II. DEFINITIONS

1. "Documents" whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term "documents" includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts,

diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. "Documents" also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The term "concerning" means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

3. The term "OAG" shall refer to the Attorney General and Office of the Attorney General, including any and all other persons or entities acting or purporting to act on either of their behalf.

4. The term "Petition" shall refer to the "Commonwealth's Petition to Modify Consent Decrees" filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 MD 2014 (Pa. Commw. Ct.).

5. The term "UPMC" shall refer to UPMC and its subsidiaries and affiliates.

6. The term "Highmark" shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

7. The term "Governor" shall refer to the Pennsylvania Governor, the Pennsylvania Governor's Office, and any and all persons or entities acting or purporting to act on his or its behalf.

8. The term "PID" shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

9. The term "DOH" shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

10. The term "AHN" shall refer to Allegheny Health Network and its subsidiaries, affiliates and predecessors, including any other persons or entities acting or purporting to act on any of their behalf.

11. The term "Consent Decree" shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

12. The term "Mediated Agreement" shall refer to the Mediated Agreement agreed to by UPMC and Highmark on or about May 1, 2012.

13. The term "Second Mediated Agreement" shall refer to the Agreement between UPMC and Highmark negotiated through the auspices of the Governor and entered into on or about December 20, 2017.

14. The term "Proposed Modifications" shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

15. The term "UPE Approving Order" shall refer to the Pennsylvania Insurance Department's UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re*

Application of UPE, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

16. The term “Expiration Date Litigation” shall refer to the litigation concerning the expiration date of the Consent Decree that commenced with UPMC’s September 26, 2017 notice that it would terminate its provider contracts on December 31, 2018 and concluded with the Pennsylvania Supreme Court’s Opinion issued on July 18, 2018.

III. REQUESTS FOR PRODUCTION

1. All documents during the time period from July 1, 2014 through the present concerning Highmark’s duty to provide updated financial documentation in anticipation of any new provider contract with UPMC and/or ¶ 22 of the UPE Approving Order.

2. All communications and documents exchanged with the OAG concerning any of the following subject matters—

- (1) UPMC;
- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;
- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the Second Mediated Agreement;
- (11) the UPE Approving Order;

- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania;
- (19) provider competition in western Pennsylvania; or
- (20) the Expiration Date Litigation.

—during the relevant time period.

3. All assessments, analyses, or documents otherwise concerning any of the following subject matters—

- (1) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (2) consumer complaints about UPMC;
- (3) consumer complaints about Highmark;
- (4) consumer complaints about UPMC/Highmark provider contracting;
- (5) the Consent Decree and/or expiration of the Consent Decree;
- (6) the Proposed Modifications and/or the Petition;
- (7) AHN and its predecessors including their financial condition;
- (8) the Mediated Agreement or the Second Mediated Agreement;
- (9) the Petition for Review that was resolved by way of the Consent Decree;

(10) UPMC's charitable mission; tax exemptions; compensation, benefits, and perquisites; office space; or alleged diversion of charitable assets;

(11) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;

(12) tiering and steering by Highmark regarding UPMC;

(13) assessment or evaluation of whether/how the Proposed Modifications further the public interest;

(14) insurance competition in western Pennsylvania;

(15) provider competition in western Pennsylvania; or

(16) the Expiration Date Litigation.

—during the relevant time period.

4. All communications or correspondence with Highmark concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with the OAG, Highmark, or UPMC concerning the Proposed Modifications, AHN's financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

7. Communications with Highmark and/or the OAG regarding the PID's FAQs for End of Consent Decree Between Highmark and UPMC, available at <https://www.insurance.pa.gov/Companies/Documents/FAQ%20for%20End%20of%20Consent%20Decree%20Final.pdf>.

EXHIBIT

D



March 1, 2019

Stephen A. Cozen
Direct Phone 215-665-2020
Direct Fax 215-701-2020
scozen@cozen.com

**VIA E-MAIL (JDONAHUE@ATTORNEYGENERAL.GOV)
VIA U.S. MAIL**

James A. Donahue, III
PA Office of Attorney General
Public Protection Division
14th Fl. Strawberry Square
Harrisburg, PA 17120

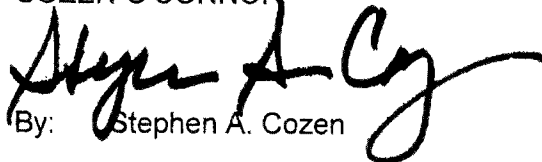
**Re: Commonwealth of Pennsylvania by Josh Shapiro, Attorney General, et al. v.
UPMC, A Nonprofit Corp., et al.**

Dear Jim:

Enclosed please find UPMC's First Set of Interrogatories and Requests for Production Directed to the Attorney General.

Sincerely,

COZEN O'CONNOR


By: Stephen A. Cozen

SAC:pd
Enclosure

LEGAL\40147820\1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
By JOSH SHAPIRO, Attorney General, et al.; :
 :
Petitioners, :
 :
v. :
 :
UPMC, A Nonprofit Corp., et al.; : No. 334 M.D. 2014
 :
Respondents. :
 :
 :

**UPMC'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION DIRECTED TO THE ATTORNEY GENERAL**

Pursuant to Rules 4005 and 4009.11 of the Pennsylvania Rules of Civil Procedure, respondent UPMC hereby propounds the following interrogatories and requests for the production of documents and things to petitioner Attorney General Josh Shapiro and requests that responses to and production of the documents and materials requested be served within thirty days or such shorter time as the Court may order.

I. INSTRUCTIONS

1. Furnish all information that is available to you, including information in the possession of your attorney or other representative or otherwise subject to your possession and/or control.

2. If it is claimed that an answer (in whole or in part) to any interrogatory or document request or any part thereof is privileged or otherwise protected from discovery, identify such information by its subject matter and state with particularity the nature and basis of

each such claim. Any such objection or claim of privilege must be substantiated by a privilege log to be served with your responses to these interrogatories and requests.

3. If you object to any part of an interrogatory or document request, answer all parts of such request as to which you do not object and, as to each part to which you do object, separately set forth the specific basis for the objection.

4. If you do not possess knowledge of the requested information, you should so state your lack of knowledge and describe all efforts made by you to obtain the information or documents necessary to answer the request.

5. The conjunctions “and” and “or” shall not be interpreted disjunctively to exclude any information otherwise within the scope of any interrogatory or request.

6. Unless otherwise provided, the relevant time period for these interrogatories and requests for production is January 1, 2011 through and including the present, which is also referred to in these interrogatories and requests as the “relevant time period.”

II. DEFINITIONS

1. “Documents” whenever used herein is intended to be an all-inclusive term referring to any writing and/or recorded or graphic matter, including electronically-stored information, however produced or reproduced. The term “documents” includes, without limitation, correspondence, memoranda, interoffice communications, minutes, reports, notes, schedules, analyses, drawings, diagrams, tables, graphs, charts, maps, surveys, books of account, ledgers, invoices, purchase orders, pleadings, questionnaires, contracts, bills, checks, drafts, diaries, logs, proposals, printouts, recordings, telegrams, films, and all other such documents tangible or retrievable of any kind. “Documents” also include any preliminary notes and drafts of all the foregoing, in whatever form, for example: printed, typed, longhand, shorthand, on paper, paper type, tabulating cards, ribbon blueprints, magnetic tape, microfilm, film, motion

picture film, phonograph records, or other form. "Documents" also include any document created or generated on a computer, laptop, tablet, smartphone, or personal digital assistant, including, but not limited to, any computer documents, electronic communications, notes, memoranda, internal or external emails, of any kind, in any form, in whatever manner stored, including, but not limited, information stored on a disc, network or tape. This definition covers all such documents so defined in your possession and/or control that are known by you to exist.

2. The terms "describe in detail," "identify with particularity," "state with particularity," and "set forth the factual basis" shall mean to describe fully by reference to underlying facts rather than by ultimate facts or conclusions of facts or law and to particularize as to time, place and manner.

3. The term "identify" when used with reference to an individual person shall mean to state his or her full name (or if not known, his or her job title or position and employer, or if no other identification is possible provide sufficient description so that he or she will be identifiable to the recipients of your answer), and last known residence or business address.

4. The term "identify" when used with reference to a document or written communication shall mean to state the type of document or communication (e.g., memorandum, employment application, letter, handwritten notes, etc. including any document which is or has been attached to the document being identified), state its date, identify the author (and if different, the originator and signer), state the title of the document or communication and if any such document or communication was, but no longer is, in your possession or subject to your control, state the present or last known location of the document or communication. Further, set forth the substance of the document or communication, or, in the alternative, produce the document.

5. The term "identify" when used with reference to an oral communication, discussion, conversation or any other oral statement, shall mean to describe in detail the

substance of each such communication, discussion, conversation or statement, state the date of such communication, discussion, conversation or statement, the place where such communication, discussion, conversation or statement was held and identify each person present for such communication, discussion, conversation or statement.

6. The term “concerning” means relating to, referring to, describing, evidencing, memorializing, and/or constituting.

7. “You” or “Your” whenever used in these interrogatories and requests for production shall refer to the Attorney General and Office of the Attorney General (“OAG”), including any and all other persons or entities acting or purporting to act on either of their behalf.

8. The term “Petition” shall refer to the “Commonwealth’s Petition to Modify Consent Decrees” filed by the OAG in the matter captioned *Commonwealth of Pennsylvania, by Josh Shapiro, Attorney General v. UPMC, a Nonprofit Corp.*, No. 334 M.D. 2014 (Pa. Commw. Ct.), and the term “Lawsuit” shall refer to the instant lawsuit.

9. The term “UPMC” shall refer to UPMC and its subsidiaries and affiliates.

10. The term “Highmark” shall refer to Highmark Health and its subsidiaries and affiliates, including any and all other persons or entities acting or purporting to act on any of their behalf.

11. “Governor” means the Pennsylvania Governor, the Pennsylvania Governor’s Office, and any and all persons or entities acting or purporting to act on his or its behalf.

12. The term “PID” shall refer to the Pennsylvania Insurance Department, including any and all other persons or entities acting or purporting to act on its behalf.

13. The term “DOH” shall refer to the Pennsylvania Department of Health, including any and all other persons or entities acting or purporting to act on its behalf.

14. The term “Consent Decree” shall refer to the separate, nearly identical, reciprocal Consent Decrees entered into on June 27, 2014 between the Commonwealth and UPMC and Highmark respectively.

15. The term “Mediated Agreement” shall refer to the Mediated Agreement agreed to by UPMC and Highmark on or about May 1, 2012.

16. The term “Proposed Modifications” shall refer to the proposed modifications to the Consent Decree set out in ¶ 75 of the Petition and Exhibit G to Petition, including any prior iterations or versions thereof.

17. The term “UPE Approving Order” shall refer to the Pennsylvania Insurance Department’s UPE Order in the Highmark/West Penn Allegheny Health System Matter, *In Re Application of UPE*, No. ID-RC-13-06 (Pa. Insur. Dept. April 29, 2013) and subsequently-issued Findings of Fact and Conclusions of Law.

III. FIRST SET OF INTERROGATORIES

1. Identify each and every individual who may have knowledge of the allegations or any fact or information relating to any allegation in the Petition and/or the subject matter of this Lawsuit, and for each individual so identified, state the subject matter of his/her knowledge.

ANSWER:

2. State whether You communicated with any legislator or representatives of any legislator concerning any of the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, either generally or specifically, before filing the Petition, and if so, identify the person(s) with whom You

communicated, the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

3. State whether You communicated with the Governor or any other department of the Commonwealth government, including but not limited to DOH or PID, concerning the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, either generally or specifically, before filing the Petition, and if so, identify the person(s) with whom You communicated, the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

4. Identify all OAG personnel with knowledge or information regarding the allegations contained in the Petition.

ANSWER:

5. Identify each and every third party with whom You communicated concerning the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, and for each third party so identified, identify the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

6. Identify each and every economist, antitrust/competition policy expert, insurance or healthcare consultant, or other expert or consultant with whom You communicated about the Proposed Modifications, the impact of the Proposed Modifications, the expiration of the Consent Decree, and/or the termination or continuation of UPMC/Highmark provider contracts, and for each person so identified, identify the substance of the communication with each, and identify any documents memorializing, constituting, or concerning each such communication(s).

ANSWER:

7. Identify all OAG personnel involved in the preparation for the testimony of Executive Deputy Attorney General James A. Donahue, III before the Democratic Policy Committee of the Pennsylvania House of Representatives on or around October 10, 2014.

ANSWER:

8. Identify each misrepresentation or deceptive or confusing statement You contend was made by UPMC and upon which the claims alleged in the Petition are based, and for each such misrepresentation or statement, identify the speaker and to whom the misrepresentation or statement was made, state the date(s) the misrepresentation or statement was made, state whether the misrepresentation or statement was written or oral, and if written, identify the writing containing the misrepresentation or statement.

ANSWER:

9. Identify any assessment, study, examination, evaluation, or analysis made or relied upon by You to determine the impact on the community, the healthcare industry, or the public in general related in any way to the Proposed Modifications or the expiration of the Consent Decree, including the individual(s) involved and methodology employed.

ANSWER:

10. Identify any and all alternative proposals to the Proposed Modifications considered by You and/or sent to or received from third parties, including all terms and parties included in such alternative proposals.

ANSWER:

11. State the complete factual basis for Your allegation in the Petition (at 2) that there is “widespread confusion” caused by “UPMC’s actions.”

ANSWER:

12. State the complete factual basis for Your allegation in the Petition (at 2) that “UPMC’s actions” are causing “personal hardships for many individual UPMC patients.”

ANSWER:

13. Identify and provide contact information for each patient referenced or discussed in the Petition, any patient or individual who spoke at or attended the Attorney General's press conference announcing the filing of the Petition, and any patient or individual whose experience or situation You otherwise rely upon in seeking the relief sought in this Lawsuit.

ANSWER:

14. Identify each nonprofit healthcare provider or payer that will be subject to the Proposed Modifications, or any similar requirements, conditions, or restrictions, and for each provider or payer so identified, state all steps You have taken and/or intend to take to enforce compliance against such entities.

ANSWER:

15. Identify all instances in which You took enforcement action, including any plans or threats to do so, against any nonprofit corporation or charity for any alleged violation of its charitable purpose, mission, or responsibilities.

ANSWER:

16. Identify all instances in which You did not take enforcement action against a nonprofit corporation or charity for violation of its charitable purpose, mission, or responsibilities based on a failure to contract with another company or entity.

ANSWER:

17. Identify all instances in which You took enforcement action, including any plans or threats to do so, against any nonprofit or charitable healthcare institution or health insurer for alleged violation of its charitable purpose, mission, or responsibilities based on a failure to contract with any insurer or provider.

ANSWER:

18. Identify all instances in which You did not take enforcement action against a nonprofit or charitable healthcare institution or health insurer for violation of its charitable purpose, mission, or responsibilities based on a failure to contract with any insurer or provider.

ANSWER:

19. Identify, by location and type of insurance, those patient You contend require protection through the Proposed Modifications, and explain why, by location and type of insurance, the Proposed Modifications are necessary in relation to those patients.

ANSWER:

20. Identify, by location and type of insurance, those patients who, upon expiration of Consent Decree, You contend will not have the independent ability to maintain in-network access to a UPMC provider at the same or lower cost.

ANSWER:

21. 21. Identify the approximate number of patients implicated by Your allegation in ¶ 44 of the Petition that a Medicare participating patient desiring to switch to a new health care insurer to retain in-network access to a UPMC physician “risk[s] being medically underwritten and the possibility of higher insurance premiums should they have a pre-existing condition” and provide the factual basis for Your approximation.

ANSWER:

22. Explain why You now contend, in contrast to the agreement reached through the Consent Decree, that every UPMC provider, including those in Allegheny and Erie counties, must enter into contracts with Highmark or any healthcare insurer seeking a services contract to fulfill their charitable missions.

ANSWER:

23. Explain how and why You selected the proposed arbitration panel and associated standards and procedures set out in Exhibit G to the Petition §§ 4.1-4.3.8, including the identification of all individuals and third parties involved in developing the composition of the panel and the standards and procedures.

ANSWER:

24. Explain how You intend to ensure that UPMC providers are treated fairly in connection with tiering and steering practices of Highmark and other payers, including how You will ensure that Highmark and other healthcare insurers do not employ arbitrary or biased determinations of cost and quality in the tiering of UPMC providers.

ANSWER:

25. Identify all aspects of the “misleading marketing campaign which caused widespread confusion and uncertainty,” as alleged in Petition ¶ 17.

ANSWER:

26. Identify all “past assurances from UPMC that seniors would never be impacted by their contractual disputes,” as alleged in the Petition ¶¶ 22 and 28.

ANSWER:

27. State the basis for the assertion in the Petition ¶ 23 that UPMC will “eventual[ly] refus[e] to contract with other health insurers.”

ANSWER:

28. State how UPMC “thwarted” patients from using Highmark’s “Out-of-Network policy riders ... under which Highmark would pay the 60% of Out-of-Network charges, less the usual co-payments and co-insurance,” as alleged in the Petition ¶ 24.

ANSWER:

29. Identify each and every alleged practice that forms the basis of Your allegation that “UPMC also employs practices that increase its revenue without apparent regard for the increase on the costs of the region’s health care.”

ANSWER:

30. Identify, as to each allegation of impropriety directed at UPMC in the Petition, whether such alleged conduct or failure to act occurred in 2012, 2013, 2014, 2015, 2016, 2017, or 2018, and specify each such instance.

ANSWER:

31. State the name(s) and address(es) of any economist or industry expert You contacted in connection with developing the Proposed Modifications or any other potential response to the expiration of the Consent Decree.

ANSWER:

32. State the names and addresses of each and every expert witness whom You may call to testify at the trial or hearing in this matter, followed by a description of the content of his or her qualifications, the materials he or she reviewed relative to this case, his or her opinions regarding this case, the basis for those opinions, and the content of his or her expected testimony.

ANSWER:

33. Identify all witnesses You may call at the trial or any hearing in this matter, and for each individual so identified, also state the subject matter of his/her expected testimony.

ANSWER:

IV. FIRST REQUEST FOR PRODUCTION

1. All documents identified in your responses to UPMC's First Set of Interrogatories, and all documents the identity of which is sought in those Interrogatories.

2. All documents referenced, consulted, or relied upon in responding to UPMC's First Set of Interrogatories.

3. All communications and documents exchanged with any of the following individuals/entities—

(a) Highmark;

(b) UPMC;

(c) the legislature, any legislative committee or caucus, or any legislator;

(d) Service Employees International Union (SEIU) including any subsidiary or affiliate thereof;

- (e) Chelsa Wagner;
- (f) PID;
- (g) DOH;
- (h) any federal agency, including the Federal Trade Commission and the Centers for Medicare and Medicaid Services (CMS);
- (i) any state/local/national elected or appointed government official or legislator, including but not limited to Dan Frankel;
- (j) any healthcare provider or payer;
- (k) any employer;
- (l) any regional chamber of commerce;
- (m) Pennsylvania Health Access Network (PHAN), APPRISE, and/or any other consumer/patient group;
- (n) Pittsburgh Business Group on Health;
- (o) INDECS;
- (p) PMF Industries;
- (q) other Commonwealth departments;
- (r) the national insurers, including Aetna, CIGNA, and United;
- (s) Western Pennsylvania community hospitals that are unaffiliated with UPMC, Highmark, or Allegheny Health Network (“AHN”);
or
- (t) other third parties

—concerning any of the following subject matters—

- (1) UPMC;
- (2) Highmark;
- (3) UPMC/Highmark provider contracting and/or the termination or continuation of the UPMC/Highmark provider contracts;
- (4) consumer complaints about UPMC;
- (5) consumer complaints about Highmark;

- (6) consumer complaints about UPMC/Highmark provider contracting;
- (7) the Consent Decree and/or expiration of the Consent Decree;
- (8) the Proposed Modifications and/or the Petition;
- (9) AHN and its predecessors including their financial condition;
- (10) the Mediated Agreement or the “Second Mediated Agreement” (Petition ¶ 20);
- (11) the UPE Approving Order;
- (12) the Petition for Review that was resolved by way of the Consent Decree;
- (13) UPMC’s charitable mission, tax exemptions, compensation and benefits, office space, or alleged diversion of charitable assets;
- (14) alleged confusion or misunderstanding as to the continuation or termination of the UPMC/Highmark provider contracts;
- (15) tiering and steering;
- (16) assessment or evaluation of whether/how the Proposed Modifications further the public interest;
- (17) UPMC Health Plan;
- (18) insurance competition in western Pennsylvania; or
- (19) provider competition in western Pennsylvania.

—during the relevant time period.

4. All communications or correspondence with Highmark or UPMC concerning the Proposed Modifications, AHN’s financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

5. All notes, memoranda, or other documents concerning meetings, conversations, or communications with Highmark or UPMC concerning the Proposed Modifications, AHN’s

financial condition, the termination of the Consent Decree, and/or the continuation or termination of the UPMC/Highmark provider contracts.

6. All evaluations of the Proposed Modifications by any economist, insurance consultant, healthcare consultant, or other subject matter expert.

7. All consumer complaints about UPMC or Highmark during the Consent Decree, all communications with or concerning each such complaint/complainant, and Your investigation files for each such complaint.

8. All documents reflecting expenditures and/or actions by the OAG soliciting complaints concerning UPMC, Highmark, UPMC/Highmark provider contracting, the termination of the UPMC/Highmark provider contracts, or the expiration of the Consent Decree.

9. All evaluations of the impact of the Proposed Modifications on insurance competition in western Pennsylvania, including any antitrust evaluations.

10. All documents related to any OAG investigation of UPMC from 2011 to the present including, but not limited to, the investigation reflected in the November 18, 2011 letter from James A. Donahue, III to W. Thomas McGough, Jr.

11. All documents related to any OAG investigation of Highmark from 2011 to the present.

12. Your complete investigation/evaluation/review files for each hospital/health system acquisition transaction alleged in the Petition ¶¶ 64-65.

13. All testimony, statements to legislative bodies/committees, or public statements by the OAG concerning the Highmark/UPMC contracting status, the Mediated Agreement, the Consent Decree, expiration of the Consent Decree, and/or the Proposed Modifications, or insurance competition or provider competition in western Pennsylvania.

14. All documents or other evidence that refer or relate to the impact of the Proposed Modifications on the public interest.

15. All social media posts and messaging by or with the OAG, both public and private, concerning the Highmark/UPMC contracting status, the Mediated Agreement, the Consent Decree, expiration of the Consent Decree, and/or the Proposed Modifications.

16. All documents supporting, refuting, or otherwise concerning your allegations that UPMC has engaged in deceptive or misleading advertising or made deceptive or misleading statements that are a basis for the OAG's Petition.

17. All documents concerning the Second Mediated Agreement as alleged in the Petition ¶¶ 20-23.

18. All documents supporting, refuting, or otherwise concerning Your allegation that UPMC "thwarted" patients from using Highmark's "Out-of-Network policy riders ... under which Highmark would pay the 60% of Out-of-Network charges, less the usual co-payments and co-insurance" as alleged in the Petition ¶ 24.

19. All documents supporting, refuting, or otherwise concerning the patients identified as examples of financial hardships, treatment denials, and/or treatment delays for out-of-network patients in the Petition ¶ 25, and all documents concerning any other patient You contend is similarly situated, including but not limited to documents sufficient to identify the names and contact information of all such patients.

20. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC has refused to contract and/or engaged in practices to increase revenues, as alleged in the Petition ¶¶ 27-31.

21. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC has engaged in unfair and misleading marketing, as alleged in the Petition ¶¶ 32-36.

22. All documents concerning the patients identified as examples of access and treatment denials in the Petition ¶ 37, and all documents concerning any other patients you contend are similarly situated, including but not limited to documents sufficient to identify the names and contact information of all such patients.

23. All documents supporting, refuting, or otherwise concerning Your allegations about UPMC Susquehanna, PMF Industries, and its alleged “insurer,” as alleged in the Petition ¶ 38.

24. All documents supporting, refuting, or otherwise concerning Your allegations that “UPMC rejects efforts by employers to use reference based prices or other cost comparison tools,” as alleged in the Petition ¶ 41.

25. All documents supporting, refuting, or otherwise concerning Your allegations that UPMC refuses to contract with out-of-area Blue Cross Blue Shield companies, as alleged in the Petition ¶ 42.

26. All documents supporting, refuting, or otherwise concerning Your allegations that “UPMC’s decision to not participate in certain Highmark or other Blue Cross Blue Shield Medicare Advantage plans imposes special costs and hardships on seniors,” as alleged in the Petition ¶¶ 43-44.

27. All documents supporting, refuting, or otherwise concerning Your allegations that out-of-network patients treated for emergency care in UPMC hospitals will pay significantly higher prices, which will also impose higher costs on employers, and increase healthcare costs, as alleged in the Petition ¶¶ 45-51.

28. All documents supporting, refuting, or otherwise concerning Your allegations that all out-of-network patients receiving non-emergency healthcare at UPMC hospitals after June 30, 2019 will be required to pay expected charges for treatment before services are provided, and the alleged unjust impact thereof, as alleged in the Petition ¶¶ 52-55.

29. All documents supporting, refuting, or otherwise concerning Your allegations in the Petition ¶¶ 56-63 regarding UPMC's financial position, spending and compensation practices, and alleged wasteful expenditures of charitable resources.

30. A full, unredacted version of the Penn State Hershey Medical Center / PinnacleHealth System merger litigation file, including all briefs, hearing transcripts, depositions, discovery, and other filings.

31. All documents concerning, or generated or reviewed in connection with, the testimony of Executive Deputy Attorney General James A. Donahue, III before the Democratic Policy Committee of the Pennsylvania House of Representatives on or around October 10, 2014 and/or the conclusions contained in his testimony, including but not limited to that the OAG has no legal basis to compel UPMC and Highmark to contract.

32. All documents relating to provider-based/hospital-based billing in Pennsylvania, including all complaints, documents indicating which providers are so billing, and what the OAG has done in response.

33. All documents concerning how the arbitration panel and associated standards and procedures set out in Exhibit G to the Petition §§ 4.1-4.3.8 were developed.

34. All communications and/or documents exchanged with any individual about serving as an arbitrator on an arbitration panel, as contemplated in Exhibit G to the Petition §§ 4.1-4.3.8.

35. All documents concerning the qualifications and selection of the arbitrators as contemplated in Exhibit G to the Petition §§ 4.1-4.3.8.

36. All documents evaluating, addressing, or concerning the OAG's authority to impose the Proposed Modifications.

37. All documents evaluating, addressing, or concerning whether the Proposed Modifications are consistent with federal law.

38. All documents relating to any effort to impose any willing payer or any willing insurer system by legislation or regulation, including but not limited to Pennsylvania General Assembly House Bill 345, Regular Session 2017-2018, February 3, 2017, and House Bill 1621, Regular Session 2017-2018, June 26, 2017.

39. Any and all literature the OAG has reviewed regarding the impact of any willing provider laws raising healthcare costs.

40. All documents concerning public support for or opposition to an any willing payer or any willing insurer regime by the OAG, Pennsylvania legislatures, and/or any trade, industry, business, consumer, or other lobbying groups.

41. All documents relating to the impact and purpose of the Consent Decree.

42. All documents relating to the 2017 UPMC/Highmark contracts.

43. All documents relating to any nonprofit healthcare provider or payer who has declined to enter into a contract with a willing provider/payer, including but not limited to Penn State Hershey Medical Center's refusal to contract with UPMC Health Plan.

44. All documents concerning ¶ 22 of the UPE Approving Order, including but not limited to, all documents that relate to Highmark's compliance or noncompliance with ¶ 22.

45. All notes, memoranda, or other documents used in preparation for meetings between the OAG and UPMC in 2013, 2014, 2015, 2016, 2017, or 2018.

46. All documents concerning or containing any information relating, in any way, to the subject matter of this Lawsuit and/or that are relevant to the claims and defenses at issue in this Lawsuit and/or, the facts underlying the allegations set forth in the Petition.

47. All documents related to or containing any information relating, in any way, to this Lawsuit received from any party, whether in response to a subpoena, demand for documents, or otherwise.

48. All statements and/or admissions concerning the claims and defenses at issue in this Lawsuit.

49. Curricula vitae for each expert consulted and/or anticipated to be called as a witness in connection with this matter.

50. All documents generated or reviewed by, or upon which each and every expert witness you may call to testify at the time of trial will rely in testifying in the Lawsuit.

51. All documents you intend to introduce as exhibits at trial or any hearing on this matter.

52. All statements by any individual who is or may be a witness at the trial or any hearing in this Lawsuit.

Dated: March 1, 2019

COZEN O'CONNOR

/s/ Stephen A. Cozen
Stephen A. Cozen (Pa. 03492)
James R. Potts (Pa. 73704)
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Attorneys for Respondent UPMC

EXHIBIT

E

From: Bailey, Anderson T. [<mailto:atbailey@JonesDay.com>]
Sent: Friday, March 22, 2019 1:54 PM
To: Coles, Amy J. <AColes@BlankRome.com>
Cc: Eddy, Kevin M. <KEddy@BlankRome.com>
Subject: RE: Commonwealth v. UPMC et al., 334 MD 2014

Amy,

Thanks for speaking this morning. I write to confirm three points from our discussions that I understand we have agreed upon:

- Each of the subpoenas that UPMC served on or about March 13, 2019, on the Pennsylvania Insurance Department, Pennsylvania Department of Health, and Pennsylvania Governor's Office remains in effect.
- With respect to all three of those subpoenas, the deposition date will move from March 28 to April 3 (same location and time of day for each).
- I will look into revising the document requests in those subpoenas in a way that your clients may find less objectionable, and each agency will at least consider those revised requests prior to any motion practice, reserving all rights.

Please consider this confirmed for UPMC and let me know if you understand the state of play differently. This is without prejudice to any argument or objection either side may have, but affords us some space to continue our discussion. I will be in touch with you again on Monday about the requests.

Have a good weekend.

Anderson T. Bailey
Partner
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From: Coles, Amy J. <AColes@BlankRome.com>
Sent: Friday, March 22, 2019 9:21 AM
To: Bailey, Anderson T. <atbailey@JonesDay.com>
Cc: Eddy, Kevin M. <KEddy@BlankRome.com>
Subject: Re: Commonwealth v. UPMC et al., 334 MD 2014

How about 10 am? My office line is below. Thanks.

Amy Joseph Coles
Blank Rome LLP
412-932-2802

On Mar 22, 2019, at 9:18 AM, Bailey, Anderson T. <atbailey@JonesDay.com> wrote:

Amy,

Is there a time this morning that works for a quick call? I am free until 11:00.

Thanks,

Anderson T. Bailey
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