

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
By JOSH SHAPIRO, Attorney General, et al.; :

Petitioners, :

v. :

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

Respondents. :

No. 334 M.D. 2014

**UPMC’S RESPONSE TO GENERAL SHAPIRO’S BRIEF  
SUPPORTING THE COURT’S AUTHORITY TO  
TEMPORARILY EXTEND THE CONSENT DECREE**

General Shapiro has asked this Court to extend the June 30, 2019 termination date of Consent Decree as a matter of law. Now, he reiterates his earlier (rejected) request to award him the *exact same relief* under equity.

This Court rejected the Commonwealth’s request for an equitable extension of the Consent Decree at the parties’ May 31, 2019 status conference. (Tr. 11-13, May 31, 2019.) As the Court recalls, immediately upon remand from the Supreme Court, General Shapiro requested a temporary extension based upon the Majority Opinion, footnote 13. (*Id.*) This Court, however, rejected General Shapiro’s reading, stating “I didn’t read that in there” and that the Supreme Court “reserve[d] . . . [to] themselves the decision about whether there’s going to be a pause during the litigation.” (*Id.* at 11:12, 20-23.)

Since that decision, the parties have expedited the preparation and presentation of evidence, this Court conducted a two-day hearing and has stated that it intends to make a decision as soon as possible (perhaps even this week). Rather than heightening the need for a temporary extension, these events have reduced the need for one.<sup>1</sup>

Further, separate and apart from this Court's earlier ruling, the Supreme Court has also denied the relief sought by the Attorney General. General Shapiro first made this request when he sought interlocutory Supreme Court review of this Court's holding that the term of the Consent Decree could not be extended. The Supreme Court denied the request, concluding that "[a]t this juncture, we do not deem it necessary to extend the termination date of the Consent Decrees through the extraordinary powers that OAG asks us to invoke." (Opinion at 21.)

In any event, as Justice Baer explained in the Dissenting Opinion, in the event that "a decision cannot be rendered prior to [June 30, 2019,] . . . the OAG should be required to file an appropriate application and meet the burden of establishing all prerequisites to a mandatory preliminary injunction" if it seeks a temporary extension. (Dissenting Opinion at 6-7 n.5.) Nothing in the Majority

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<sup>1</sup> General Shapiro's repeated contention that UPMC is trying to "win" by "running out the clock" is false and misstates the history of this case. It is General Shapiro who decided to file suit 4½ years into the 5-year term of the Consent Decree. Likewise, it is General Shapiro who is making his request for an extraordinary temporary extension of the Consent Decree for the first time to this Court a mere 19 days before the termination date. UPMC has done nothing to "run out the clock;" General Shapiro has manufactured a supposed crisis entirely of his own making.

Opinion suggests any disagreement with this point, and indeed, the Majority's conclusion that extraordinary relief in the form of a temporary extension is not warranted now is entirely consistent with it. Here, the Commonwealth fails utterly to put forward any basis at all for the requested extraordinary extension, has not presented any evidentiary support, and has made no showing that any of elements required for a mandatory injunction exist (which they do not).

For all of these reasons, the Court should deny General Shapiro's (second) request for an extraordinary temporary extension of the term of the Consent Decrees.

Dated: June 12, 2019

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of June, 2019, I submitted the foregoing UPMC's Response to the Commonwealth's Brief Supporting the Court's Authority to Temporarily Extend the Consent Decree for electronic service via the Court's electronic filing system on the following:

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