

ATTACHMENT TO MEMORANDUM OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UPMC <i>a Pennsylvania Nonprofit,</i>)	
<i>Non-Stock Corporation,</i>)	
)	
Plaintiff,)	
)	
)	
v.)	
)	
)	
CITY OF PITTSBURGH <i>a Pennsylvania</i>)	Civil Action No. 13-563
<i>Second Class City and Home Rule</i>)	
<i>Municipality; LUKE RAVENSTAHL, in</i>)	
<i>his, Official Capacity as Mayor, City of</i>)	
<i>Pittsburgh, and Individually; FAIR</i>)	
SHARE PITTSBURGH ACTION FUND;)	
JOHN DOE #1 and JOHN DOE #2,)	
)	
)	
)	
Defendants.)	
)	
)	

[PROPOSED] PRESERVATION ORDER

UPMC made certain legal claims against the City of Pittsburgh, its mayor, Luke Ravenstahl, and Fair Share Pittsburgh Action Fund (collectively, “Defendants”), concerning their filing of a lawsuit in the Court of Common Pleas of Allegheny County, captioned City of Pittsburgh v. UPMC, No. GD-13-005115, and their participation in public statements associated with that lawsuit and the substantive issues raised therein. The Court stayed further proceedings

in this case, including initial disclosures and discovery, due to the pendency of the proceeding in state court.

Defendants acknowledge that this Order does not supersede any pre-existing duty to preserve documents and electronically stored information, or any order presently issued by the Court of Common Pleas of Allegheny County, Pennsylvania. UPMC may at some point be entitled to request that evidence comprised of documents and electronically stored information be produced by Defendants. At that point, Defendants would be required to search for, locate and produce documents and electronic records responsive to those requests.

Because of these obligations, the Court hereby directs Defendants to locate and preserve all documents, electronically stored information, and other evidence within Defendants' possession, custody, or control reasonably anticipated to be subject to discovery under Rule 26(b) of the Federal Rules of Civil Procedure in this matter. Defendants are ordered to maintain such documents, electronically stored information, and other evidence in their present state, preserving and protecting them from destruction, modification, or alteration. This obligation will persist until UPMC's claims in this case are resolved.

The obligation to preserve, maintain and protect evidence is to be interpreted broadly in order to accomplish the goal of maintaining the integrity of all relevant evidence reasonably anticipated to be subject to discovery under Federal Rule of Civil Procedure 26(b) in this action. The Defendants shall fulfill their obligations by taking reasonable steps to prevent the partial or full destruction, alteration, modification, deletion, shredding, incineration, wiping, or theft of such material. As used in this Order, the following terms have the following meanings:

"Document(s)" means any recorded information or communication in any format other than electronic or digital media. Examples include but are not limited to any hard copy

materials, such as memos, reports, correspondence, marketing materials, spreadsheets, presentation materials, applications, contract documents, and handwritten notes. It includes draft copies in addition to final copies of documents and records.

“Electronically Stored Information” means any electronically preserved information, file or data including but not limited to e-mails voice mails, instant messaging, word processed documents, spreadsheets and tables, accounting application data, image and facsimile files, sound recordings, video and animation, contact and relationship data, presentations, calendar and diary application data, project management application data, backup and archival files or any other documents made, kept or stored in electronic format on an Electronic Device. It includes draft copies saved electronically in addition to final copies of documents and records saved electronically.

“Electronic Device” means any electronic workplace or storage device including but not limited to file servers, desktop and laptop computers, workstations, computer servers, hard disks, external drives, zip drives, jump and flash drives, floppy disks, CDs and DVDs, back-up tapes, videotapes, audiotapes used to preserve and generate Electronically Stored Information.

I. Preservation Directions

1. Each of the Defendants is hereby **ORDERED** to:

(a) Make internal inquiries, and identify to its counsel, by name, title and contact information, knowledgeable person within each organization familiar with that Defendant’s document storage and destruction practices, and Information Technology systems for creating, keeping and backing up electronic data, files and information.

(b) Make internal inquiries, and identify to its counsel, by name, title and contact information, each employee, agent or vendor of that Defendant who may have physical

possession, custody or control over any or all of the Documents as well as the Electronically Stored Information identified in Part II, below.

2. Each of the Defendants is hereby **ORDERED** to take the following steps to preserve the Documents and Electronically Stored Information subject to this Preservation Order, identified in Part II, below:

2.1 Documents

From and after the date of this Order, each of the Defendants shall:

(a) Use its best efforts to search for and identify to Defendants' counsel the locations of file or document storage locations where such Documents may be found;

(b) Instruct each person having possession or custody over such files and documents stored in each such location to:

(1) preserve against the alteration, loss or destruction of such Documents;

(2) cease discarding, destroying or recycling such Documents; and

(3) as to such Documents, cease any regularly scheduled practice or procedure of discarding, destroying or recycling documents or files.

2.2 Electronically Stored Information

From and after the date of this Order, each of the Defendants shall:

(a) Use its best efforts to search for and identify to Defendants' counsel the locations of computer servers, workstations and lap top hard drives, and external drives, and jump, zip, flash, or other disks or drives, that are or were in active service at any time between December 2012 and the date of this Order, on which Electronically Stored Information subject to this Preservation Order is or may be saved or stored and provide an itemized list of all of these existing Electronic Devices to Defendants' counsel.

(b) Use its best efforts to search for and identify to Defendants' counsel the locations of any back-up or archive systems, including tapes, back-up hard or external drives, CDs, floppy disks or drives on which Electronically Stored Information subject to this Preservation Order was or may be, preserved against loss or disaster in the regular course of business and provide an itemized list of all these existing back up or archival systems to Defendants' counsel.

(c) Implement a policy and practice of routinely backing-up all Electronic Devices which may contain Electronically Stored information subject to this Preservation Order and identify the terms of that policy to Defendants' counsel.

(d) Instruct all persons having possession or custody over an Electronic Device, including but not limited to, any computer or backup device or media, on which Electronically Stored Information subject to this Preservation Order is saved or stored to preserve against the alteration, loss, destruction or corruption of the data, files and information stored on such devices and media, including the following specific measures:

(1) Cease deleting or overwriting from servers, workstation and laptop hard drives, and external drives, jump, zip, flash, or other disks or drives, in active service any e-mail, data, information or file which contains Electronically Stored Information subject to this Preservation Order;

(2) When installing new software or freeing up space on any server, workstation and laptop hard drive, and any external drive, jump, zip, or flash storage device in active service, preserve, insofar as is reasonably practical, in its original format, e-mails, data, information or files which contain Electronically Stored Information subject to this Preservation Order.

(3) Disable any “rule” or routine that automatically deletes e-mails or other data, information, or files which contain Electronically Stored Information subject to this Preservation Order.

(4) Before replacing or taking out of active service any server, workstation, lap top computer or any other data storage device, remove and preserve in a secure place each internal or external drive or device on which e-mails, data, information or files which contain Electronically Stored Information subject to this Preservation Order is stored, and cease any practice of discarding, “wiping” or purging e-mails, data, files or information from such computers, drives and data before replacing or removing them from service.

(5) Cease overwriting or recycling any back-up or archive media on which emails, data, information or files which contain Electronically Stored Information subject to this Preservation Order is backed-up or preserved against loss or disaster in the regular course of business, and preserve in a secure place and manner such back-up or archival media.

(6) Comply with the terms of a policy and procedure created to ensure the regular back-up of Electronic Devices which may contain Electronically Stored information subject to this Preservation Order.

3. Each of the Defendants is hereby **ORDERED** to preserve any Documents and Electronically Stored Information created or received after the effective date of this Order in the same manner applicable to Documents and Electronically Stored Information existing on the effective date of this Order.

4. Each of the Defendants is hereby **ORDERED**: Within sixty (60) days after entry of this Order, to file with the Court a notification signed by an officer of each Defendant company, or each individual defendant stating that the requirements of this order have been met.

II. Documents and Electronically-Stored Information Subject to this Order

The duties to preserve imposed by this Order shall apply to Documents, Electronically Stored Information, and Electronic Devices in the possession, custody or control of any Defendant, which contain any information, data, or files relating to the following list of topics. This list may be modified from time to time hereafter by agreement of the parties, or further Order of the Court:

1. Information concerning the lawsuit pending at City of Pittsburgh v. UPMC, No. GD-13-005115.

2. Information concerning the letter filed at UPMC v. City of Pittsburgh, No. 13-563, ECF No. 59.

3. Information concerning any public comments, mailings or statements set forth in the amended complaint filed at UPMC v. City of Pittsburgh, No. 13-563, ECF No. 18.

4. Any communications between any of the defendants regarding the previously listed items.

[PROPOSED ORDER]

Joy Flowers Conti

Chief United States District Judge

Dated: _____, 2013

ACKNOWLEDGEMENT

I, the undersigned, do hereby agree that I have received, reviewed, and will use my best efforts to cause the Defendant company to adhere to the terms of this Protective Order.

Printed Name

Signature
LUKE RAVENSTAHL, *in his, Official Capacity*
as Mayor, City of Pittsburgh, and Individually

Printed Name

Signature
CITY OF PITTSBURGH

Printed Name

Signature
FAIR SHARE PITTSBURGH ACTION FUND