

## Philadelphia Courts Develop “Temporary Financial Monitor” Program to Help Local Businesses Hard Hit by the Pandemic

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On June 22, 2020, the Philadelphia Commerce Court took judicial notice that the COVID-19 pandemic and the related shutdown of commercial activity deemed non-essential or non-life sustaining has caused significant economic harm to local for-profit businesses and non-profit institutions. The Court, which hears commercial disputes and administers the dissolution and liquidation of business entities, noted that many businesses and non-profits have been unable to generate sufficient income to pay their debts or retain their staff, and the current economic climate threatens their ability to operate in the future.

In order to provide assistance to keep Philadelphia County enterprises operational – and to forestall further, potentially disruptive company dissolutions or liquidations – the Court ordered creation of a Commerce Court Temporary Financial Monitor Program (the “**Monitor Program**”) under the general supervision of the Commerce Court Supervising Judge. As explained below, the temporary monitors will evaluate these troubled businesses and assist with the preparation of an operating plan, with the goals of continued operation and long-term viability.

The order provides as follows:

1. The Commerce Court Supervising Judge, upon consultation with the Administrative Judge of the Trial Division, members of the bar, and other stakeholders, will adopt appropriate case management orders and other protocols for the implementation of the Monitor Program in accordance with the Administrative Orders governing the Commerce Court and other applicable rules of court.
2. Any for-profit or non-profit entity, including a sole proprietorship, will be eligible to participate in the Monitor Program if its principal place of business is located in Philadelphia County and it ceased to conduct a substantial portion of its operations due to the Covid-19 pandemic, resulting in a loss of revenue and causing the entity to be unable to pay its usual and customary costs and expenses coming due in the ordinary course on and after March 1, 2020. Entities whose defaults or failure to pay costs and expenses occurred on or before February 29, 2020, are generally ineligible to participate, unless otherwise determined by the court upon petition.
3. A case is commenced and will be assigned to the Monitor Program when an eligible entity files a Petition to Enjoin Collection Activities and Appoint a Temporary Financial Monitor (hereinafter the “**Petition**”), which must include financial statement(s) identifying pre- and post- COVID assets, revenues, costs, and expenses, along with detailed information regarding the entity’s creditors and the amounts owed to each of them. Exhibits containing financial information may be filed under seal, but they will be available for viewing by creditors and the Temporary Financial Monitor. The Petition must be filed as a public document.

4. The Petition will be assigned to the Commerce Court Supervising Judge or his designee, who may issue one or more orders:
  - a. directing the filing of response(s) to the Petition by creditors and other interested parties;
  - b. appointing a legal or accounting professional to act as a Temporary Financial Monitor;
  - c. scheduling meetings or conferences with creditors; enjoining creditors from engaging in any collection activities against the petitioning entity and its assets; requiring the entity to post a nominal bond; and
  - d. directing such other actions as the court, sitting in equity, deems appropriate.
5. The Temporary Financial Monitor shall be responsible for evaluating the financial information provided by the petitioning entity and, upon consultation with the entity and its creditors, will prepare a proposed operating plan to enable the entity to resume and/or continue operations while paying off its accumulated debts. The operating plan will be shared with creditors and other interested parties and submitted to the court for approval. The Temporary Financial Monitor will provide periodic reports, as well as any revised operating plans, as directed by the court.
6. The Temporary Financial Monitor will be discharged within one year from the date of appointment, unless otherwise ordered by the court.