ANTONIA VERNI, by her Guardian Ad Litem, Albert Burstein, and FAZILA VERNI, Plaintiffs-Appellees, v. HARRY M. STEVENS, INC. OF NEW JERSEY, and ARAMARK SERVICES MANAGEMENT OF NEW JERSEY, INC., Defendants-Appellees, v. PUBLIC CITIZEN, Intervenor-Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-001816-07T3 Civil Action Appeal from an Order of the Superior Court of New Jersey, Bergen County Sat Below: Hon. Robert C. Wilson

BRIEF OF INTERVENOR-APPELLANT PUBLIC CITIZEN

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PRELIMINARY STATEMENT

In a case that has been the subject of national media attention, the court below ordered on June 7, 2007, that "the balance of all proceedings" in the case "shall be filed under seal." Pa7. The court gave no public explanation for its sealing order except that it was supported by "good cause." Pa7. Wishing to gain access to the sealed record, Public Citizen filed motions to intervene and to unseal, arguing that the court's umbrella sealing order violated the well-established rule in New Jersey that courts "must examine *each* document individually and make factual findings with regard to why the presumption of public access has been overcome." *Hammock v. Hoffmann-LaRoche, Inc.*, 142 N.J. 356, 382, 662 A.2d 546, 559 (N.J. 1995) (emphasis in original). Pa19. In particular, Public Citizen asked the court to unseal the final judgment in the case and any sealed opinions and orders, including any opinions justifying the court's decision to seal the record, transcripts and exhibits from sealed hearings, and details about the amount and terms of the settlement that were on file with the court, including the amount of attorneys' fees awarded to counsel. Pa19, 21-22. Public Citizen also requested that the court vacate its order prospectively sealing all future proceedings in the case. Pa19.

The court granted Public Citizen's motion to intervene, but denied its motion to unseal as to all documents in the record

except for one: a previously sealed opinion in which the court explained the basis for its sealing order. Pa9. In the opinion, the court acknowledged that privacy interests alone did not justify sealing the record in the case. Pa11. The court held, however, that the amount of the settlement must remain secret so that the father of the minor plaintiff—who had recently moved to Florida—would not learn of the settlement and return to New Jersey in an attempt to misappropriate some of the settlement money. Pa10-11.

The court's basis for sealing the record fails to meet the rigorous standard set forth by the New Jersey Supreme Court in *Hammock*. The court's concerns about drawing the father to New Jersey are both speculative and highly unrealistic, given that the settlement has already been publicized in the media. Moreover, the court failed to engage in the required document-by-document review, instead entering a prospective sealing order that sealed *all* future filings in the case, regardless of whether they posed a legitimate privacy interest and regardless of whether that interest was outweighed by the public's right to know. Indeed, there is not even an indication in the record of what filings have been made in the case since June 7, 2007. Even the fact that the case has been settled and a final judgment has been entered is under seal.

The trial court's order is vastly overbroad and fails to take into account the public's continuing interest in the case. Accordingly, this Court should reverse the court's denial of Public Citizen's motion to unseal.

PROCEDURAL HISTORY

In 1999, two-year-old Antonia Verni was paralyzed when her family's car was struck by Daniel Lanzaro, a drunk driver on his way home from a New York Giants game. Dave Anderson, *"Culture Of Intoxication" And a Victim*, N.Y. Times, Mar. 23, 2007, at D7. Lanzaro, who had been drinking beer at the game, had a blood-alcohol level of more than twice the legal limit. *Id.* The accident left Verni a quadriplegic and needing a ventilator to breathe. *Id.*

Antonia and her mother, Fazila Baksh Verni, sued multiple defendants, including Lanzaro and Aramark Corp., the concessionaire that served beer to Lanzaro at the game. *See Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 484, 387 N.J. Super. 160, 176 (N.J. Super. Ct. App. Div. 2006). During the four-week trial, plaintiffs presented evidence indicating that Lanzaro had consumed the equivalent of sixteen twelve-ounce beers and that Aramark had served Lanzaro even though he was visibly drunk. *Id.* at 484-87, 175-81. Plaintiffs argued that Aramark vendors had repeatedly violated rules against selling more than two beers to a patron at a time, and that a "culture

of intoxication" at Giants Stadium had contributed to Lanzaro's drunkenness. *Id.* at 489-94, 185-93. The jury awarded $105 million in compensatory and punitive damages, most of it against Aramark. *Id.* at 484, 175-76.

On appeal, this Court reversed and remanded for a new trial. *Id.* at 508, 215. The Court held that the trial court had erred by, among other things, admitting the evidence of a culture of intoxication at the stadium. *Id.* at 490-94, 186-93. On remand, the plaintiffs filed an unopposed motion to seal "the balance of proceedings" in the case. Pa7. The court held a sealed hearing on the motion on June 1, 2007, and granted the motion in a public consent order that gave no reason for sealing the record other than a statement that the decision to seal was supported by "good cause." Pa7. At the same time, the court entered an opinion explaining its justification for its decision, but that opinion was filed under seal. Pa9.

On October 10, 2007, intervenor Public Citizen filed a motion to intervene and to unseal the record. Pa1, 19. Public Citizen asked the court to unseal all current filings and to vacate or modify its order sealing all future filings. Pa1, 21-22. Both parties filed oppositions to the motion. Pa15-18. At a November 16, 2007, hearing, the court granted the motion to intervene, but denied the motion to unseal. Pa21-22. The court did, however, unseal the previously secret June 7, 2007, opinion ex-

plaining the basis for its sealing order. Pa22. This appeal followed. Pa23.

STATEMENT OF FACTS

Intervenor Public Citizen is a nonprofit advocacy organization founded in 1971 with approximately 80,000 members nationwide. Pa4. From its inception, Public Citizen has taken an active role in promoting consumer health and safety, including advocating in Congress and the courts and conducting public awareness campaigns on issues of highway safety. Pa4-5. Among many other issues, Public Citizen's work on automobile safety has involved advocating programs to increase seatbelt use and to decrease intoxicated and distracted driving, including advocating stricter drunk driving laws that lower the standard for blood-alcohol concentration to .08 percent. Pa5.

Public Citizen has also long been concerned with issues of open government and access to the courts. Pa4. Public Citizen has litigated numerous cases concerning the right of public access to court records, including the leading cases *Hammock v. Hoffmann-LaRoche, Inc.*, 142 N.J. 356, 379, 662 A.2d 546, 558 (N.J. 1995), in which Public Citizen was an intervenor, and *Estate of Frankl v. Goodyear Tire & Rubber Co.*, 181 N.J. 1, 853 A.2d 880 (N.J. 2004), in which Public Citizen was amicus curiae. Pa5. Public Citizen has also intervened or filed amicus briefs in numerous other cases involving public access to court re-

cords. *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 787 (1st Cir. 1988); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165 (6th Cir. 1983); *Cardiac Pacemakers, Inc. v. Aspen II Holding Co.*, No. 04-4048, 2006 WL 3043180 (D. Minn. Oct. 24, 2006); *Chao v. Estate of Frank Fitzsimmons*, 349 F. Supp. 2d 1082 (N.D. Ill. 2004); *In re Am. Historical Ass'n*, 62 F. Supp. 2d 1100 (S.D.N.Y. 1999); *In re Agent Orange Prod. Liab. Litig.*, 104 F.R.D. 559 (E.D.N.Y. 1985). Pa5. Public Citizen has used information revealed in its cases to produce petitions to regulatory authorities and reports on legislative issues. Pa5.

When Public Citizen learned about the trial court's decision to seal the record, it moved for leave to intervene for the limited purpose of asserting its First Amendment and common-law right of access to sealed decisions and other filings. Pa2. The trial court granted the motion to intervene, but denied the motion to unseal except as to its June 7, 2007, opinion explaining the basis for the sealing order. Pa21-22. In the opinion, the court disclaimed privacy interests as a basis for its decision to seal the record. Pa11. Instead, the court expressed concern that Antonia's absent father, Ronald Verni, had in the past "improperly and unlawfully used certain monies" obtained in prior settlements for his own benefit. Pa10. The court credited the plaintiffs' assertion that "publicity regarding any settlement may cause Mr. Verni to return to New Jersey to seek use of those

monies for his own purposes." Pa10. The court also referred to "several domestic violence incidents" that had led to a restraining order against Ronald Verni and concluded that, "[b]y sealing the record of any potential settlement, the estranged father is far less likely to return to New Jersey and continue his unlawful behavior." Pa11. The court therefore ordered sealed "the balance of the record" in the case. Pa14.

Aside from that opinion, everything in the case after June 1, 2007, including the briefing on Public Citizen's motion to unseal, remains sealed. However, based on the court's order denying the motion to unseal, Public Citizen learned that the court held an October 5, 2007, friendly hearing on the terms of the parties' proposed settlement, and at some point entered a final judgment approving the settlement. Pa21-22. Moreover, based on defendants' response to the notice of appeal, Public Citizen learned that the parties remain engaged in an ongoing dispute about attorneys' fees. Pa26. None of these filings is in the public record.

ARGUMENT

I. The Common Law, Rules of Court, and the First Amendment Create a Presumptive Right of Public Access to Court Filings.

There is a strong "presumption of public access to documents and materials filed with a court in connection with civil litigation." *Hammock*, 142 N.J. at 375, 662 A.2d at 556; *see also*

In re Cendant Corp., 260 F.3d 183, 192 (3d Cir. 2001). This presumption arises both from the common-law right of access and from New Jersey court rules requiring decisions to seal the record or to enter protective orders to be supported by "good cause." R. 1:2-1, 4:10-3; *Hammock*, 142 N.J. at 367-68, 662 A.2d at 551-52.

Court filings are part of the public record when they have "been filed with the court, or otherwise somehow incorporated or integrated into a . . . court's adjudicatory proceedings." *Cendant*, 260 F.3d at 192; *Hammock*, 142 N.J. at 381, 662 A.2d at 559. Thus, the public record includes all "documents, transcripts, and legal memoranda with attachments filed with the court." *Id.* at 361, 548. It also includes settlement agreements, at least as long as the settlement has been filed. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 343-45 (3d Cir. 1986) (holding that a settlement filed with the court was a public record); *Jackson v. Del. River & Bay Auth.*, 224 F. Supp. 2d 834, 838-40 (D.N.J. 2002) (holding that a draft settlement agreement and transcript of proceedings where the draft was discussed were public documents).

The presumption of public access "disallows the routine and perfunctory closing of judicial records." *Cendant*, 260 F.3d at 193-94. Before records can be sealed, the party advocating secrecy must meet its "burden of showing that the material is the

kind of information that courts will protect" and that "disclosure will work a clearly defined and serious injury." *Id.* at 194 (internal quotations omitted). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient." *Hammock*, 142 N.J. at 381-82, 662 A.2d at 559; *Cendant*, 260 F.3d at 194. Rather, "[t]he need for secrecy must be demonstrated with specificity as to *each document*." *Id.* (emphasis in original).

Even assuming that the parties satisfy their burden of identifying a compelling privacy interest, they must still show that the interests in secrecy substantially outweigh the strong presumption of public access. *Hammock*, 142 N.J. at 381, 662 A.2d at 559; *Cendant*, 260 F.3d at 194. This balancing process must again be conducted on a document-by-document basis. *Hammock*, 142 N.J. at 381-82, 662 A.2d at 559. Moreover, "to have the least intrusive effect on the public's right-of-access," an entire document should not be sealed when it is possible to redact just the private information. *Hammock*, 142 N.J. at 382, 662 A.2d at 559.

In addition to the common-law right of access, the First Amendment provides a right of access to judicial decisions and other sorts of filings in civil cases. *N.J. Div. of Youth & Family Servs. v. J.B.*, 120 N.J. 112, 119-123, 576 A.2d 261, 264-66 (N.J. 1990); *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059,

1067-71 (3d Cir. 1984). The presumption of openness under the First Amendment is even stronger than the common-law presumption and can be overcome only by showing "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Publicker*, 733 F.2d at 1073 (internal quotation omitted); *In re Providence Journal Co.*, 293 F.3d 1, 11 (1st Cir. 2002).[1]

II. There Is No Substantial Interest in Sealing the Record in this Case.

A. Privacy Interests Do Not Justify the Sealing Order.

As a preliminary matter, it is important to note that the court's decision to seal the record in this case had nothing to do with protecting the privacy of the plaintiff, Antonia Verni. As the court recognized, general interests of privacy, including the privacy of an injured minor plaintiff, "do not outweigh our State's strong public policy favoring open and accessible judicial proceedings." *Zukerman v. Piper Pools*, 256 N.J. Super. 266, 628-29 (N.J. Super. Ct. App. Div. 1992) (unsealing a minor's settlement where the presumption of access was not overcome); *see also N.J. Div. of Youth & Family Servs.*, 120 N.J. at 127,

[1] All the federal courts of appeals to have decided the question have held that the First Amendment protects access to civil filings. *See Grove Fresh Distribs. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988); *Westmoreland v. CBS, Inc.*, 752 F.2d 16, 23 (2d Cir. 1984); *Publicker*, 733 F.2d at 1067-71; *Brown & Williamson Tobacco Corp.*, 710 F.2d at 1177; *Newman v. Graddick*, 696 F.2d 796, 801-02 (11th Cir. 1983).

576 A.2d at 269 (holding that "the court must balance the public's right of access to judicial proceedings against the State's interest in protecting children from the possible detrimental effects of revealing to the public allegations and evidence relating to parental neglect and abuse"); *see also Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607-08 (1982) (holding that the state's interest in protecting a minor's well-being "does not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest") (emphasis in original).

Moreover, given that the case has already been through a four-week public trial that was the subject of national press coverage, any details about the case that may have once been considered private are now a matter of public record. During the trial and subsequent appeal, Antonia's parents and attorneys held media interviews and press conferences in which they publicly discussed Antonia's injuries, and details of her condition were reported in the national media. *See, e.g.*, Henry Gottlieb, *Jury Duns Stadium Beer Vendor $105M For Paralysis Caused by Drunken Fan*, New Jersey Law Journal, Jan. 24, 2005, *available at* http://www.nrdmlaw.com/Documents/$135millionjuryverdict.pdf; Associated Press, *$135 Million for Girl Hit by Drunk Football Fan*, Jan. 21, 2005, *available at* http://www.msnbc.msn.com/id/6852253; CNN, *Lawsuit Targets NFL*, Oct. 13, 2003, *available at* http://

archives.cnn.com/TRANSCRIPTS/0310/13/ltm.14.html. "The public should not be excluded from information already widely disseminated." *Lederman*, 385 N.J. Super. at 321-22, 897 A.2d at 371.

Although the trial court's opinion sealing the record discussed evidence of domestic violence that was introduced at the June 1, 2007, hearing on the motion to seal, keeping this evidence secret was not the basis of the court's decision to seal the record. Pa11. This case has nothing to do with domestic violence, and the only reason there is any evidence about domestic violence in the record is because the plaintiffs introduced it in support of their motion to seal. Pa9-10. To be clear, Public Citizen has no desire to gain access to sensitive family court records or other filings that would be harmful to the minor plaintiff if made public. However, as explained below, the presence of *some* truly private evidence about domestic violence does not justify sealing the *entire case*. This is especially true when, as here, the truly private information was only put into the record to justify sealing other, unrelated documents.

B. There Is No Good Cause to Seal the Settlement Terms.

Like other judicial documents, a settlement filed with the court is a public record. *See Union Oil Co. v. Leavell*, 220 F.3d 562, 567 (7th Cir. 2000); *Bank of Am.*, 800 F.2d at 343-45; *Jackson.*, 224 F. Supp. 2d at 838-40; *Lederman v. Prudential Life Ins. Co., Inc.*, 385 N.J. Super. 307, 311, 897 A.2d 362, 365

(N.J. Super. App. Div. 2006). Any interest in privacy of the settlement in this case is especially small, given that the amounts of previous settlements with other defendants already have been made public and were cited in this Court's published decision on appeal. *See Verni*, 903 A.2d at 502, 387 N.J. Super. at 206.

The trial court nevertheless held that the settlement must be kept secret because, if it were made public, Ronald Verni may return to New Jersey and attempt to illegally appropriate some of the settlement funds. Pa10-11. The court's concern about publicity of the settlement, however, is undermined by the fact that the settlement has already been well publicized. Indeed, plaintiffs' attorney prominently advertises the fact of the settlement on his website, which states on its front page:

> Over the past several years, Mr. Mazie has won numerous jury verdicts and settlements in excess of $1 million, including the landmark $135 million liquor liability verdict against Aramark which is the largest personal injury verdict in New Jersey history. The case was later remanded by the appellate court and *settled for a confidential amount*.

See http://www.mazielaw.com (emphasis added). Thus, all Ronald Verni would need to do to discover the fact of the settlement would be to visit the website of plaintiffs' counsel. Given that the previous verdict in the case exceeded $100 million dollars, Verni would be justified in believing that the confidential settlement was for a significant amount.

Moreover, the fact that the court kept the amount of the settlement secret to avoid drawing Verni back to New Jersey is now publicly available in the trial court's opinion justifying its decision to seal the case and in media coverage regarding Public Citizen's motion to unseal. Pa9. Because of the coverage, if Ronald Verni were to Google the words "Verni settlement," he would receive as the first result an article about the motion hearing. Henry Gottlieb, *Judge Won't Unseal Stadium Crash Settlement But Says Why He Sealed It*, New Jersey Law Journal, Nov. 16, 2007. He would then see, in the first sentence of the article, the following: "The settlement for the quadriplegic girl in the notorious Giants Stadium drunken-driving case must be kept secret so her estranged father won't learn how much money she has and try to steal it, a judge says in an opinion made public on Friday." *Id.* Later in the article, Verni would see a quote from plaintiffs' lawyer saying that "Verni's knowledge of the amount of the settlement would prompt him to annoy the family," and that "[t]he amount [of the settlement] would be a red flag" to him. *Id.*

The continued sealing of the record thus depends on the assumption that Antonia's father would be drawn back to New Jersey if he learned the precise *amount* of the settlement, but would *not* be drawn back by news that a settlement was reached, even if he learned that the amount of the settlement would be a "red

flag" to him. This assumption is not only speculative, it is implausible. It therefore cannot meet the "good cause" standard required to justify sealing court records, much less the compelling interest required by the First Amendment.

C. The Court Failed to Consider Less Restrictive Alternatives.

In blocking the entire public's access to the case because of a concern about how one man, Ronald Verni, would react to it, the trial court adopted a drastic remedy to address a purely speculative problem. Even assuming the court's concerns were legitimate, it could have adopted less restrictive alternatives to address them. This is especially important as to filings to which the First Amendment right of access applies, such as judicial decisions and hearings. As to these filings, the court's remedy must be narrowly tailored to address a compelling government interest. *See N.J. Div. of Youth & Family Servs.*, 120 N.J. at 119-123, 576 A.2d at 264-66; *Publicker*, 733 F.2d at 1067-71.

First, the court expressed concern that, if the amount of the settlement were public, it would "cause Mr. Verni to return to New Jersey to seek use of [settlement] monies for his own purposes." Pa10. Assuming this is a realistic problem, it would be easily solved by putting the money from the settlement in a trust, as were previous settlements with other defendants in the case. In its opinion granting the motion to seal, the court ac-

knowledged the existing trust, but appeared to discount this solution because Verni had "appeared before Judge Donohue in the Summer of 2005 and objected to not being named as a trustee." Pa10. But preventing Verni from objecting in court—which he has a right to do—is no reason to keep news of the settlement from him. The only way that Verni could obtain any relief from a court is if he shows he is entitled to that relief, in which case the parties would have no legitimate interest in preventing him from exercising his rights. If, on the other hand, Verni has no right to prevail, a court would not allow him to misappropriate any part of the settlement funds. In either case, addressing the adequacy of Verni's showing in that future hearing, if it should ever occur, would be far less destructive to the public's right to know than preventing the hearing from happening in the first place by concealing the settlement from Verni, and the rest of the public, entirely.

The court also expressed some concern about past "threats of violence" made by Verni. Pa10. Public Citizen acknowledges that preventing domestic violence is the sort of important state interest that may in some cases justify sealing portions of the record. But, aside from the fact that, as already discussed, the *fact* of the settlement has already been made public and is just as likely as a specific dollar figure to draw Verni back to the state, the plaintiffs here, as the trial court acknowledged,

have already obtained a restraining order against Verni. There is no indication that this order is insufficient to address the court's concerns, or that there is also a need to prevent Verni from even being in the *same state* as plaintiffs.

D. The Sealing Order Is Drastically Overbroad.

The New Jersey Supreme Court held in *Hammock* that, "to have the least intrusive effect on the public's right-of-access," an entire document should not be sealed when it is possible to redact just the private information. 142 N.J. at 382, 662 A.2d at 559. Even assuming that the court was correct that the parties have a legitimate interest in keeping the specific amount of the settlement from Ronald Verni, that conclusion would, at most, justify redacting the specific dollar figure from the final settlement. The court, however, went far beyond a minimal redaction, issuing a blanket order prospectively sealing the entire case file after June 1, 2007. The court's order thus covers documents that had not even been filed at the time of the order, for which the court could not possibly have made a determination that privacy interests outweighed the presumption of public access.

Courts strongly disfavor umbrella sealing orders that fail to account for the circumstances of individual documents. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786-87 (3d Cir. 1994) ("The burden of justifying the confidentiality of each and

every document sought to be covered by a protective order remains on the party seeking the order."); *Hammock*, 142 N.J. at 381-82, 662 A.2d at 559 ("The need for secrecy must be demonstrated with specificity as to *each document*."); *see, e.g.*, *Public Citizen*, 858 F.2d at 790 (rejecting a blanket protective order that "extend[ed] broad protection to all documents . . . without a showing of good cause for confidentiality as to any individual documents"). The court's sealing order here disregards this requirement of an individualized determination.

For example, because the order seals *all* prospective documents, Public Citizen's motion to unseal is itself now under seal. Presumably, the trial court would grant a motion to unseal it, but the fact that it was caught up in the sweep of the court's order illustrates the problem with a rule that seals all filings by default. Public Citizen has no way of knowing what other similarly innocuous documents remain under seal. Rather than carefully scrutinizing each filing to determine whether there is a compelling reason for it to be sealed, the court's blanket sealing order improperly creates a *presumption* that filings will be sealed. *See In Providence Journal*, 293 F.3d at 12-13 (declaring unconstitutional a district court's practice of storing legal memoranda in the judges' chambers, where they were inaccessible to the public, because the practice "place[d] on persons desiring access the onus of initiating action" and "re-

verse[d] the constitutional presumption of public access to documents"); *cf. Globe Newspaper*, 868 F.2d at 507 (holding that restricting access to judicial records in criminal cases and "plac[ing] on the public the burden of overcoming inertia" was impermissible).

The court here failed to undertake a document-by-document review of the record as required by the New Jersey Supreme Court. In particular, the court made *no* findings that any of the following filings need to be sealed:

- **Any other terms of the settlement.** Even if the dollar amount of the settlement were to remain sealed, the public would have an interest in knowing any other terms of the settlement, including whether the defendants agreed to implement any changes in stadium alcohol policies that would prevent similar incidents from happening in the future.

- **The final judgment and any orders and opinions.** The public's interest in access to court records is at its peak when it comes to decisions of the court. *Hicklin Eng'g, L.C. v. Bartell*, 439 F.3d 346, 348 (7th Cir. 2006) ("[R]edacting portions of opinions is one thing, secret disposition is quite another."); *BBA Nonwovens Simpsonville, Inc. v. Superior Nonwovens*, LLC, 303 F.3d 1332, 1335 n.1 (Fed. Cir. 2002) (citing the importance of public scrutiny on the administration of justice in denying a motion to issue an opinion under seal); *Joy v.*

North, 692 F.2d 880, 893 (2d Cir. 1982) ("An adjudication is a formal act of government, the basis of which should, absent exceptional circumstances, be subject to public scrutiny."). Because of the importance of public access to judicial decisions, courts have upheld the right of access even when national security interests were at stake. *See, e.g.*, *United States v. Ressam*, 221 F. Supp. 2d 1252, 1263-64 (W.D. Wash. 2002). As the court wrote in *Ressam*:

> [T]here is a venerable tradition of public access to court orders, not only because of the inherent value in publicly announcing a particular result, but because dissemination of the court's reasoning behind that result is a necessary limitation imposed on those entrusted with judicial power. A court's order therefore serves a function that extends far beyond a specific case. More than merely informing the parties of the outcome of a motion, an order also enlightens the public about the functioning of the judicial system.

Id. at 1262. The court should therefore, at a minimum, allow access to its final judgment and other decisions in the case, including its order approving the settlement.

- **The arguments and decision on the fairness of the settlement.** The public has a heightened role to play in assuring the fairness of a settlement involving a minor, where the interests of the plaintiff's parents and attorneys may diverge from the minor's own interests. *See* Mem. in Supp. of Mot. to Unseal, at 7-8; *cf. In re High Sulfur Content Gasoline Prods. Liab. Litig.*, No. 07-30384, --- F.3d ---, 2008 WL 287347 (5th Cir.

Feb. 4, 2008) ("From the perspective of class welfare, publicizing the process leading to attorneys' fee allocation may discourage favoritism and unsavory dealings among attorneys even as it enables the court better to conduct oversight of the fees."); *Cendant*, 260 F.3d at 193-96 (noting the increased importance of public oversight in class action cases and holding that attorney bids for the role of lead counsel must be open to the public). This case has already seen substantial public dispute over whether Antonia Verni's parents and lawyers have adequately represented her interests. *See* Henry Gottlieb, *In Wake of Record $105M Verdict, Fee Fights and Coverage Contests Emerge*, New Jersey Law Journal, Feb. 2, 2005, *available at* http://www.law.com/jsp/article.jsp?id=1107178526481. The public has a right to know whether Antonia's interests were in fact protected.

- **Transcripts of hearings and evidence submitted at those hearings.** The trial court ordered that the records of the June 1, 2007, hearing on the motion to seal and the October 5, 2007, friendly hearing remain sealed, but gave no reason supporting this order. Pa21. The public has a strong interest in access to court proceedings, and the parties have given no reason to overcome the presumption of openness. *See Huminski v. Corsones*, 396 F.3d 53, 81 (2d Cir. 2005) ("Holding court in public . . . assumes a unique significance in a society that commits itself to the rule of law.") (internal quotation omitted).

The records of these hearings, and any other hearings held in the case should therefore also be unsealed.

- **The current dispute about attorneys' fees.** In response to Public Citizen's notice of appeal, defendants noted that there are ongoing disputes about attorneys' fees in the trial court. Even if the parties could justify sealing the amount of the settlement, the amount allocated as fees to plaintiffs' counsel and to the court-appointed guardian ad litem, and the arguments in support of these fees, should be made public. *See In re High Sulfur Content Gasoline Prods. Liab. Litig.*, No. 07-30384, 2008 WL 287347 ("On a broad public level, fee disputes, like other litigation with millions at stake, ought to be litigated openly. Attorneys' fees, after all, are not state secrets that will jeopardize national security if they are released to the public."). Rule 1:21-7(c) limits the amount of contingent fees that New Jersey lawyers can collect in tort litigation and provides that the court must determine a reasonable fee on any portion of an award that exceeds $2 million. This rule, in addition to Rule 4:44-3's requirement that the court approve the fairness of a settlement involving a minor, makes the allocation of fees in this case an issue of public interest. Moreover, the question of what percentage of a recovery in excess of $2 million should be set by the court as a contingent fee pursuant to R. 1:21-7(c) is a question that frequently arises in New Jersey

courts. *See, e.g.*, *Ehrlich v. Kids of N. Jersey, Inc.*, 338 N.J. Super. 442, 769 A.2d 1081 (N.J. Super. Ct. App. Div. 2001). Access to the court's disposition of the issue would therefore be useful to inform courts and litigants in future cases.

- **Any other filings for which the parties have not met their burden.** Public Citizen cannot know what other filings in this case have been sealed. However, because the parties have not shown that their interest in the secrecy of *any* particular filing outweighs the public's interest in openness, or that any such interest could not be accomplished by less restrictive means, the court should unseal any remaining sealed documents in the record.

III. The Countervailing Public Interest Is Strong.

Because of the strong public presumption of openness, Public Citizen need not offer any particular justification for the public's right of access to all the filings in this case. Regardless of the particularities of the case, public access to the court's files serves important societal values. Court openness "promotes public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court" and by "assur[ing] that judges perform their duties in an honest and informed manner." *Cendant Corp.*, 260 F.3d at 192 (internal quotations omitted). It also "provides the public with a more complete understanding of the judicial

system and a better perception of its fairness." *Id.* Indeed, the public's ability to access civil trials is "inherent in the nature of our democratic form of government." *Publicker*, 733 F.2d at 1069.

Although establishing the right of public access thus does not require any showing as to the particular public-interest value of the case, the circumstances of this case make public access especially important. In its first round through the courts, the case led to the largest alcohol-liability award in the United States in at least twenty-five years. *Verdict Against Stadium Beer Vendor Overturned*, Chi. Trib., Aug. 4, 2006, at 16. This large verdict led to extensive national discussion and debate. Dozens of articles and editorials were written about the case, including articles in the *Washington Post*, *Wall Street Journal, New York Times*, *Chicago Tribune*, *Houston Chronicle*, *San Francisco Chronicle*, *New York Post*, and *USA Today*.

Given all the media interest in the case, the court acknowledged in its opinion that "[a]ny settlement would certainly be covered by the media." Pa10. Indeed, immediately following the denial of the motion to unseal, a Star Ledger editorial called for the details of the settlement to be made public. *See* Fran Wood, *Sealed Settlements Ill Serve the Public's Interest*, The Star Ledger, November 25, 2007 ("What's a fair penalty for a sports stadium vendor selling too much beer to a fan who subse-

quently caused a traffic accident with appallingly tragic results? For a variety of reasons, it would be nice to know—if only as reassurance that there are fair consequences for that kind of negligence. That's why it's frustrating that in a recent case where that's exactly what happened, no one outside the principals knows the outcome."). When, as here, the subject matter of the litigation is of interest to the public, the public's presumptive right of access is substantially strengthened. *See Pansy*, 23 F.3d 772 at 788 ("If a settlement agreement involves issues or parties of a public nature, and involves matters of legitimate public concern, that should be a factor weighing against entering or maintaining an order of confidentiality.").

The importance of openness in this case is further amplified by the issues of public health and safety involved. *See Hammock*, 142 N.J. at 379, 662 A.2d at 558 ("[T]here is a profound public interest when matters of health, safety, and consumer fraud are involved."); *Pansy*, 23 F.3d at 787. The case sparked a national debate about the "culture of intoxication" at ballparks, and much of the media coverage speculated that the case would be a "wake up call" to teams and stadiums that would lead to reforms. *See, e.g.*, Tom Fitzgerald, *A Sobering Reality for NFL Concessionaires*, S.F. Chron., Sept. 25, 2005, at D3; Robert Dvorchak, *"Culture" of Drinking, Sports Is Given a Sobering Revision*, Pittsburgh Post-Gazette, Apr. 3, 2005, at D1; Mark

Maske, *Ruling May Affect Team Policies*, Wash. Post, Jan. 22, 2005, at D3. The Vernis' attorney, David Mazie, said the verdict "sends an appropriate message, and hopefully will make a difference at arenas across the country." David Porter, *Jury Awards $75M in Damages from Crash*, USA Today, Jan. 19, 2005. That message, however, and any deterrent value the settlement might have had, is lost as long as the settlement is kept secret.

Finally, the fact that the case involved approval of a settlement involving a minor increases the importance of public access. This is not a typical settlement agreement that is not filed in court and is essentially a private contract between the parties. *See Pansy*, 23 F.3d at 776. Rather, because this case involves a minor, Rule 4:44-3 requires the court to "determine whether the settlement is fair and reasonable as to its amount and terms." Rule 4:44-3. This requirement of judicial approval increases the importance of public oversight to ensure fairness of the process. *See Jessup v. Luther*, 277 F.3d 926, 929 (7th Cir. 2002) ("The public has an interest in knowing what terms of settlement a . . . judge would approve and perhaps therefore nudge the parties to agree to."); *Bank of Am.*, 800 F.2d at 345; *Stephens v. County of Albemarle*, 422 F. Supp. 2d 640, 644 (W.D. Va. 2006). Thus, whereas "a competent adult, whose settlement need not be judicially approved, is free to negotiate a 'private' settlement[,] in the case of a minor or incompetent, the

requirement of judicial approval of the settlement forecloses, in the ordinary case, the plaintiff's privacy option." *Hammock*, 142 N.J. at 368, 662 A.2d at 552 (internal quotation omitted); *see, e.g.*, *Zukerman*, 256 N.J. Super 622, 607 A.2d 1027 (unsealing a minor's settlement where the presumption of access was not overcome). Courts should not make decisions about the fairness of settlements without public oversight, and the public cannot judge the fairness of a settlement—or of the court's decision approving the settlement—if they cannot see it.

CONCLUSION

This court should reverse the trial court's decision denying intervenor Public Citizen's motion to unseal and remand the case with instructions to vacate the June 7, 2007, sealing order and to unseal the record in this case.

Respectfully Submitted

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Attorneys for Intervenor-Appellant,
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February 20, 2008

APPENDIX

Memorandum in Support of Public Citizen's Motion to Intervene, filed October 10, 2007

ANTONIA VERNI, by her Guardian Ad Litem, Albert Burstein, and FAZILA VERNI, Plaintiff, vs. DANIEL LANZARO, HARRY M. STEVENS, INC. OF NEW JERSEY, ARAMARK SERVICES MANAGEMENT OF NEW JERSEY, INC., and MICHAEL HOLDER, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. BER-L-10488-00 Civil Action

MEMORANDUM IN SUPPORT OF PUBLIC CITIZEN'S MOTION TO INTERVENE

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Gregory A. Beck
Alan Y. Medvin
On the Brief

MEMORANDUM IN SUPPORT OF PUBLIC CITIZEN'S MOTION TO INTERVENE

Pursuant to New Jersey Court Rules 4:10-3 and 4:33-2, Public Citizen has moved for leave to intervene for the limited purpose of seeking public disclosure of sealed decisions and other filings in this case. Public Citizen intends to assert its First Amendment and common-law right of access to the case file.

BACKGROUND

In 1999, two-year-old Antonia Verni was paralyzed when her family's car was struck by Daniel Lanzaro, a drunk driver on his way home from a New York Giants game. Dave Anderson, *'Culture Of Intoxication' And a Victim*, N.Y. Times, Mar. 23, 2007, at D7. Lanzaro, who had been drinking beer at the game, had a blood-alcohol level of more than twice the legal limit. *Id.* The accident left Verni a quadriplegic and needing a ventilator to breathe. *Id.*

Antonia and her mother, Fazila Baksh Verni, filed suit against multiple defendants, including Lanzaro and Aramark Corp., the concessionaire that served beer to Lanzaro at the game. *See Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 484, 387 N.J. Super. 160, 176 (N.J. Super. Ct. App. Div. 2006). During the four-week trial, plaintiffs presented evidence indicating that Lanzaro had consumed the equivalent of sixteen twelve-ounce beers and that Aramark had served Lanzaro even though he was visibly drunk. *Id.* at 484-87, 175-181. Plaintiffs argued that Aramark vendors had repeatedly violated rules against selling

more than two beers to a patron at a time, and that a "culture of intoxication" at Giants Stadium had contributed to Lanzaro's drunkenness. *Id.* at 489-94, 185-93. The jury awarded $105 million in compensatory and punitive damages, most of it against Aramark. *Id.* at 484, 175-76.

The Appellate Division reversed and remanded for a new trial. *Id.* at 508, 215. The court held that the trial court erred by, among other things, admitting the evidence of a culture of intoxication at the stadium. *Id.* at 490-94, 186-93. The case was remanded and, following a case-management conference, this court ordered all subsequent filings in the case sealed. Consent Order, June 7, 2007. Apparently, the parties have settled—although there is no indication of it in the public record, the Vernis' attorney, David Mazie, updated his website to state that the case had "settled for a confidential amount." http://www.nrdmlaw.com/. Nothing in the record explains why the case file was sealed or whether the parties had met their burden of showing that their interest in the secrecy of specific filings, or portions of filings, outweighed the public's presumptive right of access.

ARGUMENT

New Jersey Court Rule 4:33-2 allows a court to grant third parties permission to intervene in a case. R. 4:33-2. Similarly, Rule 4:10-3 provides that a non-party may intervene for the purpose of challenging a protective order on the ground that it is not supported by good cause. R. 4:10-3. The New Jersey Supreme Court

has specifically recognized permissive intervention under Rule 4:33-2 as an appropriate mechanism for a third party to seek public access to sealed court documents. *Hammock v. Hoffmann-LaRoche, Inc.*, 142 N.J. 356, 379, 662 A.2d 546, 558 (N.J. 1995). In *Hammock*, the Court upheld the trial court's decision to grant Public Citizen permission to intervene to challenge a secrecy order. *Id.* The Court adopted a "broad standing rule" for non-parties seeking access to secret filings, holding that "[t]he applicability and importance of the interests favoring public access are not lessened because they are asserted by a private party that was not a party to the litigation." *Id.* (internal quotation and alteration omitted). Permissive intervention for the purpose of moving to unseal, the Court held, "comports with the spirit, if not the letter" of Rule 4:33-2. *Id.*; *see also Estate of Frankl v. Goodyear Tire & Rubber Co.*, 181 N.J. 1, 853 A.2d 880 (N.J. 2004) (involving a claim by non-party intervenors seeking modification of a protective order).[1]

Public Citizen is a nonprofit advocacy organization founded in 1971 with more than 90,000 members nationwide. From its inception, Public Citizen has

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[1] Likewise, the federal courts, including the Third Circuit, "routinely have found that third parties have standing to assert their claim of access to documents in a judicial proceeding." *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 787 (1st Cir. 1988); *see Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777-80 (3d Cir. 1994); *Jackson v. Del. River & Bay Auth.*, 224 F. Supp. 2d 834, 837-38 (D.N.J. 2002).

taken an active role in promoting consumer health and safety, including advocating in Congress and the courts and conducting public awareness campaigns on issues of highway safety. Among many other issues, Public Citizen's work on automobile safety has involved advocating programs to increase seatbelt use and to decrease intoxicated and distracted driving, including advocating stricter drunk driving laws that lower the standard for blood-alcohol concentration to .08 percent.

Public Citizen has also long been concerned with issues of open government and access to the courts. In addition to *Hammock*, Public Citizen has litigated numerous cases concerning the right of public access to court records, including *Liggett Group*, 858 F.2d 775; *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165 (6th Cir. 1983); *Cardiac Pacemakers, Inc. v. Aspen II Holding Co.*, No. 04-4048, 2006 WL 3043180 (D. Minn. Oct. 24, 2006); *Chao v. Estate of Frank Fitzsimmons*, 349 F. Supp. 2d 1082 (N.D. Ill. 2004); *In re Am. Historical Ass'n*, 62 F. Supp. 2d 1100 (S.D.N.Y. 1999); *In re Agent Orange Prod. Liab. Litig.*, 104 F.R.D. 559 (E.D.N.Y. 1985); and *Frankl*, 181 N.J. 1, 853 A.2d 880. Public Citizen has used information revealed in its cases to produce petitions to regulatory authorities and reports on legislative issues.

Public Citizen therefore has an interest in access to the sealed filings in this case and is well positioned to represent the general public's right of access. As explained in the accompanying memorandum in support of the motion to unseal, the

court's decision to seal the record in this case conflicts with the right of access to judicial records guaranteed by the common law and the First Amendment.

CONCLUSION

This court should grant Public Citizen's motion to intervene under New Jersey Court Rules 4:10-3 and 4:33-2 for the limited purpose of moving to unseal the record in this case and to vacate or otherwise modify the sealing order entered on June 7, 2007.

Respectfully Submitted,

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FILED

JUN 07 2007

ROBERT C. WILSON
J.S.C.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
Docket No. BER-L-10488-00

ANTONIA VERNI, by her Guardian Ad Litem, Albert Burstein, and FAZILA VERNI,

Plaintiffs,

-vs-

DANIEL LANZARO, HARRY M. STEVENS, INC. OF NEW JERSEY, ARAMARK SERVICES MANAGEMENT OF NEW JERSEY, INC., and MICHAEL HOLDER,

Defendants.

Civil Action

CONSENT ORDER SEALING THE RECORD FOR THE BALANCE OF THE PROCEEDINGS IN THIS MATTER

This matter having come before the Court on June 1, 2007 for a case management conference, and for good cause and with consent of all counsel, it is hereby **ORDERED** on this the 7th day of June, 2007, as follows:

1. the balance of all proceedings in this matter shall be filed under seal and the Clerk is hereby instructed to accept any and all filings under seal;

2. a copy of this Order shall be served on all counsel of record.

Hon. Robert C. Wilson, J.S.C.

On behalf of plaintiffs Antonia Verni and Fazila Verni, I hereby consent to the form and entry of this Order.

David A. Mazie, Esq.

Dated: June 7, 2007

On behalf of defendants Harry M. Stevens, Inc. of New Jersey and Aramark Services Management of New Jersey, Inc., I hereby consent to the form and entry of this Order.

David W. Field, Esq.

Dated: June 7, 2007

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06/06/2007 2174260.01

On behalf of defendant Michael Holder, I hereby consent to the form and entry of this Order.

Gerard D. Nolan, Esq.

Dated: June 7, 2007

RECORD AND DECISION SEALED
NOT TO BE PUBLISHED WITHOUT COURT APPROVAL

ANTONIA VERNI, et al.	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiffs,	:	
	:	BERGEN COUNTY
	:	
	:	DOCKET NO. BER-L-10488-00
DANIEL R. LANZARO, et al.	:	
	:	CIVIL ACTION
Defendants.	:	
	:	OPINION
	:	

Argued: June 1, 2007
Additional Submissions Received: June 7, 2007
Decided: June 7, 2007
Honorable Robert C. Wilson, J.S.C.

David A. Mazie, Esq., appearing on behalf of the Plaintiffs, Antonia Verni, et al. (Mazie Slater Katz & Freeman, L.L.C).

David W. Field, Esq., appearing on behalf of the Defendants, Daniel R. Lanzaro, et al. (Lowenstein Sandler, P.C.).

Introduction

This matter comes before the Court on application by plaintiffs, with consent of all defendants, to seal the balance of the proceedings in this matter. In support of the motion, testimony was taken on June 1, 2007 from Albert Burstein, Esq., guardian for the infant plaintiff, Antonia Verni. Having considered that testimony and other evidence, and having reviewed the applicable law as discussed herein, the Court grants plaintiffs' application.

Statement of Facts

By way of background, this matter arises out of an automobile accident which occurred on October 24, 1999 in which plaintiff Antonia Verni suffered serious injuries. She is now a ventilator-dependent quadriplegic who will require significant medical care and financial

support for the rest of her life. In addition, plaintiff Fazila Verni also suffered serious injuries. As set forth in detail Mr. Burstein's testimony, the reasons for his appointment as guardian are germane to this application. He was appointed in approximately March 2004 after the Court learned that the father of the infant plaintiff, Ronald Verni, had improperly and unlawfully used certain monies (received from settlements with other defendants) to purchase a condominium for his own use and enjoyment. It was later discovered that Mr. Verni had also misappropriated and used for his own benefit social security monies which were intended for his infant daughter. Most recently, Mr. Verni appeared before Judge Donohue in the Summer of 2005 and objected to not being named as a trustee on his daughter's Special Needs Trust which was funded by the balance of the earlier settlement proceeds. At all relevant times, Mr. Verni has not provided financial support for his family. It is believed he is currently residing in Florida; he has not seen his family for almost one year.

Since Mr. Burstein's appointment as guardian, there have been other issues involving Mr. Verni which are also germane to this motion. Specifically, there were several domestic violence incidents which resulted in a series of temporary and now permanent restraining orders against Mr. Verni, which preclude him from contacting the family and seeing his children without specific supervision. Mr. Burstein's testimony provided the Court with numerous examples of Mr. Verni's threats of violence and other conduct clearly detrimental to plaintiffs who continue to reside in Cliffside Park, New Jersey. The Court also had the opportunity to review the Bergen County Family Court files. For the sake of brevity, those details will not be repeated but are incorporated as part of the basis for the Court's decision.

In seeking to seal the record of future proceedings and any possible settlement in this matter, plaintiffs assert, in addition to a basic privacy concern, a strong argument that publicity regarding any settlement may cause Mr. Verni to return to New Jersey to seek use of those monies for his own purposes. The case has received significant media coverage. Any settlement would certainly be covered by the media.

Legal Analysis

The Court is mindful that a mere privacy interest is inadequate to justify sealing the public record of civil proceedings, including a settlement. Zukerman v. Piper Pools, 256 N.J. Super. 622, 628-29 (App. Div.) certif. denied, 130 N.J. 394 (1992). In Zukerman, the Appellate Division held

> [Plaintiffs'] "privacy" interests, couched in terms of being safe, secure and free from annoyance or harassment, are important personal interests, especially in light of the physical and psychological disabilities of Ethan [the minor plaintiff in that case]. However, such interests do not outweigh our State's strong public policy favoring open and accessible judicial proceedings. The Zukermans' personal interests in this case do not equate with the State's interest in protecting minors such as in cases involving trauma, embarrassment or other possible detrimental effects related to the public disclosure of sexual, physical or psychological abuse. Since the Zukermans failed to satisfy their burden of establishing an important governmental interest, they are not entitled to keep sealed what are actually public proceedings which are neither authorized by statute nor court rule to be shielded from public inquiry.

Id. 628-29. In this case, the infant plaintiff Antonia Verni suffers from equally severe injuries and certainly has similar privacy concerns. However, any settlement proceeds to be realized by her must be kept free from unlawful misappropriation as those monies are vital to her future care and support. The Court finds the parties have demonstrated by clear and convincing evidence that a significant interest exists in assuring adequate future care and support for Antonia Verni (now 9 years old), and that protecting the settlement proceeds constitutes an important governmental interest. Moreover, given the domestic violence issues already litigated to a permanent restraining order, the safety of both the adult plaintiff and the infant plaintiff also constitute an important governmental interest. By sealing the record of any potential settlement, the estranged father is far less likely to return to New Jersey and continue his unlawful behavior.

Since Zukerman, New Jersey law has demonstrated a further willingness to permit sealing of the record in situations like this. The New Jersey court rules provide for public access to court documents other than upon a showing of good cause:

> All trials, hearings of motions and other applications, pretrial conferences, arraignments, sentencing conferences (except with members of the probation department) and appeals shall be conducted in open court unless otherwise provided by rule or statute. If a proceeding is required to be conducted in open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, which shall be set forth on the record. Settlement conferences may be heard at the bench or in chambers.

R. 1:2-1. In Hammock v. Hoffman-LaRoche, Inc., 142 N.J. 356 (1995), the Supreme Court set forth standards for good cause to seal a court record or proceeding. The standard for entry of a protective order, set forth in R. 4:10-3 is also informative: "the court for good cause shown. . . may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." See Hammock, supra, 142 N.J. at 368-69, 382.

The sealing of court records and documents, whether in criminal or civil litigation, implicates the common law and First Amendment public right of access to those proceedings and materials. Therefore, there is a presumption of public access to documents and material filed with a court in connection with civil litigation. That right is not, however, absolute. The trial court has the discretion to determine whether to seal court documents or proceedings. Hammock, supra, 142 N.J. at 371, 375-76, 380; Lederman v. Prudential Life Ins. Co. of Amer, Inc., 385 N.J. Super. 307, 315-16 (App. Div. 2006); cf. Zukerman v. Piper Pools, Inc., 256 N.J. Super. 622, 626 (App. Div.), certif. denied, 130 N.J. 394 (1992).[1]

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1 Zukerman predated a 1992 amendment to R. 1:2-1, which added the good cause standard for sealing the record. In a report explaining the amendment, the Civil Practice Committee observed that Zukerman created a "dichotomy [in] that a competent adult, whose settlement need not be judicially approved, is free to negotiate a 'private' settlement whereas in the case of a minor or incompetent, the requirement of

To determine whether to seal the record, the court must conduct "a flexible balancing process," tailored to the circumstances "to determine whether the need for secrecy substantially outweighs the presumption of access." Hammock, supra, 142 N.J. at 381. "The requirements of confidentiality are greater in some situations than in others." Id. (internal quotation omitted). The burden of proof rests with the person who seeks to overcome the presumption of access, to show "by a preponderance of the evidence that the interest in secrecy outweighs the presumption." Id. at 381; see id. at 375-76, Lederman, supra, 385 N.J. Super. at 316-17. "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient." Hammock, supra, 142 N.J. at 381-82.

The public right of access to court files is particularly strong where the public interest in the issues of health, safety, and consumer fraud is promoted by disclosure. Hammock, supra, 142 N.J. at 379 (discussing whether discovery documents relating to the safety of a drug should be related to the public). In contrast, "[a]bsent presence of such important issues, the general public's right to inspect sealed private documents relating to a person's personal finances is highly suspect." In re Trust Created by Johnson, 299 N.J. Super., 415, 423 (App. Div. 1997) (prohibiting an individual, as a member of the public and remote contingent beneficiary of a trust, from accessing financial and business records of a vested beneficiary, produced to the court in connection with an intermediate accounting).

The presumption of openness of court proceedings is tempered in certain family and other proceedings in order to protect children and adults who might otherwise be harmed by

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judicial approval of the settlement forecloses, in the ordinary case, the plaintiff's privacy option." Pressler, Current N.J. Court Rules, comment 3 on R. 1:2-1 (2007).

Subsequently, in Moehring v. Maute, 268 N.J. Super. 477 (Ch. Div. 1993), the court declined to disclose the terms of a personal injury settlement entered in favor of a minor, to her estranged father, finding that information was irrelevant to a proceeding in which he sought a determination as to whether he had a continuing obligation to pay her college expenses in accordance with an order entered in a matrimonial proceeding. More recently, in Boryszewski v. Burke, 380 N.J. Super. 361, 387-88 (App. Div. 2005), certif. denied, 186 N.J. 242 (2006), the court recognized that a R. 4:44-3 hearing could potentially be conducted as a sealed proceeding, while not specifically ruling on that issue.

indiscriminate disclosure and publicity, although the possibility of mere embarrassment or reputational harm to an adult does not rise to the same level. See, e.g., N.J.S.A. 2C:25-33 (confidentiality of records of domestic violence proceedings); Div. of Youth & Family Servs. v. J.B., 120 N.J. 112, 127 (1990) (discussing circumstances in which proceedings involving children are kept confidential); Smith v. Smith, 379 N.J. Super. 447, 452-59 (Ch Div. 2004) (same).

Conclusion

The Court has carefully considered all of the competing interests and applicable law. Given the need to protect any potential settlement from misappropriation by a parent who has repeatedly demonstrated an inclination to do so, and to minimize any further domestic violence toward the severely injured child and her mother, the Court finds that sealing the balance of the record in this matter is clearly justified. As a result, the Court grants plaintiffs' application. A copy of this letter decision is being sent to all counsel who are instructed that the decision is not to be made public. On this date, the Court has read this decision into the record and ordered that the tape be sealed. Furthermore, the Court will enter the Consent Order proposed by counsel sealing the balance of the proceedings in this case.

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October 30, 2007

Hon. Robert C. Wilson, J.S.C.
Bergen County Courthouse
Justice Center
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Chambers 215
Hackensack, NJ 07601-7699

Re: Verni, et al. v. Lanzaro, et al.
Docket No. BER-L-10488-00
Motions Returnable 11/16/07

Dear Judge Wilson:

Please accept this letter on behalf of defendants Harry M. Stevens, Inc. of New Jersey ("HMS") and Aramark Services Management of New Jersey, Inc. ("AMS") in lieu of more formal response to the Notice of Motion filed by proposed intervenor Public Citizen. HMS and ASM do not object to leave being granted for Public Citizen to intervene for the limited purpose of seeking to unseal certain sealed documents or to the pro hac vice admission of Gregory A. Beck, Esq. For the following reasons, HMS and ASM respectfully ask the Court to deny Public Citizen's application to unseal the sealed portions of this record.

As a preliminary matter, Public Citizen misstates and mischaracterizes many of the underlying facts to this case. The errors in its moving papers are, however, irrelevant to the limited issue before the Court.

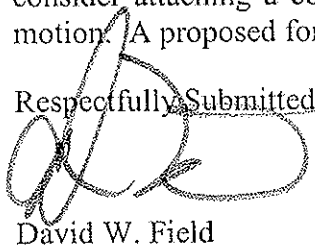
More importantly, Public Citizen mischaracterizes the proceedings which led to the decision to seal a limited number of the pleadings regarding the settlement of this matter. The Court did not enter an "umbrella sealing order" as suggested by Public Citizen. (Public Citizen Brief, p. 1.) Instead, Your Honor conducted an extensive review of the evidence offered by plaintiffs to support their application, including testimony from Albert Burstein, guardian ad litem for the infant plaintiff, and a review of the several relevant Family Court files. The reasons advanced by plaintiffs were not limited to privacy concerns which, by themselves, would not sustain the burden necessary to justify sealing public documents. Zukerman v. Piper Pools, 256 N.J. Super. 622, 628-29 (App. Div.), certif. denied, 130 N.J. 294 (1992). Plaintiffs only sought to seal the

documents relevant to the settlement and the June 1, 2007 and October 5, 2007 hearings. Out of respect to plaintiffs, HMS and ASM consented.

Nothing presented in Public Citizen's application changes the evidentiary record which justified the decision to seal the closing documents for plaintiffs' settlement. The Court's decision was not an "umbrella sealing order . . . for which the [c]ourt [did] not ma[k]e findings that concrete interests in secrecy outweigh the public's right to know." (Public Citizen Brief at p. 1.) The decision pertains to very limited number of documents and a limited issue of an otherwise extensive and complex litigation matter.

For the foregoing reasons, defendants Harry M. Stevens, Inc. of New Jersey and Aramark Services Management of New Jersey, Inc. join in plaintiffs' opposition to the motion by proposed intervenor Public Citizen to unseal the sealed portions of this record. To satisfy Public Citizen's concern that the Court's decision was not placed on the record, we ask that the Court consider attaching a copy of the June 7, 2007 decision to the Order denying Public Citizen's motion. A proposed form of Order is submitted herewith.

Respectfully Submitted,



David W. Field

DWF:bra
Enclosure
cc: Allan Y. Medvin, Esq. (w/encl.)
David A. Mazie, Esq. (w/encl.)
Gerard D. Nolan, Esq. (w/encl.)

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October 30, 2007

Honorable Robert C. Wilson, J.S.C.
Bergen County Superior Court
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Hackensack, New Jersey 07601-7699

Re: Verni v. Lanzaro, et al.
Docket No.: BER-L-10488-00
Motions Returnable: 11/16/07

Dear Judge Wilson:

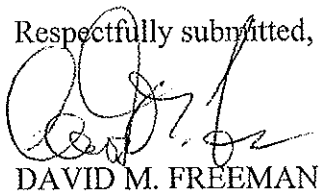
Please accept this letter on behalf of plaintiffs Fazila Verni and Antonia Verni, in lieu of a more formal response to the Motion filed by proposed intervenor Public Citizen. Plaintiffs do not object to Public Citizen's motion to intervene for the limited purpose of seeking to unseal certain sealed documents or to the pro hac vice admission of Gregory A. Beck, Esq. However, plaintiffs respectfully ask the Court to deny Public Citizen's application to unseal the sealed portions of this record because the Court's prior ruling was adequately supported.

On June 1, 2007, Your Honor heard plaintiffs' application to seal the settlement documents and related proceedings in this matter. An evidentiary hearing was held in which the Court heard compelling testimony amount our clients' privacy, safety and financial concerns. Relevant to those concerns, Your Honor also reviewed certain files from the Family Court. This clear and convincing evidence offered by plaintiffs led the Court correctly to conclude that the need for secrecy substantially outweighed the presumption of public access to those documents. See Hammock v. Hoffman-LaRoche, Inc. 142 N.J. 356, 368-369, 382 (1995).

Public Citizen's application does not change that evidentiary record. The Court's decision pertains to a very limited number of documents relating only to the settlement.

For these reasons, plaintiffs respectfully ask that Public Citizen's motion to unseal the sealed portions of this record be denied.

Respectfully submitted,



DAVID M. FREEMAN

DMF/dmc

cc: Allan Y. Medvin, Esq.
David W. Field, Esq.
Gerard D. Nolan, Esq.

(H:\DAM\Verni\Wilson ltr. re Public Citizen motion 10-30-07.doc)

MEDVIN & ELBERG
One Gateway Center
Newark, New Jersey 07102
(973) 642-1300
Attorneys for Proposed Intervenor, Public Citizen

ANTONIA VERNI, by her Guardian Ad Litem, Albert Burstein, and FAZILA VERNI, Plaintiff, vs. DANIEL LANZARO, HARRY M. STEVENS, INC. OF NEW JERSEY, ARAMARK SERVICES MANAGEMENT OF NEW JERSEY, INC., and MICHAEL HOLDER, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. BER-L-10488-00 Civil Action NOTICE OF MOTION

TO: DAVID A. MAZIE, ESQ.
MAZIE, SLATER, KATZ & FREEMAN, LLC
103 Eisenhower Parkway
Roseland, New Jersey 07068
Attorneys for Plaintiffs

DAVID W. FIELD, ESQ.
LOWENSTEIN SANDLER, PC
65 Livingston Avenue
Roseland, New Jersey 07068
Attorneys for Defendants, Harry M. Stevens, Inc. of New Jersey and Aramark Services Management of New Jersey, Inc.

GERARD D. NOLAN, ESQ.
RONCA, HANLEY, NOLAN & ZAREMBA, LLP
5 Regent Street
Livingston, New Jersey 07039
Attorneys for Defendant, Michael Holder

PLEASE TAKE NOTICE that on Friday, November 2, 2007, the undersigned attorneys for the proposed intervenor, Public Citizen, shall move before the Honorable Robert C. Wilson for an order permitting Public Citizen to intervene in the within matter for the limited purpose of moving to vacate or otherwise modify the sealing order entered by the court in this matter on June 7, 2007, and shall also move to vacate or otherwise modify the aforesaid sealing order.

Proposed intervenor Public Citizen shall rely on the attached memorandums in support of its motion to intervene and to unseal the record

Oral argument is requested.

MEDVIN & ELBERG
Attorneys for Proposed Intervenor
Public Citizen

DATED: October 10, 2007

BY: ALAN Y. MEDVIN

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
Docket No. L-10488-00

ANTONIA VERNI, by her Guardian Ad Litem, Albert Burstein, and FAZILA VERNI,

Plaintiffs,

-vs-

DANIEL LANZARO, HARRY M. STEVENS, INC. OF NEW JERSEY, ARAMARK SERVICES MANAGEMENT OF NEW JERSEY, INC., and MICHAEL HOLDER,

Defendants.

Civil Action

ORDER

The above matter having been opened to the Court by Medvin & Elberg, attorneys for proposed intervenor Public Citizen, upon application for an Order (1) allowing Public Citizen to intervene for the limited purpose of seeking public disclosure of certain sealed documents, (2) admitting Gregory A. Beck, Esq. pro hac vice and (3) unsealing those documents previously sealed by Order dated June 7, 2007, and for good cause and the reasons stated on the record and as set forth in the Court's Opinion dated June 7, 2007 (a copy of which is attached hereto),

It is on this the 16th day of November, 2007,

ORDERED that Public Citizen's motion is granted in part and denied in part; and it is further

ORDERED that leave is granted to Public Citizen to intervene for the limited purpose of seeking public disclosure of certain sealed documents; and it is further

ORDERED that Gregory A. Beck is admitted pro hac vice and a separate Order shall issue with the conditions of that admission as required by R. 1:21-2; and it is further

ORDERED that Public Citizen's motion to unseal certain documents sealed by the Court's June 7, 2007 Order is denied; and it is further

ORDERED that all documents submitted as part of the friendly hearing which was held on October 5, 2007 shall remain sealed; and it is further

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ORDERED that the Final Judgment approving the infant plaintiff's settlement shall remain sealed; and it is further

ORDERED that the tape recording the June 1, 2007 evidentiary hearing and the October 5, 2007 friendly hearing shall remain sealed; and it is further

ORDERED that the seal of the Court's June 7, 2007 Opinion shall be lifted and that document made available to the public and is attached hereto; and it is further

ORDERED that a copy of this Order be served on all counsel of record within ____ days hereof.

Hon. Robert C. Wilson, J.S.C.

PAPERS CONSIDERED

	Yes	No	Date
Notice of Motion	_____	_____	_____
Movant's Affidavits	_____	_____	_____
Movant's Brief	_____	_____	_____
Answering Affidavits	_____	_____	_____
Answering Brief	_____	_____	_____
Cross Motion	_____	_____	_____
Movant's Reply	_____	_____	_____
Other _____	_____	_____	_____

NOTICE OF APPEAL

PLEASE PRINT OR TYPE

SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

TITLE IN FULL (AS CAPTIONED BELOW):

Antonia Verni, by her Guardian Ad Litem, Albert Burstein and Fazila Verni,
Plaintiffs,
vs.

Harry M. Stevens, Inc. of New Jersey, Aramark Services Management of New Jersey, Inc. and Michael Holder,
Defendants.

Attorney or Pro Se Litigant
Name: Alan Y. Medvin
Medvin & Elberg

Address. One Gateway Center
Newark, NJ 07102
Telephone No. (973) 642-1300
Attorney for Intervenor,
Public Citizen

ON APPEAL FROM:

TRIAL COURT OR STATE AGENCY

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY

TRIAL COURT OR AGENCY NUMBER

DOCKET NO. BER-L-10488-00

TRIAL COURT JUDGE:

ROBERT C. WILSON, J.S.C.

CIVIL [x] CRIMINAL [ ] JUVENILE [ ]

NOTICE IS HEREBY GIVEN THAT Intervenor, Public Citizen, APPEALS TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, FROM THE JUDGMENT [ ] ORDER [x] STATE AGENCY DECISION [ ] ENTERED IN THIS ACTION ON 11/16/07.

IF NOT APPEALING THE ENTIRE JUDGMENT, ORDER OR AGENCY DECISION, SPECIFY WHAT PARTS OR PARAGRAPHS ARE BEING APPEALED.

HAVE ALL ISSUES AS TO ALL PARTIES BEEN DISPOSED OF IN THIS ACTION IN THE TRIAL COURT OR AGENCY? (IN CONSOLIDATED ACTIONS, ALL ISSUES AS TO ALL PARTIES IN ALL ACTIONS MUST HAVE BEEN DISPOSED OF.) YES [x] NO [ ]

IF NOT, HAS THE ORDER BEEN CERTIFIED AS FINAL PURSUANT TO R. 4:42 -2? YES [ ] NO [ ]

IN CRIMINAL, QUASI-CRIMINAL AND JUVENILE ACTIONS:

GIVE A CONCISE STATEMENT OF THE OFFENSE AND OF THE JUDGMENT, DATE ENTERED AND ANY SENTENCE OR DISPOSITION IMPOSED.

IS DEFENDANT INCARCERATED? YES [ ] NO [ ]

WAS BAIL GRANTED OR THE SENTENCE OR DISPOSITION STAYED? YES [ ] NO [ ]

IF IN CUSTODY, GIVE THE PLACE OF CONFINEMENT.

ATTACH ADDITIONAL SHEETS IF NECESSARY

NOTICE OF APPEAL AND ANNEXED CASE INFORMATION STATEMENT HAVE BEEN SERVED ON:

	NAME	DATE OF SERVICE
TRIAL COURT JUDGE	Hon. Robert C. Wilson	12/14 /07

TRIAL COURT CLERK OR STATE AGENCY

Clerk of Bergen County
Justice Center
Room 415
10 Main Street
Hackensack, NJ 07601

ATTORNEY GENERAL OR ATTORNEY FOR
OTHER GOVERNMENTAL BODY PURSUANT
TO R. 2:5-1(a), (e) or (h)

OTHER PARTIES:

NAME & DESIGNATION	ATTORNEY NAME, ADDRESS & TELEPHONE NO. DATE OF SERVICE
Plaintiffs, Antonia Verni, by her GAL, Albert Burstein and Fazila Verni	David M. Freeman, Esq. Mazie, Slater, Katz & Freeman, LLC 103 Eisenhower Parkway Roseland, NJ 07068 (973) 228-0393 Date of Service: 12/14/07
Defendants, Harry M. Stevens Inc. of New Jersey and Aramark Services Management of New Jersey, Inc.	David W. Field, Esq. Lowenstein Sandler 65 Livingston Avenue Roseland, NJ 07068 (973) 597-2356 Date of Service: 12/14/07
Co-counsel for Intervenor, Public Citizen	Gregory A. Beck, Esq. Public Citizen Litigation Group 1600 20th Street Washington, DC 20009 (202) 588-7713 Date of Service: 12/14/07

ANNEXED TRANSCRIPT REQUEST FORM HAS BEEN SERVED ON:

NAME DATE OF SERVICE AMOUNT OF DEPOSIT

TRANSCRIPT HAS BEEN PREVIOUSLY ORDERED:

COURT REPORTER'S SUPERVISOR,
CLERK OF COURT OR AGENCY

Court Transcripts 11/21/07 $200.00
Attn: Surei
Bergen County Justice Center
10 Main St., Rm. 104
Hackensack, NJ 07601

EXEMPT FROM ANNEXING THE TRANSCRIPT REQUEST FORM DUE TO THE FOLLOWING:

[ ] NO VERBATIM RECORD.

[ ] TRANSCRIPT IN POSSESSION OF ATTORNEY OR PRO SE LITIGANT. (FOUR COPIES, ALONG WITH THE COMPUTER DISKETTE FROM THE TRANSCRIPT PREPARER, MUST BE SUBMITTED.) LIST THE DATE(S) OF THE TRIAL OR HEARING.

[ ] MOTION FOR ABBREVIATION OF TRANSCRIPT FILED WITH THE COURT OR AGENCY BELOW.

[ ] MOTION FOR FREE TRANSCRIPT FILED WITH THE COURT BELOW.

I CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. I ALSO CERTIFY THAT, UNLESS EXEMPT, THE FILING FEE REQUIRED BY N.J.S.A. 22A:2 HAS BEEN PAID.

12/14/07
DATE

SIGNATURE OF ATTORNEY OR PRO SE LITIGANT

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4/01
(Page 2 of 2)
Revised 04/2001, CN 10502-English

EXHIBIT B

Judgment was initially entered on January 31, 2005 as amended by order dated March 8, 2005. An appeal was taken. The judgment was reversed and the matter was remanded for a new trial. See Verni ex. rel. Burnstein v. Harry M. Stevens, Inc. of New Jersey, et al., 387 N.J. Super. 160 (App. Div. 2006), certif. denied, 189 N.J. 429 (2007).

On remand, the claims of plaintiffs were settled. Plaintiffs moved to seal the record regarding the details of the settlements. An evidentiary hearing was held on June 1, 2007. By order and decision dated June 7, 2007, certain portions of the record were sealed.

Public Citizen moved to intervene and moved to unseal the record. By order dated November 16, 2007, the motion to intervene was granted and the motion to unseal the record was denied.

The proceedings remaining in the Law Division involve a dispute over attorneys' fees. Discovery is being taken pursuant to a case management order. An evidentiary hearing will be held, but one is presently not scheduled. As a result, this appeal was filed prematurely. R. 2:2-3; R. 2:2-4; see General Motors v. City of Linden, 279 N.J. Super. 449, 454-55 (App. Div. 1995), rev'd o.g., 143 N.J. 336 (1996); Hallowell v. American Honda Motor Co., Inc., 297 N.J. Super. 314, 318 (App. Div. 1997); Sprenger v. Trout, 375 N.J. Super. 120, 125 (App. Div. 2005).

CERTIFICATE OF SERVICE

I certify that on February 20, 2008, I served two copies of the foregoing brief by first-class mail, postage prepaid, to the last-known address of each of the following:

David A. Mazie
103 Eisenhower Parkway
Roseland, NJ 07068
Attorney for plaintiffs

David W. Field
65 Livingston Ave.
Roseland, NJ 07068
Attorney for defendants

_____
Gregory A. Beck