

## 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).<sup>1</sup>

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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<sup>1</sup> 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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