

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

REPLY MEMORANDUM IN SUPPORT OF
PUBLIC CITIZEN'S MOTION TO UNSEAL

Gregory A. Beck
On the Memorandum

In their responses to Public Citizen's motion to unseal, the parties provide only vague and generalized explanations of the purported need for secrecy in this case. Plaintiffs cite unspecified "privacy, safety, and financial concerns."

Defendants concede that concerns about privacy would not alone justify the sealing order, but assert without explanation that the reasons supporting the decision to seal "were not limited to privacy concerns." As the New Jersey Supreme Court held in *Hammock v. Hoffmann-LaRoche, Inc.*, such "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient" to justify sealing the public record. 142 N.J. 356, 381-82, 662 A.2d 546, 559 (N.J. 1995). It is the burden of the party advocating secrecy to demonstrate the need to seal, and to keep under seal, each document in the record. *Id.* at 375-76, 556.

Because the parties in this case have given *no* specific reasons that would justify keeping the record under seal, they have failed to satisfy this heavy burden.

Rather than providing any concrete reason for keeping the record under seal, both parties allude to evidence introduced in a sealed hearing, which they claim is sufficient to justify the sealing order. This sealed evidence, however, is not itself "set forth on the record" as required by Rule 1:2-1 and therefore cannot support keeping the record under seal. R. 1:2-1; *see also Hammock*, 142 N.J. at 382, 662 A.2d at 559 (holding that a court "must . . . state with particularity the facts, without disclosing the secrets sought to be protected, that currently persuade the

court to seal the document or continue it under seal”). The parties’ reliance on evidence to which only they have access makes it impossible for intervenors to respond to the claimed justifications for secrecy and underscores the importance of keeping these justifications in the public record.

Moreover, the parties have not even attempted to justify the need for secrecy as to *each document* in the record, or to show why any interest in secrecy cannot be satisfied with limited redactions. In particular, the parties have not explained the need to seal the following portions of the record:

- **The opinion justifying the court’s decision to seal the record.** As already explained, Rule 1:2-1 requires that the reasons justifying the court’s decision to seal the record be made public. Defendants concede that the court’s opinion sealing the record should be unsealed, and plaintiffs offer no reasons to the contrary. At a minimum, therefore, the opinion should be unsealed so that intervenors can effectively challenge the claimed justifications for secrecy, both in this court and, if necessary, on appeal.

- **The final judgment.** As explained in Public Citizen’s memorandum in support of its motion to unseal (at 11-12), the public’s interest in access to the record is at its height when it comes to the court’s decisions *See 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.”). The court’s final judgment in this case therefore should also be unsealed.

- **The fairness hearing and any opinions of the court approving 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 plaintiffs 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 Cendant Corp.*, 260 F.3d 183, 193-96 (3d Cir. 2001) (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 disputes 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.

- **The amount and terms of the settlement.** A settlement filed with the court is a public record. *See Bank of Am. Nat’l Trust & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 343-45 (3d Cir. 1986); *Jackson v. Del. River & Bay Auth.*, 224 F. Supp. 2d 834, 838-40 (D.N.J. 2002). In this case, it is difficult to imagine what “privacy, safety, [or] financial concerns” would justify keeping

information about the settlement, such as the amount of the settlement, under seal. The parties' general desire to keep this information secret is not sufficient. *Lederman v. Prudential Life Ins. Co., Inc.*, 385 N.J. Super. 307, 311, 897 A.2d 362, 365 (N.J. Super. App. Div. 2006) (“[P]arties’ contractual agreements do not outweigh the presumption of openness that applies to court proceedings and filed documents.”). This is especially true here, given that the amounts of previous settlements with other defendants already have been made public and were cited in the Appellate Division’s published decision. *See Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 502, 387 N.J. Super. 160, 206 (N.J. Super. Ct. App. Div. 2006). Because the public already has access to the terms of the other settlements, any interest in keeping the remaining settlement secret is seriously diminished.

- **The amount of attorneys’ fees.** 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 should be made 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 4:44-3s 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 importance. 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 North 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.

- **Transcripts of hearings and evidence submitted at those hearings.**

The parties' responses to Public Citizen's motion indicate that the court held several hearings for which the record is sealed. 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 any hearings held in this case should therefore also be unsealed.

- **Future proceedings.** The court's order seals "the balance of all proceedings" in the case." Consent Order, June 7, 2007. The parties could not have shown that any need for secrecy outweighs the public's interest in openness as to proceedings that have not yet occurred. The court should therefore vacate its order sealing future proceedings in the case.

- **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.

* * *

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, in the absence of some particular reason supporting secrecy, the mere presence of a minor in the case does not justify sealing the records. *See Zukerman v. Piper Pools, Inc.*, 256 N.J. Super 622, 607 A.2d 1027 (N.J. Super. Ct. App. Div. 1992) (unsealing a minor's settlement where the presumption of access was not overcome); *N.J. Div. of Youth & Family Servs. v. J.B.*, 120 N.J. 112, 127, 576 A.2d 261, 269 (N.J. 1990) (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”).

In this case, the parties have given no reason to believe that public access would be harmful. The facts of the case, including Antonia’s injuries, have already been made public during the course of a four-week trial and subsequent appeal. During that time, 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](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/ltn.14.html>. The parties have not shown that any sensitive information in the case remains secret, and “[t]he public should not be excluded from information already widely disseminated.” *Lederman*, 385 N.J. Super. at 321-22, 897 A.2d at 371.

CONCLUSION

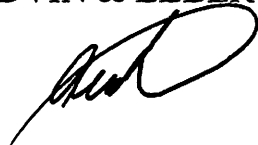
All filings currently under seal in this case should be unsealed, and the order sealing all future proceedings should be vacated or otherwise modified.

Respectfully Submitted,

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