

CORY A. HOFFMAN, as Administrator of the  
Estate of TRISHA LYN HOFFMAN, and in his  
own right,

Plaintiffs

v.

NORFOLK SOUTHERN RAILWAY  
COMPANY and PENNSYLVANIA FISH  
AND BOAT COMMISSION,

Defendants

: IN THE COURT OF COMMON PLEAS,  
: DAUPHIN COUNTY, PENNSYLVANIA

: NO. 2017-CV-4959

: CIVIL ACTION - LAW

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DAUPHIN COUNTY COURT

**MEMORANDUM OPINION**

This matter comes before the Court on the Contested Motion to Intervene and Unseal that was filed by the Patriot News/Penn Live. (hereinafter "Patriot News"). For the reasons set forth below, we DENY the Patriot News' Motion.

**SUMMARY OF ARGUMENT**

The Petition to Seal was properly granted, and Patriot News did not show good cause in order to open the sealed documents. The only documents that were sealed in the instant matter are documents related to financial information, including any settlement monies that are to be paid to Plaintiff's minor daughter. The sealed documents do not provide any information related to public safety or liability of any of the parties. The documents that are actually important to the public interest in the safety of the subject boat launch and/or the railroad crossing are still available to the public. Thus, sealing only the documents related to the settlement was narrowly tailored to serve the interest of protecting the Plaintiff's minor daughter and preventing purely financial information from being released to the public while still providing the public with the information that it needs to determine the safety of the subject boat launch and railroad crossing.

## FACTUAL AND PROCEDURAL BACKGROUND

Cory A. Hoffman, as Administrator of the Estate of Trisha Lynn Hoffman and in his own right, (“Plaintiff”) commenced a wrongful death and survival action by Complaint filed July 5, 2017 and amended on September 21, 2017. Plaintiff is the widower of the decedent, Trisha Lyn Hoffman (hereinafter “Plaintiff’s Decedent”), and Administrator of the Estate of Trisha Lyn Hoffman. Plaintiff’s Decedent died on September 5, 2016, when the vehicle she was driving collided with a Norfolk Southern freight train at a railroad crossing on Susquehanna Trail Drive in Halifax Township, Pennsylvania.

In the Amended Complaint, Plaintiff alleged that Norfolk Southern Railway Company (“Norfolk Southern”) and the Pennsylvania Fish and Boat Commission (“PFBC”) failed to safely design, construct, and maintain the railway crossing. Plaintiff alleged that the PFBC, who constructed Susquehanna Trail Drive in 1984 to connect a boat launch that it built on the Susquehanna River to State Route 147, did so in a negligent manner which rendered the crossing unsafe for motorists.<sup>1</sup> The Amended Complaint detailed the history before the Public Utility Commission (“PUC”) regarding the PFBC’s proposed design for the access road and public crossing. As to Defendant Norfolk Southern, Plaintiff alleged that Norfolk Southern, which acquired the rail line that crossed Susquehanna Trail Drive from Conrail eighteen years earlier, was negligent in its placement of signage and other steps Plaintiff asserted were necessary to render the crossing safe. Norfolk Southern contested liability and asserted, among other defenses, that it met any common law and regulatory duties it owed and all responsibilities imposed by the PUC by placing and maintaining a crossbuck sign at the crossing. Norfolk Southern further contended

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<sup>1</sup> The PFBC closed this boat launch after the death of Plaintiff’s Decedent. The boat launch has remained closed since that time.

that it met its obligation to maintain its right of way in the vicinity of the rails. Defendant PFBC denied responsibility for alleged unsafe conditions.

Both Defendants asserted that Trisha Lyn Hoffman was comparatively negligent in an alleged failure to yield the right of way to the approaching train on which lights and horn were activated.

Following the close of pleadings, five years of litigation ensued. Numerous Motions and Petitions were filed, and oral arguments were heard. All of these documents were filed on the public docket, and all of the oral arguments were conducted in open court. The documents that were publicly filed include Motions for Summary Judgment and Motions *in limine*, responses to same, and the accompanying briefs. Thus, the hundreds of pages of open filings include detailed facts, diagrams, photographs, expert reports, and legal argument, which litigated the issue of the alleged dangerous conditions at the crossing and averments of liability of the Defendants. The parties also publicly filed their Pre-Trial Statements in September 2022, which identified lay and expert witnesses and legal and evidentiary matters that were expected to be presented at the trial of this matter.

#### PUBLIC REPORTING OF THE PUBLIC FILINGS

Patriot News published several articles on the death of Plaintiff's Decedent and the safety of the subject railroad crossing and/or subject boat launch in 2016. Two articles in particular were published on or around September 9, 2016 and September 28, 2016 and authored by Christine Vendel, who is a reporter at Patriot News. These well-written articles showed excellent reporting by Ms. Vendel in interviewing and citing to various experts as to the safety of the subject railroad crossing. However, it does not appear that Patriot News published any articles on this matter or the litigation of same after 2017.

## REQUEST TO SEAL

On November 14, 2022, Plaintiff filed, on the open record, a Joint Petition to File Under Seal the Petition for Approval of Wrongful Death and Survival Action (hereinafter the “Petition to Seal”), with a Memorandum of Law in Support Thereof. On November 15, 2022, the Court, by the Honorable John F. Cherry, granted the Petition. On November 22, 2022, Plaintiffs filed the Petition for Approval of Wrongful Death and Survival Action under Seal (hereinafter the “Petition for Approval”). The Order which approved the Petition for Approval of Wrongful Death and Survival Action and the documentation of compliance with the Court’s Order remain under seal (hereinafter collectively referred to as the “Settlement Documents”).

Approximately one year later, on October 23, 2023, Patriot News filed its Contested Motion to Intervene and Unseal (“Motion to Unseal”) and Memorandum in Support Thereof. On November 20, 2023, Plaintiffs file a Response thereto and a Memorandum in Opposition. On the same date, Norfolk Southern filed a Response and a Brief in Opposition. PFBC took no position on Patriot News’ Motion to Unseal.

On February 2, 2024, Patriot News filed a Contested Motion to Compel Discovery to which Plaintiffs, Norfolk Southern, and the Commonwealth filed Responses. Ultimately, that issue did not require the Court’s ruling.

The Court heard oral argument on February 26, 2024.

## DISCUSSION

Initially, Patriot News seeks to intervene in this matter for the express purpose of unsealing the Settlement Documents. Although this was not addressed at oral argument, intervention is not required when the public is seeking to unseal the records of a completed judicial proceeding. Milton Hershey Sch. v. Pennsylvania Human Relations Comm'n, 226 A.3d 117, 123

(Pa.Cmwlt. 2020). In the instant matter, the case was marked discontinued and ended on March 20, 2023. As such, the judicial proceeding has been completed, and Patriot News is not required to formally intervene in this matter to seek the unsealing of certain documents.

Since formal intervention by Patriot News is not necessary in this case, we may instead look at Patriot News' request that the Settlement Documents be unsealed. At oral argument, Norfolk Southern raised the issue that although Plaintiff filed the Motion to Seal on November 14, 2022, Patriot News did not seek to intervene at the time of the filing or after entry of the sealing Order on November 15, 2022. Norfolk Southern noted that Patriot News had access to the parties' Petition to Seal and could have sought to intervene and oppose the Petition to Seal at or around the time that it was filed. However, Patriot News did not file their Motion to Unseal until October 23, 2023, almost a year after the Petition to Seal was filed and granted. As such, Norfolk Southern argues that Patriot News bears the burden to "demonstrate good cause" to modify the November 15, 2023 Order placing the Settlement Documents under seal. In re Estate of duPont, 606 Pa. 567, 583, 2 A.3d 516, 525 (2010). This is because a request to open records presents a very distinct issue from whether records should be sealed in the first place. Id. at 573 2 A.3d at 519.<sup>2</sup>

We find that Patriot News did not demonstrate good cause to open the Settlement Documents. We are unpersuaded by Patriot News' argument that unsealing the Settlement Documents is necessary to protect a compelling public interest in public safety. The hundreds of pages of filings since 2017, all available for public inspection, set forth the details of the respective parties' claims as to what entity or entities bore responsibility for the safety of the railroad crossing. Plaintiff and Defendant Norfolk Southern's filings cite Federal regulations, which each

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<sup>2</sup> Regardless of whether Patriot News demonstrated good cause to open the Settlement Documents, we find that the Settlement Documents were properly sealed, which will be discussed later in this Opinion.

respectively asserted apply or did not apply to the crossing. Each attached expert report supported Plaintiff and Norfolk Southern's arguments regarding the Federal regulations. As to Defendant PFBC, the filings disclose the history of public hearings before the PUC in review of the boat launch area. There are also public filings that include surveys, photographs, expert reports and legal arguments as to whether vegetation impeded view of signage.

The only documents that Patriot News cannot access are the Settlement Documents, and there is no evidence to show that opening the Settlement Documents would shed additional light on the safety of the subject railroad crossing, the subject boat launch, or the closure of the subject boat launch. The Settlement Documents contain nothing regarding public safety or information as to the specific crossing. Rather, the Petition for Approval contains basic summaries of the claims and the defenses. The open record cited at length, *supra*, contains the same and much more detailed information.

Next, unsealing would not enlighten the public as to attribution of fault. There is no information in the Settlement Documents that would give any sense of whether Defendants were liable for the death of Plaintiff's Decedent or the extent of any liability. As Counsel for Norfolk Southern stated at the hearing, the typical settlement agreement denies fault. Rather, the Settlement Documents set forth the allegations that were made, which are available in the publicly filed pleadings, the history of the case, which is also available in the publicly filed pleadings, the total settlement amount and the proposed distribution of said settlement.

In short, the only portion of the Settlement Documents that are not already publicly available is purely financial information as to the settlement amount and how the settlement monies are to be distributed. Patriot News failed to provide any reason as to why this purely financial information should be made available to the public or what useful purpose this

information would serve to the public. Rather, the public would only seek this information out of mere curiosity, which is not permitted. Katz v. Katz, 356 Pa.Super. 461, 468, 514 A.2d 1374, 1377 (1986).

As to any claim that an interest in utilization of taxpayer funds outweighs the individual privacy interest, contrary to Patriot News' suggestion, Norfolk Southern is not a government entity which would have utilized public funds in the settlement.

It may be assumed therefore that use of public funds related to the settlement on behalf of PFBC was limited by statute. PFBC, a government entity, is subject to a statutory cap which provides:

§ 8553. Limitations on damages

(b) Amounts recoverable.--Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed \$500,000 in the aggregate.

42 Pa. Stat. and Cons. Stat. Ann. § 8553. Therefore, use of public funds related to the settlement on behalf of PFBC was limited accordingly.

To the extent that Patriot News seeks to do so, the instant Motion does not properly place before the Court an argument that the sealing order contravenes the Right-to-Know Law, 65 P.S. §§ 67.101. Our review of the propriety of sealing is distinct from requests under the Right-to-Know Law.

In its Motion to Unseal, Patriot News asserts that PFBC denied its request for a copy of the settlement agreement as exempt from access because the Court had sealed the Settlement Documents. The June 2, 2023, response of the PFBC Agency Open Records Officer provided:

Our review is complete and your request is denied because you are asking for records that are not public information. Under 65 P.S. § 67.708(b)(17)(vi)(A), a record that if disclosed would do any of the following is exempt from access by a requester:

“Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is deemed confidential by the court and is therefore exempt from disclosure.

(Patriot News/Penn Live Motion to Intervene and Unseal, Exhibit B). This response notified the requester, Patriot News, of the appeal procedure.

The instant filing does not constitute a request for judicial review of the denial of disclosure by PFBC. “A requester seeking review of a final determination by the designated appeals officer is entitled to “judicial review by the appropriate court of common pleas under Section 1302 of the RTKL, 65 P.S. § 67.1302.” Kyziridis v. Off. of Northampton Cnty. Dist. Att’y, 308 A.3d 908, 912 (Pa. Cmwlth. 2024). The trial court must “render its own findings of fact and conclusions of law ....” Id. at 912; In re Bochetto & Lentz, No. 1445 C.D. 2022, 2024 WL 2043295, at \*3 (Pa. Commw. Ct. May 8, 2024). Therefore, PFBC’s denial of the request for settlement information has no bearing upon our analysis.

Regardless of whether Patriot News has demonstrated good cause for opening the Settlement Documents, we find that the parties sufficiently showed good cause to seal the Settlement Documents in the first place, and they should remain sealed for that reason. Pennsylvania Courts have long held that there exists a common law right of access to judicial proceedings and inspection of judicial records. R.W. v. Hampe, 426 Pa. Super. 305, 310, 62 A.2d 1218, 1220 (1993) (citations omitted). However, this right is not absolute, and courts have supervisory power over their own files and records. In re 2014 Allegheny Cnty. Investigating



Grand Jury, 656 Pa. 589, 598, 223 A.3d 214, 220 (2019). Access to certain documents or files can be denied when the presumption of openness is outweighed by circumstances warranting closure. Id. at 599, 223 A.3d at 220. Additionally, courts may deny access where such access may “become a vehicle for harmful or improper purposes.” Katz at 468, 514 A.2d at 1377.

There are two methods to analyze requests for closure of judicial proceedings: one based on common law and one based on the First Amendment of the United States Constitution. In re M.B., 819 A.2d 59, 63 n. 2 (Pa. Super. Ct. 2003). Analysis under the common law requires a balancing test where the Court has to balance the harm to the party seeking closure with the importance of disclosure to the public. Id. (citations omitted). The party seeking closure bears the burden to show that his or her interest in secrecy outweighs the presumption of openness. Id. (citations omitted).

Under the Constitutional law approach, the party seeking to seal the record must show that “closure serves an important governmental interest, and there is no less restrictive way to serve that interest.” Id. (citations omitted).

To satisfy these requirements, the party seeking closure must demonstrate that the material is the kind of information that the courts will protect and that there is good cause for the order to issue. A party establishes good cause by showing that opening the proceedings will work a clearly defined and serious injury to the party seeking closure. We have emphasized that only a *compelling* government interest justifies closure and then only by a means narrowly tailored to serve that interest.

Id. at 63 (internal citations omitted, emphasis in original). The Constitutional law approach is generally applied in cases where the press or another interested party is seeking access to the proceedings. See, e.g. PA Childcare, LLC v. Flood, 887 A.2d 309 (Pa. Super., 2005); Compare with Zdrok v. Zdrok, 829 A.2d 697, 699-700 (Pa. Super. 2003) (“Because the instant request for closure does not involve the press, nor has Appellant made a constitutional challenge, and the issue

before us can be resolved under the common law, we need not engage in the constitutional analysis.”)

Pennsylvania Rule of Civil Procedure 223 states that the Court has the authority to exclude the public or persons not interested in the proceedings “whenever the court deems such regulation or exclusion to be in the interest of the public good, order, or morals.” Pa. R.C.P. 223(4). It has previously been held that the public can be “excluded, temporarily or permanently, from court proceedings or the records of court proceedings to protect private as well as public interests: to protect trade secrets, or the privacy and reputations [of innocent parties] as well as to guard against risks to national security interests, and to minimize the danger of an unfair trial by adverse publicity.” Katz at 468, 514 A.2d at 1377 (citations omitted). These aren’t necessarily the only situations where the public can be excluded, and the decision as to public access rests in the discretion of the court. Id. The determination will not be reversed absent an abuse of discretion. Id. at 474, 514 A.2d at 1381.

One specific type of proceeding that can be closed under the law is a proceeding to declare a person incapacitated. In re: Estate of DuPont, 606 Pa. 567, 2 A.3d 516 (2010). The Pennsylvania Supreme Court has noted that incompetency proceedings “necessitate the exposure of inherently private, personal information—such as detailed financial, medical, and psychiatric records...” Id. at 575–76, 2 A.3d at 521. Privacy is needed in an incapacity hearing because the evidence, if made public, could result in embarrassment and harassment of the incapacitated person and the others involved in managing his estate. Id. at 576, 2 A.3d at 521.

Divorce cases are another type of proceeding where closure has been allowed upon a showing of good cause. Katz at 472, 514 A.2d at 1380. This is because the subject matter of divorce litigation involves matters which are essentially private in nature and lack any useful

public purpose. Id. This includes details of the failed marriage as well as the financial status of each of the parties. Id. at 473, 514 A.2d at 1380. Additionally, the subject matter of divorce cases often serves only to embarrass and humiliate the parties. R.W. at 314, 626 A.2d at 1222 (citations omitted).

Finally, Courts have been very protective of minors and have allowed closure in cases that involved a minor's privacy interests. The Pennsylvania Superior Court has noted that minor's privacy interests are specially protected by statute. Id. at 315, 626 A.2d at 1223. Specifically, the general public is excluded from hearings held under the Juvenile Act for the valuable reason of protecting the privacy interests of minors. Id. at 314, 626 A.2d at 1222 (citations omitted). Closure has also been allowed in dependency proceedings, because of the compelling interest in the protection of children and their privacy. M.B. at 64 (citations omitted). Finally, the Pennsylvania Commonwealth Court has allowed certain documents to remain sealed that involve the medical and educational information of minors because those documents implicated serious privacy concerns. Milton Hershey Sch. v. Pennsylvania Human Relations Comm'n, 226 A.3d 117, 129 (Pa.Cmwlt. 2020)

In the instant matter, Patriot News initially argues that they have a constitutional right to access the Settlement Records based on the experience and logic test. The experience and logic test was adopted to establish whether the constitutional right of access attaches in the first place, i.e. if the place and process has historically been open and if public access plays a significant positive role in the function of the process in question. Grand Jury at 601, 223 A.3d at 222. However, even if Patriot News has a right of access, that right is not absolute "as it may be overcome by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." Id. (citations omitted). Since there does not

seem to be a dispute that the Settlement Documents would be accessible by the public but for the Order to Seal, it seems clear that the general presumption of openness applies to the documents at issue, and there is no need to employ the “experience and logic” test.

Since access to the Settlement Documents is presumed to be open, we must determine whether that presumption has been rebutted by Plaintiffs and Defendants. In order to rebut the well-established presumption of openness, a party must demonstrate good cause which exists where closure is “necessary in order to prevent a clearly defined and serious injury to the party seeking [closure]” R.W. at 312, 626 A.2d at 1221 (citations omitted). “[G]eneral concerns for harassment or invasion of privacy” are not sufficient to support closure. *Commonwealth v. Long*, 592 Pa. 42, 922 A.2d 892, 906 (2007) (citations omitted).

In the instant matter, Patriot News argues that the parties did not and cannot overcome the presumption of openness because mere embarrassment is insufficient to support sealing a document. This argument does not reflect the actual allegations in the Petition to Seal, which sets forth a clearly defined and serious injury in that Plaintiff and his young daughter have already received harassment and blame online and in person for the closure of the subject boat launch. Disclosure of purely financial information that is tangentially related to the closure of the boat launch could very well intensify this harassment and subject the Plaintiff and his young daughter to harm. In fact, as noted in Patriot News’ brief, “[t]he Commonwealth has a vital interest in protecting its citizens from harm.” Com. v. Howe, 842 A.2d 436, 446 (Pa. Super. Ct. 2004).

In short, this Court finds that the parties have met their burden of demonstrating good cause for sealing the Settlement Documents. As noted above, the courts in Pennsylvania have frequently found that a minor’s privacy rights are an important government interest, and financial information constitutes private information. Additionally, the Plaintiff set forth facts to

show that he had already experienced harassment as a result of the filing of the lawsuit, and he wanted to keep the financial information of the settlement private so he would not be subject to further harassment over the money that he and his daughter received.

In contrast to Patriot News' claims, this is not a case where a Plaintiff generally alleges that he might experience harassment if the public discovers the amount that he received from a settlement. Rather, this is a case where a widower, who has been diagnosed with Post Traumatic Stress Disorder after watching his wife perish in front of him, and his seven-year-old daughter, who lost her mother only a few months after she was born, have already experienced harassment and blame from the public as a result of this case and may experience intensified harassment if the Settlement Documents are made public. Based on these facts, protecting the Plaintiff and his minor child from further harassment and protecting the little privacy that they have in this case serves the compelling government interests of protecting minor children, protecting privacy interests, and protecting citizens of this Commonwealth from harm.

These facts also greatly outweigh any presumption of openness. In addition to protecting the Plaintiff and his daughter, the settlement was conditioned on confidentiality. It is axiomatic that courts have a policy in encouraging fair and amicable settlements of civil cases. Although this is not determinative on its own, it is a fact to consider when weighing the parties' interest in secrecy against the presumption of openness.

Moreover, if Plaintiff's Decedent had not died, then the Settlement Documents never would have been filed. The only reason that the Settlement Documents were filed was because Plaintiff's Decedent died, and Pennsylvania Rule of Civil Procedure 2206 requires that a Petition to Settle be filed in a wrongful death case involving a minor in order to protect the interests of the minor who would receive settlement monies. In the instant matter, it would be inconsistent

to require the Settlement Documents to be opened to the public when the only reason they were filed was to provide protection for the minor child. Opening the Settlement Documents would disregard the express purpose of protecting the minor child.

Additionally, as noted above, there is no information in the Settlement Documents that is of any use to the public. The Settlement Documents do not assign liability, apportion liability or even admit liability of any party. They say nothing about the safety of the subject boat launch or the railroad crossing. They also say nothing about government accountability or a definitive reason as to why the accident occurred. Thus, given the weighty reasons in favor of sealing the Settlement Documents, and the negligible public interest in unsealing the Settlement Documents, we find that the parties' interest in sealing the Settlement Documents greatly outweighs the presumption of openness.

Furthermore, the only documents that were sealed are the documents related to the financial information, including any settlement monies that are to be paid to Plaintiff's minor daughter. The documents that are actually important to the public interest in the safety of the subject boat launch and/or the railroad crossing are still available to the public. Thus, the relief was narrowly tailored to serve the interest of protecting the Plaintiff's minor daughter and preventing purely financial information from being released to the public while still providing the public with the information that it needs to determine the safety of the subject boat launch and train crossing.

For these reasons, we hereby enter the following Order:

CORY A. HOFFMAN, as Administrator of the Estate of TRISHA LYN HOFFMAN, and in his own right,

Plaintiffs

v.

NORFOLK SOUTHERN RAILWAY COMPANY and PENNSYLVANIA FISH AND BOAT COMMISSION,

Defendants

: IN THE COURT OF COMMON PLEAS,  
: DAUPHIN COUNTY, PENNSYLVANIA

: NO. 2017-CV-4959

: CIVIL ACTION - LAW

2024 JUN 25 PM 11:02  
DAUPHIN COUNTY  
PENNSYLVANIA

**ORDER**

AND NOW, this 25<sup>th</sup> day of June, 2024, upon consideration of the Contested Motion to Intervene and Unseal that was filed by The Patriot News/Penn Live and all responses filed thereto, and having heard oral argument on February 26, 2024, it is hereby ORDERED as follows:

For the reasons set forth in the attached Memorandum Opinion, The Patriot News/Penn Live's Motion to Unseal is DENIED.

BY THE COURT:

\_\_\_\_\_  
Andrew H. Dowling, J.

I hereby certify that the foregoing is a true and correct copy of the original filed.

\_\_\_\_\_  
Matthew R. Krueger  
Notary

JUN 25 2024

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