

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

v.

NORFOLK SOUTHERN RAILWAY
COMPANY and PENNSYLVANIA
FISH AND BOAT COMMISSION,

APPEAL OF THE PATRIOT-
NEWS/PENNLIVE

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Trial Ct. No. 2017-CV-4959
NO. 1162 C.D. 2024

BRIEF FOR APPELLANT

Appeal from the Memorandum and Order of the Court of Common Pleas of
Dauphin County, entered on June 25, 2024

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STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction to review the final Orders of the Court of Common Pleas, Dauphin County (which itself had jurisdiction under Title 42, Chapter 85 of the Consolidated Statutes), pursuant to 42 Pa. C.S. § 762(a)(4)(i) and Pa.R.A.P. 341(a), (b)(3), and (c).

ORDER IN QUESTION

The Patriot-News/PennLive (“PennLive”) seeks review of the Memorandum and Order entered by the Court of Common Pleas, Dauphin County, on June 25, 2024. Appendix 1 attached hereto and Reproduced Record R139a.¹ That order denied PennLive’s Motion to Intervene and Unseal the Settlement Agreement. *Id.*

SCOPE OF REVIEW AND STANDARDS OF REVIEW

This Court’s review of decisions of the Court of Common Pleas “is limited to a determination of whether constitutional rights have been violated or whether the common pleas court abused its discretion or committed an error of law.” *Mann v. City of Philadelphia*, 563 A.2d 1284, 1286 (Pa. Commw. Ct. 1989). For questions of law, this Court's scope of review is plenary. *In re Johnson*, 254 A.3d 796, 798 n.2

¹ Pursuant to Pa.R.A.P. 2152(a) and 2132, with the exception of documents 216–222 of the record, which are sealed and only accessible to court staff and cannot be included, the relevant docket entries and any relevant portions of the record are attached to this brief in the reproduced record. Hereafter, citations to (R__a) refer to the pages in the reproduced record where those parts appear.

(Pa. Commw. Ct. 2021); *York Newspapers, Inc. v. City of York*, 826 A.2d 41, 44 (Pa. Commw. Ct. 2003); *Commonwealth v. Selenski*, 996 A.2d 494, 496 (Pa. Super. Ct. 2010) (“The threshold consideration of whether there exists a common law or constitutional right of public access to a judicial proceeding raises a pure question of law. Our standard of review, therefore, is *de novo*, and our scope of review is plenary.”).

STATEMENT OF QUESTIONS INVOLVED

Question: Did the trial court err by sealing, and/or maintaining the seal on, the portions of a settlement agreement in the judicial record relating to the payment of taxpayer funds, despite a Pennsylvania statute requiring disclosure of such settlements absent the seal, particularly in a case involving matters of public interest?

Suggested Response: Yes.

Question: Did the trial court err by sealing a settlement agreement without making a finding of good cause, and later, on a motion to unseal, finding good cause based on mere allegations and speculation about harm, without any evidence of harm?

Suggested Response: Yes.

Question: Did the trial court err by failing to analyze whether there is a *constitutional* right of access after finding that there is no *common law* right of

access, and by failing to conclude that the constitutional right of access requires unsealing in this case, given the presumption of openness of judicial records guaranteed by the First Amendment to the United States and Pennsylvania Constitution?

Suggested Response: Yes.

STATEMENT OF THE CASE

The Patriot-News/PennLive is a Central Pennsylvania news outlet that provides coverage online and in print to readers throughout the Harrisburg area.

R105a. PennLive covers significant events impacting Central Pennsylvania, including the tragic death that occurred in Dauphin County at the center of this lawsuit. *Id.*

In 2016, Trisha Hoffman died when her vehicle collided with a train as she was leaving the boat ramp at Susquehanna Trail Drive and Route 147 in Halifax. *Id.* Ms. Hoffman was a new mother and was survived by her three-month old child and husband. R025a. PennLive published numerous articles, including video coverage, about Ms. Hoffman's death and her widower Cory Hoffman's subsequent litigation against Norfolk Southern Railway Company ("Norfolk Southern") and the Pennsylvania Fish and Boat Commission ("PFBC") for wrongful death, survivor's

action, negligence, and other claims.² *Id.* Mr. Hoffman filed suit against PFBC and Norfolk Southern (together, the “Parties”) on July 5, 2017, as administrator for the Estate of Trisha Lyn Hoffman and in his own right, as well as on behalf of his infant daughter.³

After significant litigation, on November 14, 2022, the Parties filed a Joint Petition to File under Seal the Plaintiff’s Petition for Court Approval of the Wrongful Death and Survival Action Settlement (the “Settlement Agreement”). R090a. In the Joint Petition, the Parties stated that because “Court approval is required” of settlements in wrongful death and survival actions, the Parties had to seek an Order from the Court granting them permission to file the settlement records under seal. The Parties also pointed to a term of the release between Norfolk Southern and the Plaintiff stating that “Plaintiff [will] take every step to keep the amount of the settlement confidential.” R091a. The Joint Petition further alleged that “confidentiality is vitally important to” the Plaintiff because members of the community “blamed the victim” for the closure of the boat launch. *Id.*

² PennLive’s coverage was so significant that it even became part of a motion *in limine* filed by Defendant Norfolk Southern, which sought to exclude videos and news coverage produced by PennLive. See December 2, 2019 Omnibus Motion *in Limine* of Norfolk Southern Railway. R068a.

³ This initial lawsuit was filed at Civil Action No. 2017-CV-4959. R001a. Mr. Hoffman filed a subsequent lawsuit on August 28, 2018 which was docketed as No. 2018-CV-5783. The two cases were consolidated through a court order dated October 8, 2018. R065a.

The very next day after the filing of the Joint Petition, on November 15, 2022, Hon. John F. Cherry granted it.⁴ Judge Cherry’s order consisted of a single sentence granting the petition. It contained no explanation or reasoning, let alone an analysis or even a finding of good cause to seal. R101a.

On November 22, 2022, the Parties filed under seal a Petition for Approval of Wrongful Death and Survival Action Settlement and on the same day the trial court issued an order approving that petition. R103a, 467a. On March 13, 2023, the trial court issued an order sealing the affidavits of compliance. R103a, 467a. On March 27, 2023, the Plaintiff filed a praecipe to discontinue the action. R104a.

In an effort to provide its readers with information about the resolution of the case, staff for PennLive attempted to obtain a copy of the Settlement Agreement with Defendant PFBC, a state agency, through Pennsylvania’s Right to Know Law (65 P.S. §§ 67.101 *et. seq.*) (“RTKL”). R106a. On June 2, 2023, the PFBC denied PennLive’s RTKL request, stating that “[t]his settlement agreement was deemed confidential by the court and is therefore exempt from disclosure.” *Id.*

Thereafter, on October 23, 2023, PennLive sought recourse by filing a motion to intervene and unseal with the trial court. R105a. Per the Dauphin County local rules, PennLive’s counsel sought concurrence from the Parties. Plaintiff and Norfolk

⁴ The order was signed by the court on November 15, 2022, but docketed at the Prothonotary’s office November 16, 2022.

Southern opposed, while PFBC took no position on unsealing. R117a. Plaintiff and Norfolk Southern filed opposition briefing. Plaintiff's opposition alleged safety concerns for Mr. Hoffman and his now-seven-year-old child. R155a. Norfolk Southern echoed Plaintiff's claim about safety concerns, alleging substantial public controversy relating to closing a boat ramp that accompanied resolution of the case. R186a.

On November 30, 2023, the trial court (Hon. John F. Cherry) set a hearing and argument on PennLive's Motion to Intervene and Unseal. The Court advised the Parties that "[t]o the extent that counsel seek to present facts in support of legal argument, please be prepared to present witnesses and/or evidence accordingly." R196a.

Plaintiff's counsel then advised that his client, Mr. Hoffman would testify at the hearing. R239a. PennLive then sought to depose Mr. Hoffman in advance of the hearing, in order to prepare for cross-examination at the hearing, but Plaintiff refused to produce him for deposition. *Id.* PennLive then filed a motion to compel the deposition. R238a.

The motion to compel remained pending at the start of the hearing, which took place on February 26, 2024, before Hon. Andrew H. Dowling.⁵ However, although

⁵ On February 21, 2024 Judge Dowling was assigned the case, replacing Judge Cherry. February 21, 2024 order, R303a.

Mr. Hoffman attended the hearing in its entirety, Plaintiff did not present testimony by him (or any other evidence) at the hearing. H'rg Tr. 31:12–32:5, R313a. In fact, none of the Parties presented testimony or other evidence. The Parties chose to present only oral argument. R304–14a.

On June 25, 2024, the trial court denied PennLive's motion to intervene and unseal. On July 25, 2024, PennLive filed a notice of appeal with the Superior Court. R335a. However, because an appellee is a state agency, the court transferred the appeal to the Commonwealth Court.⁶ R384a.

ARGUMENT

By this appeal, the Court has the opportunity to reverse an opinion that ignores established law and stands to erode transparency in a settlement process that Pennsylvania requires judges to scrutinize for fairness.

This Court should reverse the decision below and remand with instructions to unseal the Settlement Agreement for any or all of the following reasons.

First, the portions of the Settlement Agreement concerning the Pennsylvania Fish and Boat Commission—a state agency—involve taxpayer funds and therefore must be disclosed under Pennsylvania's Right to Know Law.

⁶ On August 22, 2024, PennLive filed an Unopposed Application to Transfer to the Commonwealth Court. R377a.

Second, when it sealed the settlement agreement, the trial court made no finding of good cause, instead granting the motion one day after it was filed, in a one-sentence opinion with no findings or reasoning. Moreover, when it ruled on PennLive’s motion to unseal the settlement agreement, the trial court impermissibly relied on allegations of *speculative* harm, rather than any evidence of harm, in support of its erroneous finding that PennLive lacked good cause to unseal. Therefore, the Court should find that the trial court erred in denying PennLive’s motion to intervene and unseal the settlement agreement in an admittedly newsworthy case.

Third, the trial court erred by failing to analyze whether there is a constitutional right of access, let alone find that it applies and requires unsealing here. A court that finds that there is no common law right of access must analyze whether there is a constitutional right of access to the Settlement Agreement in its entirety.

I. The Portions of the Settlement Agreement Involving Taxpayer Funds Must Be Disclosed Given Pennsylvania’s Right to Know Law and the Strong Presumption Against Sealing Here

The trial court erred in maintaining the seal on portions of the Settlement Agreement with the PFBC—a state agency—despite the fact that those portions of the Settlement Agreement concern public funds. Under the RTKL, settlements involving taxpayer funds are required to be disclosed and cannot be concealed by

agreement of the parties, absent a court-ordered seal. Moreover, as a matter of common sense, the financial aspects of settlements in cases involving the public interest are matters of public concern.

In effect, the trial court’s decision permits Plaintiff and Norfolk Southern—two private parties—to improperly “contract around state law” and thwart the public’s access to an agreement that involves taxpayer funds and is thus “squarely carved out from the RTKL’s list of exemptions.” *Houseknecht v. Young*, No. 4:20-CV-01233, 2023 WL 5004050, at *3 (M.D. Pa. Aug. 4, 2023); *Newspaper Holdings, Inc. v. New Castle Area Sch. Dist.*, 80 Pa. D. & C.4th 95, 101 (Pa. Ct. Com. Pl., Lawrence Cnty. 2006), *aff’d*, 911 A.2d 644 (Pa. Commw. Ct. 2006) (finding settlement agreements that “call[] for the payment of money involving the disbursement of public funds” are “subject to disclosure pursuant to the Pennsylvania Right to Know Law[,] and “[t]he public’s right of access cannot be contracted away by the Parties in such a settlement agreement”).

The trial court discounted the importance of the financial terms of the settlement with PFBC, on two erroneous grounds.

First, the court incorrectly concluded that “purely financial” information need not be disclosed because, according to the court, such information serves no useful purpose. R319a. That conclusion is flatly contradicted by established statutory and

case law cited above, all of which expressly provides that the public has a right to know the financial terms of a settlement involving a government agency.

The Pennsylvania legislature has determined that disclosure of the financial terms of at least some settlements serve a useful purpose; namely, informing the public of how its government utilizes public funds. This information allows the electorate to judge the wisdom of the decisions of public officials in making such expenditures—a process central to the democratic process. One of the stated purposes of the Right to Know Act is to make agencies of the Commonwealth accountable for their use of public funds. *Korczakowski v. Hwan*, 68 Pa. D. & C.4th 129, 134 (Pa. Ct. Com. Pl., Lackawanna Cnty. 2004) (citation omitted).

Moreover, when the subject matter of the underlying litigation is a matter of public concern, such as public safety at issue here in an allegedly unsafe railroad crossing where Ms. Hoffman lost her life, or the closure of a popular public recreational facility, an even stronger presumption of access arises. *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 788 (3d Cir. 1994) (“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”); *see also Korczakowski*, 68 Pa. D. & C.4th at 134 (denying the parties’ motion to seal a settlement agreement because the financial terms of a

malpractice settlement against a health care provider were “information important to public health and safety” and “matters of legitimate public concern”).

Despite the clear public interest at issue here, the trial court erroneously allowed Plaintiff and Norfolk Southern to contract around state law and thwart the public’s rights of access.

Second, the trial court based its refusal to unseal in part on its finding that “PFBC, a government entity, is subject to a statutory cap” of \$500,000 in damages. R325a (quoting 42 Pa. C.S. § 8553). That statute is not applicable to PFBC, which is a Commonwealth party.⁷ Moreover, even if the statute did apply to the PFBC, the existence of a statutory cap would be irrelevant. The above-mentioned statutory provision, which requires disclosure of settlement agreements with governmental agencies calling for the disbursement of public funds, absent a judicial sealing order, has no exception for settlements based on their dollar amounts. Nor is there any justification for the trial court to create such an exception. Furthermore, \$500,000 is not a trivial sum, and even if it were, it would be of interest to the public to know, for example, whether the PFBC paid the maximum amount allowed.

⁷ 42 Pa. C.S. § 8553 is inapposite. It applies to actions against local parties, or “[a] government unit *other than the Commonwealth government* . . . [that] includes, but is not limited to, an intermediate unit; municipalities cooperating in the exercise or performance of governmental functions, powers or responsibilities” See 42 Pa. C.S. § 8501; 42 Pa. C.S. §§ 8541–64 (Subchapter C. Actions Against Local Parties) (emphasis added). However, PFBC is a Commonwealth party, or “a Commonwealth agency.” 42 Pa. C.S. § 8501.

Indeed, the portions of the Settlement Agreement concerning PFBC and the disbursement of public funds to Plaintiff would be accessible under the RTKL but for the sealing order in this case. Thus, there is a strong presumption against maintaining the sealing order. *See Pansy*, 23 F.3d at 791 (holding “where it is likely that information is accessible under a relevant freedom of information law, a strong presumption exists against granting or maintaining an order of confidentiality whose scope would prevent disclosure of that information pursuant to the relevant freedom of information law.”).

That strong presumption “tilts the scales heavily against” maintaining the sealing order. *Id.* To overcome the presumption, the Parties must demonstrate a confidentiality interest that arises under federal law or one that Pennsylvania state courts would deem sufficient to override the RTKL’s disclosure mandate. *See id.* at 792 n.32. As discussed further, *infra*, no party has adduced evidence to support any confidentiality interest, let alone one that meets this high bar.

The court noted that it lacks authority to review the denial of disclosure by PFBC itself under the RTKL. R326a. But that conclusion is beside the point. PennLive did not ask the court to act as an appellate court. PennLive asked the trial court to analyze the issue under the RTKL (and other grounds) in the first instance

and evaluate the Parties' interests in maintaining the seal.⁸ The lower court's failure to do so at all (in response to the Joint Petition to seal) and its later failure to do so properly (in response to the motion to unseal) was contrary to the law.

Indeed, even the PFBC itself did not object to PennLive's request to unseal the Settlement Agreement. As counsel for PFBC stated, "the Commonwealth took no position on PennLive's motion" to unseal. H'rg Tr. at 25:15–23, R311a. PFBC readily conceded at the hearing that the court's sealing "was the only basis for [its prior] denial under the Right-to-Know" Law of PennLive's request for the Settlement Agreement. *Id.*

The trial court recognized that it is the Parties' burden to overcome the presumption of openness here. However, the trial court erroneously found that the Parties overcame that presumption. While the Parties have cited an alleged interest

⁸ Prior final determinations of the Office of Open Records ("OOR") demonstrate that if records are sealed by a court order the OOR will not order them released under the RTKL. *Hinton v. Northumberland County*, OOR No. AP 2013-1533, at *6 (Sept. 26, 2013), available at: <https://www.openrecords.pa.gov/Appeals/DocketGetFile.cfm?id=48725> ("the OOR is constrained to hold that the requested settlement agreement is not presently subject to disclosure under RTKL" when a court order seals such agreement); *see also McClintick v Huston Twp. Mun. Auth.*, OOR No. AP 2020-0622, at *4–5 (May 21, 2020), available at <https://www.openrecords.pa.gov/Appeals/DocketGetFile.cfm?id=50035>. Furthermore, this Court in an unreported opinion affirmed the OOR's summary dismissal of a RTKL request based upon the existence of a court order. *Cluck v. Dep't of Conservation & Nat. Res.*, 247 A.3d 1197 (Pa. Commw. Ct. 2021) (affirming the OOR's denial in part of petitioner's appeal that sought access to "a federal court order that by judicial decree is under seal" because by virtue of the court sealing it was, "therefore, [] not a public record as defined by Section 102 of the RTKL"). There is no obligation to appeal an RTKL denial to the OOR before moving to intervene to unseal court records. And even if there were such an obligation (and there is not), PennLive effectively exhausted its administrative remedies and thus required intervention from this Honorable Court. *Id.*

in confidentiality and briefly described their speculative concerns of generalized harm, those arguments are insufficient. R156a; R176–77a. The Parties have not made a showing anywhere near sufficient to overcome the fact that a portion of these records would otherwise be available under the RTKL. Allowing the Settlement Agreement to remain sealed undermines the public’s right of access. Accordingly, the trial court’s decision should be vacated so that this case does not “illustrate[] how confidentiality orders can frustrate, if not render useless, federal and state freedom of information laws.” *Pansy*, 23 F.3d at 791.

II. The Parties Failed to Provide Evidence to Rebut the Presumption of Openness and Maintain the Seal on the Settlement Agreement

In initially sealing, and subsequently refusing to unseal, the Settlement Agreement, the Court of Common Pleas followed a well-worn, but unacceptable path: “facilitat[ing] settlement without sufficiently inquiring into the potential public interest in obtaining information concerning the settlement agreement.” *Pansy*, 23 F.3d at 785–86. When the court granted the joint petition to seal, it improperly made no findings whatsoever. When the court denied the motion to unseal, it made findings impermissibly based on mere allegations and speculation.

In order to seal a judicial record, the trial court must make on-the-record findings that articulate adequate reasons to justify closure and explain its consideration of less-restrictive alternatives. *See Commonwealth v. Upshur*, 924

A.2d 642, 651 (Pa. 2007); R101a. However, here the court utterly failed to do so. Instead, the Court’s November 15, 2022 order (docketed Nov. 16, 2024) simply adopted the parties’ request to seal in a two-sentence order without any findings or reasoning. The first sentence stated only: “AND NOW, this 15th day of November, 2022, upon consideration of Joint Petition Seeking Permission to File Plaintiff’s Petition for Court Approval of the Settlement of this Wrongful Death and Survival Action Under Seal, and any Response thereto, it is hereby ORDERED that Petition is granted.” *Id.* The second sentence of the order merely directed the Prothonotary to seal specified documents. *Id.*

“Sealing of court records is not a perfunctory judicial task that” should be “automatically granted by agreement of the Parties or at the request of a party.” *Moore v. JB Hunt Transport, Inc.*, No. 2024 CV 3773, 2024 WL 3363154, at *1 (Ct. Com. Pl., Lackawanna Cnty. 2024). However, that is exactly what the trial court did here.

Moreover, its later denial of PennLive’s motion to unseal is impermissibly based on speculation and the repeated, erroneous conclusion that purely financial settlement provisions cannot warrant disclosure. The lower court misinterpreted and misapplied the law.

On a motion to unseal, the proponent of the sealing must present “*current evidence*” proving how the unsealing would cause the alleged harm. *Dobson v.*

Milton Hershey Sch., 434 F. Supp. 3d 224, 233 (M.D. Pa. 2020) (quoting *In re Cendant Corp.*, 260 F.3d 183, 196 (3d Cir. 2001)) (emphasis added) (“continued sealing must be based on ‘current evidence to show how public dissemination of the pertinent materials now would cause the [] harm [they] claim.’”). Neither Norfolk Southern nor Plaintiff provided any evidence, let alone current evidence, needed to show the good cause to rebut the presumption of openness.

Norfolk Southern opposed unsealing with weak, completely unsupported assertions about the importance of confidentiality in crafting the Settlement Agreement. *See* R253a. Yet the trial court found this weak assertion persuasive. R331a. (finding the fact that “the settlement was conditioned on confidentiality” as a factor outweighing the presumption of openness). It is not. Norfolk Southern cannot contract around the public’s right to know merely by including a confidentiality provision in the Settlement Agreement. *Trib.-Rev. Publ’g Co. v. Westmoreland Cnty. Hous. Auth.*, 833 A.2d 112, 117, 120–21 (Pa. 2003) (finding “[t]hat the litigation settlement . . . contains a confidentiality clause, does not vitiate the public nature of the document” and holding that the “policy determination [of] this Commonwealth that favors disclosure of public records over the general policy of encouraging settlement.”); *see PA ChildCare LLC v. Flood*, 887 A.2d 309, 313 (Pa. 2005) (holding the trial court “manifestly abused its discretion in refusing to

vacate its previous sealing order” due to “weak assertions” that “appear to be nothing more than a ruse to prevent public exposure.”).

Plaintiff’s claims in support of sealing were similarly unavailing. Plaintiff relied on speculative claims about the harassment or embarrassment that might befall him and his family if the Settlement Agreement were to be unsealed. R155a. However, Plaintiff never demonstrated, as the law requires, that maintaining the Settlement Agreement under seal will prevent a clearly defined and serious injury. *See R.W. v. Hampe*, 626 A.2d 1218, 1221 (Pa. Super. Ct. 1993); *PA ChildCare LLC*, 887 A.2d at 313. Crucially, Plaintiff never provided evidence to support his speculative claims.

Instead, Plaintiff identified only a single message, sent privately to his then-fiancé nearly four years ago, on January 6, 2021. The message suggested that Plaintiff “stag[ed] the train accident” and warned Plaintiff’s then-fiancé “You don’t want to marry that loser!! He’s no better then [sic] Charles Manson!!!” R154a . That message—which was never admitted as evidence and would be too old to be persuasive evidence in any event —falls far short of supporting the trial court’s Order to Seal. It is hard to understand how that private message (sent via Facebook Messenger) could be evidence that Plaintiff will suffer embarrassment if the court unseals the Settlement Agreement. It simply does not follow. Plaintiff’s argument is utter speculation.

Moreover, Pennsylvania courts time and again have found that embarrassment alone is not enough to justify sealing. *See, e.g., Milton Hershey Sch. v. Pa. Hum. Rels. Comm'n*, 226 A.3d 117, 127 (Pa. Commw. Ct. 2020) (“Importantly, ‘general concerns for harassment or invasion of privacy’ are not sufficient to support closure.” (citing *Commonwealth v. Long*, 922 A.2d 892, 906 (Pa. 2007))). The prospect of embarrassment is particularly insufficient when the person claiming that embarrassment will ensue – like the Plaintiff here -- brought the allegedly embarrassing subject matter at issue into the public record by bringing the lawsuit in the first place. *See Hampe*, 626 A.2d. at 1224 n.7 (finding there was no good cause to partially seal the record at issue because by filing a medical malpractice suit, plaintiff “evidently was prepared” for “some degree of embarrassment” during litigation).

When faced with compelling reasons to unseal the agreement, the trial court, inexplicably, was persuaded by the Parties’ weak assertions. It incorrectly relied on alleged facts not admitted into evidence that concerning supposed fear of generalized and speculative harm that was never substantiated by any evidence, let alone current evidence, . to justify maintaining the seal on a judicial record.

Apparently recognizing the Parties’ need for evidence, the trial court expressly offered the Parties the opportunity to present evidence at the hearing on the unsealing, but the Parties did not take that opportunity. In advance of the hearing on

PennLive’s motion to unseal, the trial court’s chambers alerted the Parties on November 30, 2023 that “[t]o the extent that counsel seek to present facts in support of legal argument, please be prepared to present witnesses and/or evidence accordingly.” R196a. On December 20, 2023, counsel for Plaintiff informed PennLive’s counsel that his client, Mr. Hoffman, would testify at the hearing, R (our motion to compel, para 11), but Mr. Hoffman ultimately did not do so. Nor did the Parties present any other witness or introduce any other evidence.

When PennLive intervened to vindicate the public rights of access and presumption of openness, the burden fell to the Parties to show good cause in support of the seal, *viz.* a clearly defined and serious injury, shown with specificity. *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1071 (3d Cir.1984). The Parties utterly failed to satisfy that burden. However, after counsel for Norfolk Southern incorrectly argued that PennLive “failed to meet [the common law or Constitutional] tests or to overcome Judge Cherry’s decision,” H’rg Tr. at 25:10–13, R311a, the trial court improperly shifted the burden to PennLive to show the newsworthiness of the Settlement Agreement. R323–24a, 332a. In doing so, the court deviated from the applicable standard and imposed an undue burden on PennLive. Moreover, it is the province of PennLive—not the courts, nor the Parties—to decide what content is newsworthy to cover because it goes to the newspaper’s exercise of its editorial control and judgment. *See Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258

(1974). And in any event, the Settlement Agreement is newsworthy because it pertains to an undisputedly newsworthy lawsuit.

Instead of following established precedent, the trial court accepted the Parties' broad allegations of harm, unsubstantiated by specific examples or articulated reasoning that do not support a good cause showing that justifies the sealing of a judicial record. *See In re Avandia Marketing Sales Practices & Products Liability Litigation*, 924 F.3d 662, 678–79 (3d Cir. 2019) (vacating and remanding the district court's refusal to unseal, because the broad, vague, and conclusory allegations of harm that “‘could’ come to fruition fall short of the clearly defined and serious injury that [a party] must articulate to obtain sealing under any standard”); *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir.1986), *cert. denied*, 484 U.S. 976 (1987) (acknowledging a need for a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements) (internal citations and quotations omitted); The Parties' speculation concerning an unnamed, unproven, and unknown harm is not enough to overcome the presumption of openness. *Hampe*, 626 A.2d at 1223–24 (vacating the trial court's order granting partial seal of the record even when it contained embarrassing information because the embarrassment was not unreasonable and the case had a “public purpose”); *Long*, 922 A.2d at 906 (unsealing juror information after the trial court improperly relied on “unsubstantiated . . . general concerns for harassment or invasion of privacy”).

Ultimately, the lack of evidence presented by the Parties to support sealing requires disclosure under the common law right of access.

III. The Trial Court Erred in Concluding That It Need Not Address the Constitutional Right of Access.

If the lower court had properly analyzed the common law right of access here, it would have unsealed the settlement agreement, as explained above. However, given that the court denied PennLive’s motion to unseal, the trial court incorrectly concluded that it need not reach the *constitutional* right of access issue. R327–28a. (finding “there is no need to employ the ‘experience and logic’ test,” which is the test for the constitutional right of access) R.330a. But, as the Pennsylvania Supreme Court recognized in an analogous case, once a court finds the common law right of access does not apply, it “*must* consider [the] alternative constitutional argument.” *Long*, 922 A.2d at 899 (emphasis added). This is because “the First Amendment provides a greater right of public access than the common law.” *Id.* at 897.

Moreover, because PennLive is “a newspaper seeking access on constitutional grounds to a matter involving public figures and public money,” Pennsylvania courts generally employ “the constitutional analysis to determine whether [the party opposing disclosure] overcame the presumption of openness.” *PA ChildCare LLC*, 887 A.2d at 312; *see also Moore*, 2024 WL 3363154, at *9 (“The constitutional approach is usually invoked when the closure request involves the press.”). The trial

court gave no explanation why it was deviating from this approach in this case. R328a.

PennLive asserted its constitutional right to access the Settlement Agreement under the First Amendment to the United States Constitution. *E.g.*, R122–126a; H’rg Tr. at 4:14–19, R306a. And, PennLive asserted its rights of access under “Article I, Section 11 of the Pennsylvania Constitution, which provides that ‘all Courts shall be open.’” *PA ChildCare LLC*, 887 A.2d at 312.

Pennsylvania courts use the “experience and logic” test adopted by the United States Supreme Court when examining the constitutional right of access. *In re 2014 Allegheny Cnty. Investigating Grand Jury*, 223 A.3d 214, 233 (Pa. 2019). Under that test, settlement agreements are plainly public judicial records subject to the right of access.

The Experience Prong

The experience prong asks whether “the place and process have historically been open to the press.” *In re Avandia Marketing, Sales Practices and Products Liability Litigation*, 924 F.3d at 673 (quoting *N. Jersey Media Grp. Inc. v. United States*, 836 F.3d 421, 429 (3d Cir. 2016)) (internal quotation marks omitted).

Judicial records, including many publicly filed settlement agreements, have long been open for public inspection. *See, e.g.*, *Trib.-Rev. Publ’g Co.*, 833 A.2d at 117, 120–21; *Bank of Am. Nat’l Tr. & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800

F.2d 339, 345 (3d Cir. 1986). The Settlement Agreement at issue is a judicial record because it was filed in court. Indeed, a Pennsylvania court rule dictates that in cases where both Wrongful Death and Survival Action claims are raised, the action cannot be “settled until the court, upon petition of any party in interest, shall allow the discontinuance or approve the compromise or settlement as being fair and equitable.” Pa.R.C.P No. 2206.

(a). Similarly, another court rule requires court approval of settlement agreements concerning minors. Pa.R.C.P. No. 2039(a) (“No action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court.”). The records at issue here are thus quintessentially public records because judicial decision-making is necessary for approval of such agreements and to render the agreements enforceable. The trial court scrutinized the proposed agreement before issuing its approval. Accordingly, the Settlement Agreement involving Plaintiff, PFBC and Norfolk Southern, which was “used by the judge in rendering a decision,” is a judicial record subject to the public right of access. *Long*, 922 A.2d at 898.

The Logic Prong

Similarly, the logic prong supports a constitutional presumption of access because the press and public’s access to judicial records, including settlement agreements, advances the fundamental values that underlie the right of access: public

access to settlement agreements plays a positive role in the judicial process in Pennsylvania. Access to settlement agreements bolsters judicial accountability, *Hotel Rittenhouse Assocs.*, 800 F.2d at 345; enhances the quality of justice, *Hampe*, 626 A.2d 1218; and boosts public confidence in judicial system, *In re 2014 Allegheny Cnty. Investigating Grand Jury*, 223 A.3d at 232 (citing *Press-Enter. Co. v. Super. Ct. of Cal. for Riverside Cnty.*, 478 U.S. 1, 8–9 (1986)).

The rulemaking history of Pa.R.C.P Rule 2206 illustrates the important transparency function that certain court rules play in Pennsylvania jurisprudence. Rule 2206’s requirement that parties in combined wrongful death and survival actions seek court approval because judicial scrutiny helps ensure that the settlement agreements are fair and equitable to parties who may need the protection of Pennsylvania courts. *See Est. of Murray by York Bank & Tr. Co. v. Love*, 602 A.2d 366, 370 (Pa. Super. Ct. 1992) (“To prevent such an unfair result, rule 2206 was adopted to impose judicial scrutiny on wrongful death settlements involving minor beneficiaries”); *see also* SUPREME COURT OF PENNSYLVANIA, PROCEDURAL RULES COMMITTEE 41 (1938) (citing *Shambach v. Middlecreek Elec. Co.*, 45 Pa. Super. 300 (1911), *aff’d*, 232 Pa. 641 (1911)). Similarly, Pennsylvania courts emphasized “the great importance” of Pa.R.C.P. 2039’s role “in approving every single settlement involving minors to prevent settlements which are unfair to the minors and ensure that the minor receive the benefit of the money awarded.” *Power by Power v.*

Tomarchio, 701 A.2d 1371, 1373–74 (Pa. Super. Ct. 1997). Like Pa.R.C.P. 2206, Pa.R.C.P. 2039 cured “great defects in the prior practice” where Pennsylvania courts “lacked the power to” prevent unfair settlements and ensure the beneficiaries of the agreements received the benefit of the settlement. See Goodrich-Amram 2d § 2039(a): 1 (1962).

Here, the history and purpose of the rules requiring approval of certain settlement agreements provides additional support demonstrating that the experience and logic prongs are satisfied. The trial court therefore was required to analyze whether there is a constitutional right of access.

Under such analysis, the court must unseal the records *unless* the Parties prove that closure serves an important governmental interest *and* that their private interest in secrecy outweighs the public’s interest in access by demonstrating a clearly defined and serious injury will result if the agreement is unsealed. Here, the trial court failed to apply that test. Instead, it erroneously shifted the burden to PennLive to show good cause to unseal the Settlement Agreement, R323–24a, 332a., and failed to apply the proper burden of proof. Accordingly, the Court should remand for the trial court to apply the proper analysis under which the Parties’ inability to overcome the clear and compelling interests in disclosure militates against maintaining the seal.

CONCLUSION

For the foregoing reasons, PennLive requests that the Court reverse the decision below, dated June 25, 2024, which improperly denied access to the full Settlement Agreement, and remand with instructions directing the court to unseal the Settlement Agreement and any related documents.

Dated: December 31, 2024 REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

By: /s/ Paula Knudsen Burke

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CERTIFICATE OF WORD COUNT COMPLIANCE

I, Paula Knudsen Burke, Esq., certify that the foregoing brief complies with the word-count limit of Pa.R.A.P. 2135 and contains 5,423 words. In making this count, I have relied upon the word-count feature of Microsoft Word, which was used to prepare this brief.

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Paula Knudsen Burke

Signature: /s/ *Paula Knudsen Burke*

Attorney No.: 87607

APPENDIX 1

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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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.¹ 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

¹ 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 519.²

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

² 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:

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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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ORDER

AND NOW, this 25th 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:

[Signature]

Andrew H. Dowling, J.

Distribution:

The Hon. Andrew H. Dowling

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