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IN THE SUPERIOR COURT
OF PENNSYLVANIA

JOSEPH L. FELICIANI, AS ADMINISTRATOR OF THE ESTATE OF GRACE PACKER	:	
v.	:	
THE IMPACT PROJECT, INC., ET AL.,	:	No. 864 EDA 2024
Appeal of: Bucks County Courier Times	:	
Trial Court Docket No. 180603829	:	

BRIEF OF APPELLANT THE *BUCKS COUNTY COURIER TIMES* SEEKING REVERSAL

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TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES

Page(s):

Cases:

Statutes:

Other Authorities:

Rules:

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal, which is taken from the February 23, 2024 Order of the Court of Common Pleas of Philadelphia County, pursuant to 42 Pa. C.S. § 742.

Additionally, this Court has jurisdiction pursuant to the collateral order doctrine, which provides for immediate appellate review of orders denying motions to intervene for the limited purpose of seeking access to judicial records and proceedings, as well as orders on motions to unseal. *See* Pa. R. App. P. 313; *Cap. Cities Media, Inc. v. Toole*, 483 A.2d 1339, 1344 (Pa. 1984); *Commonwealth v. Long*, 922 A.2d 892, 897 (Pa. 2007); *A.A. v. Glicken*, 237 A.3d 1165, 1169 (Pa. Super. Ct. 2020). Access-based motions to intervene and unseal are separate from the merits of the underlying case; they raise the important and "deeply rooted" right of timely public access to the courts; and the access rights they seek to vindicate will be irreparably lost absent appellate review. *Glicken*, 237 A.3d at 1169.

DECISION UNDER REVIEW

Appellant the *Bucks County Courier Times* ("*Courier Times*") seeks review of the February 23, 2024 order of the Court of Common Pleas of Philadelphia County. Appendix 1. That order denied, in full, the *Courier Times*' Petition to Intervene and Unseal Settlement Records. Following the *Courier Times*' petition for appellate review of that order, the trial court issued an opinion in support on

September 30, 2024. Appendix 1; *see also* Concise Statement of the Errors Complained on Appeal (Apr. 18, 2024), attached as Appendix 2 pursuant to Pa.R.A.P. 2111(d).

SCOPE AND STANDARD OF REVIEW

This Court reviews *de novo* all legal determinations made by the Court of Common Pleas, including rulings on motions to intervene, *see Schriner v. Schaffhauser*, No. 1762 MDA 2012, 2013 WL 11261854, at *2 n.1 (Pa. Super. Ct. June 18, 2013), and rulings on "'whether there exists a common law or constitutional right of public access to a judicial proceeding'" or record, and the scope of its review is plenary, *see Commonwealth v. Curley*, 189 A.3d 467, 472 (Pa. Super. Ct. 2018) (quoting *Commonwealth v. Selenski*, 996 A.2d 494, 496 (Pa. Super. Ct. 2010)). "A trial court's decision . . . regarding access to a particular item must be reviewed for abuse of discretion." *Selenski*, 996 A.2d at 508. A trial court commits an abuse of discretion when it errs as a matter of law or its decision is "the result of partiality, prejudice, bias, or ill-will." *Kurtzman v. Hankin*, 714 A.2d 450, 453 (Pa. Super. Ct. 1998).

QUESTIONS INVOLVED

Did the trial court abuse its discretion in denying the *Courier Times*' motion to intervene for the limited purpose of unsealing judicial records?

Did the trial court err as a matter of law when it denied the *Courier Times*' motion to unseal dockets and sealed judicial records?

Suggested answer to both: Yes.

STATEMENT OF THE CASE

By this appeal, the Court has the opportunity to reverse an opinion that ignores established law, stands to erode transparency, and enables the rubber-stamping of settlement agreements that courts are required to scrutinize for fairness and justice.

On March 24, 2023, the *Courier Times* moved to intervene and unseal seven records in a civil case brought against The Impact Project, Inc. ("Impact Project"), Pinebrook Family Answers ("Pinebrook"), and Warwick Family Services, Inc. ("Warwick") (together, "Defendant-Appellees") by the administrator of the estate of Grace Packer ("Grace")—a child, now deceased, who was relentlessly abused and murdered by her adoptive family.[1] Compl. ¶¶ 22–24, R.034a. The *Courier Times* and other news outlets reported extensively on Defendant-Appellees' alleged life-threatening actions and inactions, including how they "failed to intervene at different points in her life despite agency reports suggesting Grace was sexually, emotionally and physically abused in the home of her adoptive parents and the failure of a private foster care agency to follow protocols." Christopher Dornblaser, *Bucks DA, State*

[1] *See, e.g.*, Compl., *Feliciani v. Impact Project, Inc.*, No. 180603829 (Pa. Ct. Com. Pl., Phila. Cnty. June 29, 2018), R.030a (alleging Defendant-Appellees failed to intervene to extricate Grace Packer from her adoptive home despite being made aware of the conditions of her abuse, including when her adoptive father pled guilty to sexually assaulting her).

Lawmakers Unveil 'Grace's Law' Package for More Accountability, Protection in PA Child Welfare System, Bucks County Courier Times (Sept. 15, 2021), *cited in Courier Times' briefing in the trial court at* R.221a, https://bit.ly/3HXjLmO.

While Grace's Estate alleged in this proceeding that Defendant-Appellees acted with "negligence, gross negligence, outrageousness and/or reckless indifference" resulting in Grace's "systematic physical and mental torture," *see* Compl. ¶ 99, R.042a, those allegations were never proven or disproven because the case settled—under seal—before trial, *see* Order to Compromise Survival Action & Order for Distribution (July 21, 2020), R.128a. Notably, the settlement in this case was not a resolution arrived at by the parties outside of the court's involvement and without its supervision; instead, because the settlement involved funds to be distributed to Grace's minor sibling, the trial court was involved in approving the agreement as a "minor's compromise." *See* 231 Pa. Code R. 2039. Given the high public interest in the ultimate resolution of the shocking claims alleged in this case, the *Courier Times* sought to intervene for the limited purpose of moving to unseal seven records[2] associated with the settlement (the "Settlement Records").

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[2] The seven records include: (1) May 4, 2020 petition to settle; (2) July 21, 2020 wrongful death order; (3) June 15, 2021 petition to approve settlement; (4) July 20, 2021 order of deferment; (5) August 4, 2021 praecipe to supplement/attach; (6) September 9, 2021 order granting petition for wrongful death; and (7) September 14, 2021 settlement order.

While the public and the press have a right to access the Settlement Records, which will shed light on Defendant-Appellees' conduct, misconduct, and any course corrections resulting from the instant suit, this presumptively public information has remained under seal. Contrary to applicable law, including the First Amendment and common law, the trial court sealed the Settlement Records without any party asserting a good cause basis for sealing and without any public findings of fact made on the record. This outcome is contrary to the prevailing standard in Pennsylvania, where the courts of this Commonwealth have consistently emphasized that the public and press have a presumptive right to access settlement agreements filed in court. *See, e.g.*, *Stenger v. Lehigh Valley Hosp. Ctr.*, 554 A.2d 954, 960 (Pa. Super. Ct. 1989) (citing *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hotel Rittenhouse Assocs*., 800 F.2d 339, 342–43 (3d Cir. 1986)); *see also Glicken*, 237 A.3d at 1170.

The *Bucks County Courier Times*, therefore, respectfully seeks reversal of the decision below which summarily ignored the First Amendment and common law rights of access to judicial records like the Settlement Records implicated here.

PROCEDURAL HISTORY

Joseph Feliciani, as Administrator of the Estate of Grace Packer, filed a wrongful death action in the trial court in June 2018. R.030a, 057a. Defendants are the Impact Project, Pinebrook, and Warwick. On May 6, 2020, the parties stipulated as to the sealing of their petition for leave for partial settlement of the matter, which

was approved by the court two days later[3]. R.060a. The last docket entry in the case is from October 2022 reflecting a *praecipe* to settle, discontinue, and end the action. R.208a. *See* Order to Settle, Discontinue, & End.

On March 23, 2024, the *Courier Times* moved to intervene for the limited purpose of unsealing the Settlement Records. R.209a. The court held oral argument on November 15, 2023 and then ordered supplemental briefing.[4] R.267a.

Following submission of supplemental briefing, the trial court on February 23, 2024 denied the March 23 motion.[5] On March 19, 2024, the *Courier Times* filed a notice of appeal. On March 28, this Court ordered the *Courier Times* to produce a statement of errors complained of on appeal, which Appellant filed on April 18 (and is appended hereto per Pa.R.A.P. 2111(d)). Following submission of the statement of errors, and the Superior Court's August 22, 2024 letter informing the trial court of its noncompliance with Pa.R.A.P. 1931(a)(1), R.393a, and the accompanying

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[3] While the Prothonotary's red font time-stamp on the Order approving stipulation is "5/7/2020 02:48 p.m.," the text of the Order reads "**AND NOW**, this **8th** day of **May**, **2020**…" and approves the order. Therefore, it is unclear if the Order was entered May 7, 2020 or May 8, 2020. R.061a.

[4] The topics for additional briefing included whether the motion to intervene was timely; what the burden was for unsealing; and whether HIPAA was applicable. *Courier Times*' Suppl. Br. (Nov. 29, 2023), R.297a, 299a., 303a.

[5] Appellant reads the trial court's denial as denying both its petition to intervene and unseal, although the court's opinion does not specify; accordingly, Appellant addresses both issues herein.

need to timely resolve this matter, on September 30, 2024, the trial court issued its opinion in support of its February 23, 2024 order. R.396a.

ARGUMENT

This Court should reverse the decision below and remand with instructions to unseal for the following reasons. ***First***, both the First Amendment and common law rights of access entitle the public and the press to access filed settlement agreements. ***Second***, the Settlement Records were improperly sealed, with no party making the requisite factual showing of good cause. Indeed, as demonstrated *infra*, ***no*** party can make such a showing in this case. ***Third***, the trial court abused its discretion in denying the *Courier Times* intervenor status herein. Therefore, the Court should find that the trial court erred in denying Appellant's motion to intervene and unseal.

I. The First Amendment and Common Law Rights of Access Apply to the Settlement Records.

The United States Supreme Court, the United States Court of Appeals for the Third Circuit, and the courts of this Commonwealth recognize First Amendment and common law rights of access to judicial proceedings and their records. When evaluating these rights, courts generally conduct a two-step inquiry: determining first whether the right attaches to the document or proceeding at issue, and, if so, whether the strong presumption of openness is overridden in a particular case. *See Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 13–14 (1986). Both the common

law and First Amendment rights of access attach to the Settlement Records at issue here.

A. The Public Has a Common Law Right of Access to the Settlement Records.

Under the common law, there is a "strong presumption of openness" of judicial proceedings to the press and public. *In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.* (*In re Avandia*), 924 F.3d 662, 672 (3d Cir. 2019) (citation omitted). "[A]ntedat[ing] the Constitution," this presumption "'promote[s] public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court.'" *LEAP Sys., Inc. v. MoneyTrax, Inc.*, 638 F.3d 216, 220 (3d Cir. 2011) (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 677–78 (3d Cir. 1988)). The presumption of openness undergirding the common law right of access extends beyond judicial proceedings to judicial records. *Id.*; *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978).

Whether the common law right of access attaches to a document depends on whether it is a "judicial record." *In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir. 2001). If a document is "filed with the court, or otherwise somehow incorporated . . . into a [trial] court's adjudicatory proceedings," then precedent "clearly establishes" that it is a judicial record. *Id.* For these reasons, a settlement record filed in a judicial proceeding is a judicial record subject to the common law right's strong presumption of openness. *See, e.g.*, *McDevitt v. Arthur Wageman Penske*

Leasing, No. 19 CV 1498, 2022 WL 3544404, at *2 (Pa. Ct. Com. Pl., Lacka. Cnty. Aug. 18, 2022) ("It is beyond cavil that the settlement petition filings in this matter are public judicial records inasmuch as they will be reviewed and relied upon in approving or rejecting the proposed settlement and distribution of funds."). That is especially the case, here, where the law expressly requires court approval of wrongful death settlements. The rules of civil procedure relevant to the instant case contain two sets of instructive rules: Minors as Parties (Rule 2026 to Rule 2049) and Actions for Wrongful Death (Rule 2201 to Rule 2224). Referencing the Pennsylvania Rule of Civil Procedure governing the rule of the judiciary in actions involving minors – Pa.R.C.P. 2039, this Court has explained:

> The Rule enables courts to prevent settlements which are unfair to the minors, and to ensure that the minor receive the benefit of the money awarded. Goodrich–Amram 2d § 2039:3 (1992). Thus, the courts were given the mandate to supervise **all** aspects of settlements in which a minor is a party in interest, *Estate of Murray v. Love*, 411 Pa. Super. 618, 625, 602 A.2d 366, 369 (1992), and in considering whether to approve a settlement, the Court is charged with protecting the best interests of the minor.

Power by Power v. Tomarchio, 701 A.2d 1371, 1374 (Pa. Super. Ct. 1997).

Indeed, in *LEAP Systems* the Third Circuit applied the common law right of access to explain that "'the court's approval of a settlement or action on a motion are matters which the public has the right to know about and evaluate.' Thus, 'settlement documents can become part of the public component of a trial . . . when a settlement is filed with a [trial] court[.]'" 638 F.3d at 220 (first quoting *Hotel*

Rittenhouse Assocs, 800 F.2d at 344; then quoting *Enprotech Corp. v. Renda*, 983 F.2d 17, 20 (3d Cir. 1993))). This reasoning applies squarely to the instant case, because state law dictates that "[i]f both Wrongful Death and Survival Action claims are raised"—as is the case here, Compl. ¶¶ 155–162, R.057–58a—"[c]ourt approval [of settlements] is ***required***." Phila. Civ. R. 2206(A)(3) (emphasis added). It thus follows that the instant Settlement Records, which were necessarily approved by the trial court, are judicial records subject to the common law right of access. *See also* Order, *Charles Joseph Freitag Jr. v. Bucks County*, No. 2:19-cv-05750-JMG (E.D. Pa. June 28, 2023) (determining "strong common law presumption of access to civil judicial records" applies to "settlement records" filed with the court and that an interest in secrecy "does not outweigh the presumption of access" to such records) (citations omitted).

The court below thus erred in deciding that the Settlement Records in this case are not judicial records subject to the common law right of access. Troublingly, the trial court reasoned that because "court approval of [a] settlement is required for combined wrongful death and survival actions like the case here," the Settlement Records do not constitute judicial records. R.401a; *see also id.* at R.402–03a. ("Nothing in the docket indicates that a court had any role in the settlement beyond entering orders approving the settlements, as required by the procedural rules. Thus, the Settlement Records sought by Appellant are not the kind of settlement records

to which the common law right of access would apply.").[6] It further stated, "[a]s the Commonwealth Court held in *Milton Hershey*, complying with the procedural rules does not convert the Settlement Records here into judicial records." R.401a (citing Phila. Civ. R. 2206(A)(3); 226 A.3d at 130). This reasoning cannot stand; in addition to constituting an incorrect interpretation of the common law right of access to the courts, it opens the door to compounded harms whereby courts may simply rubber stamp settlement agreements even where, as here, the trial is obligated by law to approve a settlement. *See* Phila. Civ. R. 2206. In *Milton Hershey*, the movant sought portions of a reproduced record filed with the court; that court explained: "The mere fact that the agency record was copied in compliance with the rules does not necessarily transform the copy into" a judicial record, *Milton Hershey Sch. v. Pa. Hum. Rels. Comm'n*, 226 A.3d 117, 130 (Pa. Commw. Ct. 2020); here, the court was not merely "copied" on the Settlement Records—the court below was *required* to scrutinize them prior to entering their approval.

To be sure, the courts of this Commonwealth routinely hold that settlement records are presumptively open for public inspection. *Glicken*, 237 A.3d at 1170 (ruling that a plaintiff's petition for approval of a settlement is presumptively open and should not be sealed); *Stenger*, 554 A.2d at 960 ("The presumption [of access]

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[6] See *infra* Section I.B. for a continued discussion of this issue.

extends to documents which have been filed with the court, such as pleadings, arrest warrant affidavits, and settlement agreements, and which are considered public records."). Just weeks ago, the U.S. District Court for the Eastern District of Pennsylvania ordered the unsealing of settlement records in another wrongful death suit where, as here, there was "no evidence that [the defendant] argued for or that the Court found an overriding interest in closure prior to sealing the settlement agreement." Mem. of L. in Supp. of the Bucks County Courier Times' Mot. to Intervene & Unseal, *Lopez v. Bucks County*, No. 2:15-cv-05059-JS (E.D. Pa. Sept. 12, 2024); Order, *Lopez v. Bucks County*, No. 2:15-cv-05059-JS (E.D. Pa. Oct. 18, 2024); *see also Moore v. J.B. Hunt Transport, Inc.*, No. 2024 CV 3773, 2024 WL 3363154, at *1 (Pa. Ct. Com. Pl., Lackawanna Cnty. July 10, 2024) (denying motion to seal settlement records and emphasizing that "[s]ealing of court records is not a perfunctory judicial task that is automatically granted by agreement of the parties").

Courts throughout the United States similarly trend toward affirming a right to access court-filed settlement agreements under the common law. *See, e.g.*, *SEC v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993) ("Once a settlement is filed in district court, it becomes a judicial record."); *Calderon v. SG of Raleigh*, No. 5:09-CV-00218-BR, 2010 WL 1994854, at *1 (E.D.N.C. May 18, 2010) ("A settlement agreement filed and submitted for court approval is a judicial record, and thus the presumption of access arises."); *Xue Lian Lin v. Comprehensive Health Mgmt., Inc.*,

No. 08-CV-6519, 2009 WL 2223063, at *1 (S.D.N.Y. July 23, 2009) ("Any document reflecting the terms of the settlement and submitted to the Court is a 'judicial document' to which the presumption of access likely applies."). The weight of authority thus stands in stark contrast to the trial court's conclusion in this case—involving the court's required review of a settlement involving children—that "a private agreement reached by the parties, without court interpretation," Op. at 8, R.403a., is exempt from the common law right of access.

To the contrary, as judicial records, the common law right of access attaches to the sealed Settlement Records and they are subject to a strong presumption of openness. For these reasons, the Court should find that the Court of Common Pleas, below, erred in denying Appellant's Petition to Unseal.

B. The Public Also Has a First Amendment Right of Access to the Settlement Records.

The First Amendment likewise guarantees presumptive public access to the Settlement Records. To determine whether the First Amendment supports a presumption of access to a particular class of judicial records, courts look to two complementary considerations: "experience and logic." *Press-Enter. Co.*, 478 U.S. at 9. Here, both favor presumptive access to the Settlement Records, and the trial court erred in finding otherwise.

i. The Experience Prong

The first prong of the Supreme Court's framework—the experience prong—"asks 'whether the place and process have historically been open to the press.'" *In re Avandia*, 924 F.3d at 673 (quoting *N. Jersey Media Grp. Inc. v. United States*, 836 F.3d 421, 429 (3d Cir. 2016)). Precedent from the Third Circuit, other federal courts, and the courts of this Commonwealth suggests that this prong is satisfied with respect to settlement records due to their longstanding openness. *See Streett Est. v. Gen. Motors Corp.*, 17 Pa. D. & C.4th 37, 40 (Pa. Ct. Com. Pl., York Cnty. Sept. 8, 1992) (declining to seal settlement terms based on First Amendment and common law rights of access); *cf. In re Gabapentin Pat. Litig.*, 312 F. Supp. 2d 653, 663 (D.N.J. 2004) ("The Third Circuit has also recognized that the First Amendment . . . protects the public right of access to records of civil proceedings." (citing *Republic of the Phil. v. Westinghouse Elec. Corp.*, 949 F.2d 653, 659 (3d Cir. 1991))). *See also*:

• *Brown v. Advantage Eng'g, Inc*., 960 F.2d 1013, 1016 (11th Cir. 1992) ("[I]t is immaterial whether the sealing of the record is an integral part of a negotiated settlement between the parties[.] Once a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case.");

• *Newton v. JP Morgan Chase & Co*., No. C22-790, 2023 WL 3948313, at *2 (W.D. Wash. June 12, 2023) (denying stipulated motion to seal court records

because "the parties ha[d] not met their burden to overcome the presumption in favor of open access to court records");

• *Gravestock v. Tarpley Truck & Trailer Inc*., No. 17-CV-01044, 2017 WL 5441462, at *2 (D. Colo. Oct. 31, 2017) (denying parties' stipulation to seal court records because "the parties ha[d] not established that any right of privacy that they may have outweighs the public's presumptive right to . . . the contents of court files. An agreement between the parties to keep a . . . settlement confidential is not sufficient to abrogate the public's right to know what happens in its courts.").

Because the instant Settlement Records are judicial records, they, too, are entitled to a First Amendment right of access. The court below, however, erroneously concluded that the First Amendment right of access did not apply because "the Settlement Records contain confidential settlement amounts and costs that resulted from the private negotiations of the parties." Op. at 11, R.406a. This determination is at odds with established constitutional law; judicial records marking the resolution of judicial proceedings are routinely found to meet the experience prong of the First Amendment's analysis. *See, e.g.*, *United States v. Thomas*, 905 F.3d 276, 282 (3d Cir. 2018) (extending First Amendment right of access in the criminal context to "plea hearings and, by extension, to documents related to those hearings"); *see id.* ("Just as there exists a first amendment right of access in the context of criminal trials, it should exist in the context of the means by which most

criminal prosecutions are resolved, the plea agreement.") (quoting *Oregonian Publ'g Co. v. District Court*, 920 F.2d 1462, 1465 (9th Cir. 1990)). This reasoning applies with equal force to settlement agreements in the civil context, which are the means by which the vast majority of civil cases are resolved. *See, e.g.*, *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1066–70 (3d Cir. 1984) (holding that common law and First Amendment apply to records of civil trials). Thus, implicit in the Third Circuit's prior precedent finding a First Amendment right to access civil judicial records and an analogous right to access criminal plea agreements is the conclusion that the First Amendment right of access should, too, extend to settlement records. But the lower court's opinion does not engage with this history.

The experience prong does not just "look to the particular practice of any one jurisdiction, but instead to the experience in that *type* or *kind* of hearing throughout the United States," *El Vocero de P.R. v. Puerto Rico*, 508 U.S. 147, 150 (1993) (citation and quotation marks omitted)—and settlement records have long been considered open for public inspection in this country. *See, e.g.*, *Rutherford's Heirs v. Clark's Heirs*, 1873 WL 11091, at *2 (Ky. Jan. 15, 1873) ("The returned settlements, when approved, were adjudications of an indebtedness . . . spread on the public records, to be sent and read by all who would take the trouble to examine them."); *see also In re Hayes*, 59 Misc. 3d 543, 72 N.Y.S.3d 358 (N.Y. Surr. Ct. 2018), *aff'd as modified sub nom.*, *In re Est. of Quigley*, 172 A.D.3d 1516 (N.Y.

App. Div. 2019) (settlement agreement, including amount of gross settlement, was a court record for purposes of First Amendment right to access court records in wrongful death action). Thus, as settlement agreements "have historically been open to the press," *In re Avandia*, 924 F.3d at 673 (quoting *N. Jersey Media Grp. Inc.*, 836 F.3d at 429), the experience prong supports finding a First Amendment right to access the Settlement Records in this case.

Finally, the Third Circuit has recognized that the common law right of access, discussed *supra*, "played a crucial role in the development of First Amendment jurisprudence" on access to judicial records. *United States v. Antar*, 38 F.3d 1348, 1361 (3d Cir. 1994). As a result, the fact that settlement records are presumptively accessible under the common law reinforces the conclusion that the judgment of experience favors access for purposes of the First Amendment. *See id*.

ii. The Logic Prong

Logic supports a constitutional presumption of access, too, because press and public access to settlement records advances the core values that underlie the right, including by promoting "informed discussion of governmental affairs by providing the public with [a] more complete understanding of the judicial system," and promoting the "public perception of fairness which can be achieved only by permitting full public view of the proceedings." *Hotel Rittenhouse Assocs.*, 800 F.2d at 345 (citation omitted); *see also McNatt v. Bush*, No. CV 119-139, 2020 WL

1649911, at *1 (S.D. Ga. Apr. 2, 2020) ("[T]he [c]ourt serves as the primary representative of the public interest in the judicial process, and must review any request to seal the record (or part of it) [and] may not rubberstamp a stipulation to seal the record." (citation omitted)). "Disclosure of settlement documents" in particular "serves as a check on the integrity of the judicial process." *Hotel Rittenhouse Assocs.*, 800 F.2d at 345. Public access to settlement records—the ultimate disposition of the vast majority of civil cases—"furthers several societal interests" in the same way that access to plea agreements does, including by "promoting the 'public perception of fairness,' 'exposing the judicial process to public scrutiny,' and 'providing the public with the more complete understanding of the judicial system.'" *See Thomas*, 905 F.3d at 282 (citation omitted). Therefore, logic counsels that, in a time where our judicial system has become a system of settlements as opposed to trials, these settlements must be made public. Courts have noted that there is a strong "public interest in finding out how decisions to spend public funds are formulated and in insuring governmental processes remain open and subject to public scrutiny," and have found "these considerations clearly outweigh any public interest served by conducting settlement of tort claims in secret, especially in light of the policies of disclosure and openness in governmental

affairs."[7] *Reg. Div. of Freedom Newspapers, Inc. v. County of Orange*, 158 Cal. App. 3d 893, 909 (Cal. Ct. App. 1984). As experience and logic both counsel in favor of finding a First Amendment right to access settlement records, this Court should reverse the decision below and find that the First Amendment right of access attaches to the Settlement Records sought by the *Bucks County Courier Times*.

II. The Settlement Records Should Be Unsealed Because No Party Has Overcome the High Burden to Justify Their Sealing.

While the right of access "is not absolute," *LEAP Sys., Inc.*, 638 F.3d at 221, once either the First Amendment or common law right of access attaches to a document, the party opposed to disclosure bears the burden of demonstrating that a document should nonetheless be withheld from the public. *See Hotel Rittenhouse Assocs.*, 800 F.2d at 344. Because the presumption of openness attaches to the Settlement Records, any proponents of sealing bear the burden of demonstrating why the Settlement Records should nonetheless be sealed in this case. *See id*.

On this record, the parties cannot satisfy the First Amendment's high bar—strict scrutiny—to justify sealing the Settlement Records. *In re Avandia*, 924 F.3d at 673 (party seeking closure must demonstrate "an overriding interest [in closure]

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[7] Defendant-Appellees' services are purchased and utilized by the Commonwealth. *See* Compl. ¶ 34, R.035a ("Under the Child Protective Services Law, Pennsylvania counties may purchase and utilize the services of any public or private agency, such as Impact Project, Pinebrook and Warwick, to provide foster, pre-adoptive and adoptive services." (citing 23 Pa. C.S.A. § 6364)).

based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest" (quoting *Publicker Indus., Inc.*, 733 F.2d at 1073)). Indeed, the parties cannot even satisfy the lower common law standard "to show that the interest in secrecy outweighs the presumption" of openness. *See Hotel Rittenhouse Assocs.*, 800 F.2d at 344.

The trial court's reasoning that the "prerequisites [for sealing] are inapplicable here" because the court's "role . . . was limited to entering settlement documents" that the parties agreed to "on their own," Op. at 12, R.407a, is antithetical to longstanding constitutional strictures. Indeed, the trial court's opinion endorses the rubber stamping of settlements as a means to forego compliance with both the First Amendment and common law standards—but the law of this Commonwealth forecloses that option. *See, e.g.*, *Korczakowski v. Hwan*, 68 Pa. D. & C.4th 129,138 (Pa. Ct. Com. Pl., Lackawanna Cnty. Sept. 23, 2004) (denying motion to seal petition to approve settlement of wrongful death action where "litigants ***simply have not demonstrated*** the requisite 'good cause' to justify the sealing of th[e] settlement" (emphasis added)); *Hotel Rittenhouse Assocs.*, 800 F.2d at 343–44 ("Similarly, unlike the civil discovery materials . . . a motion or a settlement agreement filed with the court is a public component of a civil trial. As in the cases involving trial rulings or evidence admitted, the court's approval of a settlement or action on a motion are matters which the public has a right to know about and evaluate.").

Moreover, before sealing, a reviewing court "must balance the requesting party's need for information against the injury that might result if uncontrolled disclosure is compelled." *In re Avandia*, 924 F.3d at 671 (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 787 (3d Cir. 1994)); *see also Commonwealth v. Fenstermaker*, 530 A.2d 414, 421 (Pa. 1987) (explaining that trial courts must create a record "articulati[ng] the factors taken into consideration" in determining whether there is a right of access and whether that right has been rebutted by countervailing interests). In doing so, the court must thus "articulate 'the compelling, countervailing interests to be protected,' make 'specific findings on the record concerning the effects of disclosure,' and 'provide[] an opportunity for interested third parties to be heard.'" *In re Avandia*, 924 F.3d at 678 (quoting *In re Cendant Corp.*, 260 F.3d at 194); *see also Commonwealth v. Upshur*, 924 A.2d 642, 651 (Pa. 2007) ("[T]he trial court . . . must . . . place on the record its reasoning and the factors relied upon in reaching its decision."). "[S]pecificity is essential" in conducting such a balancing test, and "[b]road allegations of harm, bereft of specific examples or articulated reasoning, are insufficient." *In re Cendant Corp.*, 260 F.3d at 194; *see also Curley*, 189 A.3d at 473 ("[T]he court should issue individualized, specific, particularized findings on the record that closure is essential to preserve higher values and is narrowly tailored to that interest.").

Here, the court below acknowledges, as it must, that it did not find, let alone consider, whether an overriding interest in closure existed prior to ordering the sealing of the partial settlement agreement. Therefore, the decision below—which ruled that these standards need not even be complied with in the first instance—should be reversed and remanded with instructions to unseal the sealed Settlement Records.

III. The Trial Court Abused its Discretion in Denying the *Courier Times'* Motion to Intervene.

In addition to its substantial deviation from established law on press and public access to judicial records, *supra*, the court below summarily denied Appellant's motion to intervene without explanation. *See* Order Denying Mot. to Intervene, R.316a. Indeed, the court's initial order—consisting of one sentence—states that both the motion to intervene and unseal would be denied, *id.*, but the court's subsequent opinion does not explain why intervention is improper under these circumstances, Op., R.396a. Absent any justification, the trial court's denial constituted an abuse of discretion and should be reversed because third parties, like the *Courier Times* here, are routinely granted limited intervention to challenge sealing of judicial records. *See, e.g.*, *Antar*, 38 F.3d at 1350 (granting third-party news organization intervenors' request for access to a *voir dire* transcript); *see also Fenstermaker*, 530 A.2d 414 (newspaper properly intervened to request access to arrest warrant affidavit); *In re Sealed Arrest Warrants Pursuant to Pa. R. Crim.*

513.1, 313 A.3d 214, 223 (2024) (ruling that the "trial court abused its discretion in denying [media] Appellant's motion to intervene and in sealing the public docket"). Indeed, the *Courier Times* just weeks ago was afforded intervenor status in *Lopez v. Bucks County*, No. 2:15-cv-05059-JS (E.D. Pa.), where the Eastern District of Pennsylvania not only permitted intervention, *see* Order (Oct. 18, 2024), ECF No. 87, but also ordered unsealing of settlement records, *see id.*; *see also* Order, *Reilly v. York County*, No. 1:18-cv-01803-MCC (M.D. Pa., Aug. 5, 2022) (granting *York Daily Record*'s motion to intervene and ordering unsealing of settlement records); Order, *Freitag v. Bucks County*, No. 2:19-cv-05750-JMG (E.D. Pa., June 28, 2023) (granting the *Courier Times*' motion to intervene and ordering unsealing of settlement records); Order, *Harbaugh v. Bucks County*, No. 2:20-cv-01685-MMB (E.D. Pa. Nov. 29, 2023) (granting the *Courier Times*' motion to intervene and ordering unsealing of settlement records). These authorities vindicate the role of the press as a surrogate for the public by gathering information and informing the public about the activities of the judicial system. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) (plurality opinion).

In light of these precedents, the trial court's unsubstantiated denial of Appellant's motion to intervene is a clear abuse of discretion that warrants reversal by the Court.

CONCLUSION

For the foregoing reasons, the *Bucks County Courier Times* requests that the Court reverse the decision below which improperly denied access to the Settlement Records, and remand with instructions directing the court to unseal the Settlement Records—or, at minimum—make findings on the record explaining why the Settlement Records do not fall within the First Amendment and common law rights of access.

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Respectfully submitted,

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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 Rule 2135 and contains 5,751 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
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