IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

STEPHANIE HALLOWICH AND
CHRIS HALLOWICH, H/W

Plaintiffs,

vs.

RANGE RESOURCES CORPORATION, WILLIAMS GAS/LAUREL MOUNTAIN MIDSTREAM, MARKWEST ENERGY PARTNERS, L.P., MARKWEST ENERGY GROUP, L.L.C., AND PENNSYLVANIA DEPARTMENT OF ENVIROMENTAL PROTECTION

Defendants.

No. **C-63-CV-201003954**

INTERVENORS' JOINT BRIEF IN SUPPORT OF PG PUBLISHING COMPANY'S AND OBSERVER PUBLISHING COMPANY'S PETITION TO INTERVENE AND MOTION TO UNSEAL RECORD

Counsel of Record for Intervenors:

Frederick N. Frank, Esquire
Pa. I.D. #10395

FRANK, GALE, BAILS, MURCKO
& POCRASS, P.C.
Firm I.D. No. 892
33rd Floor, Gulf Tower
707 Grant Street
Pittsburgh, PA 15219
(412) 471-5912

Attorneys for PG Publishing Company, d/b/a The Pittsburgh Post-Gazette

Colin E. Fitch, Esquire
Pa. I.D. #56710

MARRINER, JONES & FITCH
800 Washington Trust Building
30 East Beau Street
Washington, PA 15301
(724) 225-6600

Attorneys for Observer Publishing Company, d/b/a Observer Reporter

Table of Contents

Page

Table of Citations

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

STEPHANIE HALLOWICH AND CHRIS HALLOWICH, H/W,	)	
Plaintiffs,	)	
vs.	)	No. **C-63-CV-201003954**
RANGE RESOURCES CORPORATION, WILLIAMS GAS/LAUREL MOUNTAIN MIDSTREAM, MARKWEST ENERGY PARTNERS, L.P., MARKWEST ENERGY GROUP, L.L.C., AND PENNSYLVANIA DEPARTMENT OF ENVIROMENTAL PROTECTION	)	
Defendants.	)	

INTERVENORS' JOINT BRIEF IN SUPPORT OF PG PUBLISHING COMPANY'S AND OBSERVER PUBLISHING COMPANY'S PETITION TO INTERVENE AND MOTION TO UNSEAL RECORD

I. STATEMENT OF FACTS

The matter before the Court arises from the joint petition of the PG Publishing Company, d/b/a The Pittsburgh Post-Gazette ("Post-Gazette") and Observer Publishing Company, d/b/a Observer Reporter ("Observer Reporter") (collectively "Intervenors") to intervene and open the record in this proceeding.

On May 27, 2010, Stephanie and Chris Hallowich ("the Hallowichs") commenced this action by a praecipe to issue a writ of summons against Range Resources Corporation, Williams Gas/Laurel Mountain Midstream, MarkWest Energy Partners, L.P., MarkWest Energy Group, L.L.C. (collectively "Defendants") and the Pennsylvania Department of Environmental Protection ("DEP"). A true and correct copy of the docket is attached herein as Exhibit "A."

While no complaint was ever filed in this case, based upon the extensive publicity of this case discussed *infra*, it is apparent that the cause of action arose from claims by the Hallowichs that their property was damaged and personal well-being was affected by natural gas drilling by the Defendants at or near their residence.

Even before the commencement of the litigation, the Hallowichs gave numerous media interviews regarding the impact of gas drilling on their family. These interviews, which continued throughout the litigation, highlight in particular the Hallowichs' two minor children, Nathan Hallowich and Alyson Hallowich (collectively "Children"). Further, representatives of the Defendants discussed the case in the media, including extensive details of offers of settlement to the Hallowichs; and the Hallowichs similarly discussed their demands for resolution.

A May 5, 2009 article from Reuters, titled "Gas drillers battle Pennsylvania pollution concerns," which includes a photograph of Stephanie Hallowich and the Hallowichs' daughter "Alison[sic]" taken on April 23, 2009, includes the following quote from Stephanie Hallowich: "I don't want to find out in five years' time that my kids have cancer." A true and correct copy of the May 5, 2009 article from Reuters is attached herein as Exhibit "B."

Attached as Exhibit "C" is an August 27, 2009 article from the BBC News titled "U.S. seeks independence with natural gas" in which Stephanie Hallowich, who is described as being "surrounded by natural gas wells," states:

- "'We've had problems with water, we've had air quality issues, there's an odour which has made us sick.'"
- "'We have two children. We have huge issues about their health.'"

Attached as Exhibit "D" is a July 29, 2010 article from the Pittsburgh Post-Gazette titled "Wells of wealth – or woe? Questions waft from Marcellus Shale drilling sites" in which a photograph of the Hallowichs, alongside the Children, is displayed. The article further states:

- "Homeowners Stephanie and Chris Hallowich have traveled the state, talking to land owners and offering advice to those who are considering leasing their property for drilling."
- "The family is now in litigation with the state, drilling operators and processing companies over what they claim is contamination of their water well caused by the drilling and because of noxious fumes that prevent their children from playing outside most days."

Attached as Exhibit "E" is an article on the CBS News website based on a CBS Evening News report aired in September 2010, titled "A Burning Debate Over Natural Gas Drilling." The interview, conducted by Armen Keteyian, CBS News chief investigative correspondent, contained multiple shots of the Children playing on the Hallowichs' property, and includes a statement by Stephanie Hallowich that she is "very afraid, health-wise, for the kids, just because of the exposure to the water and the constant not-knowing what we're breathing in outside."[1]

Attached as Exhibit "F" is an October 17, 2010 article from the National Geographic News titled "A Dream Dashed by the Rush on Gas" that extensively details the instant law suit between the Hallowichs and Range Resources over the alleged pollution of the Hallowichs' property. Both a representative of Range Resources and the Hallowichs were interviewed for the article. The reporting in the article includes the following:

[1] The video interview, which includes multiple shots of the Children, can be viewed at: http://www.cbsnews.com/stories/2010/09/04/eveningnews/main6835996.shtml.

- The Hallowichs' case is being studied as part of a larger study by the University of Pittsburgh and the University of Washington, Seattle, funded by the Heinz Endowments, on the impact of natural gas drilling on air pollution. Exhibit "F," p. 8.
- Matt Pitzarella, described as a "spokesman for Range Resources, the company that drilled the well that produces gas beneath the Hallowich site" was interviewed for the article. Exhibit "F," p. 3.
- Mr. Pitzarella and the Hallowichs discussed in detail the offers and demands to resolve the instant case as follows: "Pitzarella says that Range has offered to buy the Hallowich property, while leaving them the mineral rights for around $200,000. Pitzarella says the offer –which was made verbally, not in writing – was based on a real estate agent's assessment of the fair market value of the property. But the Hallowichs, who have put their house on the market for close to $500,000, say they never received either a verbal or written offer from Range, although the company invited them to talk. They say that Range asked what they wanted; they replied that they wanted the company to buy their house, reimburse them for water, pay their legal fees, and create an escrow account for medical monitoring for the family." Exhibit "F," p. 9.
- The article also includes a photograph of the Hallowichs, alongside the Children, and quotes them as follows:

- "'It's ruined our lives. That's what it comes down to,' says Chris [Hallowich]. 'It's ruined our plans that we had for the kids. It's ruined what we thought was our perfect ten acres.'"
- "[The Hallowichs] say they fear that they and their children, now 6 and 9, face health risks from both polluted drinking water and air."

Attached as Exhibit "G" are various photographs and accompanying captions, in which the Children are prominently displayed, that were part of the National Geographic News' series, "Special Report: The Great Shale Gas Rush," of which the article referenced in the above paragraph was a part of. The National Geographic News article also contained video, including commentary by the Hallowichs, over photographs of the Children, discussing the Children's health issues.[2]

Attached as Exhibit "H"[3] is a transcript of a March 1, 2011 video news report from, the Western Pennsylvania television station, WTAE Pittsburgh, titled "Explosion Reports Send Crews To Washington Co. Gas Well Site," which includes an interview with Stephanie Hallowich. The transcript contains the following:

- "Hallowich said her family wants to move and, out of frustration at what they perceive as the health risk from [natural gas] drilling operations, carved the words 'Gas Land' into their yard. 'We had actually been away the last couple of days because the children have been having some health issues, which we believe is

[2] The video is posted and currently resides on the National Geographic New's website at: http://news.nationalgeographic.com/news/2010/10/photogalleries/101022-energy-gas-faces-shale-pictures/#/energy-shale-portrait02-hallowich_26860_600x450.jpg

[3] All exhibits listed above are admissible under Rule 902 of the Pennsylvania Rules of Evidence.

from some of the emissions coming out of these two places, with some pretty serious nose bleeds and headaches,' Hallowich said."[4]

Besides discussing in detail the health ailments, names and ages, and location of the Children's residence, the Hallowichs provided, or posed for, voluminous amounts of photographs and video recordings where the Children are prominently displayed. In addition, both the Hallowichs and the Defendant Range Resources discussed in exhaustive detail the intimate and essential details of the case, including previous financial settlement proposals, medical information, and alleged environmental and health-related violations by the Defendants.

As acknowledged in the Defendants' Joint Brief in Opposition, a settlement was executed in late June 2011 between the Hallowichs, the Hallowichs' Children (collectively "Plaintiffs"), and the Defendants. On July 28, 2011, the Petition for Approval of Settlement of Minors' Actions[5] and the Joint Motion to Seal was filed by the Hallowichs. Upon consideration of these pleadings, the Court scheduled a hearing in closed court chambers for August 24, 2011.

On August 23, 2011,[6] the Court held a hearing on the Petition for Approval of Settlement of Minors' Actions and the Joint Motion to Seal. Before the hearing commenced, upon noticing two reporters for the Post-Gazette in the courtroom, a court official proceeded into the Court's chambers and informed the Court of their presence. After doing so, the court official proceeded

[4] The video can be viewed at: http://www.wtae.com/news/27035071/detail.html.
[5] Throughout Defendants' Joint Brief in Opposition, Defendants characterizes the Petition for Approval of Settlement of Minors' Actions Pursuant to Pa.R.C.P. 2039 and Local Rule 2039.1 as an "Orphans' Court Petition," including the statement that the claims would require court approval under "Pennsylvania Orphans' Court Rules." It should be noted, that Defendants cite no Orphans' Court Rules which would apply, instead citing only Pa.R.C.P. 2039. Indeed, Pa.R.C.P. 2039 and Washington County Local Rule 2039.1 (listed as a local rule in the Civil Division) are not Orphans' Court Rules but Rules of Civil Procedure. *See* Pa.R.C.P. 2309 and Washington County Local Rule 2039.1. No Orphans' Court proceeding is at issue in the above-captioned matter.
[6] The Post-Gazette is unaware of any order of court that re-scheduled the hearing for August 23, 2011, or any reason as to why the hearing was held on August 23, 2011.

back into the courtroom and informed the Plaintiffs, Plaintiffs' Attorneys, Defendants and Defendants' Attorneys to follow him into the Court's chambers.[7]

Contrary to the Defendants' assertions in the Defendants' Joint Brief in Opposition, the reporters for the Post-Gazette did not subsequently attempt to "follow the parties into chambers," rather the reporters proceeded into the outer office of the Court's chambers and asked the court official if they could enter the chambers. When the court official denied their request, the reporters informed the court official that they were objecting to the closing of the court proceeding on behalf of the Post-Gazette. Upon hearing this, the court official went into the chambers and returned shortly after to inform the reporters that the Post-Gazette's objection had been noted by the Court.

After holding the closed court proceeding, the Court entered an order approving the settlement as to the minors' claims and sealing the record "indefinitely in its entirety." On September 6, 2011, the Post-Gazette presented a Petition to Intervene and Motion to Unseal Record. In advance of the scheduled presentation date, counsel for the Hallowichs and the DEP both sent letters to the Court they were taking no position on the Post-Gazette's request to open the record. *See* Exhibits "I" and "J."

In response to the Post-Gazette's petition, the Court entered an order scheduling argument on the petition for October 4, 2011 and directing that twenty days before the argument "all parties seeking to seal the record in the above-captioned case shall serve on all other parties, including the Proposed Intervenor, and the Court, an answer to Intervenor's motion setting forth the basis in law and in fact why the record should be sealed." The Observer Reporter then filed its separate Petition to Intervene and Joinder in the Post-Gazette's petition and the Court

[7] Despite Defendants claims in Defendants' Joint Brief in Opposition, the Court never stated the confidential nature of the proceedings, as the Court was not present in the courtroom at any time during the incident at issue. The proceedings had yet to start before the court official moved the parties into chambers.

scheduled argument on the Observer Reporter's petition at the previously scheduled October 4, 2011 argument.

Consistent with their correspondence to the Court, neither the Hallowichs nor the DEP filed an answer or any response to the Intervenors' motions to open the record. The Defendants did not file an answer to the motions as directed by the Court. Instead they filed a brief to which the Intervenors now respond. [8]

II. ARGUMENT

The Court should grant the Joint Petition to Intervene and Motion to Unseal Record, as no party seeking to seal the records can rebut the presumption of openness in a civil proceeding that allows the public access to court records.

A. Governing Legal Standards

The Pennsylvania Constitution mandates open judicial proceedings. "All courts shall be open." Pa. Const. Art. I, § 11. *See*, e.g., *Hutchinson by Hutchinson v. Luddy*, 611 A.2d 1280 (Pa. Super. 1992). The tradition of keeping proceedings and records of civil proceedings open to public observation also is founded in the common law right, and as stated in *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1071 (3rd Cir. 1984), "[it is] clear that the public and the press possess a First Amendment and a common law right of access to civil proceedings; indeed there is a presumption that these proceedings will be open."

The Defendants' brief acknowledges both the Constitutional and common law right to open courtrooms in Pennsylvania. Defendants' brief, p. 7, n. 6.

[8] Contrary to footnote 2 in the Defendant's Joint Brief in Opposition, no joint motion to open all pleadings except for the settlement agreement has been filed with this Court. The Defendants have agreed to a joint motion to open all pleadings except for the settlement agreement, in which the Intervenors' claims that the balance of the record should be opened are preserved. The Defendants, in an apparent attempt to further obfuscate the issue, have insisted on holding off presentation of the joint motion until the October 4, 2011 argument, effectively making it impossible for the Intervernors to reference the record at the October 4, 2011 argument.

The filing of a petition to intervene in order to open proceedings and records by the news media, in a civil trial, is an appropriate means of raising assertions of public rights of access. *See Hutchinson by Hutchinson,* 611 A.2d at 1284. The Defendants' brief does not challenge the right of the Intervenors, both publishers of newspapers of general circulation in Western Pennsylvania and representatives of the general public, to intervene in this matter and challenge the sealing of the record.

In determining whether the record in a civil proceeding that contains a minors' action should be sealed, the Superior Court has adopted the standards set forth by the Third Circuit in *Publicker Industries*. *See Storms ex rel. Storms v. O'Malley*, 779 A.2d 548, 568 – 69 (Pa. Super. 2001). Under *Publicker Industries*, a trial court must satisfy certain procedural and substantive requirements before it can deny access to civil proceedings. *Publicker Industries*, 733 F.2d at 1071.

The Defendants acknowledge that the party who seeks closure bears the burden of establishing that closure is appropriate under the circumstances. *See e.g.* Defendants' brief, at p. 7. This was reiterated by the Pennsylvania Superior Court in *R.W. v. Hampe*, 626 A.2d 1218, 1220, n. 3 (Pa. Super.1993):

> "There are two methods of analysis of the competing interests involved in a request for closure. In the 'first amendment' or constitutional analysis, the presumption of openness may be rebutted by a claim that the denial of public access 'serves an important governmental interest and there is no less restrictive way to serve that government interest.' Under this method, which is based in the First Amendment of the United States and Art. 1, Section 11 of the Pennsylvania Constitution, it must be established that the 'material is the kind of information that the courts will protect and that there is good cause of the order to issue'...The second method of analysis is the common laws balancing approach, where a party must show that her personal interest in secrecy outweighs the traditional presumption of openness."
> (internal citations omitted).

In *Publicker Industries*, the Court held that the sealing of pleadings and the closure of trial proceedings may be warranted only when either an important governmental interest is at stake and

there is no less restrictive way to serve that governmental interest, or that a clearly defined and serious injury would have occurred to the motioning party if the record were not sealed, such as the disclosure of a trade secret. *Publicker Industries*, 733 F.2d at 1070 - 71. Defendants, in their brief, acknowledge that under Pennsylvania law, closure only is warranted where disclosure will work "a *defined and serious injury* to the party seeking closure." Defendants' brief, p. 7 (emphasis added).

The decisions of the Pennsylvania appellate courts demonstrate both how heavy a burden the Defendants face and the courts' reluctance to close proceedings and seal records. In *R.W. v. Hampe*, *supra*, the Superior Court reversed the sealing of the record at the request of the plaintiff in a psychiatric malpractice lawsuit even though the "record reveals that it does contain embarrassing information, particularly of a sexual nature." 626 A.2d at 1223. *See also Hutchison, supra* (affirming denial of a request to seal the record in a case involving allegations of sexual abuse of a minor by a priest). It is notable that in *Stenger v. Lehigh Valley Hospital Center*, 554 A.2d 954, 959 (Pa. Super. 1989), cited by the Defendants, the Superior Court held that the intervening newspaper would "clearly have access to publish the evidence at trial" even though it potentially involved information regarding the plaintiffs' "sexual practices, their idiosyncrasies, and their personal hygiene habits."

A trial court, before closing a proceeding, must afford the representatives of the media objecting to closure a full opportunity to be heard with their counsel present.[9] If it decides to order closure, the trial court then must both articulate the countervailing interest it seeks to protect and

[9] Defendants, in Defendants' Joint Brief in Opposition, argue that this Court has already conducted such a hearing, alleging this Court "found that all parties had knowingly and voluntarily consented to the confidentiality provisions" during the closed chambers hearing. However, it is axiomatic that a hearing conducted in closed chambers, without the presence of the general public, who seek their constitutional and common law right of access, is not a proper hearing as required under *Publicker Industries*. In addition, as discussed *infra*, a unilateral agreement of confidentiality can never be an essential term of the settlement of a minors' action.

make findings specific enough that a reviewing court can determine whether the closure order was properly entered. *See Publicker Industries*, 733 F.2d at 1071-72.

B. The Court Should Grant the Joint Petition to Intervene and Motion to Unseal Record, Because No Party Seeking Closure Can Rebut the Presumption of Openness Present in the Proceedings Before This Court

i. No Party Seeking Closure Can Rebut the Presumption of Openness Under the Constitutional Analysis

With the above as background, the issue before this Court is what have Defendants shown that could possibly reach the high bar of "a clearly defined and serious injury" that would warrant closure in this proceeding.

An analysis of what the Defendants' brief does *not* argue is instructive. The Defendants do not contend that the record contains any trade secret or proprietary information, the disclosure of which would cause financial damage to the Defendants.

Instead, the gravamen of Defendants' argument is found at page 8 of their brief, which states:

> "Here there is an overriding interest that trumps any right of access the press assert to the confidential settlement agreement and related filings, namely, that a court ruling allowing press access to a settlement agreement whenever a minor is involved, despite confidential provisions in the agreement negotiated and agreed to by the parties would destroy a litigant's right to privately contract whenever Orphans' Court approval of that settlement is required."

It is clear that the Defendants' argument is disingenuous in the extreme. At the bottom of this effort is the self-evident interest of the Defendants to hide from the public a judicial record that shows the resolution of admitted claims against the Defendants for water and air pollution of a residential area. This case has drawn national media coverage in which all parties participated. This case has a wide ranging impact on issues related to natural gas drilling, a subject which has

drawn intense coverage and discussion in public forums in recent months. The public's right to know the case's resolution could not be farther from "mere curiosity", as the Defendants contend. There are few cases that could be more compelling for public disclosure. Clearly, the Defendants do not want the bright light of media coverage on the resolution of the Hallowichs' claims.

The efforts of the Defendants to hide their true motivation behind issues regarding minors' could not be clearer. The public's right to know what transpires in judicial proceedings involving issues of immense public importance has been emphasized by the Pennsylvania Superior Court. Noting that Justice Holmes declared that public access to civil judicial proceedings was of "vast importance", the Court reasoned:

> "The educative effect of public attendance is a material advantage. Not only is respect for the law increased and intelligent acquaintance acquired with the methods of government, but a strong confidence in judicial remedies is secured which could never be inspired by a system of secrecy."
> *R.W. v. Hampe*, *supra* at 1221 (citing Wigmore on Evidence).

The Defendants' motivation aside, their argument ignores the essential presumptively public proceedings involved in a settlement of a minors' claim. Rule 2039 of the Pennsylvania Rules of Civil Procedure states: "[n]o action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor." In the instant matter, a private agreement is not at issue. Rather there is a mandated court procedure whereby a petition must be presented to the Court detailing the proposed settlement. The Court then has the right to approve or disapprove the proposed settlement agreement. Inherently, every detail of the settlement is part of a court proceeding subject to the Constitutional mandate that such proceedings shall be open to the public.

As the Pennsylvania Superior Court has noted "[a] confidentiality clause [can] never be an essential term of an agreement to settle a **minor's** claim, since settlement of a minor's claim

requires court approval pursuant to Pa.R.C.P. 2039, and court proceedings are a matter of public record." *See Storms, supra*, at 568, n. 12. "Thus, [the] sealing of the record in the case of a minor's settlement is not a *pro forma* matter that is automatically performed upon the agreement of the parties, but rather, is permitted only upon analysis and approval by the court." *Id.*

In *Storms, supra*, the facts were strikingly similar to those in the instant matter. The cause of action arose from a claim upon behalf of the minor and her parents that she suffered injuries as a result of the medical malpractice of the defendant doctor. The defendant doctor sought to seal the record in an obvious attempt to avoid disclosure of the claims against him and the large settlement being paid to the plaintiffs. The trial court rejected the defendant's request to seal the record and the Superior Court affirmed.

The Superior Court, in *Storms*, held that to seal the record in a civil proceeding which contains a minors' action, the party seeking closure must rebut the presumption of openness by either: 1) showing that the closure serves an important governmental interest and that there is no less restrictive way to serve that interest (Constitutional analysis) or 2) show that his or her interest in secrecy outweighs the presumption of openness (common law analysis). *See Storms*, 779 A.2d at 569. The *Storms* Court reiterated that under the Constitutional analysis the presumption only can be overcome by showing a clearly defined and serious injury to the party seeking closure. *Storms*, 779 A.2d at 569.

As in the instant case, the defendant argued that public disclosure would discourage settlement. The Superior Court said that argument did not overcome the far greater right of public access to Court proceedings:

"....[Defendant's] argument that there was no public interest in leaving the record open and that the sealing of the record would encourage settlement did not outweigh the public's interest in open court proceedings." *Storms*, 779 A.2d at 569 – 70.

In *Storms*, the Court was presented by opposition from both the plaintiffs and the defendant, as the plaintiffs eventually joined in the effort to seal the record. Here, the Plaintiff Hallowichs have not joined in the opposition to seal the record and instead "defer to the Court's discretion..." whether to open or seal the record. *See* Exhibit "I."

Defendants' brief does not cite or attempt to distinguish *Storms.* The only case Defendants cite in support or their position, *Beaver v. McColgan*, 11 Pa. D &C 4th 97 (Ct. Com. Pl. Columbia Co. 1990) is not binding precedent on this Court and was issued eleven years before the Superior Court's decision in *Storms.* Even if there was not the overriding precedent of *Storms*, *Beaver* is clearly distinguishable. In *Beaver*, the mother of the minor was the party moving to seal the record, as she wished her financial privacy protected following a tragic accident where her husband was killed, she was seriously injured and the minor was left paralyzed from the waist down. Here, the Hallowichs have neither opposed the opening of the record nor attempted to keep the litigation private, including their financial demands. Instead they have made it a national *cause célèbre.* Further, in *Beaver*, the representative of the media remained silent in the proceedings and asserted no reason on the record why the public had an interest in the outcome.

In the instant matter, Defendants' argument that the "overriding interest of the parties in the confidentiality of their settlement agreement outweighs any right of access to the [record]" is fallacious. In fact, the Defendants' proposition that "the mere presence of minors in a settlement

does not give the public right of access to an out-of-court settlement agreement that would otherwise have been kept confidential" has been explicitly rejected by the Superior Court in *Storms*.

In addition, despite the Defendants' failure to raise any compelling government interests, or show any way that opening the record will work a clearly defined and serious injury to a party seeking closure, no privacy interest exists which rebuts the presumption of openness. Any argument that an important government interest exists in protecting the privacy of the Children fails. The Hallowichs, by their failure to object to opening the record, have made a *sub silentio* admission that they do not believe that they or the Children will suffer any injury by opening the record.

Similarly by the DEP's failure to object to the opening of the record, the DEP acknowledges it does not believe an important government interest exists which necessitates closure of the record.

Even if the Hallowichs had objected to opening the record, no interest in protecting the Children's privacy exists which outweighs the presumption of openness. The Hallowichs have mounted an intense media campaign, with the Children as the focal point, to highlight the alleged damaged caused to the Children by the Defendants. The Hallowichs appeared in national nightly news interviews, national news media publications, and local news media publications that contained pictures of the Children, videos of the Children outside their home, the location of the Children's residence, the age and names of the Children, the health ailments the Children suffered from, etc. In addition, the intimate financial details of the above-captioned case have been discussed *by both sides* in the media, including previous settlement offers, current demands, and the alleged monthly expenses of the Hallowichs.

ii. No Party Seeking Closure Can Rebut the Presumption of Openness Under the Common Law Analysis

As stated *supra*, under the common law approach, the party seeking closure must show that his or her interest in secrecy outweighs the presumption of openness. To rebut the presumption of openness, as also required under the constitutional approach, the party must establish "good cause" by showing that closure is "necessary in order to prevent a clearly defined and serious injury to the party seeking" it. *See R.W. v. Hampe, supra* at 1221. Discussing the type of injuries that may necessitate closure, this Court in *Hutchinson by Hutchinson* stated:

> Thus the public may 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."
> *Hutchinson by Hutchinson,* 611 A.2d at 1290.

It is significant that the Defendants do not raise an interest in secrecy that outweighs the presumption of openness, nor do they establish that closure is necessary in order to prevent a clearly defined and serious injury to the party seeking it. Instead, Defendants simply state that "litigants should be entitled to rely on confidentiality provisions in their settlement agreements" in actions involving minors and "that the mere presence of minors in a settlement does not give the public a right of access." As discussed *supra*, these assertions are directly contradictory to the Superior Court's holding in *Storms*, which found settlements submitted to court in compliance with Pa.R.C.P. 2309 to be public records, of which a confidentiality provision could not be an essential term. In essence, the mere presence of minors in a settlement requires the settlement to be part of the public record, and requires any party seeking closure to rebut the presumption of openness that applies to civil proceedings.

Along with failing to raise a clearly defined or serious injury that the Defendants will suffer, no other risk of serious injury exists which would necessitate closure. As the Hallowichs have not objected to the Joint Petition to Intervene and Motion to Unseal Record, and have not filed a brief asserting the continued sealing of the record, no privacy interest exists for the Children which would necessitate closure. Additionally, Defendants have not asserted that any trade secrets or proprietary information are included in the settlement, which preclude its opening.

In *Storms*, the Superior Court rejected arguments that a serious injury would occur to the privacy of the minor child, the business reputation of the defendant, and the court's general policy to encourage settlements, if the record was unsealed, stating: "the [party seeking closure] failed to establish that they would suffer a "serious injury," absent sealing of the [settlement agreement]." *Storms*, 779 A.2d at 570. As such, no party can rebut the presumption of openness under the common law analysis.

III. CONCLUSION

As demonstrated above, no party can rebut the presumption of openness that applies to civil proceedings involving a minors' action. Defendants have failed to rebut the presumption of openness under both the constitutional analysis and common law analysis. As settlements submitted to a court under Pa.R.C.P. 2039 are public records which can only be sealed upon rebutting the presumption of openness given to all civil proceedings, which the Defendants have not and cannot do, the records in the above-captioned case should be unsealed in their entirety. Based on the foregoing reasons, Intervenors respectfully request that the Court grant the Joint Petition to Intervene and Motion to Unseal Record.

Respectfully submitted,

FRANK, GALE, BAILS, MURCKO & POCRASS, P.C.

By:_____
Frederick N. Frank, Esquire

Attorneys for PG Publishing Company, d/b/a The Pittsburgh Post-Gazette

MARRINER, JONES & FITCH

By:_____
Colin E. Fitch, Esquire

Attorneys for Observer Publishing Company, d/b/a Observer Reporter