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STATEMENT OF FACTS

By separate Notice of Motion, this Firm, in its capacity as Court-appointed Liaison Counsel to the Class, moved for an award of attorneys' fees and costs. In support of the Motion, this Firm previously served a Brief in Support of Motion for Award of Attorneys' Fees and Costs, Certification of John E. Keefe, Jr. and Certification of Stephen T. Sullivan, Jr. In reply to the opposition of Bernstein Liebhard & Lifshitz, LLP, this Firm has filed a Reply Brief, supplemental Certifications of John E. Keefe, Jr. and Stephen T. Sullivan, Jr. and Certifications of Patrick J. Bartels and Robert A. Storino. These documents either directly or indirectly discuss events in this matter that may invoke various privileges, including, but not limited to, attorney-client privilege, attorney work product doctrine and trial strategy and confidential negotiations between parties. As this litigation is on-going, it requests that the Court seal these materials to protect their confidential nature.

LEGAL ARGUMENT

There is a presumption that civil proceedings will be open. *Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1070 (3rd Cir. 1984). Nevertheless, a trial court may limit this right when "an important countervailing interest is shown." *Id.* at 1071. The party seeking to seal any part of a judicial record bears the burden of demonstrating that "the material is the kind of information that courts will protect." *Miller v. Indiana Hosp.*, 15 F.3d 549, 551 (3rd Cir. 1994) (citation omitted).

Based upon the previously described burden, Local Rule 5.3(c)(2) requires a showing of:

- a. the nature of the materials of the proceedings at issue;
- b. the legitimate private or public interest which warrants the relief sought;
- c. the clearly defined and serious injury that would result if the relief sought is not granted; and

d. why a less restrictive alternative to the relief sought is not available.

Nature of the Materials: The papers sought to be filed under seal include: Reply Brief in Support of Motion for Award of Attorneys' Fees and Costs, Certification of John E. Keefe, Jr., Certification of Stephen T. Sullivan, Jr., Certification of Robert A. Storino and Certification of Patrick J. Bartels.

Interests which Warrant the Relief Sought, and Injury that Would Result from Disclosure: The papers sought to be filed under seal discuss information and documents protected by the attorney-client privilege, trial strategy, attorney work product and confidential negotiations. If disclosed during this pending litigation, confidential information may be revealed not only to the general public but also defendants presently in this matter. Courts have traditionally upheld and protected the confidential nature of these types of privileges. *See, e.g., Macey v. Rollins Environmental Services*, 179 N.J. Super. 535, 539 (App. Div. 1981) (stating that attorney-client privilege is meant to “encourage clients to make full disclosure to their attorneys”); *Miller v. J.B. Hunt Transport*, 339 N.J. Super. 144, 150 (App. Div. 2001) (discussing protections afforded by attorney work product doctrine).

Less Restrictive Alternative: No less restrictive alternative is available. The release of these documents would obviate the privileges and confidential nature related to them. Accordingly, the only way to protect the materials and confidences or privileges contained in them is to seal the pleadings and exhibits identified in this Motion.

CONCLUSION

For the foregoing reasons, Liaison Counsel to the Class, Keefe Bartels, respectfully requests that the Court grant its Motion to Seal.

Respectfully submitted,

/s/ John E. Keefe, Jr.
JOHN E. KEEFE, JR.
For the Firm

Dated: February 19, 2008