

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DELAWARE COALITION FOR  
OPEN GOVERNMENT, INC.,

*Plaintiff,*

v.

No. 1:11-cv-01015-MAM

THE HON. LEO E. STRINE, JR.,  
THE HON. JOHN W. NOBLE,  
THE HON. DONALD F. PARSONS, JR.,  
THE HON. J. TRAVIS LASTER,  
THE HON. SAM GLASSCOCK, III,  
THE DELAWARE COURT OF CHANCERY,  
AND THE STATE OF DELAWARE,

*Defendants.*

**MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OF THE REPORTERS  
COMMITTEE FOR FREEDOM OF THE PRESS AND FIVE NEWS ORGANIZATIONS IN  
SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON  
THE PLEADINGS AND PLAINTIFF'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS**

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The New York Times Company and  
The Washington Post*

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*Of Counsel*

Dated: January 20, 2012

## INTRODUCTION

The Reporters Committee for Freedom of the Press and five news organizations (collectively, “*amici curiae*” or “*amici*”) respectfully move the Court for leave to file a brief *amici curiae* in support of Plaintiff’s opposition to Defendants’ motion for judgment on the pleadings and Plaintiff’s cross-motion for judgment on the pleadings. The proposed brief accompanies this motion, to which a proposed order is attached.

## IDENTITY OF AMICI CURIAE

Pursuant to Fed. R. Civ. P. 7.1, *amici* state as follows:

**The Reporters Committee for Freedom of the Press** is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. The Reporters Committee has no parent corporation and issues no stock.

With some 500 members, **American Society of News Editors** (“ASNE”) is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as the American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers. ASNE is a private, non-stock corporation that has no parent.

**The Associated Press** (“AP”) is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. AP’s members include approximately 1,500 daily newspapers and 25,000 broadcast news outlets throughout the United

States. AP has its headquarters and main news operations in New York City and has staff in 321 locations worldwide. AP reports news in print and electronic formats of every kind, reaching a subscriber base that includes newspapers, broadcast stations, news networks and online information distributors in 116 countries.

**Maryland D.C. Delaware Broadcasters Association** (“MDCD”) unites public and commercial radio and television across Maryland, D.C. and Delaware. The main purpose of MDCD is to represent and further the interests of broadcasters, communicate relevant information to broadcasters through meetings and publications and provide educational services through webinars, workshops or other appropriate means in order to better serve the public. MDCD is a nonprofit organization that has no parent organization and issues no stock.

**The New York Times Company** is the publisher of *The New York Times*, *International Herald Tribune*, *The Boston Globe* and 15 other daily newspapers. It also owns and operates more than 50 web sites, including nytimes.com, Boston.com and About.com. The New York Times Company is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. No publicly held company owns 10 percent or more of its stock.

**The Washington Post** publishes a daily and Sunday newspaper with the nation’s fifth-largest print circulation, as well as a web site (washingtonpost.com) that attracts more than 17 million unique visitors per month.

#### **INTERESTS OF AMICI CURIAE**

*Amici curiae* are national news organizations, nonprofit associations representing newsgatherers and trade groups whose journalists and members regularly provide information on issues that affect the public. *Amici*’s interest in this case is in ensuring that the right of access to judicial proceedings and records, namely private settlement agreements approved by courts — a

guarantee upon which journalists and others rely in fulfilling their vital role of gathering and disseminating news about matters of public interest and concern — is not impeded by the rules of the Delaware Court of Chancery. Moreover, the disposition of this case is critically important in setting a precedent that will either protect or endanger the public’s right to monitor and evaluate its government and judicial process.

*Amici curiae* offer unique and valuable perspectives on the legal questions before the Court in this case. As established media organizations and advocates for the rights of those in media, *amici* closely monitor legal developments that affect the ability to gather and disseminate news, including jurisprudence about court access.<sup>1</sup> Drawing on the unique insight gained through careful observation of a particular area of law over a period of time, *amici*’s brief takes a broad view of the issue, thereby providing a larger context to the controversy. Thus, it “will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (discussing the criteria for deciding whether to permit an *amicus* brief).

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<sup>1</sup> Lead *amicus curiae* The Reporters Committee for Freedom of the Press publishes an ongoing series of reports about access to the judicial system. One report focuses on access to proceedings and records related to alternative dispute resolution, including private arbitration. The Reporters Committee for Freedom of the Press, *Secret Justice: Alternative Dispute Resolution* (2001), available at <http://www.rcfp.org/secret-justice-alternative-dispute-resolution>.

**CONCLUSION**

*Amici* are concerned that, if this Court were to grant Defendants' motion, efforts to gather and disseminate information about vital issues of public interest and concern would be chilled, and the public's right to participate in and serve as a check upon the judicial process would be severely curtailed. As such, they respectfully request that the Court grant this motion for leave to file the accompanying brief *amici curiae*.

Dated: January 20, 2012

Respectfully Submitted,  
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THE DELAWARE COURT OF CHANCERY,  
AND THE STATE OF DELAWARE,

*Defendants.*

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2012, upon consideration of the Motion for Leave to File Brief *Amici Curiae* of The Reporters Committee for Freedom of the Press and Five News Organizations in Support of Plaintiff's Opposition to Defendants' Motion for Judgment on the Pleadings and Plaintiff's Cross-Motion for Judgment on the Pleadings (Docket No. 28) and all submissions made in connection therewith, IT IS HEREBY ORDERED THAT the motion is GRANTED.

BY THE COURT:

\_\_\_\_\_  
MARY A. McLAUGHLIN, J.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2012, I electronically filed in searchable Portable Document Format the foregoing motion for leave to file brief *amici curiae* with the United States District Court for the District of Delaware by using the CM/ECF system, thereby affecting service on the following counsel of record, all of whom are registered for electronic filing:

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Dated: January 20, 2012

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