

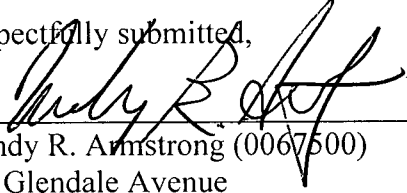
**PROBATE COURT OF HAMILTON COUNTY, OHIO
JAMES CISSELL, JUDGE**

IN THE MATTER OF ESTATE OF NEIL A. ARMSTRONG
CASE NO. 2012005552

**MOTION TO APPROVE
[FILING UNDER SEAL]**

Pursuant to Local Rule 57.2, the sons and grandchildren of Neil Armstrong move this Court to seal records relating to the wrongful death settlement in the Estate of Neil A. Armstrong. The movants request that the Court seal this Motion and the Memorandum in Support; the Application for Approval of Wrongful Death Settlement that is being filed simultaneously with this Motion by Carol H. Armstrong as Executor on behalf of the Estate; and all related consents, hearings, transcripts, reports and other materials related to the settlement. The unusual and exceptional circumstances of this settlement, including the involvement of minor beneficiaries, support restricted public access. Mr. Armstrong's widow, Carol Armstrong, is not receiving any settlement proceeds. However, in her capacity as the Executor of the Estate, she acknowledges this Motion as indicated below.

Respectfully submitted,



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COURT COMMON PLEAS PROBATE
JAMES CISSELL, JUDGE

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Acknowledged by
Estate of Neil A. Armstrong,
Carol H. Armstrong, Executor

A handwritten signature in dark ink, appearing to read "S. E. Wheatley", is written over a horizontal line.

Susan E. Wheatley (0037396)

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MEMORANDUM IN SUPPORT

I. Introduction and Factual Background

Neil A. Armstrong, who died in August 2012, led an extraordinary life. However, in the words of his biographer, “it was in Neil’s mild and modest personality to avoid publicity.”¹ Nevertheless, he and his family found themselves in a unique spotlight. Now, certain members of the Armstrong family have made allegations of medical malpractice against the hospital and against the health care providers who provided care and treatment to Mr. Armstrong. The hospital on behalf of itself and the health care providers has reached a settlement with certain of the Armstrong family members, including Mr. Armstrong’s grandchildren, three of whom are minors and one of whom has special needs.

Specifically, settlement funds would be allocated among ten family members (who do not include his widow, Carol Armstrong, who is not receiving any settlement): Mr. Armstrong’s two sons, Eric Armstrong and Mark Armstrong; his sister, June Hoffman; his brother, Dean Armstrong; and his six grandchildren, three of whom are minors and one of whom has special needs.

In her capacity as Executor, Carol Armstrong, as is required procedurally under Ohio law, is filing a Motion for Approval of the wrongful death settlement simultaneously with this Motion. Mr. Armstrong’s sons and grandchildren move to seal the court records and all information relating to the settlement.

The hospital and health care providers stand by the care they provided to Mr. Armstrong and deny that any malpractice occurred. However, the hospital, on behalf of itself and the health care providers, agreed to a confidential settlement of \$6,000,000 to avoid the publicity of litigation that the Estate might have initiated on behalf of certain members of the family if settlement had not been

¹ Hansen, J., *First Man: The Life of Neil A. Armstrong* (2005; preface 2012) at xii.

reached. The terms of the settlement include a confidentiality requirement for all parties and a full release of the hospital and the health care providers.

Mr. Armstrong's sons and grandchildren request that this Court seal:

- 1) this Motion to Seal and Memorandum in Support;
- 2) the Motion to Approve and attached Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (Probate Form 14);
- 3) all related consents, hearings, transcripts of hearings, fee applications, exhibits, filings referring to service and notices that pertain to the settlement and this Motion, reports and entries;
- 4) all appointments of guardians ad litem and their reports, and other information or filings related to the wrongful death settlement; and
- 5) records relating to bank accounts or trusts to hold settlement funds for minors.

II. Legal Analysis

The factors governing a request to seal information are set forth in this Court's Local Rule 57.2. Paragraph C. of this Rule provides:

The Court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:

- (a) Whether public policy is served by restricting public access;
- (b) Whether any state, federal, or common law exempts the document or information from public access;
- (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

The Ohio Supreme Court in its recent decision in Schussheim v. Schussheim, 137 Ohio St. 3d 133, 136, 998 N.E.2d 446, 449 (Oct. 2013), held that Ohio courts "have the inherent authority to expunge and seal records when a case involves unusual and exceptional circumstances and when the interests of the party seeking expungement outweigh the legitimate need of the government to maintain records." As this Court explained in *In re Estate of Carpenter*, 127 Ohio

Misc. 2d 22, 2004-Ohio-830, 804 N.E.2d 1059 (Ham. Cty. Prob. Ct. 2004), “To seal a record, a court must find that the risk of harm to the individual’s privacy rights outweighs the public’s interest in maximum public access to court records, government accountability, public safety, and the use of the courts to resolve disputes and the effective use of the court’s staff.” 127 Ohio Misc. 2d at 28.

Here, the factors set forth in Local Rule 57.2 and the Ohio Supreme Court’s and this Court’s rulings weigh in favor of sealing the records.

A. Whether public policy is served by restricting public access.

The documents to be sealed concern a private matter and medical issues relating to Mr. Armstrong’s death. They do not concern Mr. Armstrong’s career or accomplishments and do not bear on his contributions to society. The settlement does not contain information concerning matters of public policy. *Cf. In re Estate of Carpenter*, 2004-Ohio-830, at ¶ (civil rights settlement resulting from misdeeds of governmental officials); *In the Matter of the Guardianships of Francis Lester Moylan and Yuk Lan Moylan*, 2011 Guam 16, 2011 Guam LEXIS 17, at *52 (Guam, Oct. 18, 2011) (records would not be sealed; public has interest in protecting guardianship wards from abuse by court-appointed fiduciaries).

No public interest or open records policy is served by allowing details of the settlement to become public. Accordingly, the first factor weighs in favor of sealing the records.

B. Whether any state, federal, or common law exempts the document or information from public access.

The constitutional right to individual privacy has been recognized generally as a reason to exempt documents from public access. *See The State ex rel. WBNS TV, Inc. v. Dues, Judge*, 101 Ohio St. 3d 406, 413, 2004-Ohio-1497, 805 N.E.1116, 1125 (constitutional privacy rights are “state or federal law” under Ohio Rev. Code §149.43(A)(v) that can justify sealing). The question

becomes whether the privacy right outweighs the public's right to access otherwise public records.² Here, the privacy rights of Mr. Armstrong's family members support sealing of the documents relating to the settlement. Unlike the facts in Dues (or any other Ohio case that counsel has been able to locate), Mr. Armstrong's worldwide fame intensifies the need to protect family members from the attention that the settlement would draw. Although the context is different from that in *Schussheim*, the circumstances here are likewise "unusual and exceptional," supporting sealing the records.

C. Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

The beneficiaries of the wrongful death settlement, particularly Mr. Armstrong's minor and young adult grandchildren, are highly likely to come under media attention if the fact of the settlement itself and the details are not sealed. The fact of the wrongful death settlement and the total amount of the settlement should be sealed so that specific allocations among family members cannot be speculated about, potentially resulting in contacts with the minors or young adults at their schools or other activities. One grandchild has special needs and would be particularly vulnerable if members of the public learned of the settlement and then pressed that grandchild for details and dollar amounts. As this Court noted in Carpenter, "[D]isclosure of the division of the settlement funds satisfies only a voyeuristic interest." 804 N.E. 2d at 1064.

Mr. Armstrong's modest and private life merits strong consideration in sealing the facts and the details of the settlement. As his biographer wrote,

[N]o human being could have handled the bright glare of international fame or the instant transformation into a historic and cultural icon better than Neil. . . . [I]n my studied analysis of the quiet and unassuming way Neil lived his life after Apollo 11, the way he avoided public attention and the media for all the

² Further, medical records are an exception to public records. See Ohio Rev. Code § 149.43(A)(1)(a); *State v. Hall*, 141 Ohio App. 3d 561, 568, 752 N.E.2d 318 (4th Dist.). Although the documents in this settlement are not, per se, medical records, they relate to information that would otherwise be found in Mr. Armstrong's medical records.

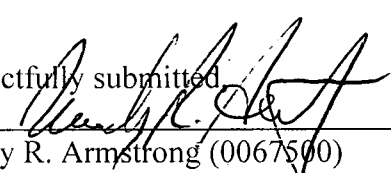
subsequent years, I came to perceive that Neil possessed a special sensitivity that was part and parcel of his elemental character: it was as if he knew that what he had helped his country achieve in the summer of 1969 – the epic landing of the first men on the Moon and their safe return to Earth – would inexorably be diminished by the blatant commercialism of our modern world, its redundant questions, all of its empty talk.³

III. Conclusion

The privacy interests of the interested parties participating in the settlement process and respect for Mr. Armstrong's modesty and privacy are unusual and exceptional circumstances weighing in favor of restricting public access. Matters of public importance are not implicated in the settlement.

Accordingly, Mr. Armstrong's sons and grandchildren request that the Court seal this Motion and Memorandum in Support; the Motion for Approval and attached Application for Approval of Wrongful Death Settlement (H.C. Form 14) that is being filed simultaneously with this Motion by Carol H. Armstrong as Executor on behalf of the Estate; and all related consents, hearings, transcripts, reports and other materials related to the settlement. They further request that a generic title be used in the case management system and docket in order to protect the contents of the documents from casual perusal.⁴

Respectfully submitted,


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*Attorney for Eric Armstrong, Mark Armstrong
and Armstrong grandchildren*

³ Hansen, J., *First Man: The Life of Neil A. Armstrong* at xii.

⁴ In the alternative, they request that the documents be redacted in such a way that the public cannot discover that the settlement is for a wrongful death claim, the total amount of the settlement, its division among family members, or the parties to the settlement. They also request that if any record is not sealed, it nevertheless not be made available remotely as Rule 57.2 (D) allows.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served by United States Express Mail upon June L. Hoffman, 11609 S. Blackfoot Drive, Phoenix, Arizona, 85044 and Dean A. Armstrong, P.O. Box 27, Marion, Kansas, 66861, and by hand delivery upon Susan E. Wheatley, counsel for the Estate of Neil A. Armstrong, Suite 1800, 425 Walnut Street, Cincinnati, Ohio 45244 this 23rd day of September, 2014.