

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: May 29, 2009
Decided: June 5, 2009

Seth D. Rigrodsky
Brian D. Long
Rigrodsky & Long, P.A.
919 N. Market Street, Suite 980
Wilmington, DE 19801

Gregory P. Williams
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Joseph A. Rosenthal
Rosenthal, Monhait & Goddess, P.A.
919 N. Market Street, Suite 1401
Wilmington, DE 19801-1201

David L. Finger
Finger, Slanina & Liebesman, LLC
One Commerce Center
N. Orange St., 7th Floor
Wilmington, DE 19801-1186

Stephen C. Norman
Abigail M. LeGrow
Potter Anderson & Corroon LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801

Re: *In re Nat'l City Corp. S'holders Litig.*
Civil Action No. 4123-CC

Dear Counsel:

I have reviewed your copious submissions in support of and in objection to the motion to unseal documents filed under seal in connection with this litigation. Shareholders of National City Corporation (“NCC” or the “Company”), a then-Delaware corporation, brought this action following the October 24, 2008, announcement of NCC’s proposed merger with PNC Financial Services Group, Inc. (“PNC”).

On May 15, 2009, the Associated Press and the Cleveland Plain Dealer Publishing Co. moved pursuant to Court of Chancery Rules 24 and 5(g), and conditionally, pursuant to the First Amendment of the United States Constitution,

to unseal documents filed under seal in connection with the parties' applications to approve the settlement in this lawsuit. This motion essentially joined a similar motion by The Dispatch Printing Company, RadiOhio, Incorporated, and Wolfe Associates, Inc. to unseal the parties' court filings submitted in support of the proposed settlement.

In *Richmond Newspapers, Inc. v. Virginia*, the United States Supreme Court found that under the First Amendment to the United States Constitution all court proceedings are presumptively open to the public.¹ The public's right to access court proceedings also extends to court filings.² Indeed, the "'public has a strong interest in obtaining the information contained in the court record,' including ascertaining what evidence the court relied upon in reaching its decision."³ Furthermore, the right of public access is particularly compelling where plaintiffs are members of a class action "because many members of the 'public' are also plaintiffs in the class action."⁴

Here, Court of Chancery Rule 5(g) provides the appropriate standard for determining whether to seal documents filed in a lawsuit. Under Rule 5(g), "the Court must determine whether good cause exists for the complaint and other related documents . . . to be filed under seal."⁵ This Court routinely undertakes this inquiry by "balancing the interests of companies in protecting proprietary commercial, trade secret or other confidential information against the legitimate interests of the public in litigation filed in the courts, as well as stockholder interests in monitoring how directors of Delaware corporations perform their managerial duties."⁶

In response to the motions to unseal the documents, NCC does not object to unsealing substantially all of the records in this action, but insists that certain documents continue to be sealed, namely those that the Office of the Comptroller of the Currency ("OCC") has sought to be protected under the bank examination

¹ 448 U.S. 555, 579 n.17 (1980) (noting that "historically, both civil and criminal cases have been presumptively open").

² *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978).

³ *In re Perrigo Co.*, 128 F.3d 430, 446 (6th Cir. 1997) (quoting *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1180-81 (6th Cir. 1983)).

⁴ *In re Cendant Corp.*, 260 F.3d 183, 193 (3rd Cir. 2001).

⁵ *Stone v. Ritter*, 2005 WL 2416365, at *2 (Del. Ch. Sept. 26, 2005).

⁶ *Id.*

privilege, which can only be waived by the government, not NCC.⁷ The OCC does not consent to the public release of its October 19, 2008 email and attachment; any deposition excerpts that quote or describe that email attachment, which has been filed in Exhibit 39 to the Newman Declaration; or any other non-public OCC information. Having reviewed all of the parties' submissions as well as the actual documents at issue, I conclude that the "balance of the interests" weighs in favor of continuing to seal some of the specific documents contested by NCC and the OCC. I am convinced that this Court should temporarily defer to the judgment and representations of the OCC concerning the sensitivity of this information pending further information regarding the need for its request. In this regard, I will continue the sealing of these documents for the near future, but I am requesting the OCC to submit an affidavit setting forth *why* the OCC requires this information to be sealed indefinitely. Specifically, the documents to remain sealed by request of the OCC are:

- The October 19, 2008 email and attachment, which was filed as Exhibit 39 to the Newman Declaration, as to which the OCC objects to any public release.

Furthermore, NCC seeks to keep documents sealed that contain certain sensitive financial information of bank customers and counterparties, including the amount of credit risk from third parties the public disclosure of which would cause significant harm to those third parties. "This Court repeatedly has held that good cause exists pursuant to Rule 5(g) to seal documents containing . . . nonpublic financial information."⁸ Here, NCC seeks to protect third party financial institutions from the public dissemination of their nonpublic financial information. This is precisely the type of information that Rule 5(g) seeks to protect. Thus, I conclude that these documents should remain sealed. This particular information has not been considered by the Court in these proceedings, and will have no influence on the Court's determination regarding the proposed settlement of the claims in this litigation. Specifically, the following documents will remain sealed:

⁷ See, e.g., 12 C.F.R. § 4.37(b); see also 18 U.S.C. § 641.

⁸ *Romero v. Dowdell*, 2006 WL 1229090, at *2 (Del. Ch. Apr. 28, 2006) (citing *One Sky Inc. v. Katz*, 2005 WL 1300767, at *1 (Del. Ch. May 12, 2005); *In re Walt Disney Co. Derivative Litig.*, 2004 WL 368938, at *1 (Del. Ch. Feb. 24, 2004); *Stone v. Ritter*, 2005 WL 2416365, at *1 (Del. Ch. Sept. 26, 2005)).

- Excerpts on four pages of Exhibit 6 to the Peter Raskind deposition, which contain sensitive financial information of bank customers and counterparties (who are not parties to this lawsuit).

On the other hand, excerpts from plaintiffs' and defendants' briefs should be unsealed. I have reviewed the excerpts in the briefs that NCC wishes to redact and I do not see how the public release of that information would result in harm to NCC, the OCC, PNC, or any third party financial institution. In fact, most of the information contained in the excerpts was discussed publicly in the May 15, 2009 settlement hearing.⁹ Thus, the redacted briefs previously filed in this litigation should be filed in their entirety, and unredacted, immediately.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name.

William B. Chandler III

WBCIII:tet

⁹ Settlement Hr'g Tr. 59, 87, May 15, 2009.