



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

JOHN W. NOBLE
VICE CHANCELLOR

417 SOUTH STATE STREET
DOVER, DELAWARE 19901
TELEPHONE: (302) 739-4397
FACSIMILE: (302) 739-6179

February 18, 2015

Albert J. Carroll, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801

Re: *Theravectys SA v. Immune Design Corp.*
C.A. No. 9950-VCN
Date Submitted: February 18, 2015

Dear Mr. Carroll:

I have Plaintiff Theravectys SA's Motion Regarding Confidential Filing (the "Motion"). TVS seeks the "resealing" of three letters mentioning the existence of a settlement between TVS and Henogen.¹ IDC first filed a letter under seal reporting the settlement. IDC filed a public version reflecting redactions proposed by TVS. TVS filed a letter in response under seal, but it did not file a redacted, public version of its letter within five days. Thus, the letter was unsealed, and the information in the letter became available to the public. Both IDC and the Court,

¹ The terms of the settlement were not set forth.

after receipt of TVS's letter, filed letters viewable by the public referencing the settlement.²

That TVS has reached a settlement with Henogen was made public because of TVS's failure to comply with Court of Chancery Rule 5.1. A party, such as TVS, that does not satisfy the straightforward requirements of that rule, suffers the consequences of its own actions (or inaction). Rule 5.1(d) clearly prescribes the conduct necessary to preserve confidentiality and clearly defines the consequences that will follow for the party seeking to preserve confidentiality that does not act in conformance with the Rule.³

TVS candidly offers nothing more than mere inadvertence to override the outcome contemplated by the Rule when the public version is not timely filed.⁴

² IDC takes no position on the Motion, but acknowledges that it is not aware of any information in the correspondence that is confidential. Def.'s Resp. to Pl. Theravectys SA's Mot. Regarding Confidential Filing at 2.

³ *Cf. Capella Hldgs., Inc. v. Anderson*, C.A. No. 9809-VCN (Del. Ch. Oct. 28, 2014) (TRANSCRIPT). As Court of Chancery Rule 5.1(d) provides: "In the absence of timely compliance with this Rule, the Confidential Filing *shall* become part of the public record, and the Register in Chancery *shall* make the Confidential Filing available for public access . . . to the same extent as any other public filing." (emphasis added).

⁴ Mot. ¶ 3. To the extent that the excusable neglect standard of Court of Chancery Rule 6(b) may be applicable, it is not helpful to TVS because TVS has offered no reason to treat its failure as somehow "excusable."

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To accept TVS's excuse, without more, would render the Rule and its standards for maintaining confidentiality nugatory.

In addition, the settlement is likely to be a significant topic during future proceedings in this action, and preserving its confidentiality would have been difficult, if not impracticable. Moreover, other than the assertion that Henogen and TVS agreed as between themselves that their conduct should be cloaked in secrecy, no other justification has been offered. This action is public; parties desiring to maintain the confidentiality of certain information are well aware of the standards to which they will be held.

In short, TVS has not sponsored a persuasive argument for why resealing is appropriate. Accordingly, the Motion is denied.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Todd C. Schiltz, Esquire
Register in Chancery-K