

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

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: September 15, 2005
Decided: September 26, 2005

Seth Rigrodsky
Milberg Weiss Bershad & Schulman LLP
919 North Market Street, Suite 411
Wilmington, DE 19801

Jesse A. Finkelstein
Raymond J. DiCamillo
Lisa M. Zwally
Richards, Layton & Finger, P.A.
One Rodney Square
Wilmington, DE 19801

Re: *Stone, et al. v. Ritter, et al.*
Civil Action No. 1570-N

Dear Counsel:

Defendants seek continued sealing of certain portions of the derivative complaint filed in this case. Finding no good cause for the continued sealing, I deny defendants' motion.

Five days after plaintiffs sought permission to file their derivative complaint under seal, the Court granted that request, but ordered plaintiffs to file a public version of the complaint within five days in accordance with Court of Chancery Rule 5(g). Plaintiffs have done so. The Court also directed defendants to show cause within twenty days of service of the complaint as to why the sealed portions of the complaint should not be publicly disclosed. Defendants now seek continued sealing with respect to all or parts of paragraphs 8, 9, 103, 106, 107, 110-120, 126, 132 and 133 of the complaint. The information in these paragraphs is derived from three documents that were produced to the plaintiffs as part of the books and records inspection, and they include: (1) the February 25, 2004 meeting minutes of

AmSouth's Audit Committee; (2) the July 15, 2004 meeting minutes of AmSouth's board; and (3) the December 10, 2004 Anti-Money Laundering Due Diligence Assessment prepared by KPMG Forensic Services for AmSouth (the "KPMG Report"). These three documents were designated as confidential under the stipulation of confidentiality entered into between plaintiffs and AmSouth as part of the books and records inspection.

Plaintiffs now oppose the continued sealing of any portion of the complaint. They insist that much of the information contained in the complaint comes from public sources. Those aspects of the complaint that derive from nonpublic information are based on historical information and do not pose any threat of harm to AmSouth if publicly disclosed. None of the disputed information, according to the plaintiffs, reveals any of AmSouth's current procedures or controls for Bank Secrecy Act or Anti-Money Laundering compliance. Rather, the complaint contains allegations regarding former procedures and controls in place at a time when AmSouth, according to plaintiffs, played a role in numerous allegedly fraudulent schemes, resulting in tens of millions of dollars in losses to its customers. Plaintiffs also note that AmSouth has been required, in accordance with a cease and desist order entered into with the Federal Reserve Board and the Alabama Department of Banking, to submit a program designed to ensure compliance with applicable provisions of the Bank Secrecy Act and other written procedures designed to strengthen the bank's internal controls. Thus, plaintiffs insist that the complaint, since it does not concern these newly devised and submitted procedures, threatens no demonstrable harm by revealing historical information regarding procedures and internal controls that have been revised. Next, many of the allegations in the complaint about which defendants seek continued sealing concern the KPMG Report, which was presented to AmSouth on December 10, 2004. The KPMG Report, however, does not reveal current Bank Secrecy Act or Anti-Money Laundering compliance controls. Rather, the KPMG Report reflects an independent assessment of AmSouth's "then-current" policies, procedures and practices.

The other information in the complaint that defendants deem highly confidential and seek to protect from public disclosure include references to AmSouth's board minutes. Defendants contend that disclosure in the complaint of board minutes would have a chilling effect on board deliberations, citing Vice Chancellor Lamb's recent decision in *Disney v. The Walt Disney Co.*, 2005 Del. Ch. LEXIS 94 (June 20, 2005). That decision, however, arose in the context of a § 220 action. This proceeding is a derivative action in which stockholder plaintiffs assert derivative claims based on information obtained using the "tools at hand"

under § 220. As Vice Chancellor Lamb recognized in the *Disney* decision, there is a reasonable expectation that confidential information produced in the books and records context will be treated as confidential unless and until disclosed in the course of litigation or pursuant to some other legal requirement. That is precisely the situation here. The information obtained in the books and records context is being used affirmatively in this derivative action. Reasonable expectations of confidentiality with respect to documents produced in a § 220 action do not continue unabated in the context of litigation. The test now is under Court of Chancery Rule 5(g) and the Court must determine whether good cause exists for the complaint and other related documents to continue to be filed under seal. That is an inquiry that this Court routinely undertakes, 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.

Having reviewed all 143 paragraphs of the fifty-two-page complaint, I find no basis for continuing to seal any portion of the complaint. The various paragraphs of the complaint detailing the findings of the KPMG Report and the then-current practices of AmSouth with respect to compliance of the Bank Secrecy Act and the Anti-Money Laundering Act are historical in nature. Nothing in the paragraphs identified by AmSouth would appear to threaten its ongoing compliance with those statutes or the integrity of its present and continuing internal controls and compliance programs. Nor do any of the references in the complaint to minutes of the board of directors and Audit Committee meetings threaten to chill internal deliberations of the board or any of its committees. Based on my review of the complaint, the references to AmSouth minutes do not reveal preliminary discussions, opinions or assessments of board members. Rather, the references in the complaint to minutes of meetings refer largely to the alleged failure of the director defendants to act in the face of a known duty to act. As just one example, paragraph 106 of the complaint, alleges as follows:

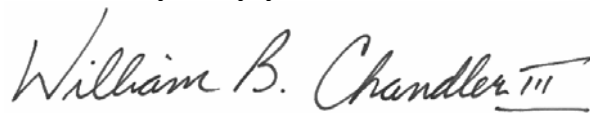
The minutes that were produced, however, confirm the finding of the USAO, FinCEN, AmSouth's outside auditor, and others. Specifically, prior to the time AmSouth learned it was the subject of a federal criminal investigation and entered into the Deferred Prosecution Agreement, *inter alia*, there is very little that reflects attempts at Bank Secrecy Act compliance

I do not understand how allegations of this sort would chill the board or committee's deliberative processes and certainly it does not rise to the level of good cause under Chancery Rule 5(g), in particular, when weighed against the legitimate interests of the public in litigation filed in the courts, as well as stockholder interests in monitoring directors of Delaware corporations.

For all of the above reasons, I deny defendants' motion to continue sealing certain portions of the complaint filed in this action. I direct that the sealing of the complaint and any related documents be vacated immediately.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line underlining the name.

William B. Chandler III

WBCIII:meg