

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

DONALD F. PARSONS, JR.
VICE CHANCELLOR

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Re: *Beard Research, Inc. v. Michael J. Kates*,
Civil Action No. 1316-VCP

Dear Counsel:

This matter is before me on Defendants' letter request for an order compelling Plaintiffs to produce the agreement they entered into with Pfizer, Inc. in settlement of this litigation. Plaintiffs oppose that request on the grounds the information sought is confidential and not relevant and, in any event, the request is premature. For the reasons stated in this letter, I grant Defendants' request.

Plaintiffs' second amended complaint asserted claims against Pfizer for misappropriation of trade secrets, aiding and abetting Kates' breach of fiduciary duty, defamation, breach of confidentiality agreement, breach of contract, and breach of the covenant of good faith and fair dealing. The non-Pfizer defendants ("Defendants") contend that many of the claims asserted against Pfizer overlap with the claims against them. Defendants, therefore, argue that the Pfizer settlement is relevant to damages in that Plaintiffs should not be permitted to recover twice for the same wrongful conduct. Plaintiffs counter that the settlement agreement is confidential and its production would be premature, because the impact of the settlement on Plaintiffs' damages should be sorted out only after they obtain a judgment, if they do, against Defendants.

The scope of discovery under Court of Chancery Rule 26(b) "is broad and far-reaching . . . [and] renders discoverable any information that appears reasonably calculated to lead to the discovery of admissible evidence."¹ Furthermore, Defendants' willingness to treat the Pfizer settlement agreement as "Highly Confidential" under the existing protective order should satisfy any concerns Plaintiffs may have about the confidentiality of the agreement.

Contrary to Plaintiffs' contention, at least some overlap does exist between their claims for breach of contract against Pfizer and those for tortious interference with

¹ See *Cal. Pub. Empls. Ret. Sys. v. Coulter*, 2004 Del. Ch. LEXIS 64, at *2-3 (Del. Ch. May 26, 2004).

contract against the other Defendants. Moreover, the overlap gives rise not only to the potential for a claim of contribution, but also to a possible reduction of the damages for the tort. Specifically, the Restatement of Torts relating to tortious interference provides that “[p]ayments made by [a] third person in settlement of a [breach of contract] claim against him must. . . be credited against the liability for causing the breach and so go to reduce damages for the tort.” RESTATEMENT (SECOND) OF TORTS § 766 cmt. v (1979). Similarly, Section 774A of the Restatement provides that “any payments made by the one who breaks the contract or partial satisfaction of judgment must be credited in favor of the defendant who has caused the breach.”² Consistent with these authorities, the Pfizer settlement could provide a basis for reducing the damages against the remaining Defendants for tortious interference or, at least, the amount of any judgment entered against them.³

For the foregoing reasons and because Pfizer itself has not interposed any objection to the production of its settlement agreement with Plaintiffs, I grant

² RESTATEMENT (SECOND) OF TORTS § 774A cmt. e (1979). The Pfizer settlement agreement also is relevant to Defendants’ cross-claim against Pfizer. Additionally, *S&R Associates, L.P. v. Shell Oil Co.*, 1999 WL 744422 (Del. Super. July 28, 1999), cited by Plaintiffs, is distinguishable in that there is no indication it involved a breach of contract claim, as in this case, as well as various tort claims.

³ *See Reliable Tire Dist., Inc. v. Kelly Springfield Tire Co.*, 607 F. Supp. 361, 373 (E.D. Pa. 1985) (relying on § 774A to avoid duplication of damages).

Defendants' request for an order to compel and hereby direct Plaintiffs to produce the Pfizer settlement agreement within two days of the date of this letter.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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