COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM B. CHANDLER III
CHANCELLOR

P.O. BOX 581
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5424
FACSIMILE (302) 856-5251

Date Submitted: August 9, 2004
Date Decided: August 18, 2004

Pamela Tikellis
Robert J. Kriner
Brian D. Long
A. Zachary Naylor
Chimicles & Tikellis
P.O. Box 1035
Wilmington, DE 19899

Anthony W. Clark
Paul Lockwood
Skadden, Arps, Slate, Meagher & Flom LLP
P.O. Box 636
Wilmington, DE 19899

Re: *Saito, et al. v. McCall, et al.*, C.A. No. 17132
Saito v. McKesson HBOC, C.A. No. 18553

Dear Counsel:

On July 26, 2004, plaintiff filed a motion for relief from judgment under Court of Chancery Rule 60(b)(6) in C.A. No. 18553 on the ground that changed circumstances exist that would justify reopening and modifying this Court's November 13, 2002 decision. On that date, I issued a revised decision denying plaintiff access to certain reports on the ground that they were privileged. Plaintiff did not appeal that decision in a timely manner, and the judgment became final.

For the reasons described below, I decline to revisit a decision made almost two years ago and deny plaintiff's motion for relief from judgment. As a result, I also deny the motion filed in C.A. No. 17132 to stay my decision on the fully-briefed and pending motions to dismiss the Fourth Amended Complaint, for which a decision shall be issued forthwith.

Court of Chancery Rule 60(b) states "[o]n motion and upon such terms as are just," the Court may offer relief from judgment when certain enumerated grounds are met, or for "any other reason justifying relief from the operation of the judgment."[1] The Delaware Supreme Court has stated:

> There are two significant values implicated by Rule 60(b). The first is ensuring the integrity of the judicial process and the second, countervailing, consideration is the finality of judgments. Because of the significant interest in preserving the finality of judgments, Rule 60(b) motions are not to be taken lightly or easily granted.[2]

In addition to this admonition that Rule 60(b) motions are not to be easily granted, motions brought under subparagraph (6) require an even stronger showing by the movant for relief to be granted than motions under the other

---

[1] CT. CH. R. 60(b) (2004).

[2] *MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625, 634-35 (Del. 2001) (internal footnotes and citations omitted).

five subparagraphs of the rule, namely the existence of extraordinary circumstances.[3]

The realm of extraordinary circumstances that would justify relief under Rule 60(b)(6) would only seem to encompass circumstances that could not have been addressed using other procedural methods,[4] and constitute an "extreme hardship," or that "manifest injustice" would occur if relief were not granted.[5] Plaintiff has failed to meet this standard.

In a letter ruling dated July 19, 2004, I denied plaintiff's informal request for production of the reports at issue on several grounds. Those same grounds suffice to demonstrate that no changed circumstances exist that would create an extreme hardship to plaintiff. First, the California court's decision to compel disclosure of these reports does not require me to do the same. Second, because of the California court's protective order,

---

[3] *Id.* at 634 n.9. *See In re U.S. Robotics Corp. S'holders Litig.*, 1999 WL 160154 at *13 (Del. Ch.). Plaintiff distinguishes *U.S. Robotics* by noting that the present request for relief came mere days after the California court's decision as opposed to the lengthy delay by the *U.S. Robotics* plaintiffs. Notwithstanding plaintiff's alacrity in responding to the developments in California, plaintiff here has still failed to demonstrate extraordinary circumstances sufficient to justify relief under Rule 60(b)(6).

[4] *See Nakahara v. NS 1991 American Trust*, 718 A.2d 518, 520 (Del. Ch. 1998).

[5] *Scureman v. Judge*, 1998 WL 409153 at *5 (Del. Ch.). Plaintiff argues that *Scureman* supports his position because relief under Rule 60(b)(6) was granted in that case. Although the Vice Chancellor did ultimately grant the relief as requested, the unique set of facts and severe hardships suffered by the movants there justified his decision. Plaintiff here has made no effort to demonstrate how the changed circumstances in this case have caused him similarly egregious harm.

plaintiff here is in the same position with respect to access to that document as he was before the California court ruled. Third, the analysis regarding selective waiver discussed in the letter opinion and in the November 13, 2002 opinion is unchanged by an involuntary, compelled disclosure of these reports.

In short, plaintiff did not have access to the reports, and still does not have access to the reports because of the protective order. The fact that other plaintiffs may have received an easy "roadmap" for their litigation does not alone entitle this plaintiff to that same roadmap. A victory for the California plaintiffs does not mean, without more, that this plaintiff has suffered harm, much less harm that amounts to an extreme hardship. Plaintiff here is free to develop his own roadmap for litigation, but he has no entitlement to merely piggyback upon the strategy of other plaintiffs and the decisions of foreign courts.

Therefore, I conclude that relief under Rule 60(b)(6) is not necessary to serve the interests of justice. The motion for relief from judgment is denied.

It necessarily follows that there is no need to grant the motion to stay my decision on the pending motions to dismiss the Fourth Amended Complaint in C.A. No. 17132. The reports which plaintiff seeks in C.A. No.

18553 are still privileged and cannot form a basis to replead the derivative complaint, especially considering that the motions to dismiss are fully briefed, and Court of Chancery Rule 15(aaa) would not permit another amended complaint because plaintiff has long ago filed an answering brief to the motions to dismiss. Therefore, the motion to stay my decision on the motions to dismiss the Fourth Amended Complaint is denied, and a decision in that matter shall issue forthwith.

IT IS SO ORDERED.

Very truly yours,

/s/ William B. Chandler III

William B. Chandler III

WBCIII:meg