

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

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CHANCELLOR

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Submitted: April 11, 2007
Decided: April 18, 2007

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Re: *Ginsburg v. Philadelphia Stock Exch., Inc., et al.*
Civil Action No. 2202-CC

Dear Counsel:

I have before me the Exchange defendants' Motion for a Protective Order Preventing Plaintiff's Counsel from Disclosing Confidential Information to Susquehanna Investment Group and plaintiff's Motion for a Rule to Show Cause Why the NASDAQ Stock Market, Inc. Should not be Held in Contempt and to

Compel Production of Documents in Response to Subpoena. Having read all of your documents and carefully considered your arguments, I am granting the first motion and withholding judgment on the second.

The Exchange defendants object to plaintiff's intention to share highly-sensitive, confidential material with unnamed members of the Susquehanna Investment Group ("SIG"). Plaintiff asserts that such sharing is necessary in order to provide plaintiff and his counsel with "unique knowledge and assistance in interpreting documents."¹ Defendants, on the other hand, insist that SIG is a competitor to certain other defendants; that SIG has, at other times, threatened to commence its own litigation involving this transaction; and finally, that SIG played a role in the events that spawned this controversy and, thus, cannot be an impartial "consultant." Both parties agree that SIG was the largest Class A Stockholder before the events challenged by plaintiff in this action.

I need not make precise factual determinations as to the Exchange defendants' allegations in order to justify granting a Protective Order. SIG is undoubtedly a competitor of some of the strategic investors in this case. Handing confidential and highly confidential information to unnamed individuals within SIG's organization poses significant risks to defendants. On the other hand, plaintiff has not credibly shown that SIG's ability to advise as an "expert or consultant" is actually unique. SIG's knowledge and experience might make it a convenient source of guidance, but it strains credibility to suggest that plaintiff cannot seek expert advice elsewhere, without converting a potential fact witness into a "consultant."

As an aside, I note that plaintiff has pending before this Court a Motion for Class Action Determination. To prevail on that application, plaintiff must demonstrate, among other things, that he will both fairly and adequately protect the interests of the class.² The Court holds serious doubts as to whether a plaintiff can adequately represent a class if that plaintiff cannot interpret discovery documents acquired from defendants without the assistance of a much larger and more interested class member as a "consultant."

As for plaintiff's Motion for a Rule to Show Cause and to Compel Production, the record is unclear as to whether this motion has been rendered moot. In a letter to the Court dated March 15, 2007, NASDAQ expressed its willingness

¹ Pl.'s Response in Opp'n to Defs.' Mot. for a Protective Order at 2.

² Ct. Ch. R. 23(a).

to begin document production, although NASDAQ intends to withhold some documents pursuant to an assertion of business strategy immunity. I shall withhold judgment upon plaintiff's motion until the Court is notified of any further discovery conflict between plaintiff and NASDAQ.

Just to be clear: This letter decision obviates the need for a conference call in this matter.

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:aar