

SOLIGENIX V. EMERGENT PRODUCT DEVELOPMENT

CONFIDENTIAL TREATMENT OF ARBITRATION PROCEEDINGS
SUMMARY AUTHORED BY SHIRA R. FREIMAN

C.A. No. 2022-0880-PAF

Court of Chancery of the State of Delaware

February 21, 2023

Key Takeaway: *Arbitration is not inherently confidential. Parties may not privately contract to prevent public access, and information presented to the Court will not be treated as confidential without good cause.*

In *Soligenix*, respondents Emergent Product Development Gaithersburg, Inc. and Emergent Manufacturing Operations Baltimore LLC (collectively, “Emergent”) sought continued confidential treatment under Court of Chancery Rule 5.1¹ of portions of Soligenix's Verified Petition to Vacate Arbitration Award (the “Petition”) and certain exhibits (the “Exhibits”), per a stipulated protective order between the parties. Vice Chancellor Paul A. Fioravanti, Jr. denied the motion, finding that Emergent did not satisfy its burden to support the continued confidential treatment request.

Despite the law's clarity that “[o]pen litigation is the default in the Court of Chancery [and that] [c]onfidentiality is the exception, and not the rule[.]” the extent of the expectation of confidentiality in *arbitral proceedings* remained murky. Though parties may elect to contract for arbitral confidentiality, such protections are jeopardized once disputes face judicial scrutiny. The Court of Chancery is not bound by stipulated protective orders agreed upon by the parties. When the Court is tasked with deciding a challenge to an arbitration award, the proceeding is public, and those seeking to keep portions of the record confidential must comply with Rule 5.1. Specifically, a party must obtain a Court order “specifying the information or categories of information for which good cause exists for [c]onfidential [t]reatment.” A request for confidential treatment will be granted “only if the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public

¹ Court of Chancery Rule 5.1 outlines the rules for public access to documents filed with the Court in civil actions. Particularly relevant to this case is Ct. Ch. R. 5.1(b), which proscribes the narrow exceptions for which confidential treatment is available.

information would cause.” The movant must also provide “tangible evidence of concrete damage” and particularized harm that would arise if the information was publicly available.

In *Soligenix*, Vice Chancellor Fioravanti explained that while arbitration is typically private, it is not inherently confidential. Additionally, the stipulated protective order between the parties did not specifically designate any arbitration award as confidential. However, even if the parties had contracted for confidentiality, the court is not bound by such an agreement. Court of Chancery proceedings are open to the public absent a movant establishing good cause for confidential treatment, and Emergent did not do so. It offered no assertion of harm that disclosure of the Petition, award, or Exhibits would cause if the motion for continued confidential treatment were not granted. Because Emergent did not satisfy the requisite burden, the Court denied the motion.