



COURT OF CHANCERY  
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October 28, 2015

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Robert W. Mallard, Esquire  
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300 Delaware Avenue, Suite 1010  
Wilmington, DE 19801

Re: *Smashburger Master LLC v. Prokupek*  
C.A. No. 9898-VCN  
Date Submitted: August 12, 2015

Dear Counsel:

The question is whether Mr. Mallard's letter of July 28, 2015, should be accorded confidential treatment despite an inadvertent failure to file a redacted version as required by Court of Chancery Rule 5.1. The failure to file a redacted version resulted in the Register in Chancery's "unsealing" of the letter. Counsel moved promptly, and the Court restored confidential treatment to allow an opportunity to consider how to handle the letter.

*Smashburger Master LLC v. Prokupek*  
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Unlike other cases in which the failure to file a redacted version resulted in a loss of confidentiality,<sup>1</sup> the confidential information, in this instance, was that of a party other than the party on whose behalf the letter was filed. The information is sensitive, and the party expecting that its information would be accorded confidential treatment would be unduly prejudiced if public access were allowed.

Under the circumstances, the Court, despite the directive of Rule 5.1, will allow confidential treatment, otherwise subject to Rule 5.1, to continue for Mr. Mallard's letter of July 28, 2015.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ John W. Noble*

JWN/cap

cc: Neal C. Belgam, Esquire  
Register in Chancery-K

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<sup>1</sup> *Theravectys SA v. Immune Design Corp.*, 2015 WL 757665 (Del. Ch. Feb. 18, 2015); *Capella Hldgs., Inc. v. Anderson*, C.A. No. 9809-VCN (Del. Ch. Oct. 28, 2014) (TRANSCRIPT).