

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AL JAZEERA AMERICA, LLC,

Plaintiff Below,  
Appellant,

v.

AT&T SERVICES, INC.,

Defendants Below,

and

BLOOMBERG L.P., PEG BRICKLEY,  
RITA FARRELL, RANDALL CHASE,  
KYLE WAGNER COMPTON, and  
SHARON BRADLEY,

Objectors Below,  
Appellees.

No. 600, 2013

APPEAL FROM THE  
OPINION DATED  
OCTOBER 14, 2013 OF THE  
COURT OF CHANCERY  
OF THE STATE OF  
DELAWARE IN  
C.A. No. 8823-VCG

REDACTED PUBLIC VERSION  
FILED: January 22, 2014

APPELLEES' ANSWERING BRIEF

FINGER & SLANINA, LLC  
David L. Finger (#2556)  
One Commerce Center  
1201 N. Orange St., 7th fl.  
Wilmington, Delaware 19801  
(302) 573-2525  
*Attorneys for Appellees Rita Farrell,  
Randall Chase, Kyle Wagner Compton  
and Sharon Bradley*

BOUCHARD MARGULES &  
FRIEDLANDER, P.A.  
Andre G. Bouchard (#2504)  
Joel Friedlander (#3163)  
222 Delaware Avenue, Suite 1400  
Wilmington, Delaware 19801  
(302) 573-3500  
*Attorneys for Appellee Bloomberg,  
L.P.*

Dated: January 6, 2014



## TABLE OF CONTENTS

NATURE OF THE PROCEEDING .....	1
SUMMARY OF ARGUMENT .....	5
STATEMENT OF FACTS .....	7
A. The Public Version of the Complaint.....	7
B. The Undisclosed Nature of the Dispute .....	9
C. The Objections by the Press Objectors and the Motions for Continued Confidential Treatment by Al Jazeera and AT&T .....	11
D. The Court of Chancery’s Ruling .....	14
ARGUMENT .....	17
I. THE COURT OF CHANCERY DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT THE LITIGATING PARTIES FAILED TO ESTABLISH THAT THE COMPETITIVE HARM THEY MAY POTENTIALLY SUFFER FROM DISCLOSURE OF THE TERMS OF THEIR CONTRACT AND THEIR CONTRACTUAL DEALINGS OUTWEIGHED THE PUBLIC INTEREST IN UNDERSTANDING THE NATURE OF THE DISPUTE .....	17
A. Question Presented .....	17
B. Scope of Review.....	17
C. Merits of Argument .....	20
1. Rule 5.1 Reflects a Constitutional and Common Law Imperative to Balance Claimed Harm from Disclosure Against the Public’s Right of Access To Basic Information About the Merits of a Dispute .....	20
2. The Court of Chancery Did Not Abuse its Discretion in Applying Rule 5.1 to Al Jazeera’s Complaint.....	26

3. Al Jazeera's Unsupported Public Policy Arguments Lack Merit.....33

CONCLUSION .....35

## TABLE OF AUTHORITIES

### Cases

<i>Bank of Am. Nat'l Trust and Sav. Ass'n v. Hotel Rittenhouse Assocs.</i> , 800 F.2d 339 (3d Cir. 1986) .....	18, 30
<i>Chartis Specialty Ins. Co. v. LaSalle Bank, Nat. Ass'n</i> , 2011 WL 3276369 (Del. Ch. July 29, 2011) .....	23
<i>F.T.C. v. AbbVie Prods., LLC</i> , 713 F.3d 54 (11th Cir. 2013) .....	24
<i>Grove Fresh Distrib., Inc. v. Everfresh Juice Co.</i> ,   24 F.3d 893 (7th Cir. 1994) .....	32
<i>Gryphon Domestic VI, LLC v. APP Int'l Fin.Co.</i> , 814 N.Y.S.2d 110 (N.Y.A.D. 1st Dept. 2006) .....	28
<i>Hopkins v. State</i> , 893 A.2d 922 (Del. 2006) .....	19
<i>Hurd v. Espinoza</i> , 34 A.3d 1084 (Del. 2011) .....	17
<i>In re Celera Corp. S'holder Litig.</i> , 59 A.3d 418 (Del. 2012) .....	19
<i>In re Cendant Corp.</i> , 260 F.3d 183 (3d Cir.2001) .....	23
<i>In Re Knoxville News-Sentinel Co., Inc.</i> , 723 F.2d 470 (6th Cir. 1983) .....	18

<i>In re NVidia Corp. Deriv. Litig.</i> , 2008 WL 1859067 (N.D. Cal. Apr. 23, 2008) .....	24
<i>In re Providian Credit Card Cases</i> , 116 Cal. Rptr. 2nd 833 (Cal. App. 2002) .....	32
<i>In re Roman Catholic Archbishop of Portland in Oregon</i> , 661 F.3d 417 (9th Cir. 2011) .....	22
<i>In re Specht</i> , 622 F.3d 697 (7th Cir. 2010) .....	28
<i>In the Matter of Trust for Grandchildren of Wilbert L. and Genevieve W. Gore</i> <i>dated April 14, 1972</i> , 2010 WL 5644675 (Del. Ch. Dec. 22, 2010) .....	24
<i>Jackson v. State</i> , 654 A.2d 829 (Del. 1995) .....	19
<i>James &amp; Jackson, LLC v. Willie Gary, LLC ( Willie Gary II )</i> , 906 A.2d 76 (Del. 2006) .....	34
<i>Johnson v. Greater Se. Comm. Hosp. Corp.</i> , 951 F.2d 1268 (D.C. Cir. 1991) .....	18
<i>Joint Stock Soc’y v. UDV N. Am., Inc.</i> , 104 F. Supp. 2d 390 (D. Del. 2000) .....	25
<i>Khanna v. McMinn</i> , 2006 WL 1388744 (Del. Ch. May 8, 2006) .....	25
<i>Kronenberg v. Katz</i> , 872 A.2d 568 (Del. Ch. 2004) .....	22



<i>Kuhn Const., Inc. v. Diamond State Port Corp.</i> , 990 A.2d 393 (Del. 2010).....	34
<i>LEAP Sys., Inc. v. MoneyTrax, Inc.</i> , 639 F.3d 216 (3d Cir. 2011).....	22
<i>Levenstein v. Salafsky</i> , 164 F.3d 345 (7th Cir. 1998).....	24
<i>Littlejohn v. BIC Corp.</i> , 851 F.2d 673 (3d Cir. 1988).....	31
<i>Mancheski v. Gabelli Grp. Capital Partners</i> , 835 N.Y.S.2d 595 (N.Y. App. Div. 2007).....	18
<i>Matter of 2 Sealed Search Warrants</i> , 710 A.2d 202 (Del. Super. 1997) .....	22, 23
<i>MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.</i> , 785 A.2d 625 (Del. 2001).....	19
<i>Republic of Philippines v. Westinghouse Elec. Corp.</i> , 139 F.R.D. 50 (D.N.J. 1991), <i>stay denied</i> , 949 F.2d 653 (3rd Cir. 1991) .....	29
<i>Sanchez v. MTC Networks, Inc.</i> , 525 Fed. Appx. 4 (2d Cir. 2013) .....	24
<i>Schultz v. Ginsburg</i> , 965 A.2d 661 (Del. 2009).....	32
<i>Sequoia Presidential Yacht Grp. LLC v. FE Partners LLC</i> , 2013 WL 3724946 (Del. Ch. July 15, 2013).....	23

*Smith v. Francisco*,  
737 A.2d 1000 (Del. 1999).....33

*State v. Kelly*,  
947 A.2d 1123, 2008 WL 187945 (Del. 2008) (Table) .....19

*U.S. v. Beckham*,  
789 F.2d 401 (6th Cir. 1986).....32

**Rules**

Court of Chancery Rule 5.1(b)(2)..... 17, 18

## NATURE OF THE PROCEEDING

On January 1, 2013, the Court of Chancery adopted Rule 5.1, which created procedures and established parameters for disputes over public access to filings in the Court of Chancery. Rule 5.1 was “intended to make clear that only limited types of information qualify for confidential treatment in submissions to the Court.” (B1) “Good cause” for confidential treatment of a filing “shall exist only if the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause.” Ch. Ct. R. 5.1(b)(2). The party seeking to maintain confidential treatment of information “always bears the burden of establishing good cause.” Ch. Ct. R. 5.1(b)(3).

On August 20, 2013, Plaintiff-Below/Appellant Al Jazeera America, LLC (“Al Jazeera”) filed under seal in the Court of Chancery a Complaint against Defendant-Below AT&T Services, Inc. (“AT&T”). The case concerns a matter of intense public concern – AT&T’s refusal to carry the U.S. news channel launched in August by Al Jazeera, a network controlled by the Qatari royal family with over 250 million viewers globally, but which lacks a foothold in the United States market.<sup>1</sup>

---

<sup>1</sup> See, e.g., Jef Feeley, *AT&T Sued Over Refusal to Carry Al Jazeera Cable Network*, Bloomberg, Aug. 21, 2013, available at <http://www.bloomberg.com/news/print/2013-08-20/at-t-sued-over-refusal-to-carry-al-jazeera-cable-network.html> (“AT&T officials’ decision amounts to a ‘wrongful termination of an affiliation agreement,’” Al Jazeera said in the filing, which accompanied a sealed complaint. Details on the case came from a cover sheet that contained a brief description of the network’s claims.”) (B10); Emily Steel, *Al Jazeera sues AT&T for*



On August 23, 2013, Al Jazeera filed a redacted public version of its Complaint. Of the 105 paragraphs of the Complaint, 75 paragraphs contained redacted allegations and 38 paragraphs were redacted in their entirety. (A125-151) A reader of the redacted version of the Complaint cannot discern the basic contour of the dispute, due to the redaction of “almost all of the contract terms in dispute, descriptions of the nature of the dispute itself, and inter-party negotiations and discussions.” (A555) To this day, only the lawyers, the parties and the Court know that Al Jazeera sued AT&T over [REDACTED]

Between August 26 and 29, Bloomberg L.P. (“Bloomberg”), Rita Farrell, Randall Chase, Peg Brickley, Kyle Wagner Compton and Sharon Bradley (collectively, the “Press Objectors”) timely objected to the redactions in the Complaint. In response, Al Jazeera and AT&T each moved for the continued confidential treatment of the information redacted from the Complaint.

In their motion papers and during a hearing held on September 24, 2013, Al Jazeera and AT&T both claimed they would suffer harm from disclosure of the terms of the Affiliation Agreement, because those terms might be used against them in negotiations with other carriers or networks. In other respects, Al Jazeera

---

*dropping network*, FT.com, Aug. 21, 2013, 7:32 p.m., available at <http://www.ft.com/cms/s/0/591c0e9c-0a82-11e3-9cec-00144feabdc0.html#axzz2pAEmD5Qz> (B13); *see also* (B9)

and AT&T advanced conflicting positions. Al Jazeera contended that disclosure of the basic fact that the parties' dispute concerned [REDACTED] would cause harm. AT&T disagreed with that assertion. AT&T sought to conceal allegations that it terminated the Affiliation Agreement due to the fear that bigotry against Arabs might cause AT&T to lose subscribers if it broadcast an Arab-owned news program. Al Jazeera did not seek to conceal those allegations.

On October 14, the Court of Chancery granted in part but largely denied the parties' motions for continued confidential treatment. Based on a detailed review of specific allegations of the Complaint, the Court granted confidential treatment for the per-subscriber fee payable by AT&T under the Affiliation Agreement (Compl. ¶ 38), the number of subscribers that historically received programming under the Affiliation Agreement (Compl. ¶¶ 11, 35) and "similar proprietary information." (A532) Regarding other redactions, the Court found that "neither Al Jazeera nor AT&T has met its burden of establishing that 'good cause' exists to continue the confidential treatment of the Complaint." (*Id.*)

The Court of Chancery reasoned that "when sensitive information that the parties wish to keep confidential directly impacts the public's basic knowledge of particular court proceedings—where, as here, *the supposedly confidential information represents the nature of the dispute itself*—the interest of the public

in accessing this information outweighs the economic harm to the parties that disclosure may cause.” (A534) (emphasis added)

On October 23, 2013, the Court of Chancery granted Al Jazeera’s motion to certify an interlocutory appeal. Notwithstanding its prior protestations of harm that would arise from disclosure of the terms of the Affiliation Agreement, AT&T did not file an appeal. The Court of Chancery stayed pending appeal its order requiring Al Jazeera to file a largely unredacted version of the Complaint.

## SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery did not proffer an “interpretation” of Rule 5.1. Instead, the Court of Chancery applied the unambiguous text of Rule 5.1 and determined, in an exercise of judicial discretion, that except for certain discrete information in the complaint, “the public interest in access to Court proceedings” was not “outweighed by the harm that public disclosure of sensitive, non-public information would cause.” The Court assumed that Al Jazeera and AT&T were correct in contending that disclosing the redacted terms of the contract and allegations about how the parties interpreted it could give a competitive edge to third parties in unrelated transactions. The Court properly held, however, that because the information in question went to the heart of the parties’ contract dispute, public disclosure was crucial to the public interest and pivotal to the public’s understanding of the operations of the Court. Accordingly, there was no abuse of discretion.

2. Denied. The Court did give weight to the potential harm articulated by Al Jazeera and AT&T. As required by Rule 5.1, the First Amendment and common law, the Court also considered the public interest. Al Jazeera points to no analogous case in any jurisdiction in which a court has allowed the basic allegations respecting a contract dispute to be kept under seal.

3. Denied. The Court of Chancery applied First Amendment principles common to all American jurisdictions and adhered to the highest principles of judicial administration in scrutinizing the redactions on a prompt basis and determining which allegations should and should not be protected from public disclosure. The Court of Chancery properly observed that the contracting parties had the option of choosing an arbitral forum if they believed they would suffer serious harm from public disclosure of the basic aspects of a future contract dispute.

## STATEMENT OF FACTS

### A. The Public Version of the Complaint

This appeal arises out of a contractual dispute between Al Jazeera and AT&T, the nature of which remains concealed from the public. When the Court of Chancery handed down its decision of October 14, 2013, the only publicly available version of the Complaint was the one filed on August 23, 2013. (A125-152) Seventy-five of the 105 paragraphs of that version of the Complaint contain redactions, 38 of which are redacted in their entirety. (*Id.*) Al Jazeera and AT&T excised from the public version of the Complaint any reference to the terms of the Affiliation Agreement, the parties' dealings under this agreement, AT&T's alleged motivation for terminating the Affiliation Agreement and even the dates of various events as well as the names of meeting attendees.

Most of the unredacted allegations concern background matters, such as Al Jazeera's business goals and industry obstacles, and how Al Jazeera obtained rights under the Affiliation Agreement between Current TV, LLC ("Current TV") and AT&T by acquiring Current TV through a merger. (*Id.*) The Complaint's unredacted allegations explain that Al Jazeera's parent company is a global news organization that planned to establish a United States based news network called Al Jazeera America through the purchase of Current TV, which had been founded by former Vice President Al Gore and Joel Hyatt and which was a party to

distribution contracts with a number of cable and satellite operators.

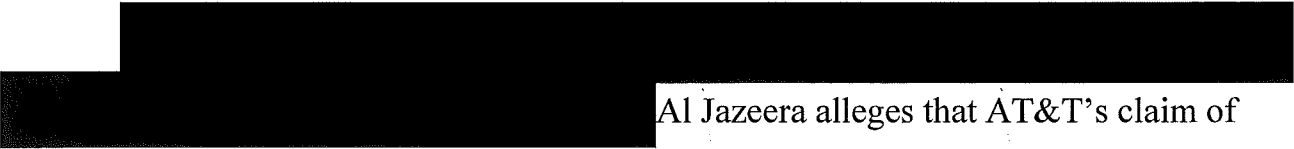
(A125-26 ¶¶ 1-4, A133 ¶¶ 33-35, A139 ¶¶ 59-61)

These contracts included the Affiliation Agreement with AT&T, which contains certain “REDACTED” terms. (*Id.*) Following the acquisition of Current TV in early 2013, Al Jazeera began investing money, setting up infrastructure and hiring staff, and planned to launch service on August 20, 2013. (A127 ¶¶ 7-9, A140-41 ¶¶ 66-69)

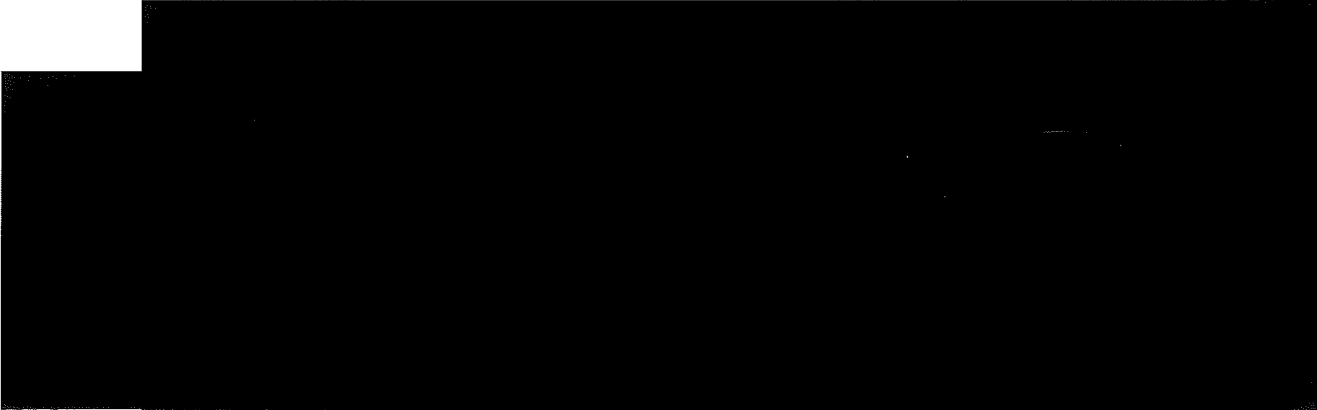
At some “REDACTED” point prior to the launch date, AT&T announced its intention to terminate the Affiliation Agreement with Al Jazeera, advancing as a pretext that Al Jazeera breached some “REDACTED” provision of the contract. (A127-29 ¶¶ 10-20, A141 ¶ 72) Al Jazeera sought and held meetings with AT&T, and the parties traded certain “REDACTED” proposals, but they were unable to work out their dispute. (A130-31 ¶¶ 22-25, A144-47 ¶¶ 83-93) At some point, Al Jazeera learned or deduced that AT&T harbored some alternative “REDACTED” motivation for terminating the contract. (A131 ¶ 26) AT&T refused to distribute Al Jazeera and, as a result, Al Jazeera sued AT&T seeking (i) a declaration that AT&T, not Al Jazeera, was in breach of the contract, (ii) an order requiring AT&T to honor the contract, and (iii) money damages caused by AT&T’s breach. (A132 ¶ 28, A148 ¶¶ 96-97)

**B. The Undisclosed Nature of the Dispute**

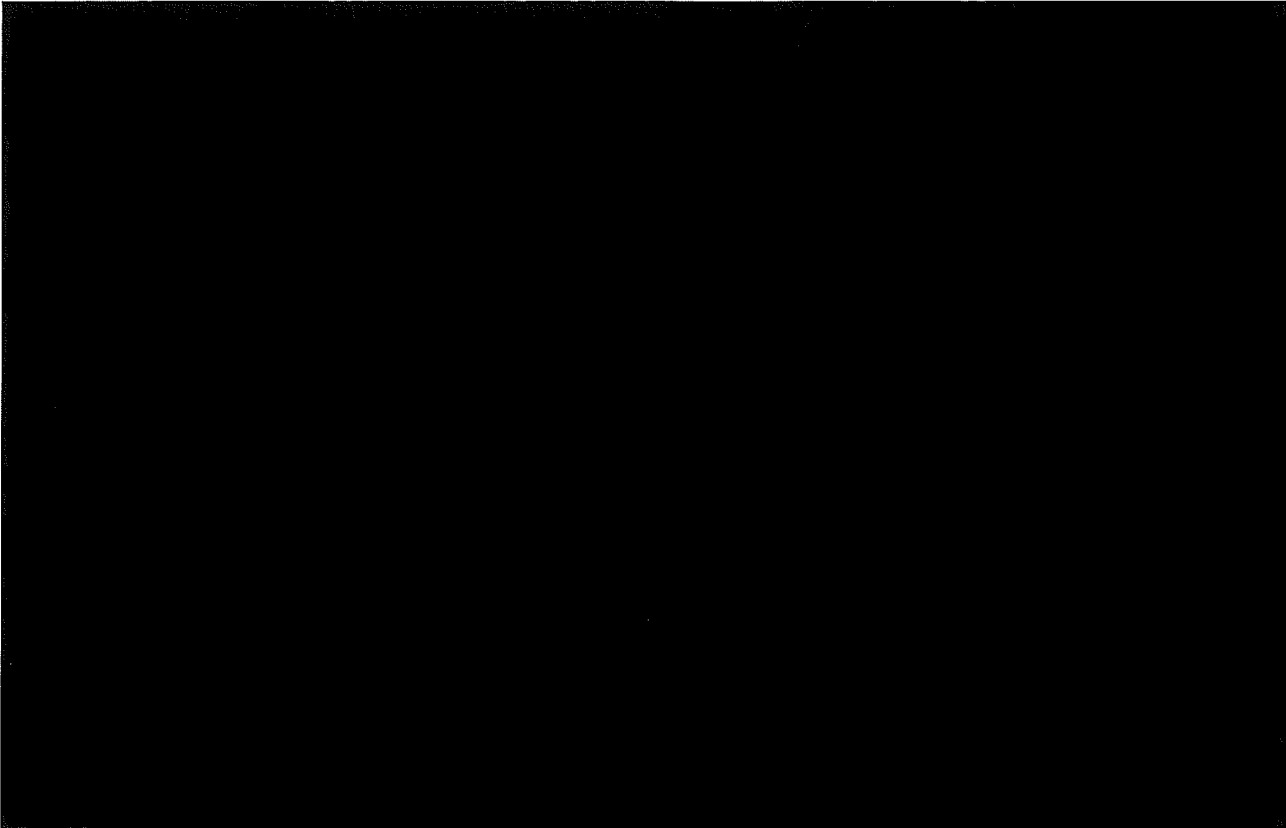
The allegations of the Complaint hidden from the public present a very different picture of the dispute.



Al Jazeera alleges that AT&T's claim of breach was an improper effort by AT&T to terminate the contract because of fears of subscriber backlash if AT&T carried Al Jazeera America. (A29-30 ¶¶ 70-73)







[REDACTED]

[REDACTED] During these meetings, an AT&T representative disclosed that shortly after consenting to Al Jazeera's assumption of the Affiliation Agreement, AT&T grew concerned that, because of bigotry against Arabs, some subscribers or groups would object to AT&T carrying Al Jazeera America on its cable service and might attempt to boycott or put economic pressure on AT&T. (A34 ¶ 90) Ultimately, AT&T refused to carry the Al Jazeera America network. (A35 ¶ 95)

**C. The Objections by the Press Objectors and the Motions for Continued Confidential Treatment by Al Jazeera and AT&T**

Between August 26 and 29, 2013, the Press Objectors filed objections to the redactions in the Complaint filed on August 23. On September 3, 2013, Al Jazeera and AT&T separately moved for continued confidential treatment of the information redacted from the Complaint. (A158-281) The Press Objectors opposed both motions. (A282-89)

Al Jazeera and AT&T both claimed they may suffer economic harm if the terms of the Affiliation Agreement were publicly disclosed. Al Jazeera argued that its "ongoing relationships and current or future negotiations" with other distributors may be harmed, [REDACTED]

[REDACTED] (A167 ¶ 10; *see also* A353-64, 380-82) Similarly, AT&T argued that it had entered similar agreements with “hundreds of other networks” and that disclosure of the contract terms would “put AT&T at a competitive disadvantage with other networks it contracts with as well as AT&T’s competitors.” (A245)

Al Jazeera went so far as to assert that disclosure of the mere fact that the lawsuit involved a dispute about [REDACTED] [REDACTED] could cause it harm. (A353-55) AT&T disagreed, explaining:

[REDACTED]

(A371)

In its motion, Al Jazeera took no position concerning “a significant amount of additional material” AT&T had redacted. (A159 n.1; *see also* A165 ¶ 4) AT&T’s additional redactions included numerous allegations that AT&T’s purported grounds for termination of the Affiliation Agreement were pretextual and that AT&T’s true motive was fear of a backlash from subscribers if AT&T were to carry an Arab-owned news program. (*See* A213-39 ¶¶ 10-12, 23-24, 26-27, 70-71, 90, 96) (AT&T’s additional redactions highlighted in blue).<sup>2</sup>

---

<sup>2</sup> When it filed its motion on September 3, 2013, AT&T submitted a revised version of the Complaint unredacting some allegations that were “pretty incremental” in nature. (A336) The

On September 24, 2013, the Court of Chancery held a 1¾ hour hearing on the motions for continued confidential treatment. When pressed by the Court to explain its assertions of harm (A354-64), Al Jazeera conceded that [REDACTED]

[REDACTED] (A358), that [REDACTED]

[REDACTED]

[REDACTED] (A355), [REDACTED]

[REDACTED]

[REDACTED] (A362) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (A356)

When asked how the Court could write an opinion adjudicating the dispute without disclosing the contractual provisions at issue or explaining its reasons, Al Jazeera had no answer. (A359) It commented only that its “sensitivity” to

---

revised version still concealed from the public any mention of the alleged motivation for its termination of the Affiliation Agreement. (See A250-76 ¶¶ 11-12, 23-24, 26-27, 71, 90, 96) (AT&T’s redactions highlighted in blue). The allegations concerning AT&T’s motivations were not disclosed until November 20, 2013, after AT&T decided not to appeal the Court of Chancery’s decision, when a public version of Al Jazeera’s First Amended Verified Complaint was filed. (See A740-77 at ¶¶ 8, 10, 22) Al Jazeera filed its First Amended Verified Complaint in response to a motion to dismiss filed by AT&T. (Op. Br. at 2 fn. 1)

[REDACTED]

confidentiality may change as it concludes its agreements with other carriers. (*Id.*)

On October 1, 2013, Al Jazeera submitted a supplemental memorandum and revised version of the Complaint containing fewer redactions.<sup>3</sup> (A479-515)

**D. The Court of Chancery's Ruling**

On October 14, 2013, the Court of Chancery issued a letter opinion that granted in part but largely denied Al Jazeera's and AT&T's motions for continued confidential treatment. Acknowledging that Rule 5.1 "protects sensitive business information like price terms, account numbers, and the names of companies that place non-winning bids during corporate reorganizations," the concealment of which would not impinge on the public's understanding of the dispute before the Court, the Court granted confidential treatment concerning the per-subscriber fee payable by AT&T under the Affiliation Agreement (Compl. ¶ 38), the number of subscribers that historically received programming under the Affiliation Agreement (Compl. ¶¶ 11, 35) and "similar proprietary information." (A532-33)

Regarding the other redactions, the Court found that Al Jazeera and AT&T had failed to meet their burden under Rule 5.1 to establish "good cause" -- that the harm from disclosing the allegations in question outweighed the public's right of access. (A524, 540) Noting that the Al Jazeera America "is the first major news

---

<sup>3</sup> During the September 24 hearing, the Court requested a narrower set of proposed redactions from Al Jazeera using only Rule 5.1 as guidance and without regard to the confidentiality provision in the Affiliation Agreement. (A388, 527-28)

channel to debut on television in many years,” the Court explained that the public had an interest in being informed about the “circumstances under which a journalistic enterprise can be denied entry to the American broadcast market by a provider with millions of viewers.” (A534-35) (internal quotations omitted)

Critically, the Court found that Al Jazeera’s redactions concealed from the public the very nature and character of the dispute between Al Jazeera and AT&T. “The parties ... enmeshed in a contractual dispute, have redacted virtually all of the contract terms in dispute as well as descriptions of the nature of the dispute itself.” (A522-23) This masking of the dispute, the Vice Chancellor explained, was antithetical to the Court of Chancery’s public function:

*The public interest in the judicial process cannot be vindicated if the nature of the litigation remains masked in a fundamental way.*

Indeed, it is difficult to envision a judicial opinion in this matter that could maintain the confidentiality of all the designated material and yet be comprehensible to the reading public.

(A523) (emphasis added)

Balancing the public interests at stake against the parties’ claims of harm, the Court concluded that the balance weighed in favor of the public interest:

[W]hen sensitive information that the parties wish to keep confidential directly impacts the public’s basic knowledge of particular court proceedings—*where, as here, the supposedly-confidential information represents the nature of the dispute itself—the interests of the public in accessing this information outweighs the economic harm to the parties that disclosure may cause.*

\* \* \*

[I]f information such as the nature of the dispute before this Court, negotiations and discussions between the parties, and the parties' contractual dealings, could be redacted merely because its disclosure could cause the parties economic harm, then this Court would no longer act as a public court but as something akin to a private arbitrator, replicating an option—private arbitration—that the parties could have, but did not, choose for themselves.

\* \* \*

Although Rule 5.1 permits litigating parties to maintain confidentiality over sensitive proprietary and commercial information when confidentiality does not greatly disadvantage the public's ability to understand the nature of the dispute before this Court, *this Rule does not permit litigating parties to withhold information from the public merely based on the potential economic or reputational impact that disclosure may have where the public's interest in this information is substantial* and outweighs the potential impact on the parties' respective business interests.

(A534, A535, A539) (emphasis added)

On October 23, 2013, the Court issued a Memorandum Opinion granting Al Jazeera's motion to certify an interlocutory appeal. There, the Court explained again how the public interests at stake outweighed the parties' assertions of harm:

[T]he parties' allegations of collateral business impact was insufficient to maintain confidential treatment of information such as the nature of the parties' dispute and the contract provisions that this contractual dispute was based upon, because this information was [too] crucial to the public interest, and pivotal to the public's understanding of the operations of this public institution.

(A558)

## ARGUMENT

### **I. THE COURT OF CHANCERY DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT THE LITIGATING PARTIES FAILED TO ESTABLISH THAT THE COMPETITIVE HARM THEY MAY POTENTIALLY SUFFER FROM DISCLOSURE OF THE TERMS OF THEIR CONTRACT AND THEIR CONTRACTUAL DEALINGS OUTWEIGHED THE PUBLIC INTEREST IN UNDERSTANDING THE NATURE OF THE DISPUTE**

#### **A. Question Presented**

Did the Court of Chancery abuse its discretion in determining that the public interest in understanding the nature of the dispute before the Court – such as the contract terms at issue, the parties’ interpretations of those terms and their dealings – outweighed the potential economic impact that public disclosure may have on the parties’ future bargaining positions? (A523, 539-40; A558)

#### **B. Scope of Review**

“This Court reviews the trial court’s decision to seal or unseal documents for abuse of discretion.” *Hurd v. Espinoza*, 34 A.3d 1084 (Del. 2011) Court of Chancery Rule 5.1(b)(2) specifies that “good cause” for sealing exists only if the public interest in access is “outweighed” by the private harm from public disclosure – a balancing test that necessarily entails a discretionary determination. Other jurisdictions similarly recognize that the weighing of competing interests respecting public access is a matter of discretion, subject to abuse of discretion review. *See, e.g., Bank of Am. Nat’l Trust and Sav. Ass’n v. Hotel Rittenhouse*



*Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986) (“The balancing of the factors for and against access [to judicial records] is a decision committed to the discretion of the district court ....”); *Johnson v. Greater Se. Comm. Hosp. Corp.*, 951 F.2d 1268, 1277 (D.C. Cir. 1991) (“[T]he decision as to access [to judicial records] is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.”) (citations omitted); *In Re Knoxville News-Sentinel Co., Inc.*, 723 F.2d 470, 474 (6th Cir. 1983) (“[T]he decision as to when judicial records should be sealed is left to the sound discretion of the district court, subject to appellate review for abuse.”); *Mancheski v. Gabelli Grp. Capital Partners*, 835 N.Y.S.2d 595, 598 (N.Y. App. Div. 2007) (“good cause, in essence, boils down to ... the prudent exercise of the court’s discretion and thus a case-by-case analysis is warranted”) (internal quotation omitted)

Al Jazeera argues for *de novo* review because that standard governs “the interpretation of court rules.” (Op. Br. at 20) That observation is inapt, because this appeal concerns the *application* of the definition of “good cause” in Court of Chancery Rule 5.1(b)(2), not the *interpretation* of any language in the Rule. This Court has explained the distinction in reviewing appeals respecting rules of trial court procedure: “To clear up that confusion, we set forth the general rule: while we review a trial judge’s *interpretation* of the Superior Court Rules relating to

discovery *de novo*, we review the trial judge's *application* of those rules for an abuse of discretion." *Hopkins v. State*, 893 A.2d 922, 927 n.5 (Del. 2006) (emphasis in original) In other appeals that involve application of the Court of Chancery Rules, this Court has applied an abuse of discretion standard. *See, e.g., In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 428 (Del. 2012) (class action determination under Rule 23); *MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625, 633 (Del. 2001) (motion to reopen a judgment under Rule 60(b))

The two cases cited by Al Jazeera in support of *de novo* review both involved the legal interpretation of a court rule. *State v. Kelly*, 947 A.2d 1123, 2008 WL 187945 at \*3 (Del. 2008) (Table) ("Reading the statutes and court rules together, only one conclusion is logical."); *Jackson v. State*, 654 A.2d 829, 832 (Del. 1995) ("In our view there is an ambiguity in the language of [Superior Court Criminal] Rule 61(i)(1) ...."). Al Jazeera raises no such interpretive issue. Indeed, Al Jazeera acknowledges that its appeal concerns the supposed "erroneous application" of Rule 5.1. (Op. Br. at 29)

AT&T expressly acknowledged below that its motion for continued sealing was addressed to the discretion of the Court of Chancery:

Issues regarding the right of access rest within the sound discretion of the Court. *Rohm and Haas Co. v. Dow Chem. Co.*, C.A No. 4309-CC, at 2; *Nixon v. Warner Commc'ns. Inc.*, 435 U.S. 589, 599 (1978) (ruling that the decision to allow access to private records rests in the sound discretion of the trial court in light of the relevant facts and circumstances of the particular case).

(A243 ¶ 11) Al Jazeera acknowledges that adoption of “Rule 5.1 did not change the substantive law,” undermining its argument that *de novo* review should apply to “the first comprehensive interpretation of Court of Chancery Rule 5.1.” (Op. Br. at 20, 29)

### C. Merits of Argument

#### 1. Rule 5.1 Reflects a Constitutional and Common Law Imperative to Balance Claimed Harm from Disclosure Against the Public’s Right of Access To Basic Information About the Merits of a Dispute

Al Jazeera argues that sensitive business information “Is Entitled To Confidential Treatment Under Rule 5.1.” (Op. Br. at 21) Al Jazeera overlooks the balancing analysis required by Rule 5.1 and the common law precedents as well as the heavy burden Al Jazeera must meet to justify continued sealing of large portions of its Complaint.

“Good cause” for confidential treatment of a filing “shall exist only if the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause.” Ch. Ct. R. 5.1(b)(2). The language of the rule requires a balancing analysis and puts the burden on a party to demonstrate that the balance lies in favor of sealing. Other authority amplifies that the burden is heavy to justify sealing the basic information about a dispute contained in a complaint.

When the Court of Chancery amended its rules to delete Rule 5(g) and add Rule 5.1, the Court issued an explanatory memorandum entitled “Public Access to the Courts: Chancery Rule 5.1” (the “Protecting Public Access Memo”). The Protecting Public Access Memo described some of the abuses that had occurred under the old Rule 5(g), including “[i]ncreasingly frequent assertions of confidentiality for information that did not fall within any recognized exception to the public’s right of access and was not truly sensitive or confidential in nature” and the filing of public versions of documents “that redacted far too much information and left the public with an improperly narrow view into the case.” (B2-3)

In the Protecting Public Access Memo, the Court emphasized that the “*overarching purpose* of Rule 5.1 is to protect the public’s right of access to information about judicial proceedings.” (B3) (emphasis added). To achieve this purpose, “Rule 5.1 reduces the categories of information that are entitled to protection once material is filed with the Court and requires that any information designated ‘Confidential’ meet the tests traditionally recognized by courts as sufficient to justify limiting the public’s right of access.” (B4) The Court explained the “good cause” requirement of Rule 5.1 as follows:

Rule 5.1 defines “good cause” to exist “only if the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause.” Rule 5.1 provides the following examples of confidential information:

“trade secrets; sensitive proprietary information; sensitive financial, business or personnel information; sensitive personal information such as medical records; and personally identifying information such as social security numbers, financial account numbers, and the names of minor children.” This is a narrower interpretation than litigants often took under [the old Rule 5(g)]. Rule 5.1 specifies that if a designation is challenged, the party seeking confidential treatment has the burden of showing that “good cause” exists.

(B4-5)

The common law right of access underlying Rule 5.1 “antedates the Constitution, and its purpose is to ‘promote[] public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court.’ Hence, a ‘strong presumption’ in favor of accessibility attaches to almost all documents created in the course of civil proceedings.” *LEAP Sys., Inc. v. MoneyTrax, Inc.*, 639 F.3d 216, 220 (3d Cir. 2011) (citations omitted). *See also In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 429 (9th Cir. 2011) (“To overcome the presumption, a party seeking to seal a judicial record must demonstrate not just ‘good cause,’ but ‘compelling reasons,’ or ‘sufficiently important countervailing interests.’”) (citations omitted); *Kronenberg v. Katz*, 872 A.2d 568, 608 (Del. Ch. 2004) (Rule 5(g) “reflects Delaware’s commitment to the principles of open government reflected in the First Amendment to the United States Constitution, and in Delaware’s common law”); *Matter of 2 Sealed Search Warrants*, 710 A.2d 202, 210-11 (Del. Super. 1997) (noting “strong presumption of openness” of judicial records)

One of the important purposes served by the public right of access is to ensure that the public is informed about the workings of the judicial branch of government, *Matter of 2 Sealed Search Warrants*, 710 A.2d at 210, which is necessary to promote public confidence in the courts. As the United States Court of Appeals for the Third Circuit has explained:

the very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness. In addition, access to civil proceedings and records promotes “public respect for the judicial process” and helps assure that judges perform their duties in an honest and informed manner.

*In re Cendant Corp.*, 260 F.3d 183, 192 (3d Cir.2001) (citations and internal quotations omitted). *Accord Sequoia Presidential Yacht Grp. LLC v. FE Partners LLC*, 2013 WL 3724946, at \*2 (Del. Ch. July 15, 2013) (public right of access is “considered fundamental to a democratic state and necessary in the long run so that the public can judge the product of the courts in a given case.”)

To achieve that goal, documents should not be redacted to the extent that they deprive the public of information necessary to understanding the nature of the dispute. *Chartis Specialty Ins. Co. v. LaSalle Bank, Nat. Ass’n*, 2011 WL 3276369 at \*3 (Del. Ch. July 29, 2011) (“because the Arbitration Award ‘is at the heart of what the Court is asked to act upon, the [party seeking to maintain confidentiality] must demonstrate why the presumption of access should be overcome’”) (citation omitted); *In the Matter of Trust for Grandchildren of Wilbert L. and Genevieve W.*

*Gore* dated April 14, 1972, 2010 WL 5644675 at \*2 (Del. Ch. Dec. 22, 2010) (unsealing certain stock valuation information because “it would assist the public in understanding the dispute that the Court has been called upon to resolve”); *see also Sanchez v. MTC Networks, Inc.*, 525 Fed. Appx. 4, 7 (2d Cir. 2013) (refusing to seal documents because “the public is entitled to understand the nature of the dispute and the reasons for the rulings”)

This policy in favor of public access applies with particular force to complaints:

A complaint, which initiates judicial proceedings, is the cornerstone of every case, the very architecture of the lawsuit, and access to the complaint is almost always necessary if the public is to understand a court's decision. Indeed, the complaint is so fundamental to litigation that the plaintiff's pleadings in the complaint determine whether a federal court has jurisdiction to even entertain the claim. Moreover, a large number of lawsuits . . . are disposed of at the motion-to-dismiss stage . . . .

*F.T.C. v. AbbVie Prods., LLC*, 713 F.3d 54, 62 (11th Cir. 2013) (citations omitted). *See also Levenstein v. Salafsky*, 164 F.3d 345, 348 (7th Cir. 1998) (“Litigation is a public exercise; it consumes public resources. It follows that in all but the most extraordinary cases—perhaps those involving weighty matters of national security—complaints must be public”); *In re NVidia Corp. Deriv. Litig.*, 2008 WL 1859067, at \*3-4 (N.D. Cal. Apr. 23, 2008) (“When a plaintiff invokes the Court's authority by filing a complaint, the public has a right to know who is invoking it, and towards what purpose, and in what manner . . . . [A] request to seal all or part

of a complaint must meet the ‘compelling reasons’ standard ....”); *Khanna v. McMin*, 2006 WL 1388744, at \*40 (Del. Ch. May 8, 2006) (rejecting sealing of portions of amended complaint that “simply are not sufficiently sensitive to counteract the strong policy reasons as to why the record is presumed to be public unless good cause is shown as to why it should be otherwise”).<sup>4</sup>

Al Jazeera has not identified a single case in which a court has permitted a litigant to seal a large portion of its complaint on the ground that public disclosure of non-public information poses a threat of competitive harm. Instead, the only case Al Jazeera discusses at length is *Joint Stock Soc’y v. UDV N. Am., Inc.*, 104 F. Supp. 2d 390 (D. Del. 2000), the facts and reasoning of which are no help to Al Jazeera and support the Press Objectors.

*Joint Stock Soc’y* involved an effort to unseal thousands of pages of discovery material, the vast majority of which were submitted in opposition to defendants’ motions for summary judgment. *Id.* at 393. Most of the documents were voluntarily released from seal by the parties. A special master recommended continued sealing of consumer research studies, strategic plans and marketing campaigns or financial information, “which, if disclosed, would subject the defendants to a competitive harm because other firms in the alcohol industry could

---

<sup>4</sup> Briefing is presently underway in the Court of Chancery on a motion to dismiss. (B15) For the reasons discussed above, the public’s ability to understand the basis of any decision of such motion will be fundamentally impaired if Al Jazeera is permitted to maintain the current redactions.



use the information to their advantage.” *Id.* at 407. Importantly, the special master also had determined that such sensitive proprietary information would not aid the public’s understanding of the case:

[T]he special master observed that the ruling on summary judgment addressed the fundamental issues of justiciability, standing, and laches. The ruling did not touch on the merits of the case, such as whether the plaintiffs had submitted sufficient evidence to create a genuine issue as to whether the defendants had engaged in false or misleading advertising. Consequently, the special master concluded, *the unsealing of the defendants’ commercial information would not assist the public in evaluating the summary judgment opinion.*

*Id.* (emphasis added) Here, as discussed below, the balancing analysis is quite different. The information in question is not proprietary, and it is essential to public understanding of the nature of the dispute.

## **2. The Court of Chancery Did Not Abuse its Discretion in Applying Rule 5.1 to Al Jazeera’s Complaint**

The Court of Chancery properly weighed the two factors in Rule 5.1(b)(2) and made a fact-specific determination concerning which allegations and underlying contract terms should remain confidential and which should be unsealed. Al Jazeera’s contention that the Court failed to properly balance the pertinent factors is unsupported.

The Court of Chancery expressly considered the parties’ contentions that public disclosure of the complaint would have adverse “business ramifications.” (A532) Indeed, the Court assumed the truth of the argument that public disclosure

of the terms of the contract and how it is interpreted by the parties is capable of causing harm and giving a competitive edge to third parties. (A523) The Court made its ultimate determination by balancing that harm against the public interest in access to different aspects of the complaint.

The Court of Chancery determined that the parties had established good cause for confidential treatment regarding the per-subscriber fee payable by AT&T under the Affiliation Agreement (Compl. ¶ 38), the number of subscribers that historically had received programming under the Affiliation Agreement (Compl. ¶¶ 11, 35) and “similar proprietary information.” (A532) The Court noted that the Court “traditionally has allowed redaction of discrete sensitive information, such as a price term,” and that public knowledge of such discrete information “does not impinge on the public’s understanding of the disputes before this Court.” (A523, 534)

The Court reached the opposite conclusion concerning the redactions respecting “the nature of the dispute before this Court, negotiations and discussions between the parties, and the parties’ contractual dealings.” (A535). The Court recognized the public interest in understanding the circumstances under which Al Jazeera, “the first major news channel to debut on television in many years,” could be “denied entry to the American broadcast market by a provider with millions of viewers.” (A534-35) In light of the intense public interest in the nature of the

dispute, arguments about the “potential for collateral economic consequences” were insufficient.” (A533)

The Court of Chancery rejected the argument that allegations respecting the very nature of a litigated dispute are analogous to a price term:

[W]hen sensitive information that the parties wish to keep confidential directly impacts the public’s basic knowledge of particular court proceedings—where, as here, the supposedly-confidential information represents the nature of the dispute itself—the interests of the public in accessing this information outweighs the economic harm to the parties that disclosure may cause.

.... [D]espite the alleged uniquely competitive nature of the cable news industry, the information that the parties want to keep confidential, such as the nature of the dispute, cannot be viewed as analogous to a price terms because of the public’s significant interest in being able to access this information.

(A534)

The Court’s conclusion that the alleged harm to Al Jazeera’s negotiating position with existing and/or potential commercial partners was not sufficient to overcome the public’s right of access to basic information about the dispute is consistent with decisions of other courts that have balanced the same considerations. *See, e.g., In re Specht*, 622 F.3d 697, 701 (7th Cir. 2010) (declining to treat an indemnity agreement as confidential simply because other parties in the same business might be able to obtain some “negotiating advantage” by knowing the contract’s terms); *Gryphon Domestic VI, LLC v. APP Int’l Fin. Co.*, 814 N.Y.S.2d 110, 114 (N.Y.A.D. 1st Dept. 2006) (“Sealing, however, is not

appropriate merely to protect the advantage that one side might have over the other in negotiating an agreement in a commercial dispute between sophisticated business entities.”); *Republic of Philippines v. Westinghouse Elec. Corp.*, 139 F.R.D. 50, 61-62 (D.N.J. 1991) (declining to treat claimed “proprietary business information” as confidential where party claimed that disclosure would, among other things, harm its ability to negotiate with customers and sales representatives, and would give competitors an invaluable competitive advantage), *stay denied*, 949 F.2d 653, 662-63 (3rd Cir. 1991) As noted above, Al Jazeera does not discuss any case in which a court has kept basic allegations about the nature of a dispute under seal due to concerns of potential economic harm.

The Vice Chancellor expressly found that the redacted information in the complaint went to “the core nature of the dispute itself,” was “necessary to understand the nature of the dispute,” and “outweighs the potential impact on the parties’ respective business interests.” (A539-40) Al Jazeera’s argument that the Court of Chancery misapplied Rule 5.1 rests on its own rewriting of the Court’s decision. (Op. Br. at 29-30) (“The underlying rationale appears to be that any information that the public might consider germane to a case cannot be protected from public disclosure, no matter how serious the collateral damage to the parties from that disclosure.”) The Court announced no such rule, and its parsing of the complaint permits no such extrapolation. The Court of Chancery applied the

balancing test required by Rule 5.1(b)(2) and found that the parties did not meet their burden of demonstrating “good cause” as to the bulk of the pleading.

Al Jazeera also incorrectly argues that the Court of Chancery “did no balancing at all.” (Op. Br. at 30) Al Jazeera goes so far as to say that “the Court of Chancery, at oral argument, stated that it would give no weight to either [the confidentiality] agreement or the importance of confidentiality in the industry.” (Op. Br. at 30) The cited pages of the transcript actually reveal that Al Jazeera’s counsel admitted that the confidentiality provision in the Affiliation Agreement had no direct bearing on the Rule 5.1 analysis (A320),<sup>5</sup> and that Al Jazeera was “being cautious” in redacting any allegations that may be deemed “to have violated a contractual obligation.” (A321) In the same colloquy, Al Jazeera’s counsel was unable to answer the Court’s question why industry participants agreed to publicly litigate, rather than privately arbitrate, disputes under agreements that are supposedly so sensitive that their terms cannot be revealed. (A324) The confidentiality provision in the Affiliation Agreement admits of various exceptions and requires parties to seek confidential treatment and redaction “to the greatest extent possible.” (A69-70)

---

<sup>5</sup> This admission is unsurprising. Parties in private transactions may not bargain away the rights of the public when disputes are brought into the public court system. *See, e.g., Bank of Am. Nat’l Trust and Sav. Ass’n v. Hotel Rittenhouse*, 800 F.2d 339, 345 (3d Cir.1986) (settlement agreement filed with court under seal subject to disclosure because parties’ private confidentiality agreement could not bar access to what had become a judicial record).

Far from doing no balancing, the Court gave Al Jazeera the benefit of the doubt in its weighing of the Rule 5.1 factors by assuming that public disclosure of the redacted information could give a competitive edge to third parties. (A523) The record easily could support an opposite assumption. “[C]onfidential business information is not entitled to the same level of protection from disclosure as trade secret information.” *Littlejohn v. BIC Corp.*, 851 F.2d 673, 685 (3d Cir. 1988). Al Jazeera’s claim of commercial sensitivity is hypothetical and speculative, and it is belied by Al Jazeera’s concession [REDACTED]

[REDACTED] See *supra* p. 13. Tellingly, AT&T, which asserted similar claims of harm below as Al Jazeera, *see supra* p. 11-12, did not pursue an appeal.

Al Jazeera complains about the “untailed nature of the remedy” and suggests that only portions of the Affiliation Agreement or the parties’ correspondence need be disclosed to “permit the public to obtain a general understanding of the dispute.” (Op. Br. at 30-31) Yet, Al Jazeera has not proffered any suggestions about what portions of the Affiliation Agreement and the correspondence are sufficient to inform the public. Having framed the issue “on an all or nothing basis” and “spurned such a line-by-line approach,” Al Jazeera

“cannot now fault the trial court for following [its] lead.” *In re Providian Credit Card Cases*, 116 Cal. Rptr. 2d 833, 846 (Cal. App. 2002).

Al Jazeera also faults the Court of Chancery for not considering alternative approaches, such as deferring disclosure “until the court issued a substantive ruling.” (Op. Br. at 31) Unsurprisingly, Al Jazeera has not cited any authority for that proposition, as the right of public access is a right of contemporaneous access:

In light of the values which the presumption of access endeavors to promote, a necessary corollary to the presumption is that once found to be appropriate, access should be immediate and contemporaneous. The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression. [E]ach passing day may constitute a separate and cognizable infringement of the First Amendment.

*Grove Fresh Distrib., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (citations and internal quotation omitted). *See also U.S. v. Beckham*, 789 F.2d 401, 420 (6th Cir. 1986) (denial of contemporaneous right of access would result in denial of right to records at a time when the issues remained a matter of public interest) Moreover, as discussed above, the common law right of access applies with special force to complaints. *See supra* p. 24-25.

A court “abuses its discretion when it exceeds the bounds of reason in light of the circumstances or when it ignores the rules of law or practices in a manner that creates injustice.” *Schultz v. Ginsburg*, 965 A.2d 661, 667 (Del. 2009). Al Jazeera has not and cannot make this showing. As discussed above, the Court of

Chancery undertook the analysis required by Rule 5.1, the First Amendment and the common law right of access and reached a conclusion in accord with ample precedent. Absent an abuse of discretion, the Court of Chancery's decision should be affirmed even if this Court may have reached a different conclusion had it been the trier of fact. *Smith v. Francisco*, 737 A.2d 1000, 1009 (Del. 1999).

**3. Al Jazeera's Unsupported Public Policy Arguments Lack Merit.**

Given the constitutional dimension to a Rule 5.1 analysis, there can be no supervening public policy rationale for a different result. Nevertheless, Al Jazeera makes several arguments unsupported by any legal citations as to why its pleading should remain largely under seal.

Al Jazeera argues that if its Complaint is unsealed in the manner prescribed by the Court of Chancery then future litigants will not "attempt to tell the full story of a dispute, attach the agreements and correspondence at issue, and quote from contract language in order to establish a cause of action." (Op. Br. at 32-33) Al Jazeera contends that "adversaries will have to engage in additional discovery to learn the nature of the claim against them," which will "make the judicial process longer and more expensive." (Op. Br. at 33) This argument lacks force because myriad factors affect a plaintiff's tactical judgment about how detailed a complaint should be, and defendants must always take discovery into the full factual bases of a claim.



Al Jazeera also argues that litigants will opt for private arbitration or litigation in courts of other jurisdictions if Delaware takes an “unbalanced view of sensitive business information.” (Op. Br. at 33) Al Jazeera makes no effort to establish that any court in any other jurisdiction subject to the First Amendment of the United States Constitution would resolve the unsealing issue differently than did the Court of Chancery in this case. Furthermore, Delaware has no interest in raising the threshold for public access to court records so as to compete with private arbitral forums. The Court of Chancery properly observed that it must “act as a public court [and not] as something akin to a private arbitrator, replicating an option—private arbitration—that the parties could have, but did not, choose for themselves.” (A535) Moreover, “the public policy of Delaware favors arbitration.” *Kuhn Const., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396 (Del. 2010); *James & Jackson, LLC v. Willie Gary, LLC ( Willie Gary II )*, 906 A.2d 76, 79 (Del. 2006).

## CONCLUSION

For all the foregoing reasons, Appellees respectfully request that the Court affirm the decision of the Court of Chancery.

*/s/ David L. Finger*

\_\_\_\_\_  
David L. Finger (#2556)  
Finger & Slanina, LLC  
One Commerce Center  
1201 N. Orange St., 7th fl.  
Wilmington, Delaware 19801  
(302) 573-2525

*Attorneys for Appellees  
Rita Farrell, Randall Chase,  
Kyle Wagner Compton and  
Sharon Bradley*

*/s/ Andre G. Bouchard*

\_\_\_\_\_  
Andre G. Bouchard (#2504)  
Joel Friedlander (#3163)  
Bouchard Margules & Friedlander, P.A.  
222 Delaware Avenue, Suite 1400  
Wilmington, Delaware 19801  
(302) 573-3500

*Attorneys for Appellee Bloomberg, L.P.*

Dated: January 6, 2014