

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYNCOR INTERNATIONAL CORP. : CIVIL ACTION
v. :
CHETAN MODY, et al. : NO. 98-6284

MEMORANDUM AND ORDER

HUTTON, J.

February 3, 2000

Presently before the Court is the proposed Protective Order of Confidentiality of Syncor International Corp. and Defendants Chetan Mody and Pinestar Technology, Inc. For the reasons stated below, approval of the Joint Protective Order of Confidentiality is **DENIED.**

I. BACKGROUND

Plaintiff entered into a contract with DuPont Merck ("DuPont") to be the exclusive distributor of Cardiolite. Cardiolite is a pharmaceutical product which assists in pinpointing cardiac damage and evaluating cardiac blood flow and heart pumping efficiency. Plaintiff entered into a contract with Nuclear Imaging Systems, Inc. ("NIS") which obligated NIS to purchase Syncor's radiopharmaceutical products, including Cardiolite.

Plaintiff alleges that Defendant Chetan Mody and Defendant Pinestar Technology, Inc. ("Pinestar") embarked on a scheme to purchase Cardiolite from a source other than DuPont-- knowing that

the Cardiolite was stolen, unlawfully converted, or obtained by fraud-- and to resell that Cardiolite to NIS. The Parties now file with the Court a Proposed Protective Order of Confidentiality concerning all documents to be produced during the course of discovery.

II. DISCUSSION

A. Standard

Federal Rule of Civil Procedure 26(c)(7) allows a court, "upon good cause shown," to order that "a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way." Miles v. Boeing Co., 154 F.R.D. 112, 114 (E.D. Pa. 1994) (quoting Fed. R. Civ. P. 26 (c)(7)). Nevertheless, such orders of confidentiality cannot be granted arbitrarily. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785-86 (3d Cir. 1994). "Disturbingly, some courts routinely sign orders which contain confidentiality clauses without considering the propriety of such orders, or the countervailing public interests which are sacrificed by the orders." Id. It is therefore incumbent upon this Court to carefully scrutinize the parties' request for a confidentiality order.

A party wishing to obtain a confidentiality order over discovery materials must demonstrate that "good cause" exists for the order of protection. Pansy, 23 F.3d at 786; Miles, 154 F.R.D. at 114. "Good cause is established on a showing that disclosure

will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984)); see also Aetna Casualty & Surety Co. v. George Hyman Const. Co., 155 F.R.D. 113, 115 n.3 (E.D. Pa. 1994). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not support a good cause showing. Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986), cert. denied, 484 U.S. 976 (1987); see also Frupac Intern. Corp. v. MV "CHUCABUCO", Civ.A. No.92-2617, 1994 WL 269271, *1 (E.D. Pa. Jun. 15, 1994). The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order. Id. at 1122. Pansy, 23 F.3d at 786-87 (footnote omitted).

In determining whether "good cause" exists, the federal courts have adopted a balancing approach, under which the following factors may be considered:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;

5) whether the sharing of information among litigants will promote fairness and efficiency;

6) whether a party benefitting from the order of confidentiality is a public entity or official; and

7) whether the case involves issues important to the public. Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995); Pansy, 23 F.3d at 788-89. "Whether this disclosure will be limited depends on a judicial balancing of the harm to the party seeking protection (or third persons) and the importance of disclosure to the public." Pansy, 23 F.3d at 787 (citing Arthur R. Miller, Confidentiality, Protective Orders, and Public Access to the Courts, 105 Harv. L. Rev. 427, 435 (1991)).

B. Analysis & Conclusion

Applying the Pansy test in this case is a simple matter. The Proposed Protective Order of Confidentiality submitted by the Parties utterly fails to address any consideration under the required "good cause" standard. The Parties fail to show with any specificity that disclosure will cause a defined and serious injury and they articulate no justification for requesting the Court to enter such an Order.

An appropriate Order follows.

