

AMERICAN ARBITRATION ASSOCIATION

AIDS HEALTHCARE FOUNDATION,

Claimant,

v.

PRIME THERAPEUTICS LLC,

Respondent.

No. 01-22-0000-2756

Arbitrator: Stuart M. Widman

**Ruling On Respondent's Motion For Protective
Order And Monetary Sanctions**

On July 22, 2024, Respondent Prime Therapeutics, LLC ("Prime") filed its Motion For Protective Order And Monetary Sanctions (the "Motion") asking that: (i) a broadened confidentiality order be entered designating all aspects of these proceedings confidential, and (ii) imposing monetary sanctions against Claimant AIDS Healthcare Foundation ("AHF") for violating the existing Protective Order.¹ On July 24, 2024, AHF filed its Opposition.

For the reasons discussed below, the Motion is denied, but that is specific to the facts raised by the Motion and is not a *carte blanche* approval of future public statements that AHF may make regarding this Arbitration.

The Protective Order (¶ 8) restricts the use of Highly Confidential Information (and Highly Confidential Attorneys' Eyes Only Information per the 4/17/24 amendment) to "solely for the purpose of resolving the issues in this Arbitration", and "not for any other purpose whatsoever." Prime says that AHF improperly disclosed Prime's protected information when AHF issued a press release on July 19, 2024 that discussed this Arbitrator's July 10, 2024 Ruling On Respondent's

¹ The original Protective Order was entered by the prior Arbitrator on December 12, 2023, but amended Orders were entered by this Arbitrator on April 17 and July 9, 2024. The later versions did not substantially alter the fundamental terms of the original Protective Order regarding what information is protected. Therefore, this Order primarily refers to the paragraphs in the December 12, 2023 Order.

Motion For Summary Adjudication (the “Ruling”) and also provided a link to the Ruling. There is no dispute that the press release was issued and that it linked to the Ruling. AHF asserts instead that the press release was accurate and did not disclose any of Prime's protected information.

Highly Confidential Information (and later Highly Confidential Attorneys' Eyes Only Information) includes all "documents, information, data, and tangible items produced, exchanged, or made available for inspection by the parties ... which either party considers proprietary, trade secrets, non-public, or of a sensitive business nature ..." (Order, ¶ 1.)² That is a very broad definition, and Prime contends it covers the items which Prime provided as support for its Summary Adjudication motion and which AHF disclosed in its press release. AHF did not contest Prime's original designations of its supporting materials as confidential, but AHF now argues that, despite that, nothing confidential was disclosed.

Implicit in the Protective Order is that the bar to improper use applies only to the other party's information, but does not bar the disclosure of the disclosing party's own confidential information. (See eg., Order ¶¶ 6 - 7, regarding disclosure of “the other party's Highly Confidential Information” (or later also "the other party's ... Highly Confidential Attorneys' Eyes Only Information".))

The Motion (p. 3) identifies three pieces of Prime's allegedly confidential information that were improperly disclosed: (i) this Arbitrator's finding of how the Collaboration effected price control; (ii) page cites to, but not quotes from, deposition testimony, also as part of this Arbitrator's findings of the macro effect of the Collaboration on prices; and (iii) cites (pages and some content) of Prime's expert report concerning AHF's damages. Although those are mentioned "among other

² The Order (¶ 1) allows the receiving party to object to overdesignation.

things", in making this ruling this Arbitrator looks at only those and does not search for other allegedly (but not specified) offending inclusions.

This Arbitrator first concludes that neither of the first two references violate the Protective Order because those brief discussions in the Ruling did not disclose any specific information that Prime tendered and that allegedly contained its non-public or sensitive business information. Rather, the Ruling disclosed only this Arbitrator's overall and general observations and conclusions. Notably, the Protective Order does not expressly cover an Arbitrator's ruling in this matter, and this Arbitrator did not designate the Ruling as confidential. Indeed, the prior Arbitrator similarly denied Prime's prior request to require AHF to take down an earlier press release that publicly posted the June 20, 2023 Order on Prime's Motion To Dismiss. While this Arbitrator finds independent reasons to deny these two aspects of the Motion, this Arbitrator also notes that AHF's recent disclosures about the workings of the Collaboration are substantively the same as AHF's earlier disclosures about it (see 6/20/23 Order, p. 7) that the prior Arbitrator would not bar.

As for the third component - references to the Maness Report that concern AHF's damages - AHF was not barred by the Protective Order from publicizing its own financial and damages information, whether raised by Maness or AHF's own witness. (Prime does not contest that latter disclosure.) The Protective Order only bars AHF from disclosing Prime's information. That AHF's data appeared in Prime's expert's report does not transform the underlying information into Prime's confidential information.

Finally, this Arbitrator finds there are no misrepresentations in the press release. The time-worn metaphor of "David and Goliath" is always viewed as an (often hyperbolic) opinion; statements about fear are clearly subjective, even without context; and the reference that this Arbitrator is "leaning toward" a finding is legitimately derived from this Arbitrator's conclusion in

the Ruling (p. 7). Linking the press release to the full Ruling additionally allows any reader of the press release to see exactly what this Arbitrator concluded (or not).

For the foregoing reasons, the Motion For Protective Order And Monetary Sanctions is denied. Nonetheless, the Protective Order remains the guiding standard for what may be (and may not be) publicly disclosed about this proceeding

Dated: July 26, 2024

/s/ Stuart M. Widman
Stuart M. Widman, Arbitrator