PRACTICE

PROTECTIVE ORDERS

Reasons for order dismissing defendant's motion for protective order — Parties in underlying patent infringement action embarking upon documentary, oral discoveries — Recognizing that information involved commercially sensitive or confidential — Negotiating, agreeing between themselves, *inter alia*, terms governing manner in which information designated, marked, to whom information may be disclosed — Defendant of view this undertaking not sufficient to protect its interests — Submitting meeting all criteria previously established by case law for issuance of protective order, no need for additional requirement to show existence of unusual circumstances — Taking issue with conclusion in *Live Face on Web, LLC v. Soldan Fence and Metals (2009) Ltd.*, 2017 FC 858 that reliance on implied undertaking, private agreements offering adequate protection — Analysis of case law by Court herein illustrating that practice of routinely issuing protective orders developed at time where applicability of implied undertaking rule still ill-defined — Existence of well-entrenched, long-standing practice not constituting rule of law Court obliged to follow —Whether issuance of protective order necessary in present case — Protective order not needed here— Clear that protective orders applicable to third parties [heading (1), p. 21] Paucity of case law may simply reflect obviousness of this principle — Unthinkable that third parties acting as agents for parties not bound by same obligation as their principals — Otherwise, important protection intended to be afforded by implied undertaking could be defeated, rendered nugatory simply by allowing party to act through agent — Unless circumstances whereby potential for unauthorized use established, no need for explicit protective order warning strangers against breaches of implied undertaking rule — Court not satisfied that issuance of protective order offering any advantage in ensuring enforcement against persons outside Court's jurisdiction — Fact that implied undertaking rule not codified in *Federal Courts Rules*, SOR/98-106 not making its scope uncertain — Parties able to clarify any aspect of rule deemed uncertain or ambiguous by express agreement between them — Free to impose limits on number or categories of people accessing designated information by way of supplementary undertakings — To suggest that "potentially unlimited" number of persons could need to receive discovery information for purpose of action is to misconceive appropriate use of discovery information — Implied undertaking rule evolving to become clearly recognized, well-established, comprehensive jurisprudential code — Caution must be exercised in relying on cases decided prior to Supreme Court's decision in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522 — Issuing protective orders undesirable since tending to devalue implied undertaking, may lead to abuse or misunderstanding of parties' obligations under implied undertaking, unnecessarily using Court's time, resources — Motion denied.

SEEDLINGS LIFE SCIENCE VENTURES, LLC V. PFIZER CANADA INC. (T-608-17, 2018 FC 443, Tabib P., reasons for order dated April 24, 2018, 34 pp.)