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Securities Litigation Update

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## Delaware Supreme Court Rejects Bright Line Rules in Section 220 Books and Records Proceedings

*Paramount Global v. State of Rhode Island Office of the General Treasurer, On Behalf of the Employees' Retirement System of Rhode Island*, No. 129, 2025 – Decided March 25, 2026

Last week, the Delaware Supreme Court held 3-2 that the Court of Chancery did not err by considering post-demand evidence and anonymous sources when determining whether a stockholder demonstrated a “credible basis” to suspect wrongdoing under Section 220 of the Delaware General Corporation Law.

*“The general rule is that when a stockholder seeks relief under § 220, it will be limited to evidence identified in the demand and the information available to the stockholder when the demand was made. But under exceptional circumstances, the Court of Chancery may, in the exercise of its sound discretion, consider post-demand evidence that is material to the court’s credible-basis inquiry and not prejudicial to the corporation.”*

*Justice Traynor, writing for the Court*

## Background

In 2023 and 2024, news outlets reported on the potential sale of National Amusements, Inc., which owned a majority interest in Paramount Global. These reports, often citing anonymous sources, suggested that Shari Redstone (who owned a majority interest in National Amusements) might be blocking a sale of Paramount in its entirety in favor of a sale of just National Amusements' controlling interest in Paramount.

Paramount stockholder Employees' Retirement System of Rhode Island (Rhode Island) served a books-and-records demand on Paramount in April 2024, seeking documents to explore potential wrongdoing in connection with the developing sale. The demand relied largely on the news reports just discussed to establish the "credible basis" of wrongdoing that Section 220 requires before a stockholder may inspect books and records.

The parties subsequently went to trial on whether Rhode Island had enough evidence to demonstrate a credible basis to suspect wrongdoing. The magistrate who oversaw the trial held that it did not, and rejected Rhode Island's attempt to rely on newspaper articles that post-dated its books-and-records demand. In doing so, the magistrate explained that the court could "only consider the evidence available at the time the demand was served."

Rhode Island asked Vice Chancellor Laster to review the magistrate's ruling, which the Vice Chancellor reversed. The court held that "there are settings when a stockholder can legitimately rely at trial on post-demand evidence." As for Rhode Island's reliance on anonymous sources in news articles, the court held that "articles from reputable publications that rely on anonymous sources will generally be sufficiently reliable for a court to consider when assessing" the existence of a "credible basis to suspect wrongdoing."

## Issues on Appeal

Paramount sought interlocutory appeal on whether a credible basis could be established based on (1) post-demand evidence, and (2) hearsay from anonymous sources in news reports.

## Court's Holdings

**Post-Demand Evidence:** The Delaware Supreme Court held "under exceptional circumstances, the Court of Chancery may, in the exercise of its sound discretion, consider post-demand evidence that is material to the court's credible-basis inquiry and not prejudicial to the corporation." The Court reasoned that there is nothing in Section 220's text that prohibits the consideration of post-demand evidence. However, the Court endorsed the general rule "that when a stockholder seeks relief under § 220, it will be limited to evidence identified in the demand and the information available to the stockholder when the demand was made."

**Hearsay in Confidentially Sourced News Reports:** The Court affirmed that hearsay from anonymous sources in news articles, if found to be sufficiently reliable, can support a credible basis. The Court expressed unease with the Vice Chancellor's suggestion that "[n]ews articles from *reputable publications* that rely on anonymous sources will generally be sufficiently reliable for a court to consider when assessing whether a stockholder has a credible basis to suspect

wrongdoing,” but was satisfied that the Vice Chancellor did not rely exclusively on the news outlets’ reputations in reaching his conclusion. The Court noted that an inquiry into the reliability of hearsay evidence is “fact-specific” and concluded that the Vice Chancellor’s reliability determination fell “within the permissible range of choices available in this case.”

### What It Means

- **Potential for Increased Demands.** Corporations should be aware that this ruling may encourage stockholders to prematurely file books-and-records demands based on developing situations, knowing that post-demand evidence may bolster their case.
- **Further Litigation Over “Exceptional Circumstances.”** Although the Supreme Court held the Court of Chancery has discretion to consider post-demand evidence under “exceptional circumstances,” it did not delineate those circumstances. We can expect further litigation over what circumstances permit the use of post-demand evidence to establish a credible basis to suspect wrongdoing.

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