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Delaware Court of Chancery Permits Reliance on News Articles and Information Post-Dating Books and Records Demand


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On January 29, 2025, in *State of Rhode Island Office of the General Treasurer v. Paramount Global* (the "Decision"),[1] the Delaware Court of Chancery issued a post-trial opinion, broadening the types of sources a stockholder may rely on to establish a proper purpose in connection with a books and records request under Delaware General Corporation Law Section 220. Paramount Global ("Paramount" or the "Company") had received a Section 220 demand from a Rhode Island pension fund (the "Stockholder") seeking documents to investigate potential corporate wrongdoing. Notably, finding in favor of the Stockholder, the Court concluded that (1) information post-dating a books and records demand may, in some circumstances, be utilized to support a credible evidentiary basis to suspect wrongdoing, and (2) news articles that use anonymous sources—like other materials potentially supporting a credible evidentiary basis—do not, *per se*, lack indicia of reliability and should be assessed on a case-by-case basis.

Background

National Amusements, Inc. ("NAI") controlled Paramount through its ownership of a majority of the Company's Class A stock. Shari Redstone controls NAI and serves as its CEO and Chairwoman. Redstone created Paramount in 2019 by way of a merger between two firms NAI controlled. However, Paramount failed to meet expectations, and at the end of 2023, Redstone began to explore a sale of NAI. On January 10, 2024, the *New York Post* reported that Redstone had sent non-disclosure agreements to private equity firms and was asking for as much as a 50% premium over market value. A *Wall Street Journal* article that same month reported that Skydance Media ("Skydance") was interested in purchasing NAI and expected to be able to pay more than a private equity firm due to anticipated synergies. In particular, citing sources familiar with the matter, the *Wall Street Journal* reported that Skydance's CEO, David Ellison, had proposed an all-cash bid, which would have been partially financed by Skydance investors (the "Skydance Deal").

Other bidders soon entered the scene. Media entrepreneur Byron Allen reportedly submitted a $14.3 million bid, offering a premium for Redstone's Class A voting stocks, but a *New York Post* piece noted that neither Paramount nor NAI had shown a genuine interest in striking a deal with Allen. On March 20, 2024, a *Wall Street Journal* article reported that Apollo Global Management ("Apollo") offered $11 billion for one of the media and entertainment assets that Paramount owns: Paramount Pictures (the "Studio"). Apollo's offer for the Studio exceeded Paramount's market valuation. In April 2024, an article in *Variety* reported that Redstone had entered into exclusive discussions with Skydance about acquiring NAI's controlling stake in Paramount.

On April 5, 2024, the Stockholder served a demand for books and records (the "Section 220 Demand"), seeking to investigate whether Redstone and NAI usurped Paramount's corporate opportunities by "channeling potential buyers toward a

purchase of NAI or its controlling stake rather than a transaction with [Paramount]."[2]

On the same day the Stockholder sent its Section 220 Demand, the *Wall Street Journal* reported that the Skydance Deal was going to be a two-step deal: (1) Skydance would buy NAI for $2 billion in cash, and then (2) Paramount would buy Skydance in an all-stock transaction valued at approximately $5 billion. Step two would mandate approval from a Special Committee. Throughout April 2024, news agencies, often citing anonymous sources, reported that: four Paramount directors would resign, including three directors on the Special Committee[3]; at least one of the departing directors referenced concerns regarding the Skydance Deal; and many Paramount stockholders voiced concerns about possible breaches of fiduciary duty by Redstone.

On April 19, 2024, Paramount rejected the Section 220 Demand on the basis that it was overly broad and did not proffer a proper purpose. The Stockholder filed suit on April 30, 2024. Several days after the Stockholder filed suit, the *Wall Street Journal* reported that Apollo and Sony Picture submitted a joint offer letter to acquire Paramount. A month later, another *Wall Street Journal* article reported that Skydance sweetened its offer with respect to the non-voting stockholders in the form of a 26% premium for a certain amount of Paramount Class B stocks. Critically, this revision meant $300 million less for NAI. On June 12, 2024, the *Los Angeles Times* reported that Redstone had a change of heart about the Skydance Deal due to the lowered consideration for herself, along with Skydance's refusal to indemnify Redstone against stockholder suits. On July 7, 2024, Paramount formally announced that Skydance would buy NAI for $2.4 billion, followed by a second-step merger between Skydance and Paramount that valued Skydance at $4.75 billion. Under this new deal, the post-merger company would indemnify Redstone.

On July 24, 2024, Judge Selena E. Molina, a Court of Chancery magistrate judge, presided over a trial on the papers and recommended a ruling in Paramount's favor. In a bench ruling, Judge Molina concluded that the Stockholder had not established an adequate evidentiary basis to support a proper purpose for an investigation into possible corporate wrongdoing. The Stockholder took issue with Judge Molina's post-trial bench ruling.

The Court of Chancery's Decision

The ultimate decision, by Vice Chancellor J. Travis Laster, was closely watched by practitioners, given the recent spike in Section 220 Demands in response to persistent encouragement from Delaware courts to utilize Section 220 prior to filing a lawsuit.[4] At trial, a stockholder must "show, by a preponderance of the evidence, a credible basis from which the Court of Chancery can infer there is possible mismanagement that would warrant further investigation . . ."[5] Paramount contended that the Stockholder lacked a proper purpose because it did not pinpoint a viable form of wrongdoing and that, even assuming *arguendo* that it had, the Stockholder neglected to create an evidentiary record sufficient to establish a credible basis to suspect corporate wrongdoing.

With respect to whether the Stockholder shouldered what Vice Chancellor Laster called its conceptual burden to identify a viable form of wrongdoing, the Court said that "Redstone and NAI . . . steering bidders away from a Company-level transaction and toward an NAI-level transaction" could involve breaches of the duty of loyalty and, therefore, support a proper purpose.[6] The Court looked to Delaware Supreme Court precedent, which teaches that "an investigating stockholder is not required in all cases to establish that the wrongdoing under investigation is actionable."[7] This makes sense because the purpose of obtaining books and records is to permit a stockholder to evaluate whether to file suit and plead a more viable claim, mandating that a Section 220 Demand articulate a viable claim would "put the cart before the horse."[8] Because he was convinced the Section 220 Demand described a situation that could give rise to a breach of loyalty claim, Vice Chancellor Laster found in favor of the Stockholder on this point.

Vice Chancellor Laster next analyzed a stockholder's reliance on evidence about *post*-Section 220 Demand events to meet its evidentiary burden (an issue of first

impression). The Court acknowledged that a stockholder should, as a general matter, be confined to the evidence identified in the Section 220 Demand itself and information the stockholder knew (or could have known) at the time of the demand. However, where a "material event occurs after the demand but before trial" and when the stockholder's reliance on those events does not prejudice the corporation, an exception may be appropriate.[9] The Court explained that there is a difference between events post-dating a demand and information available to a stockholder pre-Demand that the stockholder neglects to include. Here, it was appropriate to permit the Stockholder to rely on post-Section 220 Demand news articles. Although it did not establish a bright line rule, the Court stated it would consider all of the post-Section 220 Demand evidence submitted,[10] given the Stockholder's pre-trial disclosure of news articles discussing material events that unfolded post-Section 220 Demand and the fact that the post-demand evidence relates to the Company's own conduct ("[a] party should not be surprised by evidence about its own acts, nor should the introduction of the evidence be prejudicial[]").[11]

As to the reliability of the news articles that the Stockholder introduced, the Court rejected Paramount's arguments that they were unreliable hearsay and that articles quoting or paraphrasing confidential sources are unreliable absent facts to evaluate the sources' credibility. The Court noted that Delaware law permits a stockholder to rely on hearsay to supply a credible basis to suspect corporate wrongdoing, so long as the hearsay carries sufficient guarantees of trustworthiness. When news articles are involved, the articles must directly implicate the company in wrongdoing or suggest wrongdoing. Here, the Stockholder submitted 47 news articles, many of which were lengthy and detailed. The news articles came from reputable publications and none reflected any "indicia of unreliability[.]"[12] Thus, the Court concluded that the Stockholder could rely on the news articles to establish a credible basis to suspect corporate wrongdoing.

Finally, Vice Chancellor Laster concluded that the news articles' use of anonymous sources did not make them unpersuasive, placing particular weight on the facts that: (1) the reputable publications had demanding internal standards for fact-checking confidential sources; (2) news organizations place their reputations on the line when publishing pieces that rely on anonymous sources; and (3) the sources themselves were likely drawn from internal personnel or professional advisers of the Company. Accordingly, the Court held that the news articles were sufficiently reliable to be accorded weight when assessing whether the Stockholder had established a credible basis to suspect corporate wrongdoing in connection with the sale of NAI.

Implications

Vice Chancellor Laster's decision provides insight into the types of evidence a stockholder can use to establish a proper purpose in connection with a Section 220 Demand. Post-demand evidence may be permissible, including when the events relate to the theory of wrongdoing alleged in the demand and also pre-date trial. In addition, hearsay evidence, including news articles, is allowed provided it meets Delaware's standard of trustworthiness. Nor are news articles that use anonymous sources automatically excluded, especially when the articles appear in reputable publications with rigorous sourcing procedures.

Nevertheless, the Decision's fate is not certain, given that, on March 24, 2025, the Court granted Paramount's application for certification of two aspects of the Decision for interlocutory appeal.[13] While of the view that the application mischaracterized the Decision and made "dubious predictions about its dire consequences," Vice Chancellor Laster felt that the Delaware Supreme Court's insights on these issues would be particularly useful and can be obtained efficiently.[14]

It will be interesting to see how the Delaware Supreme Court analyzes the Decision and whether it blesses Vice Chancellor Laster's views on the proper purpose and analysis.

[1] C.A. No. 2024-0457-SEM (Del. Ch. Jan. 29, 2025).

[2] *Id.* at 6.

[3] *See id.* at 7 ("On April 10, 2024, citing 'people familiar with the situation,' the *Wall Street Journal* reported that four Company directors would step down, including three directors serving on the Special Committee.").

[4] Stockholders in a Delaware corporation are statutorily entitled to inspect certain of the company's books and records. *See* 8 *Del. C.* Section 220(b).

[5] *Seinfeld*, 909 A.2d at 123. This showing "may ultimately fall well short of demonstrating that anything wrong occurred." *Khanna v. Covad Commc'ns Group, Inc.*, No. 20481-NC, 2004 WL 187274, at *6 n.25 (Del. 2006).

[6] C.A. No. 2024-0457-SEM, at 11 (Del. Ch. Jan. 29, 2025).

[7] *AmerisourceBergen Corp. v. Lebanon Cty. Empls.' Ret. Fund (AmerisourceBergen II)*, 243 A.3d 417, 421 (Del. 2020).

[8] C.A. No. 2024-0457-SEM, at 12 (Del. Ch. Jan. 29, 2025).

[9] *Id.* at 18.

[10] The post-Section 220 Demand evidence comprised 25 post-Section 220 Demand news articles, seven post-Section 220 Demand SEC disclosures by Paramount, and two litigation-related communications. *Id.* at 24. Of these, seven news articles and three SEC disclosures predate the Complaint; the rest predate the trial. *Id.* at 24-25. The post-Section 220 Demand news articles all report on Paramount's or Redstone's post-Section 220 Demand actions. *Id.* at 25.

[11] C.A. No. 2024-0457-SEM, at 21 (Del. Ch. Jan. 29, 2025). The Court also relied on the language and structure of Section 220 to conclude that a court can consider post-Section 220 Demand evidence under certain circumstances.

[12] *Id.* at 32.

[13] *See State of Rhode Island Office of the General Treasurer v. Paramount Global*, C.A. No. 2024-0457-SEM (Del. Ch. Mar. 24, 2025). Paramount asked the Court of Chancery to certify two rulings: (1) the finding that the Stockholder properly relied in this case on articles that post-dated the Section 220 Demand or the filing of the Complaint and (2) the finding that the Stockholder properly relied on articles citing anonymous sources. *See id.* at 6.

[14] *Id.* at 3, 12, 16. In particular, Paramount argued that the Decision would "permit litigants to use [Section] 220 litigation to launch an inquisition into hypothetical-but-as-yet unsubstantiated corporate wrongdoing." *Id.* at 13. Paramount also contended that the Decision "invites stockholders to use the Section 220 demand process to keep corporate books and records open in perpetuity as long as some rumors about the corporation circulate in the news, even if alleged wrongdoing has not occurred." *Id.* The Court said both were "poor attempts at Chicken Little consequences," as "[b]oth ignore (i) a corporation's independent ability to bring closure to the Section 220 process and [(ii)] more potent incentives that drives how most stockholders proceed when seeking books and records." *Id.*