

No Need to Pile On: Delaware Court of Chancery Rejects LLC Books and Records Demand After Unitholder's Months-Long Investigation



By **Adam Magid**
Partner | Global Litigation



By **Douglas Mo**
Associate | Global Litigation

In a recent decision, *Thomas J. Scaramellino v. Arencibia Holdco, LLC*,^[1] the Delaware Court of Chancery refused to allow the unitholder of a Delaware LLC to access “informal” LLC books and records—email, text messages, Slack, and Signal communications—where the unitholder already possessed “extensive information” regarding alleged wrongdoing from his own investigation, enough to draft a derivative complaint and 59-page demand. The decision reflects Delaware courts’ continued inclination to impose limits on books and records demands.

Scaramellino arose from concerns of a unitholder of Arencibia Holdco, LLC—who sat on the company’s board of directors and served as a senior vice president—that the company was engaged in fraudulent billing practices. Over 18 months, the unitholder personally investigated the situation, gathering evidence of the Arencibia CEO’s alleged involvement in the scheme, and compiled his findings in a draft derivative complaint. According to the unitholder, the company terminated him after he brought the matter to the CEO’s attention.

Thereafter, the unitholder, through his attorney, sent Arencibia a 59-page demand to inspect the company’s books and records, pursuant to section 21 of the company’s unitholders’ agreement^[2] and section 18-305 of the Delaware Limited Liability Act. The demand requested numerous categories of documents, including, among other things, all board-level materials including the audit function and financial oversight of Arencibia; all documents and communications (including emails and communications on Slack and Signal) concerning invoice calculations; all documents and communications related to customer invoices; and all documents and communications regarding the company’s “financial audit, including all final and draft correspondence or materials transmitted to the Company’s Auditor.”

Arencibia agreed to produce formal board-level materials concerning financial oversight and practices related to customer invoices. However, it declined to produce other requested materials such as “software code, repositories, change records and supporting files and documentation concerning the calculation of customer invoices” and “[a]ll contracts with customers.” With the parties at an impasse, the unitholder filed suit in the Court of Chancery to enforce the remainder of his demand.

In a post-trial opinion, the Court of Chancery (Vice Chancellor Bonnie W. David) ruled in favor of the company and declined to require any further production. Evaluating the “unique nature of the facts and circumstances,”^[3] the Court emphasized that the unitholder “personally undertook a months-long investigation, compiling the results in a ninety-page draft derivative complaint and a fifty-nine-page Demand.”^[4] Those documents, the Court noted, evidenced the unitholder’s “detailed knowledge of the wrongdoing alleged.”^[5]

In the Court’s view, the unitholder did not adequately explain the need for additional materials—e.g., email, text messages, Slack, and Signal communications—or how the request for such materials was “reasonable in light of the extensive

information already in his possession.”^[6] Nor was the Court moved by the unitholder’s assertions that he needed the materials “to gain a complete picture into” and “expose the full scope of” the alleged wrongdoing.^[7] That “rhetoric,” the Court explained, is “insufficient to meet Plaintiff’s burden.”^[8]

Takeaways

Although one should be careful not to read too much into *Scaramellino*—an unpublished decision, based in part on a contractual provision in Arencibia’s unitholders’ agreement—it reveals the Court of Chancery’s continued inclination to impose guardrails on books and records demands. As previously [reported](#) in Cadwalader Quorum, Vice Chancellor Lori W. Will shut down a sprawling request for books and records last year regarding a corporation’s alleged anticompetitive conduct around the globe, criticizing the demand’s “astoundingly broad” purpose and “scattershot” allegations.^[9] In *Scaramellino*, Vice Chancellor David did not question the propriety of the demand’s investigative purpose, but nonetheless declined to enforce the demand because, in the Court’s view, the unitholder already possessed adequate evidence to achieve his aims.

These scope-limiting decisions are well-rooted in Delaware precedent. For many years, Delaware courts have cautioned that a requesting party is only entitled, through a books and records demand, to documents “necessary and essential”^[10] to accomplish the demand’s proper purposes. Where a proper purpose (such as investigating mismanagement) has been articulated, board-level materials (e.g., minutes and board presentations) may be available.^[11] Delaware courts, however, have cautioned that a books and records demand “is not a substitute for discovery under the rules of civil procedure[.]”^[12] Further, a demand “does not open the door to the wide ranging discovery”^[13] as may be had in full litigation on the merits.^[14] If *Scaramellino* is any indication, a restrained conception of the scope of a books and records demand remains in vogue in Delaware.

^[1] C.A. No. 2024-1174-BWD, 2025 WL 994583 (Del. Ch. Mar. 31, 2025).

^[2] Section 21 of the unitholders’ agreement entitled the unitholders to receive, among other things, “regular and suitable business ([e.g.,] sales, marketing and technology), financial and other information reasonably appropriate to monitor and manage its ownership interests in the Company and such other information as it may reasonably request from time to time.” *Id.* at *1.

^[3] *Id.* at *4 (quoting *NAMA Hldgs., LLC v. World Mkt. Ctr. Venture, LLC*, 948 A.2d 411, 420 (Del. Ch. 2007), *aff’d*, 945 A.2d 954 (Del. 2008)).

^[4] *Id.*

^[5] *Id.*

^[6] *Id.*

^[7] *Id.* (internal quotations omitted).

^[8] *Id.* The Court further held that the unitholder was not entitled to books and records under Section 18-305 of the Delaware Limited Liability Company Act because—sent by an attorney, but lacking a power of attorney executed on behalf of the unitholder—his demand did not comply with Section 18-305’s form-and-manner mandates. *See id.* at *5. As the Court explained, “[a] demand ‘sent by counsel but not accompanied by a power of attorney’ is ‘clearly deficient.’” *Id.* (internal citations omitted).

[9] *Roberta Ann K.W. Wong Leung Revocable Trust v. Amazon.com, Inc.*, C.A. No. 2023-1251-BWD, 2024 WL 4564754, at *5 (Del. Ch. Oct. 24, 2024).

[10] See, e.g., *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113, 118 (Del. 2002) (“The source of the documents and the manner in which they were obtained by the corporation have little or no bearing on a stockholder’s inspection rights. The issue is whether the documents are necessary and essential to satisfy the stockholder’s proper purpose.”).

[11] See, e.g., *Simeone v. Walt Disney Co.*, 302 A.3d 956, 973 (Del. Ch. 2023) (“The Delaware Supreme Court has instructed that ‘the Court of Chancery should not order emails to be produced when other materials (e.g., traditional board-level materials, such as minutes) would accomplish the petitioner’s proper purpose.’” (internal citation omitted)); *In re Plains All American Pipeline, L.P.*, Consolidated CV No. 11954-VCMR, 2017 WL 6016570, at *5 (Del. Ch. 2017) (“Plaintiffs are not entitled to Armstrong’s emails because board-level materials are sufficient for their stated purpose.”).

[12] *Khanna v. Covad Communications Grp., Inc.*, No. 20481-NC, 2004 WL 187274, at *9 (Del. Ch. 2004).

[13] *Saito*, 806 A.2d at 114.

[14] See, e.g., *Handler v. Centerview Partners Holdings L.P.*, C.A. No. 2022-0672-SG, 2023 WL 1955151, at *2 (Del. Ch. 2023) (“Compared to plenary proceedings before this Court, the scope of discovery permitted in books and records actions under 6 Del. C. § 17-205 and its corporate analog, 8 Del. C. § 220, is more limited.”); *Maitland v. Int’l Registries, LLC*, No. 3669-CC, 2008 WL 2440521, at *2 (Del. Ch. 2008) (“Because the issues in a books and records case are narrow, discovery is necessarily narrow as well.”).