

Two Court of Chancery Decisions Consider the “Credible Basis” Standard for Section 220 Demands

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Two recent decisions from the Delaware Court of Chancery further clarify the legal requirements that stockholders must satisfy when seeking books and records under Section 220 of the Delaware General Corporate Law (“DGCL”). That section permits a stockholder to access a Delaware corporation’s books and records, provided they identify a proper purpose for the demand and a credible basis on which to pursue that purpose, and the request is narrowly tailored to documents necessary and essential to that purpose. These two decisions specifically address the question of when third-party allegations and accusations, in subpoenas, complaints, or news articles, are sufficient to satisfy the “credible basis” test. Together, they support an analysis that focuses on the degree to which an evidentiary basis for the allegations is discernable in the third-party documents; documents that merely reflect unsupported allegations, suspicions, or speculation are not enough to support a demand for inspection.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

NEW YORK

Roger Cooper
+1 212 225 2283
racoper@cgsh.com

Charity E. Lee
+1 212 225 2638
charitylee@cgsh.com

Sara Watson
+1 212 225 2616
sawatson@cgsh.com

One Liberty Plaza
New York, NY 10006
+1 212 225 2000

clearygottlieb.com



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Background

Under DGCL § 220 (“Section 220”), stockholders in Delaware corporations are permitted to inspect a corporation’s books and records, provided they are able to establish by a preponderance of the evidence that they are a stockholder, have complied with the statutory form and manner requirements for making a demand, and have a proper purpose for conducting the inspection.¹

One of the most commonly litigated issues in the context of whether a stockholder is entitled to review books and records under Section 220 has been whether the stockholder has established a proper purpose. One common and accepted purpose is to investigate whether directors or officers have engaged in some type of wrongdoing, potentially giving rise to a claim for breach of fiduciary duty. In order to proceed on this basis, however, the stockholder “must present some evidence to suggest a credible basis from which a court can infer that . . . wrongdoing may have occurred.”² The “credible basis” test has repeatedly been described by the Court of Chancery as the “lowest possible burden of proof.”³ And for some time, it appeared that a corporation’s ability to challenge a stockholder’s showing on this element was increasingly limited. Two decisions in the past year, however, reinforce that a stockholder does have a meaningful burden in showing a credible basis, and suggest that certain increasingly common approaches to requesting books and records may not be sufficient to justify inspection.

Amazon Case

One recent case involved Amazon.com Inc. (“Amazon”), which received a Section 220 demand from a stockholder who referenced as its basis for inspection various U.S. and European governmental

investigations, lawsuits, and a €1.13 billion fine from the Italian antitrust regulator, as well as news articles alleging antitrust violations. Stockholder claimed that these items established a credible basis on which to suspect corporate wrongdoing relating to such antitrust violations.⁴

Amazon initially offered to produce a targeted set of core board materials without conceding that the stockholder was entitled to such a production.⁵ The stockholder, however, was unwilling to agree to a jurisdictional restriction on using the materials exclusively in a Delaware forum, and so the stockholder commenced litigation seeking to compel production of the books and records.⁶

The magistrate judge recommended a ruling in favor of Amazon, which the Court of Chancery of Delaware later affirmed. The magistrate judge’s opinion reasoned that while investigations and lawsuits may provide the necessary evidentiary basis for an inspection, the mere fact of their existence is not enough to satisfy the credible basis requirement.⁷ Documents related to these investigations and lawsuits at most contained unproven allegations, and the court reasoned that such allegations alone are not sufficient to justify a demand. Indeed, the court reasoned that even detailed government complaints or reports are insufficient without some factual or evidentiary basis, such as attached exhibits, to support them. In the case of Amazon, the “handful” of investigations and lawsuits cited by the stockholder did not contain findings of wrongdoing and had not resulted in any material impact on the company.⁸ In contrast, another recent case that the court cited featured more than forty government investigations--including completed investigations that had found “widespread violations”--and approximately 1,500 civil lawsuits, which had

¹ 8 Del. C. § 220; *Petry v. Gilead Scis., Inc.*, 2020 WL 6870461, at *9 (Del. Ch. Nov. 24, 2020).

² *Roberta Ann K.W. Wong Leung Revocable Tr. U/A Dated 03/09/2018 v. Amazon.com, Inc.*, No. 2023-1251-BWD, 2024 WL 1916089, at *9 (Del. Ch. May 1, 2024), *adopted*, No. 2023-1251-BWD, 2024 WL 4564754 (Del. Ch. Oct. 24, 2024) (quoting *Petry*, 2020 WL 6870461, at *10).

³ See *AmerisourceBergen Corp. v. Lebanon Cty. Emps.’ Ret. Fund*, 243 A.3d 417, 426 (Del. 2020) (citation omitted).

⁴ *Amazon.com*, 2024 WL 1916089, at *1-2.

⁵ *Id.* at *4.

⁶ *Id.* at *5.

⁷ *Id.* at *6.

⁸ *Id.* at *7-8.

produced “significant corporate trauma.”⁹ The *Amazon* court thus concluded that the stockholder lacked a proper purpose.¹⁰

The Delaware Chancery Court affirmed this decision, explaining that the stockholder needed to identify the matter it sought to investigate “supported by specific and credible allegations”; “mere curiosity or desire for a fishing expedition will not suffice.”¹¹

Paramount Case

A second case, involving Paramount Global (“Paramount”), likewise highlights the requirement that a stockholder state a firm factual, evidentiary basis for seeking inspection that goes beyond mere allegations or speculation.

In *Paramount*, a stockholder demanded to inspect Paramount’s books and records for evidence of corporate wrongdoing of a controlling stockholder steering bidders away from a company transaction.¹² To support its showing of a credible basis, the stockholder relied primarily on news articles published in the *Wall Street Journal*, *New York Times*, and *Financial Times*, among others, that reported on the sudden departure of four company directors.¹³

On July 24, 2024, the magistrate judge at the Court of Chancery recommended a ruling in favor of Paramount, crediting Paramount’s argument that the shareholder had not established a sufficient evidentiary foundation to support a proper purpose for the document inspection.¹⁴ The stockholder took exception to the report, however, and the Court of Chancery (VC Laster) granted the stockholder’s demand and remanded to the magistrate judge for a ruling as to the appropriate scope of inspection.¹⁵ The Court of Chancery reasoned that, despite many of the

news articles’ reliance on confidential, anonymous sources, the articles had been published in reputable news outlets, such as the *Wall Street Journal*, with a strong editorial reputation, and there were 47 such articles, many of which were lengthy and detailed in their description of the alleged wrongdoing.¹⁶ Because of these indicia of reliability, the fact that they relied on anonymous sources and hearsay statements did not preclude the news articles from constituting sufficient evidence to meet the credible basis standard.¹⁷ The *Paramount* court specifically contrasted its analysis with a case in which the news articles relied upon by the stockholder lacked external evidence.¹⁸

Additionally, in response to Paramount’s argument that the stockholder is limited to the evidence known at the time of the demand, the Court of Chancery reasoned that even news articles and events that post-date the filing of a Section 220 complaint can be considered as part of the court’s analysis. Here, the stockholder sought to rely at trial on additional evidence that came to light after the stockholder had made its demand and filed the complaint. That evidence concerned events that occurred post-demand, including the departure of directors. Although typically in Section 220 disputes stockholders are limited to relying on evidence identified at filing, the Court of Chancery reasoned that, where the evidence could not have been obtained prior to filing the complaint and the corporation is not prejudiced by the use of the evidence, a stockholder may rely on such post-demand evidence to support the demand.¹⁹

Like in *Amazon*, the *Paramount* decision reinforced that for third-party documents like subpoenas or news articles to support a Section 220 demand, such articles or other documents must reflect a reliable evidentiary

⁹ *Id.* at *8 (citing *AmerisourceBergen Corp.*, 243 A.3d at *11).

¹⁰ *Id.* at *9.

¹¹ *Roberta Ann K.W. Wong Leung Revocable Tr. U/A Dated 03/09/2018 v. Amazon.com, Inc.*, No. 2023-1251-BWD, 2024 WL 4564754, at *5 (Del. Ch. Oct. 24, 2024).

¹² *State of Rhode Island Office of the General Treasurer, on behalf of the Employees’ Retirement System of Rhode Island*

v. Paramount Global, No. 2024-0457-SEM, 2025 WL 324227, at *1 (Del. Ch. Jan. 29, 2025).

¹³ *Id.* at *4, *14.

¹⁴ *Id.* at *5.

¹⁵ *Id.* at *16.

¹⁶ *Id.* at *14.

¹⁷ *Id.*

¹⁸ *Id.* at *13.

¹⁹ *Id.* at *8-9.

basis for their claims, and not be based on speculation or conjecture. Documents that do not reflect their evidentiary basis should be given no weight in the “credible basis” analysis.

Conclusion

While the *Amazon* and *Paramount* decisions may initially appear to point in different directions, both underscore the basic principle that satisfying the credible basis test requires a showing of some evidence. Mere allegations in unproven complaints or inquiries in subpoenas, standing alone, are not sufficient to satisfy this burden. After *Paramount*, news articles too are not sufficient unless they reflect the evidentiary basis of the reporting or show other strong indicia of reliability. In *Paramount*, it was the detailed factual statements by witnesses and the number of articles in highly respected publications that together constituted sufficient evidence to meet the credible basis standard. Only public or third-party sources that solidly reflect the evidentiary basis for the claims can help a stockholder satisfy the credible basis requirement.

Senate Bill 21 of the Delaware General Assembly, currently under consideration, proposes some changes to Section 220. Those changes, however, mostly aim to address the uncertainty around the proper scope of documents a stockholder is entitled to inspect, after first making a showing of proper purpose. The Senate Bill does not address the credible basis standard or the evidentiary burden on a stockholder to justify an investigation of potential wrongdoing by the board. Decisions like *Amazon* and *Paramount* are thus significant in reinforcing the meaningfulness of the credible basis standard and underscoring that stockholders seeking to investigate wrongdoing have an obligation to come forward with some actual evidence of misconduct, and that mere allegations, suspicions, or speculation, whatever the source, are not enough.

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