

Hindsight Is 20/20?: The Delaware Supreme Court Issues a 3-2 Split Decision Allowing Post-Demand Evidence to Be Admissible in Section 220 Actions

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There have been several notable split decisions over the years in the Delaware Supreme Court, but it is a *rara avis* to see the justices split 3-2 over an issue involving access to books and records.

On March 25, 2026, a divided Delaware Supreme Court majority held that in exceptional circumstances, the Court of Chancery may consider post-demand evidence in the Section 220 context when analyzing whether a stockholder had a credible basis to suspect wrongdoing.

Justice Gary F. Traynor authored the majority's opinion, ruling, among other things, that "nothing in [8 *Del. C.*] Section 220's text prohibits the consideration of post-demand evidence," and that a blanket prohibition could result in inefficiencies such as a repetitive process of updated demands and complaints.¹

Chief Justice Collins J. Seitz, Jr. and Justice Karen L. Valihura dissented, arguing that, from a policy standpoint, a bright-line rule barring post-demand evidence would "discourage a premature race to the courthouse to attempt to gain a foothold for later merits-based litigation" and also would respect the intended summary nature of Section 220 proceedings.

The Demand and Lower Court Decisions

The case arose in connection with the sales process of Paramount Global. Shari Redstone, through National Amusements Incorporated, held a majority of Paramount's voting shares. In 2023 and 2024, media outlets reported on efforts to sell National Amusements and possible bids for Paramount itself. Some reports suggested that Redstone, acting as Paramount's controller, blocked full company sales in favor of selling only National Amusements' controlling stake.

A Paramount stockholder sought to investigate the company's books and records for potential corporate wrongdoing, including the usurpation of a corporate opportunity.

A Delaware Court of Chancery magistrate presided over a Section 220 trial where the stockholder sought to compel production of the company's books and records and relied, in part, on post-demand news articles to establish it had a credible basis.

The magistrate declined to consider post-demand evidence and recommended that judgment be entered for Paramount. The stockholder took exceptions, and the Court of Chancery, conducting a *de novo* review, rejected the magistrate's recommendation.

Vice Chancellor J. Travis Laster considered **both** pre- and post-demand evidence, including confidentially sourced news reports, and found that stockholder plaintiff had established a credible basis to infer possible wrongdoing, stating that "there are settings when a stockholder can legitimately rely at trial on post-demand evidence."²

¹ *Paramount Glob. v. State of Rhode Island Off. of the Gen. Treasurer, on behalf of the Emps.' Ret. System of Rhode Island*, -- A.3d --, 2026 WL 820647, at *7 (Del. 2026).

² *State of Rhode Island Off. of Gen. Treasurer on Behalf of Emps.' Ret. Sys. of Rhode Island v. Paramount Glob.*, 331 A.3d 179, 192 (Del. Ch. 2025).

Vice Chancellor Laster ultimately certified two questions for interlocutory appeal to the Delaware Supreme Court:

1. Whether post-demand evidence can be used to establish a proper purpose.
2. Whether confidentially sourced reporting can be used to demonstrate a credible basis for books and records purposes.³

The Delaware Supreme Court's Analysis

On appeal, the majority court addressed Paramount's three-fold argument that a stockholder should not be permitted to use post-demand evidence to establish a credible basis.

First, the court rejected Paramount's argument that Section 220(c) requires that a stockholder "first establish" a proper purpose based on what was known at the time the demand was made. The court opined that the term "first establish" means what a stockholder **must prove** to obtain a court order compelling inspection, which **occurs after** the demand is made.

The court further noted that there is nothing in the Section 220 statute that prohibits the consideration of post-demand evidence.

Second, while Paramount pointed to several transcript rulings in which the Court of Chancery had declined to consider post-demand evidence, the Delaware Supreme Court distinguished those cases, finding that the exclusion was based on the nature of the evidence. The court also pointed to its own recent precedent that considered post-demand evidence.⁴

Third, the Delaware Supreme Court held that judicial officers should exercise their discretion on a case-by-case basis in determining whether to permit

post-demand evidence. The court rejected Paramount's policy concerns "that a ruling permitting consideration of post-demand evidence will unleash a wave of premature and baseless demands by stockholders who are merely hopeful that a credible basis will arise before trial."⁵

The court viewed "the policy considerations as cutting both ways" — on the one hand, stockholders may serve thinly supported demands. But on the other hand, categorically barring post-demand evidence would create potential unavoidable inefficiencies with iterative demands.

The Delaware Supreme Court adopted the Court of Chancery's general rule that "when a stockholder seeks relief under § 220, it will be limited to evidence identified in the demand." However, "under exceptional circumstances," the Court of Chancery may exercise its discretion to "consider post-demand evidence that is material to the court's credible-basis inquiry and not prejudicial to the corporation."

Moreover, the Delaware Supreme Court found Paramount was not prejudiced by the post-demand evidence because:

- It related to the company's own conduct.
- The parties stipulated to admissibility of certain post-demand evidence.
- It did not object to the use of evidence before trial.

The Dissent

Chief Justice Seitz and Justice Valihura dissented and opposed the majority's holding that post-demand evidence may be used at trial to determine whether a stockholder has established a credible basis. In their view, the court should adopt a bright-line rule barring post-demand evidence rather than a case-by-case assessment.

³ *Paramount Global*, 2026 WL 820647, at *5.

⁴ See *Wong Leung Revocable Tr. v. Amazon.com, Inc.*, 345 A.3d 965, 978 (Del. 2025).

⁵ *Paramount Global*, 2026 WL 820647, at *6.

The dissent raised several policy concerns in support of this position:

First, a blanket bar on post-demand evidence would discourage stockholders from rushing to the courthouse prematurely in an effort to establish a foothold for later merits-based litigation.

Second, limiting stockholders to evidence that existed at the time of their demand would deter Section 220 actions filed without a concrete basis.

Third, the dissent cautioned that applying a “materiality” standard to post-demand evidence would introduce unnecessary complexity into what should be a prompt, streamlined and narrow summary proceeding.

Subsequent Opinion Applying Post-Demand Evidence

Shortly after the Delaware Supreme Court’s *Paramount* decision was issued, another *Paramount*-related books and records action was resolved by a Court of Chancery magistrate, who held that stockholders may use post-demand evidence — specifically, a *New York Times* article — as “admissible hearsay evidence to support Plaintiffs’ credible basis inquiry.”⁶ The magistrate determined that the stockholder was entitled to informal board materials because the formal board minutes were contradicted by the article.

In his analysis, the magistrate cited to the analysis set forth by the majority court in *Paramount* and found that the *New York Times* article was “material because it directly addresses the central issue raised here” and is credible because it was “deeply reported.”

The magistrate noted the reputation and reliability of *The New York Times* and that the “use of anonymous sources in news reporting is routine and unremarkable.”

Impact of Post-Demand Evidence on Amended Section 220

Both *Paramount* decisions were decided under the earlier version of Section 220, not the current version that was significantly amended and modernized in 2025.

The 2025 amendments reflect the Delaware General Assembly’s intent to keep books and records demands and proceedings narrow and streamlined. For instance, the statute now explicitly defines which documents qualify as “books and records,” giving companies greater clarity about what they must produce. (See our article “New Day, New Rules: Five Key Aspects of Amended DGCL Section 144 and Section 220,” in this issue of the newsletter, for more on the amendments.)

The amendments also specify the circumstances — and impose a heightened evidentiary burden — under which a stockholder may obtain documents beyond those defined as “books and records.”

That said, the amendments have been interpreted as primarily focusing on narrowing the scope of available documents while leaving the proper purpose requirement and credible basis standard largely intact. As a result, although the Delaware Supreme Court analyzed *Paramount* under the pre-amendment statute, its holding concerning post-demand evidence will likely remain relevant under the amended statute.

But the magistrate’s more recent analysis — which pre-dates the 2025 amendments and blanketly permitted the production of documents beyond normal “books and records” — may result in a different outcome under the amended statute’s heightened standard for seeking documents beyond the itemized categories in Section 220(a).

⁶ *Metro. Water Reclamation Dist. Ret. Fund v. Paramount Glob.*, 2026 WL 1623142, at *9 (Del. Ch. June 5, 2026).

Takeaways

- The majority decision in *Paramount* makes clear that the stockholders will be limited to evidence identified in their demand and information available at the time of demand, and that post-demand evidence will only be permitted in “exceptional circumstances” where it is “material” to the credible-basis inquiry and not prejudicial to the corporation.
- That said, there was a strong dissent from Chief Justice Seitz and Justice Valihura against using any post-demand evidence for books and records purposes. Given the divided 3-2 split decision, and if post-demand evidence becomes a more prominent issue at the Court of Chancery, it’s possible that the Delaware Supreme Court may revisit the *Paramount* decision.
- Despite the split decision, the *Paramount* court unanimously agreed that a court may rely on hearsay in news articles in its credible basis inquiry provided the news outlet is reputable and the court has engaged in a sufficient analysis of that news outlet’s reputation.
- After *Paramount*, it remains to be seen whether disputes over what qualifies as “material” and “not prejudicial” may add a new layer of complexity to what are supposed to be summary proceedings.
- Companies should also be mindful of waiver and preserving prejudice arguments. The majority court noted that *Paramount* was not prejudiced, partly because it stipulated to admissibility of certain post-demand evidence, did not object before trial and offered its own post-demand evidence. This serves as an important reminder that, even at the summary proceeding stage, corporations litigating against a Section 220 demand have the ability to make trial-level objections and take legal or factual positions that may be preserved and raised on appeal.

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