

Delaware Supreme Court Holds That Post-Demand Evidence May Support a Credible Basis Finding in Section 220 Actions

WRITTEN BY

Cassandra L. Thompson | Christopher B. Chuff | Taylor B. Bartholomew | Matthew M. Greenberg | Joanna J. Cline

In *Paramount Global v. State of Rhode Island Office of the General Treasurer*, the Delaware Supreme Court resolved an open question under Delaware law: Can stockholders rely on post-demand evidence to prove that they have a credible basis to suspect corporate wrongdoing, thus entitling them to inspect corporate books and records under Section 220 of the Delaware General Corporation Law (DGCL)? In a 3-2 decision, the Delaware Supreme Court concluded that the answer is yes, under exceptional circumstances.

Background

Shari Redstone controlled Paramount Global (Paramount) through National Amusements, Inc. (National Amusements), which held a supermajority of Paramount's voting shares. Beginning in late 2023, news outlets reported that Redstone was negotiating a sale of National Amusements' controlling stake rather than facilitating a sale of Paramount as a whole. The reporting relied on confidential sources.

On April 5, 2024, a stockholder, the Employees' Retirement System of Rhode Island (Rhode Island), served a books and records demand alleging that Redstone had usurped Paramount's corporate opportunity by steering buyers toward a controller-level transaction. Paramount rejected the demand. Rhode Island then filed suit to enforce its demand in the Court of Chancery. A magistrate held a trial on a paper record, and Paramount relied on both pre- and post-demand news articles and post-demand securities filings to establish that it had a credible basis to suspect wrongdoing. As with the pre-demand reporting, many of the post-demand articles relied on confidential sources.

The magistrate excluded the post-demand evidence and found that Rhode Island did not have a proper purpose to inspect books and records. Rhode Island took exception to the magistrate's post-trial ruling, and a vice chancellor reviewed the magistrate's legal and factual findings *de novo*. The vice chancellor declined to accept the magistrate's findings and concluded that post-demand events could be considered under exceptional circumstances. In addition, the vice chancellor held that the confidential-source reporting in Rhode Island's cited news articles was reliable enough for the court to consider it in evaluating whether Rhode Island had established a credible basis to suspect wrongdoing. Ultimately, the vice chancellor concluded that Rhode Island had satisfied the credible basis standard and was entitled to inspect Paramount's books and records.

Paramount asked the Court of Chancery to certify two of its holdings for interlocutory appeal to the Delaware

Supreme Court: (1) whether a stockholder can rely on post-demand evidence at trial to establish a credible basis to suspect wrongdoing; and (2) whether a stockholder can rely on information from confidential sources to satisfy the credible basis standard. The Court of Chancery granted certification, and the Delaware Supreme Court accepted the appeal.

The Supreme Court's Analysis

The Supreme Court affirmed the vice chancellor's ruling on Paramount's exceptions.

The Court rejected Paramount's argument for a categorical rule barring all post-demand evidence. It found nothing in the text of Section 220 of the DGCL that limits the credible basis inquiry to evidence available at the time of the demand. Section 220(c)'s requirement that a stockholder "first establish" a proper purpose addresses the showing required to obtain court-ordered inspection — a showing necessarily made after the demand is served.

The Court found no established precedent supporting a categorical bar. It also noted that it had relied on post-demand evidence in *Wong Leung Revocable Trust v. Amazon.com, Inc.*, 345 A.3d 965 (Del. 2025), when finding a credible basis based partly on a federal court ruling issued after the demand.

The Court acknowledged that policy considerations cut both ways. Allowing post-demand evidence risks encouraging thinly supported demands. But a categorical bar would force stockholders to serve new demands each time material evidence surfaces, creating avoidable inefficiency.

Although the Court held that there was no categorical bar on a stockholder's use of post-demand evidence to meet the credible basis standard, the Court concluded that a stockholder will generally be limited to evidence identified in its books-and-records demand and the information available when the demand was made. Under exceptional circumstances, however, the Court of Chancery may consider post-demand evidence that is material to the credible basis inquiry and not prejudicial to the corporation.

The Court found no prejudice to Paramount here. The post-demand evidence concerned Paramount's own conduct. Paramount had stipulated to the admissibility of certain post-demand evidence, offered its own post-demand evidence, and failed to object before trial.

Regarding the question of whether confidentially sourced reporting can support a credible basis finding, the Court confirmed that confidentially sourced hearsay can support a credible basis finding if it is sufficiently reliable. The Court concluded that the Court of Chancery had not abused its discretion in determining that the confidentially sourced reporting was reliable enough to be considered.

The Dissent

Chief Justice Seitz and Justice Valihura dissented on the post-demand evidence issue. They would have adopted a categorical bar. The dissent argued that the majority's approach undermines the five-day litigation-free window in Section 220(c) of the DGCL, encourages premature demands, and adds complexity to what should be a streamlined summary proceeding. The dissent noted that Rhode Island itself served a second demand after the transaction was announced and that Paramount cooperated with that demand — suggesting the first demand

consumed judicial resources unnecessarily.

Takeaways

- **Pre-demand evidence remains the default.** The Court emphasized that stockholders will ordinarily be limited to evidence available at the time of the demand. Post-demand evidence is the exception. Practitioners should build the strongest possible record before serving a demand.
- **The “exceptional circumstances” standard is new and undefined.** The Court adopted a two-part test — materiality and absence of prejudice — but did not elaborate on what makes circumstances “exceptional.” It remains to be seen how this standard will be interpreted and applied by the Delaware Court of Chancery.
- **Corporations must preserve objections to post-demand evidence early.** Paramount’s failure to object before trial and its own introduction of post-demand evidence fatally undermined its prejudice argument. Corporations that wish to challenge post-demand evidence should raise objections promptly and avoid offering their own.
- **Confidentially sourced reporting remains a viable basis for Section 220 demands.** Stockholders can rely on news articles citing unnamed sources to meet the credible basis standard. But a publication’s reputation alone is not enough — courts will assess reliability based on a variety of other factors.

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