

KNOWING YOUR RIGHTS: STOCKHOLDER DEMANDS TO
INSPECT CORPORATE BOOKS AND RECORDS FOLLOWING
WOODS v. SAHARA ENTERPRISES, INC.

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I. INTRODUCTION

Delaware Corporation and Business Entity Laws have been found to be reliable, well-understood, and superior in a variety of ways to those of other states.¹ As Delaware's reputation of dominance in corporate law has continuously developed, so has the total number of business entities established within.² With nearly 1.5 million legal entities incorporated in Delaware as of 2018, and with 226,589 new entities formed in 2019, there seems to be no signs of the growth slowing down.³ With the nexus for a vast number of these entities being holding companies acting as safe havens for larger organizations looking to save on corporate income tax, such a strategy has left many unanswered questions requiring legal

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¹See R. FRANKLIN BALOTTI, JESSE A. FINKLESTEIN, JOHN MARK ZEBERKIEWICZ & BLAKE ROHRBACHER, DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS § 18.15 (4th ed. Supp. 2021).

²JEFFREY W. BULLOCK, DELAWARE DIVISIONS OF CORPORATIONS 2019 ANNUAL REPORT (2019).

³*Id.*

interpretation over the years, especially for stockholders.⁴ Consequently, the subsequent influx of litigation has led to the formation of very specific common law rules for corporations and stockholders to interpret, frequently to no avail.⁵ Stockholders have been left feathered with ambiguity, specifically in areas regarding their rights.⁶ This piece will focus on Section 220 of the Delaware General Corporation Law ("DGCL"), including its recent interpretation by the Delaware Court of Chancery in *Woods v. Sahara*, and aims to give clarity for concerned investors as to their rights to demand access of a corporation's books and records upon a proper showing of purpose and ownership.

II. BACKGROUND

A. *Development of 8 Del. C. § 220*

Section 220 of the DGCL establishes the fundamental right for stockholders to inspect the books and records of a corporation in which they own stock.⁷ The inspection right seems to be rather dynamic, especially as the world of business has developed into a digital realm.⁸ Historically, requests that once would have been unduly burdensome to yield—compiling records only stored in hard copy form—can now be accomplished with ease due to the global adoption of digital record keeping and data management in organizations.⁹ In return, the electronic age has provided a broad definition for what is now recognized as a "record" or a "book" under the Delaware law.¹⁰ Not expressly stated in the legislation, the common law has provided stockholders the right to inspect documents such as financial records, private corporate emails, consultant reports or opinions, and, generally speaking, anything that a stockholder seeking inspection of the corporate books and records can obtain, so long

⁴Ellisa Opstbaum Habbart, *Governance of Delaware Investment Holding Companies*, DELAWARE BANKER, Spring 2006, at 17-18.

⁵See generally *Woods v. Sahara Enter., Inc.*, 238 A.3d 879 (Del. Ch.), *enforced sub nom.* In re *Woods v. Sahara Enter., Inc.*, (Del. Ch. 2020).

⁶*Id.*

⁷See 8 Del. C. § 220; see generally 24 AM. JUR. PROOF OF FACTS 2D. 71 (1980).

⁸Francis G.X. Pileggi, Kevin F. Brady, Jill Agro, *Inspecting Corporate "Books and Records" in A Digital World: The Role of Electronically Stored Information*, 37 DEL. J. CORP. L. 163, 163-64 (2012).

⁹*Id.* at 165-66.

¹⁰See *id.*

as said books and records address the crux of the stockholder's purpose if there is no alternative reliable source.¹¹

Stockholders may have a number of reasons to request an inspection of a corporation's books and records.¹² The language of the code, however, provides that the stockholder is owed only a qualified right to inspection, not a guaranteed right.¹³ A stockholder is only entitled to inspection of corporate books and records if the purpose is reasonably related to their ownership interests.¹⁴ One of the quintessential conclusions to be derived from the court's decision in *Woods v. Sahara* is presented by the unexhaustive list of proper purpose examples, in which the court provides prior case illustrations to establish how broad the proper purpose clause of the Delaware law is.¹⁵ The subtle burden placed on stockholders seeking to gain record access was provided to alleviate the risk of an influx of requests and prevent some of the foreseeable hardship corporations would face in having to compile and disclose voluminous record demands; it was not to create a hurdle that interested shareholders must overcome or a loophole for duplicitous corporations aiming to suppress information.¹⁶

Today, the need for a clear understanding into the functions of Section 220 is vital because the capabilities of corporations to access documents electronically could negate their defense that voluminous record requests by shareholders are frivolous and dubious. Currently, we know that stockholders are undoubtedly provided with a broad scope of action for demanding the production of business books and records to which they have ownership.¹⁷ We also know the particular books and records to be provided from the corporations can be as delicate as a detailed summary of expenses over a five year period to directors and other board members, or as simple as a chain of emails between an entity and its subsidiary.¹⁸ The demand for inspection shall typically be granted when a

¹¹See *KT4 Partners LLC v. Palantir Techs. Inc.*, 203 A.3d 738 (Del. 2019); *Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752 (Del. Ch. 2016), *abrogated by* *Tiger v. Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019) (stating there is no presumption of confidentiality in production under statute governing a stockholder's inspection of a corporation's books and records.); *City of Westland Police & Fire Ret. Sys. v. Axcelis Techs., Inc.*, 1 A.3d 281 (Del. 2010).

¹²*Woods*, 238 A.3d at 889-90; *accord Westland Police & Fire Ret. Sys.*

¹³See also *State ex rel. Dixon v. Missouri-Kansas Pipe Line Co.*, 36 A.2d 29, 31-32 (Del. Super. 1944); See generally *Woods*, 238 A.3d at 879; *KT4 Partners LLC* 203 A.3d at 738.

¹⁴*Woods*, 238 A.3d at 889; 8 Del. C. § 220(b).

¹⁵*Woods*, 238 A.3d at 889-90 (giving illustration to fourteen different hypothetical scenarios that all have been decided by the Chancery Court of Delaware to satisfy the proper purpose clause in the statute.).

¹⁶See generally AM. JUR. PROOF OF FACTS 2D. *supra* note 7.

¹⁷See *Woods*, 238 A.3d at 889-90.

¹⁸*Id.*; see also *KT4 Partners LLC* 203 A.3d 741-42.

stockholder can establish their statutory right of being a holder of record and they can present the corporation with a sufficient purpose of interest for their request.¹⁹

B. *Essential Functions of Section 220*

Despite Section 220's meticulous formation—purposely broken into four well framed subsections for feasibility and practicability—the need for a summarized working order of the code is still present; the continued litigation of the matter can support such a need.²⁰

The inspection right begins under subsection (a), which provides the foundation for three key terms of art used throughout the statute.²¹ Two of the three tend to appear in litigation more frequently, thus there is significance in highlighting their particularities.

In layman's terms, the word "stockholder" is most commonly defined as "an owner of corporate stock."²² Section 220(a)(1) gives interested parties a more expansive explanation as to who exactly classifies as a stockholder under the DCGL.²³ What is most important to note about the code's use of the term "stockholder" is that, following a 2003 amendment, Section 220 provides for the inspection rights to extend to beneficial owners as well the stock's control persons.²⁴ By increasing the number of persons entitled to inspect the corporation's books, the court faced a number of declaratory issues.²⁵ The code's expansion led to a flock of claimants seeking to exercise their inspection right; however, a clear and timely opinion on the matter was not distinctly provided.²⁶ Following the Delaware Supreme Court's decision in *Central Laborers Pension Fund*, issues arising around who qualifies as a stockholder under the right

¹⁹See *Woods*, 238 A.3d at 889-90.

²⁰8 Del. C. § 220; (Section 220(d) establishes the directors' exclusive rights to examine particular corporate documents. Although the section contains important legislature and procedure, it is of no substance in the instant analysis and will not be discussed or summarized passed this note.).

²¹*Id.*

²²*Stockholder*, MERRIAM-WEBSTER (last visited Nov. 05, 2020), <https://www.merriam-webster.com/dictionary/stockholder>.

²³8 Del. C. § 220

²⁴*Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 143-44 (Del. 2012); *see also* *Deephaven Risk Arb Trading Ltd. v. UnitedGlobalCom, Inc.*, C.A. 379-N, 2005 WL 1713067 (Del. Ch. July 13, 2005).

²⁵*See generally* *Deephaven*, 2005 WL 1713067; *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117 (Del. 2006); *Norfolk Cty. Ret. Sys. v. Jos. A. Bank Clothiers, Inc.*, C.A.3443-VCP, 2009 WL 353746 (Del. Ch. Feb. 12, 2009), *aff'd*, 977 A.2d 899 (Del. 2009).

²⁶*Id.*

to inspect clause have been relatively quiet. This could be due to the definitive language used by Justice Holland to help emphasize the well-founded demand requirements upon individuals seeking to inspect books and records who claim the title of a "beneficial stockholder."²⁷

With Delaware being a hub for millions of companies to incorporate, a prevalent business strategy for parent companies, or holding companies, is to recognize subsidiaries incorporated in the state and organize them so they function as an independent entity for tax and liability purposes.²⁸ A subsidiary is commonly recognized as a "company wholly controlled by another."²⁹ Without more detail, this definition leaves ambiguity in Section 220's practical application. Moreover, prior to the 2003 amendment, unless there was a showing of fraud or misfeasance, stockholders of a parent corporation had no rights to inspect a subsidiary's books and records.³⁰ Through the amendment, the Delaware legislature provided framework to expand Section 220's scope of production by establishing the clause extends to a subsidiary.³¹ Additionally, the amendment defined a subsidiary as being any entity which is owned either directly or indirectly, in any capacity, by the corporation which the stockholder owns shares and oversees the affairs about which the corporation can directly or indirectly exercise control.³² Furthermore, Section 220 identifies a few examples of entities that may be recognized as a subsidiary but does not do so exhaustively—corporations, partnerships of any type, limited liability companies, and trusts or joint ventures to provide a few for foundational purposes.³³

In 2005, the Delaware Supreme Court expressly noted the lack of legislative history establishing how the term of art "subsidiary" was to be interpreted.³⁴ The court had no issue interpreting a majority of the language within the definition, however, to that point, there was no helpful basis for determining the scope.³⁵ Justice Holland was proactive in establishing some basis in the law for the court's concern, holding that "the 2003 amendment must be construed in a manner that is consistent with the actual ability of the parent corporation before the Court of Chancery to

²⁷See *Cent. Laborers Pension Fund*, 45 A.3d at 143.

²⁸Bret N. Bogenschneider & Ruth Heilmeier, *Google's Alphabet Soup in Delaware*, 16 HOUS. BUS. & TAX L.J. 1 (2016); see also BULLOCK, *supra* note 2.

²⁹*Subsidiary*, MERRIAM-WEBSTER (last visited Nov. 05, 2020), <https://www.merriam-webster.com/dictionary/subsidiary>.

³⁰*Weinstein Enterprises, Inc. v. Orloff*, 870 A.2d 499, 505-06 (Del. 2005).

³¹*Id.*; see also 8 Del. C. § 220.

³²8 Del. C. § 220.

³³*Id.*

³⁴*Weinstein Enterprises*, 870 A.2d at 506.

³⁵*Id.*

cause the subsidiary corporation that is not before the Court of Chancery to make its documents available for inspection."³⁶ Further, he found the matter of "control [of] the affairs" shall be the important inquiry requiring crucial examination.³⁷ There is a caveat that arises in effect when the books and records are in the subsidiaries possession;³⁸ that will be an issue explored below.³⁹

Following their breakdown of the statute's key terms in subsection (a), the legislators went on to establish the fundamental right of inspection due to "any stockholder."⁴⁰ Subsection (b) is broken down into multiple parts, but can be summarized best as follows. Any stakeholder who can establish status as an owner of record by providing documentary evidence of such, and can represent a proper purpose that is reasonably related to their ownership interest in the corporation, shall, upon a written demand under oath, have the right during normal business hours to inspect and make copies of the corporation's books and records.⁴¹

As previously mentioned, there is a caveat when the production of books and records is extended beyond the parent entity unto the subsidiary.⁴² The parent company is required to provide the stockholder "access to all ... documents in the corporation's possession, custody or control, that are necessary to satisfy proper purpose."⁴³ When the documents requested are in possession of the subsidiary, however, there needs to be a showing of proper purpose and the corporation must have the right to exercise control over the subsidiary in order for a requirement to compel to be proper.⁴⁴ Essentially, it is likely for the subsidiary to have books and records of completely unrelated matters that have no causal connection between the stockholder and their specific ownership interest. Therefore, Section 220 insulates subsidiaries from stockholders making extensive allegations and requires the subsidiary to only provide "enough

³⁶*Id.*

³⁷*Id.* (explaining that control takes on a very different role in the relationship between equity investors and corporations).

³⁸*Infra* note 44.

³⁹8 Del. C. § 220(a)(3); "Under oath" has not seemed to be an issue in the courts for the need for a substantive address. However, for all intents and purposes, the final term of art is recognized to "[include] statements the declarant affirms to be true under penalty of perjury under the laws of the United States or any state."

⁴⁰8 Del. C. § 220(b).

⁴¹*Id.*

⁴²*Woods*, 238 A.3d at 903 (citing *Dobler v. Montgomery Cellular Hldg. Co., Inc.*, C.A. 18105-NC, 2001 WL 1334182 (Del. Ch. Oct. 19, 2001); *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113 (Del. 2002)).

⁴³*Woods*, 238 A.3d at 903 (quoting *Saito*, 806 A.2d at 114-15; 8 Del. C. 1953 § 220(b)(1)).

⁴⁴*Saito*, 806 A.2d at 115, 117.

information to effectively address the problem."⁴⁵ Subsections (b)(2)(b)(1) and (2) provide, at length, what is summarized above; it is crucial to understand that when a corporation has the ability to obtain the records requested and the subsidiary would not have rights under the law to block the corporation's access, or the request would not constitute a breach of an agreement between the corporation or the subsidiary and a third-party not affiliated with the corporation, the stockholder most likely retains their right to inspect the documents for which they can show proper purpose.⁴⁶

When a corporation refuses to comply with to a shareholder's request to inspect, or fails to respond within five business days, proper recourse is provided under Section 220(c).⁴⁷ The clause grants the Court of Chancery exclusive jurisdiction over the final determination as to whether a party seeking inspection is entitled to such a request.⁴⁸ There are two common courses of action the court will typically take.⁴⁹ First, the court may order the corporation to permit the inspection of the corporation's stock ledger, provide an existing list of stockholders, allow review of its other books and records, and allow the stockholder to make necessary copies therefrom.⁵⁰ Otherwise, the court may order the corporation to furnish a list of stockholders and relative documents as of a specific date or time period, so long as the stockholder first pays the corporation the reasonable cost of obtaining and furnishing such.⁵¹

The Court of Chancery addressed the function of 220(c) in *Amalgamated Bank v. YAHOO! Inc.*⁵² Following Yahoo's rejection of Amalgamated Bank's request for the specific production of corporate documents, the court interpreted 220(c) by stating, in their own discretion, the Court of Chancery may prescribe limitations and conditions in relationship to the inspection of any corporate documents that they "deem just and proper."⁵³ This ability was expressly stated in the statute, and bolstered as the common law in Delaware has developed.⁵⁴

⁴⁵*Id.* at 117.

⁴⁶*See Woods*, 238 A.3d at 903 (citing *Dobler v. Montgomery Cellular Hldg. Co., Inc.*, C.A. 18105-NC, 2001 WL 1334182 (Del. Ch. Oct. 19, 2001); *Saito v. McKesson HBOC, Inc.*, 806 A.2d 113 (Del. 2002)); *see* 8 Del. C. § 220(b).

⁴⁷8 Del. C. § 220(c).

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹8 Del. C. § 220(c).

⁵²*See Amalgamated Bank v. Yahoo! Inc.*, 132 A.3d 752 (Del. Ch. 2016), *abrogated by Tiger v. Boast Apparel, Inc.*, 214 A.3d 933 (Del. 2019).

⁵³*Amalgamated Bank.*, 132 A.3d at 796 (citing *United Techs. Corp. v. Treppel*, 109 A.3d 553 (Del. 2014); 8 Del. C. § 220(c)).

⁵⁴*See United Techs. Corp.*, 109 A.3d at 558-59.

The Court of Chancery functions similar to a gatekeeper in its analysis on the propriety of a stockholders' inspection request. By conditioning a case-by-case analysis when such an issue arises, the court utilizes Section 220(c) as a way to "maintain a proper balance between the rights of stockholders to obtain information based upon credible allegations of corporation mismanagement and the rights of directors to manage the business of the corporation without undue interference from stockholders."⁵⁵ Section 220(c) could be best understood as the remedy and judgment clause of the DGCL. If there is a dispute regarding a stockholder seeking inspection of corporate documents, should the stockholder demonstrate proper purpose and actual ownership, and if the corporation has been given meaningful time and opportunity to respond but fails to do so, the stockholder may utilize 220(c) to determine how they should proceed in action.

III. INTERPRETATION OF *WOODS* v. *SAHARA*

Francis G.X. Pileggi, a renowned Delaware corporate and commercial litigation attorney, opined "[*Woods v. Sahara*] must be read by anyone seeking a complete understanding of Delaware law on Section 220."⁵⁶ The dispute in the case arose out of whether the Trust of Woods had proper purpose under Section 220 to demand corporate records and, if justified, the scope of the inspection.⁵⁷

As a legal scholar and practitioner, Mr. Pileggi appreciated the Chancery Court's technical overview in *Woods*—its opinion including approximately fifteen years of related decisions and by its contribution of "eminently quotable passages" to practitioners needing clarity and briefing on important nuances of the code.⁵⁸ As Pileggi suggested, the court's analysis does a remarkable job of laying out the foundation for Section 220 and continues on to provide noteworthy synopses of proper purpose, inspection scope, and production requirements of holding companies and their subsidiary entities.⁵⁹

⁵⁵*Amalgamated Bank*, 132 A.3d at 796 (quoting *Seinfeld v. Verizon Commc'ns, Inc.*, 909 A.2d 117, 122 (Del. 2006)).

⁵⁶Francis G.X. Pileggi, *Chancery Clarifies Nuances of Section 220 Stockholder Demand for Inspection Rights*, DELAWARE CORPORATE & COMMERCIAL LITIGATION BLOG, (July 27, 2020), <https://www.delawarelitigation.com/2020/07/articles/chancery-court-updates/chancery-clarifies-nuances-of-section-220-stockholder-demand-for-inspection-rights/>.

⁵⁷See generally *Woods*, 238 A.3d at 879.

⁵⁸*Id.*

⁵⁹*Id.*

A. *Woods v. Sahara's Concise Legal Analysis of Section 220*

In brevity, the Chancery Court began by clearly recognizing the stockholder's right to inspect corporations' books and records upon their establishment of ownership and proper purpose.⁶⁰ Highlighted in its opinion was the weight Section 220 now carries in the landscape of general corporate governance.⁶¹

Well summarized by Vice Chancellor J. Travis Laster, he stated how Section 220 requires the plaintiff to establish, by a preponderance of the evidence, the following: 1) status as a stockholder; 2) compliance with the statutory requirements of Section 220(b); and 3) a proper purpose for requesting the production.⁶² Upon establishing such requirements, the plaintiff shall then prove, by a preponderance of the evidence, that the books and records they are seeking to inspect are essential to accomplish the owner's purpose as stated in their production request.⁶³

B. *Synopsis of Section 220's Proper Purpose Clause in Woods*

What qualifies as a proper purpose for a stockholder to establish his or her entitlement to the inspection of a corporation's books and records has been open to broad interpretation since the statute's inception, especially given the array of litigation surrounding the clause.⁶⁴ However, the language in the statute is clear: "[a] proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder."⁶⁵

The Chancery Court places the ball in the stockholder's court in this regard, providing them with reasonable malleability to demonstrate a proper purpose, both rational and relative to their ownership interests.⁶⁶ As previously held, stockholders have been able to establish their right to inspect, satisfying the proper purpose clause, "by seeking: to investigate alleged improper transactions or mismanagement; to clarify an unexplained discrepancy in the corporation's financial statements regarding assets; to ascertain the value of his stock; to communicate with

⁶⁰*Woods*, 238 A.3d at 889; *see also Seinfeld*, 909 A.2d at 117; *Sec. First Corp. v. Die Casting & Dev. Co.*, 687 A.2d 563 (Del. 1997).

⁶¹*Woods*, 238 A.3d at 889 (citing *Seinfeld*, 909 A.2d 117, quoting *Sec. First Corp*, 687 A.2d at 563 "Section 220 is now recognized as 'an important part of the corporate governance landscape.'").

⁶²*Id.* (citing *Cent. Laborers Pension Fund*, 45 A.3d at 144).

⁶³*Id.* (citing *Thomas & Betts Corp. v. Leviton Mfg. Co., Inc.*, 681 A.2d 1026, 1035 (Del. 1996)).

⁶⁴*See Woods*, 238 A.3d at 889-90.

⁶⁵*Id.* 889 (quoting 8 Del. C. § 220(b)).

⁶⁶*Id.*; *see also Melzer v. CNET Networks, Inc.*, 934 A.2d 912 (Del. Ch. 2007).

other stockholders regarding a tender offer"67 As the list provided by Vice Chancellor Laster continues on at length, it is important to appreciate the quote the Vice Chancellor cites from *Melzer*, "[t]here is no shortage of proper purposes under Delaware law"68

Matters such as the inherent risks taken by stockholders are to be considered when the court analyzes whether a justifiable proper purpose has been established.⁶⁹ For example, in a privately traded company, it is of great interest to the owner of shares to have access to the corporation's books and records in order to value their investment and make further buy/sell decisions.⁷⁰ This purpose has long been held by the Court of Chancery of Delaware as proper to satisfy the Section 220(b) standard, which is how Woods could establish the Trust had a valid purpose for inspection of Sahara's books and records.⁷¹

Furthermore, the defendant's notion in *Woods*, that the stockholder must prove actual intent to use the requested books and records as purported and demonstrate their end goal of the application, is contrary to DGCL.⁷² In fact, when the stockholder has met their standard in establishing a proper purpose of inspection, the burden shifts to the corporation to show whether the owner's actual purpose for conducting the search is improper or frivolous.⁷³ If the defendant can prove the stockholder's primary purpose was improper and that they pursued their claim under false pretenses, the defendant may succeed in justifying their conduct following a fact intensive review before the court.⁷⁴

In *Woods*, Sahara tried to present an argument relying on two cases, *Radwick* and *Helmsman*—both which involved efforts by a corporation to prove an improper stockholder purpose—on the notion that the reason for the valuation must be sincere as well as establish a showing of some external reason for the need of a valuation.⁷⁵ However, both the *Radwick* and *Helmsman* courts stood for the proposition "a valuation purpose must be bona fide" and did not support the idea that the stockholder "must

⁶⁷See *Woods*, 238 A.3d at 889-90.

⁶⁸See *Woods*, 238 A.3d at 889, *Melzer*, 934 A.2d at 912.

⁶⁹*Woods*, 238 A.3d at 890 (citing *Thomas & Betts Corp.*, 685 A.2d at 713).

⁷⁰*Id.*

⁷¹*Woods*, 238 A.3d at 893.

⁷²*Id.* at 891; see *Lebanon Cty. Emps.' Ret. Fund v. AmerisourceBergen Corp.*, C.A. 2019-0527-JTL, 2020 WL 132752, at 11-14 (Del. Ch. Jan. 13, 2020)(stating the law does not require both a proper purpose, such as valuation of shares, and demonstration of the "end to which the fruits of the inspection will be put.")

⁷³*Woods*, 238 A.3d at 891 (citing *Pershing Square, L.P. v. Ceridian Corp.*, 923 A.2d 810, 817 (Del. Ch. 2007)).

⁷⁴*Id.*

⁷⁵*Id.*; see also *Radwick Pty., Ltd v. Med., Inc.*, C.A. 7610, 1984 WL 8264 (Del. Ch. Nov. 7, 1984); *Helmsman Mgmt. Servs., Inc. v. A&S Consultants, Inc.*, 525 A.2d 160 (Del. Ch. 1987).

demonstrate a need to value her shares [in order] to satisfy [their] burden under Section 220."⁷⁶

The plaintiff in *Woods* also cited in their demand request under Section 220 the "desire to monitor the directors and officers of the Company" to ensure they are upholding their prescribed fiduciary duties.⁷⁷ The stockholder's desire to investigate the corporation for mismanagement or wrongdoing is well established as "[o]ne of the most traditional proper purposes for a Section 220 demand. . . ."⁷⁸

The requirement for a stockholder's demand to be justified under the claim of corporate wrongdoing is as follows: the showing, by a preponderance of the evidence, of some credible basis in which the court can infer the possibility of mismanagement that would warrant a further investigation.⁷⁹ The standard is one of relatively low requirement; a stockholder need not prove by a preponderance of the evidence any wrongdoing has actually occurred, only the possibility of the alleged behavior.⁸⁰

A credible basis claim can be satisfied in a number of ways, most notable being through documents, logical reasoning, testimony, circumstantial evidence, and even hearsay, if it is sufficiently reliable.⁸¹ A mere disagreement with a board decision will not satisfy the shareholders showing requirement, regardless of the decision's outcome.⁸² Additionally, it seems as though the underperformance of a financial institution's investment portfolio and their lack of transparency into their board members and employees' compensation will not provide enough of a showing of mismanagement to satisfy the burden requirement.⁸³ Though, when coupled with conflicting testimony and proof of misrepresentation, the accompanying circumstances could provide the plaintiff with a credible basis the court may accept in order to justify the suspicion of mismanagement and frivolous behavior needed to satisfy their burden of proof.⁸⁴ The facts in *Woods* equated to such; the court held, without dissent,

⁷⁶*Woods*, 238 A.3d at 891.

⁷⁷*Id.* at 892-93.

⁷⁸*Id.* at 893-94 (quoting *Seinfeld*, 909 A.2d at 121; quoting *KT4 P'rs*, 203 A.3d at 758).

⁷⁹*Id.* at 901; see *Seinfeld*, 909 A.2d at 120.

⁸⁰*Woods*, 238 A.3d at 901.

⁸¹See generally *Woods*, 238 A.3d at 879; *Seinfeld*, 909 A.2d at 117; *Wal-Mart Stores, Inc. v. Ind. Elec. Workers Pension Tr. Fund IBEW*, 95 A.3d 1264 (Del. 2014).

⁸²*Woods*, 238 A.3d at 894; see *Okla. Firefighters Pension & Ret. Sys. v. Corbat*, C.A. 12151-VCG, 2017 WL 6452240 (Del. Ch. Dec. 18, 2017).

⁸³*Woods*, 238 A.3d at 894-96.

⁸⁴*Id.*

the Company's discrepancies in their position, coupled with the plaintiff's allegations, established a proper purpose for the inspection.⁸⁵

The *Woods* decision provides an extremely useful opinion, which can guide litigants and future courts in settling conflict on the interpretation of Section 220 surrounding instances of ambiguity in the proper purpose clause. "Section 220 does not require a stockholder to expressly state why it seeks to value its shares" so long as they have a bona fide purpose reasonably related to their interest.⁸⁶ Notwithstanding such, a stockholder's intentions are not necessarily irrelevant.⁸⁷ If the defendant makes an argument asserting an improper stockholder purpose and a stockholder fails to identify a credible potential end use, the court may hold that a "proper purpose" has not been established.⁸⁸ Moreover, when a plaintiff brings a demand for request against a corporation for mismanagement and fraudulent behavior, their burden of proof for the claim to be justified is "credible basis."⁸⁹ The credible basis standard may be satisfied when the plaintiff makes a showing that there are legitimate concerns of wrongdoing through documents, logic, or otherwise.⁹⁰

In sum, the investigation into a corporation for perceived mismanagement is one of the traditional proper purposes recognized under the Delaware law.⁹¹

C. *Scope of Section 220's Inspection Rights by Woods*

When a plaintiff has satisfied their burden necessary to warrant a document inspection, Section 220(c) provides discretion for the Chancery Court to determine its scope.⁹² One thing in the law is for certain, the production of records under a "Section 220 demand is not the equivalent of discovery in a plenary action."⁹³ The statute requires the requested records shall be essential to the purpose stated by the plaintiff and the corporation must provide everything that is in their possession, custody, or control considered necessary and essential to the plaintiff's purpose, but

⁸⁵*Id.*

⁸⁶*Id.* at 892-93.

⁸⁷*Woods*, 238 A.3d at 892-93.

⁸⁸*Id.* at 893; *see* *Marathon P'rs, L.P. v. M.F. Worldwide Corp.*, C.A. 018-N, 2004 WL 1728604 (Del. Ch. July 30, 2004).

⁸⁹*Woods*, 238 A.3d at 892-93.

⁹⁰*Id.* at 894 (quoting *Seinfeld*, 909 A.2d at 123).

⁹¹*Id.*

⁹²*Woods*, 238 A.3d at 896.

⁹³*Sec. First*, 687 A.2d at 569.

may stop production at what is sufficient.⁹⁴ When the plaintiff's production order is reviewed, the court must weigh the interests of both the stockholder and the corporation before making its decision.⁹⁵ The court has traditionally held, when a plaintiff presents evidence to show mismanagement or frivolous behaviors, "a more wide-ranging inspection may be justified."⁹⁶ The source of the documents, and the manner in which they were received, has little to no bearing in the analysis so long as the documents provided to the stockholder can effectively address the problem.⁹⁷ The key principles to derive from the scope clause are whether the documents, formal or informal, are necessary and essential to satisfy the stockholder's purpose and whether or not the documents are in the corporation's control or possession.⁹⁸

A common area of uncertainty in the Section 220 demand is whether the stockholder is entitled to particular categories of corporate documents.⁹⁹ The court's review of the plaintiff's claim is fact specific, and the burden is on the demanding party to show the requested document is necessary within the context of their stated purpose.¹⁰⁰ For example, an adequate request seeking financial reports, business plans, budgets, and projections has been found to clearly fall within Section 220's scope clause boundaries.¹⁰¹ If the plaintiff receives the formal board materials, but they do not prove to be suitable for their purpose, a renewed request may be processed.¹⁰² A request so broad as demanding "any [d]ocuments, correspondence, reports, or drafts thereof concerning any investment decision, business plan, valuation, budget, financial guidance, forecast or projections concerning the [c]ompany [as of a particular date] . . ." will not satisfy the law's requirement of showing necessity to the court.¹⁰³ Furthermore, blanket requests seeking voluminous investment strategies, meeting minutes, agendas, committee reports, and notes taken during meetings also need not be produced without a greater showing of necessity.¹⁰⁴

⁹⁴*Woods*, 238 A.3d at 896 (quoting *Thomas & Betts*, 681 A.2d at 1035; *KT4 Partners LLC*, 203 A.3d at 752; *Saito*, 806 A.2d at 114-15).

⁹⁵*Id.* at 896 (citing *Sec. First*, 687 A.2d at 569).

⁹⁶*Id.* at 896-97; see *Freund v. Lucent Techs. Inc.*, 2003 WL 139766 (Del. Ch. Jan. 9, 2003).

⁹⁷*Woods*, 238 A.3d at 897; see *Saito*, 806 A.2d at 114-15.

⁹⁸*Woods*, 238 A.3d at 897.

⁹⁹*Woods*, 238 A.3d at 898; see *Wal-Mart*, 95 A.3d at 1271.

¹⁰⁰*Woods*, 238 A.3d at 898.

¹⁰¹*Woods*, 238 A.3d at 898-99.

¹⁰²*Id.*

¹⁰³*Id.* at 899.

¹⁰⁴*Id.*

The Chancery Court in *Woods* did find requests relating to senior officers and board directors' compensation may warrant production. A seemingly fundamental right of an interested stockholder is to obtain at least basic information about how the board and other officers are being compensated,¹⁰⁵ but a request seeking the compensation of every employee in the company is likely to be defined as overbroad.¹⁰⁶ The rationale is relatively simple—positions like directors and officers owe a fiduciary duty to their shareholders, where lower level employees may not owe such a duty. Therefore, it will not be required for the stockholder to make a preponderance of the evidence showing of corporate wrongdoing or other suspicions in order to learn how high-level employees are being compensated.¹⁰⁷ It is within the court's discretionary power to draw a reasonable limit on such requests.¹⁰⁸

The inquiry request in *Woods* was straightforward—the plaintiff was seeking Formal Board Materials relating to investment strategies and compensation.¹⁰⁹ While this request was granted, a more extensive showing of necessity will be required in relationship to their demand request of transactional data, informal board materials, and officer-level materials, which included lower-level employee information.¹¹⁰ If the plaintiff's initial request proves to be inadequate in satisfying their investigation, the party may renew their request for further production of both the informal and officer-level materials.¹¹¹ Again, the fundamental principle in the scope clause is that the plaintiff's request shall be adequately tailored to show a need for the production of documents, formal or informal, and the need is essential to the stated purpose of the investigation.¹¹²

D. *Woods' Explanation of Production Requirements for Corporations and Subsidiaries*

Due to the organizational structure of many Delaware companies, documents may be housed or secured by entities other than the corporation in which the stockholders possess a record of ownership. In such cases, defendants may attempt to shield themselves from production requests by

¹⁰⁵*Woods*, 238 A.3d at 900-01; see *KT4 P'rs LCC*, 203 A.3d 738.

¹⁰⁶*Woods*, 238 A.3d at 900.

¹⁰⁷*Id.* at 901.

¹⁰⁸*Id.*

¹⁰⁹*Woods*, 238 A.3d at 902.

¹¹⁰*Id.*

¹¹¹*Id.* at 899.

¹¹²*Id.* at 889.

claiming a lack of access or control.¹¹³ Although non-traditional corporate entities can add complexities to the legal structure of the organization, it should not have any impact on the information justifiably available to stockholders.¹¹⁴ Companies are required to provide the plaintiff's with "access to all of the documents in the corporation's possession, custody or control" necessary to satisfy the proper purpose of the inquiry.¹¹⁵

The Chancery Court will not provide any deference whatsoever to corporations seemingly positioning themselves in a way that establishes a veil over financial documents in which shareholders have interest.¹¹⁶ Vice Chancellor Laster has made clear, books and records accessible to the parent company in the ordinary course of business whenever they so wish, even if held by subsidiaries or other entities, can be equally compelled by court order.¹¹⁷ The substantive takeaway from the production requirements of subsidiaries housing business records is the inquiry into the means of accessibility and control by the parent corporation.¹¹⁸

IV. CONCLUSION

We concur with Mr. Pileggi to the significance *Woods* provides to Section 220 for courts, scholars, and practitioners alike.¹¹⁹ Business relations are a process of give and take. Stockholders transfer a substantial amount of control to corporations when they decide to position themselves as investors. In doing so, a fiduciary bond is established between the organization, its board of directors, and the stockholder. Thus, the need for governance and accessibility is required, along with clarity as to the rights instilled unto stockholders in examining the status of their investments.

Section 220 has been molded over the last fifteen years and now plays a critical role in the Delaware law surrounding corporate governance.¹²⁰ The opinion in *Woods* provides a functional analysis of the statute, explanation to a number of its caveats, and a summary as to how conflicts within the application can be resolved.¹²¹ Thanks to the Chancery Court's decision, and its well-crafted opinion provided by Vice Chancellor Laster, *Woods* will likely serve as a one-stop-shop for those seeking clarity

¹¹³*Woods*, 238 A.3d at 902-03; see *Dobler*, 2001 WL 1334182 at 10.

¹¹⁴*Woods*, 238 A.3d at 903-04.

¹¹⁵*Woods*, 238 A.3d at 896 (quoting *Thomas & Betts*, 681 A.2d at 1035; *KT4 Partners LLC*, 203 A.3d at 752; *Saito*, 806 A.2d at 114-15).

¹¹⁶*Woods*, 238 A.3d at 903-04.

¹¹⁷See generally *Woods*, 238 A.3d at 879.

¹¹⁸*Id.*

¹¹⁹See Pileggi, *supra* note 56.

¹²⁰See *Woods supra* note 61.

¹²¹See generally *Woods*, 238 A.3d 879.

into DGCL Title 8 Section 220 and the stockholders' right to inspect corporate documents.