

January 31, 2019

### **Delaware Provides Guidance on Books-and-Records Inspection Rights**

The Delaware Supreme Court this week offered important guidance on stockholders' rights to inspect corporate books and records. [\*KT4 Partners LLC v. Palantir Techs., Inc.\*, No. 281, 2018 \(Del. Jan. 29, 2019\)](#).

The case involved a stockholder's demand under Section 220 of the Delaware General Corporation Law to obtain documents to investigate suspected wrongdoing by Palantir's board. The trial court permitted Palantir to exclude email from its production and limited the stockholder's ability to use the documents in litigation outside of Delaware. On appeal, the Supreme Court reversed on both issues.

As to the proper scope of inspection, the Court confirmed that a Section 220 petitioner is generally entitled to "everything that is 'essential'" but no more than "what is 'sufficient'" for its purpose. For that reason, the Court noted, inspections are often properly limited to formal board-level materials such as meeting minutes, resolutions, and presentations. Nevertheless, "§ 220 must be interpreted in light of companies' actual and evolving record-keeping and communications practices." In this case, the corporation had "a history of not complying with required corporate formalities" and had admitted that "there are no board-level documents" responsive to the request. In such circumstances, the Court held, an email production was required: "If a respondent in a § 220 action conducts formal corporate business without documenting its actions in minutes and board resolutions or other formal means, but maintains its records of the key communications only in emails, the respondent has no one to blame but itself for making the production of those emails necessary."

With respect to the forum use restriction, the Court [reaffirmed](#) that courts may impose such restrictions on inspection demands to protect legitimate corporate interests (such as avoiding wasteful multiforum litigation) but stressed that the inquiry is case-specific. Here, a forum restriction would have the effect of multiplying, rather than consolidating, intracorporate disputes, because the corporation did not have a Delaware forum-selection bylaw and was already embroiled in related litigation in California.

The decision supplies corporations with yet another reason to take two prudent governance steps: (1) to [document board actions](#) with care (to avoid intrusive inspection requests from stockholders), and (2) to consider adopting [forum-selection bylaws](#) (to avoid the obligation to produce documents for use in foreign tribunals).

William Savitt  
Ryan A. McLeod  
Anitha Reddy

*If your address changes or if you do not wish to continue receiving these memos, please send an e-mail to [Publications@wlrk.com](mailto:Publications@wlrk.com) or call 212-403-1443.*