

Delaware Chancery Reiterates Directors' Right to Access Corporation Information

Article By:

Brooks T. Giles

In a recently issued letter decision, the Delaware Court of Chancery reiterated the general rule that directors have an unencumbered right to access corporate information (with certain exceptions). The case involves a dispute between two groups of directors—those affiliated with a controlling stockholder, and those that are not. An affiliated director filed a motion to compel the production of information, including corporate communications between (1) unaffiliated directors and officers of the corporation and company counsel; and (2) members of a special committee formed specifically to negotiate with the controlling stockholder and that committee's own independent counsel. The court largely granted the affiliated director's request, with the exception of communications between the special committee and its counsel.

The letter decision provides a useful reminder of directors' broad rights to information. Directors of Delaware corporations may access corporate information except: (1) where there is an agreement among the parties to the contrary; (2) information subject to attorney-client privilege between a committee that excludes a particular director and such committee's counsel; and (3) when there is sufficient adversity between a director and the corporation that such director could not have a reasonable expectation that such director is a client of the board's counsel.

This right to access can lead to significant tension in numerous scenarios, such as family businesses with directors nominated by antagonistic branches of the family, venture-stage companies with board designees from venture capital firms with potentially competing investments, and private equity-backed companies with former (and disgruntled) owners or executives that have retained their board seats. Investors that are stockholders in corporations should carefully consider board designees' rights to information and the dynamics among the various stockholders, and whether it is appropriate to mandate director access agreements before seating any directors, or to utilize a more flexible entity form, such as a limited liability company, to address potential risks arising from directors' relatively unlimited rights to corporate information.

The *In re CBS Corporate Litigation* letter decision is available [here](#).

©2025 Katten Muchin Rosenman LLP

Source URL: <https://natlawreview.com/article/delaware-chancery-reiterates-directors-right-to-access-corporation-information>