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IN THE SUPREME COURT OF THE STATE OF DELAWARE

PARAMOUNT GLOBAL, Defendant Below, Appellant, v. STATE OF RHODE ISLAND OFFICE OF THE GENERAL TREASURER, ON BEHALF OF THE EMPLOYEES' RETIREMENT SYSTEM OF RHODE ISLAND Plaintiff Below, Appellee.	Case No. 129,2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0457-SEM

APPELLANT'S OPENING BRIEF

OF COUNSEL:

SIMPSON THACHER & BARTLETT LLP
Jonathan K. Youngwood
Meredith Karp
425 Lexington Avenue
New York, NY 10017
(212) 455-2000

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Jon E. Abramczyk (#2432)
D. McKinley Measley (#5108)
Alexandra M. Cumings (#6146)
1201 N. Market Street
Wilmington, DE 19801
(302) 658-9200
jabramczyk@morrisnichols.com
dmeasley@morrisnichols.com
acumings@morrisnichols.com

Attorneys for Defendant Below/Appellant Paramount Global

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NATURE OF PROCEEDINGS

Plaintiff Below/Appellee State of Rhode Island Office of the General Treasurer, on behalf of the Employees' Retirement System of Rhode Island ("ERSRI") served a demand under 8 *Del. C.* § 220 upon Defendant Paramount Global ("Paramount" or the "Company") on April 5, 2024 (the "Demand" or "April Demand"). The Demand sought wide-ranging books and records, including informal communications, purportedly to investigate potential breaches of fiduciary duty, wrongdoing, and mismanagement in connection with pre-signing deal discussions with numerous potential acquirers. A0050. Paramount responded to the Demand on April 19, 2024, explaining that ERSRI failed to state a proper purpose because the Demand lacked a credible basis to infer wrongdoing, as the Demand almost exclusively relied on uncorroborated news articles based on unnamed sources, and because the Demand was premature, as no transaction had been announced. Exhibit A, Opinion Addressing Stockholder's Proper Purpose dated January 29, 2025 (the "Opinion" or "Op.") at 8; *see also* A0073. Paramount, without waiving its position that the Demand was improper and premature, nevertheless offered to produce certain limited documents and meet and confer. Rather than meet and confer, or wait for the announcement of an actual transaction on which to premise a revised demand, on April 30, 2024, ERSRI brought this lawsuit. Ex. A at 8.

After trial on a paper record before now-Senior Magistrate Selena Molina as to ERSRI's entitlement to books and records, the Senior Magistrate issued a Telephonic Final Report on August 2, 2024 ruling in Paramount's favor (the "Post-Trial Report"). Ex. A at 10; *see also* A0384-A0407. The court held that ERSRI had not established a sufficient evidentiary foundation to support a proper purpose, including because ERSRI was not entitled to rely on post-Demand evidence to support a credible basis and ERSRI failed to establish a credible basis to suspect wrongdoing based on the facts as they existed at the time of the Demand. *Id.* On August 27, 2024, ERSRI took exceptions to the Senior Magistrate's Post-Trial Report. *See* A0189-A0239. After briefing and a hearing before Vice Chancellor J. Travis Laster on ERSRI's exceptions, the Court of Chancery reversed the Senior Magistrate's ruling, finding that ERSRI could rely on post-Demand evidence and that the evidence relied on at the time of the Demand was sufficiently reliable to support a credible basis to suspect wrongdoing. *See* Ex. A. The Court of Chancery remanded the case to the Senior Magistrate to resolve disputes over the scope of the broad request for inspection. Ex. A at 40; Ex. B.

Upon timely application by Paramount, the Vice Chancellor certified his Opinion and Order for interlocutory appeal. A0312-A0348. This Court accepted the interlocutory appeal on April 30, 2025. A0635-A0641.

SUMMARY OF ARGUMENT

1. The lower court erroneously considered post-Demand evidence of post-Demand conduct in finding that ERSRI's Demand established a credible basis to suspect wrongdoing. Section 220 provides inspection rights only to stockholders who first establish that they have a proper purpose for the inspection. 8 *Del. C.* § 220(c). Therefore, courts evaluating a stockholder's stated purpose for inspecting corporate books and records limit their analysis to the evidence that exists at the time the demand is made. This prevents stockholders from evading the Section 220 requirements to launch premature fishing expeditions into a corporation's records without first having the requisite evidence to support a proper purpose. It also incentivizes out-of-court resolution of 220 demands: if a stockholder's proper purpose finds support at the time of the demand, a corporation will produce responsive materials without litigation. By contrast, the lower court's approach of allowing a demand to ripen after service and during the pendency of litigation encourages stockholders to race to serve meritless demands based on rumors and hope that evidence substantiating those rumors comes into existence before trial. Were the lower court's position to be affirmed, the number of premature or even baseless 220 demands would grow further, imposing needless costs on Delaware corporations. By contrast, no harm would befall ERSRI or other stockholders seeking to inspect corporate books and records were the Senior Magistrate's decision

to be reinstated; a proper 220 demand can always be served once facts to support such a demand have developed. Here, ERSRI had no evidence to establish a proper purpose at the time it made its Demand. At the time of service, Paramount had not yet entered into a merger agreement, or announced or finalized a transaction. The Demand lacked a proper purpose and should therefore be rejected.

2. The lower court also erred by permitting ERSRI to rely on uncorroborated statements from confidential, unnamed sources quoted in news articles to establish a credible basis under Section 220. Excluding the improperly admitted post-Demand evidence of post-Demand conduct discussed above, these anonymous hearsay declarants cited in the media provide the only factual predicate for ERSRI's purported purpose for inspection. It is settled Delaware law that uncorroborated news articles alone cannot establish a credible basis, and that the evaluation of the reliability of evidence is fact specific. The court below departed from these principles by finding that if a news article is published by a sufficiently reputable news publication, that "will generally be sufficiently reliable for a court to consider" in deciding whether a stockholder has shown a credible basis (Ex. A at 34-35), rather than following precedents that analyze whether each unattributed statement cited in support of a stockholder's stated purpose for inspection demonstrates "indicia of reliability," as the Senior Magistrate did below (A0403-A0404). Because the news articles upon which ERSRI relied were not corroborated by other, contemporaneous

evidence, lacked factual particulars, and omitted descriptive information, *see* A0404, they should not be considered as part of the alleged basis to suspect wrongdoing. Again, affirming the Vice Chancellor's decision will multiply the number of 220 demands served on Delaware corporations without factual bases, while reinstating the Senior Magistrate's decision will properly limit such meritless demands without infringing on the interests of stockholders with valid concerns.

STATEMENT OF FACTS

A. The Parties.

Defendant Below/Appellant Paramount, a Delaware corporation, is a media and entertainment company that owns Paramount Pictures, the CBS Television Network, and other assets. A0151. Paramount offers Class A and Class B publicly traded common stock; only the former carries voting rights. Ex. A at 2; A0153. NAI is Paramount's controlling stockholder through its ownership of Class A shares. A0152. Shari Redstone acts as NAI's Chairwoman and CEO. A0151. On January 2, 2024, Paramount's Board of Directors formed a special committee of independent directors to evaluate strategic alternatives for the Company, including third party proposals (the "Special Committee"). A0153. Plaintiff Below/Appellee ERSRI is a beneficial owner of Paramount Class B common stock. Ex. A at 6; A0045.

B. Paramount Explores Potential Transactions.

Since 2023, Ms. Redstone and Paramount have considered strategic alternatives for the Company. Ex. A at 3. In the early months of 2024, prior to ERSRI's April 5 Demand, the media began to report that Paramount might be considering various transactions, including rumored potential bids from various suitors such as Amazon, Apple, Netflix, entrepreneur Byron Allen, Apollo Global Management, and Skydance Media. Ex. A at 3-6.

C. Prior To The Announcement Of A Deal, ERSRI Served Paramount With A Books And Records Demand Based On Speculation Derived From News Articles.

On April 5, 2024, before there was any agreement to sell Paramount, ERSRI served a Demand to inspect Paramount's books and records pursuant to 8 *Del. C.* § 220 based on ERSRI's suspicion that "Shari Redstone and NAI have used third parties' interest in acquiring some or all of Paramount to usurp Paramount's corporate opportunity" by steering potential buyers toward a transaction involving NAI. A0047. The Demand sought board-level and officer-level materials concerning (i) any actual, potential, or proposed sale, merger, or other business combination involving NAI, Paramount, or any of Paramount's assets, (ii) any committee of the Board empowered to evaluate such a transaction, and (iii) the adoption of change-in-control agreements for Paramount management. A0050-A0051. The Demand also sought informal materials including emails and text messages regarding the foregoing topics. *Id*. ERSRI's Demand heavily relied on news reports. These articles frequently quoted unnamed confidential sources, referring to them as, for example, "sources" or "people familiar with the situation." Ex. A at 3-5.

Paramount timely responded to the Demand on April 19, 2025, explaining that ERSRI failed to state a proper purpose because there could be no usurpation of

Paramount's business opportunities because there was no agreement to sell Paramount as of the time the Demand was made or the response to the Demand was given. Ex. A at 8; *see also* A0073-A0077. Nevertheless, in an effort to avoid litigation while preserving its objections, Paramount offered to meet and confer and, subject to entering into a confidentiality order, produce resolutions regarding the formation and mandate of the Special Committee to evaluate proposed transactions. *See* A0076. Paramount stated that, should a transaction be announced or finalized, it would re-engage with ERSRI at that time regarding the Demand. *See id.* Rather than accept Paramount's offer, though, less than two weeks after Paramount responded to the Demand, ERSRI brought this lawsuit on April 30, 2024. Ex. A at 8. Again, as of April 30, no transaction had yet been announced. Ex. A at 9; A0158-A0160.

D. After ERSRI Served Its Demand And Filed Its 220 Action, Paramount Announced The Skydance Transaction.

About three months after ERSRI made its Demand, on July 7, 2024, Paramount and Skydance announced a proposed merger between Paramount and Skydance (the "Skydance Transaction") in which Skydance would acquire NAI for $2.4 billion, followed by a second-step merger between Skydance and Paramount that valued Skydance at $4.75 billion. Ex. A at 9-10. The agreement included a go-shop period during which other potential buyers could compete with Skydance's

offer. *Id.* at 9. To date, the Skydance Transaction has not closed pending further regulatory clearance.

E. The Trial Court Rules That ERSRI Has Not Established A Proper Purpose.

On July 24, 2024, Senior Magistrate Molina held a trial on ERSRI's entitlement to books and records and, on August 2, 2024, issued a post-trial final report finding that ERSRI did not have a sufficient evidentiary foundation to support a proper purpose. Ex. A at 10; *see also* A0384-A0407. In its briefing and at trial, ERSRI relied on news articles and other materials reporting on events that unfolded after the Demand was served on April 5, 2024, including director departures and Paramount's CEO transition. *See, e.g.*, A0037; A0114; A0357-A0358; *see also* Ex. A at 7-9. ERSRI argued through the lens of hindsight that, because a transaction was announced on July 7, 2024—weeks before trial—the proper purpose for its April 5, 2024 Demand was retroactively validated. A0358. In assessing the stated basis for the April Demand, Senior Magistrate Molina properly excluded post-Demand evidence from consideration, holding that the court "must step back in time and ask whether there was a credible basis ***at the time*** the demand was served," and it "may only consider the evidence available at [that] time." A0395 (emphasis added). She further noted that ERSRI agreed that the court must determine whether a credible basis existed at the time of the Demand. *Id*. Senior Magistrate Molina

also held that the pre-Demand news articles underpinning ERSRI's Demand bore "common indicia of unreliability," presenting "information from [] unnamed sources, which is the information on which [ERSRI] relies for its credible basis argument" and involving "anonymity and lack of pre-demand corroboration." A0403-A0404; *see also* A0456-A0457; A0458-A0461; A0462-A0467; A0468-A0473; A0474-A0475; A0476-A0479; A0480-A0484; A0485-A0489; A0490-A0498; A0499-A0509; A0510-A0512; A0513-A0515; A0516-A0517; A0518-A0520. On August 27, 2024, ERSRI took exception to the ruling. A0186-A0188.

F. ERSRI Filed A Second Demand In October 2024 And Paramount Produced Documents.

In addition to ERSRI's Demand, Paramount received several other stockholder demands pertaining to the Skydance Transaction, including a second demand from ERSRI served in October 2024 (the "Second Demand") while its Exceptions were pending in the Court of Chancery. A0548-A0600; *see also* A0289-A0296. Paramount has produced documents responsive to these demands and worked cooperatively with stockholders—including ERSRI—to provide relevant books and records and address stockholders' follow-up correspondence. However, ERSRI sought documents in its April Demand that it did not seek in the Second Demand, namely, "all emails, text messages, or other electronic messages exchanged between or among (i) Shari Redstone or anyone representing her, on the one hand,

and (ii) any other person, regarding (a) [a]ny actual, potential, or proposed sale, merger, or other business combination involving NAI; and/or (b) [a]ny actual, potential, or proposed sale, merger, or other business combination involving Paramount or any of its assets, including Paramount Studios." *Compare* A0050-A0051 to A0642-A0672.

ERSRI has not disputed the adequacy of Paramount's productions in response to its October 2024 Second Demand. Yet ERSRI has continued to prosecute this litigation over its premature April Demand and to press its claims for certain informal materials it chose not to pursue in connection with its October Demand. *See* A0362. That is, ERSRI's present litigation is focused solely on obtaining materials it did not (or was not entitled to) obtain once the dust settled and the facts surrounding the transaction were made public. Presumably, ERSRI seeks to vindicate its April Demand in order to bolster its prospects for being appointed lead plaintiff in any plenary litigation that might follow stockholders' Section 220 inspection of books and records related to the still-pending Skydance transaction.

G. After Paramount Responded To ERSRI's Second Demand, The Court Of Chancery Held An Exceptions Hearing And Issued The Opinion.

After a November 14, 2024 hearing on ERSRI's Exceptions, Vice Chancellor Laster reviewed the facts and law *de novo* and reached the opposite conclusion as

Senior Magistrate Molina in his January 29, 2025 Opinion. *See* Ex. A at 10, 40. After acknowledging the fundamental principle that, "[a]s a general matter, a stockholder should be limited to . . . what the stockholder knew at the time of the demand," the Vice Chancellor held that nevertheless "there are settings when a stockholder can legitimately rely at trial on post-demand evidence." *Id.* at 19. The Vice Chancellor's Opinion declined to follow certain cases rejecting consideration of post-demand evidence, reasoning that those cases "d[id] not cite authority or formulate a broader principle that could be applied in other cases" or they "d[id] not [explicitly] address whether a stockholder can rely on later-acquired evidence." *Id.* at 22-23. The Opinion further found that the holdings in cases that *did* expressly "refuse[] to consider evidence of post-demand events" "rest[ed] on prejudice and relevance," rather than "the post-demand timing." *Id.* at 25.

With respect to the reliability of anonymous sources cited in news articles, the Opinion stated, "articles from reputable publications that rely on anonymous sources will generally be sufficiently reliable for a court to consider when assessing" a stockholder's "credible basis to suspect wrongdoing," and credited ERSRI's evidence in finding a credible basis. *Id.* at 34-35.

H. Paramount Files An Interlocutory Appeal.

On March 7, 2025, Paramount filed its Application for Certification of Interlocutory Appeal, seeking appellate review of the Opinion's novel interpretation

of Section 220's statutory language to permit ERSRI to substantiate the credible basis for its purported proper purpose by relying on (i) post-Demand evidence concerning post-Demand conduct, and (ii) unverified assertions by anonymous sources reported in the news media. *See* A0298.

The Court of Chancery issued a Memorandum Opinion Certifying Interlocutory Appeal ("Cert. Op.") on March 24, 2025, recommending that this Court accept the appeal. A0315. On March 27, 2025, Paramount filed its Notice of Appeal from Interlocutory Order. *See* A0349-A0352. This Court accepted Paramount's interlocutory appeal on April 30, 2025. A0641.

I. Paramount Litigates Another Section 220 Demand On Similar Facts.

Two other stockholders filed Section 220 actions against Paramount subsequent to ERSRI regarding their demands related to the Skydance Transaction, one of which bears some relevance here. In *Gabelli Value 25 Fund Inc. v. Paramount Global,* a purported holder of Class A and Class B shares ("Gabelli") made a Section 220 demand and later brought suit seeking informal communications. C.A. No. 2024-1353-SEM, Dkt. 1 (Compl.) at ¶¶ 2, 9 (Del. Ch. Jan. 6, 2025).[1] Unlike ERSRI, Gabelli waited until after Paramount formally

[1] Four other stockholders filed a 220 litigation against Paramount in *Metropolitan Water Reclamation District Retirement Fund, et al. v. Paramount Global* (Continued . . .)

announced the Skydance Transaction to make its demand, citing specific concerns with the then-public transactional structure in support of its purported proper purpose. *Id.* ¶ 3. Paramount produced thousands of pages of formal board materials to Gabelli—and to ERSRI—but Gabelli sought informal electronic communications that exceeded the scope of 220, like those communications sought by ERSRI in the April Demand but not in the Second Demand. Senior Magistrate Molina found that Gabelli had established a proper purpose to inspect Paramount's books and records but was not entitled to the electronic communications sought. C.A. No. 2024-1353-SEM, Dkt. 50 at 38:11-15 (Del. Ch. Apr. 8, 2025). No appeal has been sought of that ruling.

for the purported purpose of seeking to preserve standing; the parties there agreed to stay proceedings. *See* C.A. No. 2025-0377-SEM, Dkt. 7 (Del. Ch. Apr. 21, 2025).

ARGUMENT

I. THE COURT OF CHANCERY INCORRECTLY HELD THAT POST-DEMAND EVIDENCE OF POST-DEMAND CONDUCT CAN ESTABLISH A CREDIBLE BASIS TO SUPPORT A PROPER PURPOSE FOR INSPECTION

A. Question Presented

Did the Court of Chancery err in considering post-Demand evidence of post-Demand conduct to find a credible basis in support of ERSRI's demand? *See* A0304. This issue was raised and decided below. A0162; A0259-A0262; Ex. A at 18.

B. Scope of Review

The lower court's legal conclusions are reviewed *de novo. Nationwide Emerging Managers, LLC v. NorthPointe Holdings, LLC*, 112 A.3d 878, 889 (Del. 2015).

C. Merits of Argument

The language in Section 220 and the weight of precedent require that a stockholder have a credible basis to suspect wrongdoing ***at the time*** it serves a demand to inspect corporate books and records under Section 220, and therefore should not be able to use post-Demand evidence of post-Demand conduct to establish a credible basis. The text and purpose of Section 220 support this baseline rule. It is uncontroversial that "mere curiosity or a desire for a fishing expedition will not suffice" to satisfy a stockholder's burden. *Sec. First Corp. v. U.S. Die Casting & Dev. Co*., 687 A.2d 563, 568 (Del. 1997); *see also, e.g.*, *Seinfeld v.*

Verizon Communications, Inc., 909 A.2d 117, at *118 (Del. 2006) (holding that the "credible basis" standard achieves an "appropriate balance" between providing stockholders who can offer some evidence of possible wrongdoing with access to corporate records and safeguarding the right of the corporation to deny requests for inspections that are "based only upon suspicion or curiosity"). Permitting a stockholder to support a credible basis with evidence of post-Demand conduct would contravene this principle and would not only be contrary to the language and purpose of Section 220, it would incentivize abuse of Section 220 in support of unsubstantiated, speculative fishing expeditions.

1. Section 220 And Caselaw Interpretating It Limit The Credible Basis Inquiry To Evidence Available At The Time The Demand Is Served.

Following the plain language of Section 220, Delaware courts have consistently recognized that a stockholder must have a credible basis ***at the time the demand is served***, and therefore confine their proper purpose inquiry to pre-demand evidence. The text of Section 220 provides the blueprint: "Where the stockholder seeks to inspect the corporation's books and records, . . . such stockholder ***shall first establish*** that: . . . [t]he inspection such stockholder seeks is for a proper purpose." 8 *Del. C.* § 220(c) (emphasis added). In other words, the proper purpose must precede the demand, not vice versa.

This simple, baseline rule is rooted in the requirements of the statute as well as common sense—and the rules of pleading that require a party to supplement its pleading to add facts that arise post-complaint—because there can be no basis for making a demand without first having evidence to support the requisite proper purpose. In addition, as a matter of policy recognized by the law applying Section 220, a Section 220 demand must be premised on an already-existing proper purpose because inspection ***in search of*** a proper purpose would constitute precisely the type of "indiscriminate fishing expedition[]" that this Court has blocked as "adverse to the interests of the corporation." *Seinfeld*, 909 A.2d, at 122-23 (Del. 2006); *see also, e.g.*, *Plumbers & Steamfitters Local Union No. 248 Pension Fund v. Wal-Mart Stores*, C.A. No. 7726-CS, Tr. at 11:13-16 (Del. Ch. May 20, 2013) (TRANSCRIPT) (holding that the plaintiff did not have a credible basis premised on a lone piece of pre-demand evidence because stockholders "are not allowed in 220 to seek discovery in aid of finding a colorable basis" and instead "have to have the colorable basis first" as "a minimum requirement").

Following this principle, prior to the Opinion, the Court of Chancery has been unanimous in limiting the proper purpose inquiry to pre-demand evidence.

For example, in *Rudnick v. Chatham Capital Corp.*, the plaintiff had served a Section 220 demand based on suspicion of potential wrongdoing and sought discovery from the corporation to substantiate a credible basis for that suspicion.

Rudnick v. Chatham Capital Corp., C.A. No. 3010-VCS, Tr. at 10:1-13 (Del. Ch. Mar. 12, 2008) (TRANSCRIPT). In opposing the demand, Defendant reiterated that "whether [Plaintiff] has a credible basis for asserting this as a purpose ***at the time he made his demand*** is something [Plaintiff] must establish" ***before*** the 220 proceeding, not ***through*** it. *Id.* Tr. at 12:7-19 (emphasis added). The court agreed, rejecting the plaintiff's cart-before-the-horse demand and reasoning that before a court will find a stockholder entitled to inspection, "[y]ou have to prove your entitlement to books and records. You don't get to get discovery that is corresponding[.]" *Id.* Tr. at 23:14-16. In other words, the court blocked the stockholder's attempt to serve a demand first and then collect evidence in support of the credible basis for that demand later. The same reasoning should apply here: just as the plaintiff in *Rudnick* was rightly blocked from seeking post-demand evidence (deposition testimony) in support of its credible basis, ERSRI should be barred from ***introducing*** post-demand evidence in support of its credible basis. To hold otherwise could permit stockholders to use the Section 220 process to launch fishing expeditions in search of corroborating evidence.

Cutler v. Quiq, Inc. underscores this point. C.A. No. 6897-VCG, Tr. at 20:5-7 (Del. Ch. Feb. 24, 2012) (TRANSCRIPT). There, the court ruled that "what you can't do is simply go on a fishing expedition for evidence of improper management to bolster your Section 220 action." In *Cutler*, plaintiffs noticed a 30(b)(6)

deposition of a company representative because plaintiffs claimed "reason to believe that there has been misappropriation, and… mismanagement" and wished to use the deposition to identify certain documents. *Id.* Tr. at 10:23-11:3. Defendant contended that "[e]ither [plaintiff] has made the showing that will entitle [it] to inspect the books and records or [it] has not." *Id.* Tr. at 12:16-18. In other words, the credible basis must be ripe and demonstrable at the time of the demand.

Senior Magistrate Molina followed this well-grounded approach in her Post-Trial Report. A0395 (ruling that the trial court "may only consider the evidence available at the time the demand was served," and noting that even "[ERSRI] agree[d] that this is the appropriate lens to use"). The Vice Chancellor acknowledged in the Opinion that "[a]s a general matter, a stockholder should be limited to the evidence identified in a demand or what the stockholder knew at the time of demand, because that constraint helps parties resolve Section 220 demands without judicial involvement." Ex. A at 19. But he found the general rule inapplicable on the ground that the holdings in the cases Paramount cited in support thereof "were not based on the post-demand timing," but instead "on prejudice and relevance." *Id.* at 25. And, without citing authority, he carved out from the rule "settings when a stockholder can legitimately rely at trial on post-demand evidence, such as when a material event occurs after the demand but before trial and when the

stockholder's reliance on those post-demand events does not prejudice the corporation." *Id.* at 19.

For one, this carve-out does not find support in the statute or caselaw. The Opinion below does not cite any case where a court has permitted a stockholder to collect evidence in support of its credible basis showing after serving its Demand, ERSRI has not cited any, and undersigned counsel is unaware of any.

Even assuming such a carve-out were appropriate, it should not apply here because Paramount was clearly prejudiced by the introduction of post-Demand evidence in support of ERSRI's premature April Demand. By pressing its April Demand in court and effectively evolving its purported credible basis as facts on the ground developed, ERSRI exposed Paramount to needless time-consuming and costly litigation. *See, e.g.*, *Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 1987 WL 13520, at *8 (Del. Ch. July 7, 1987) ("Litigation may be prejudicial because of the unnecessary expense incurred[.]") (citation omitted). Paramount expressly offered to confer with ERSRI to address any "material event" relevant to the subject matter of the Demand—*i.e.*, the execution of an actual transaction—that might occur after the Demand's service, which would have avoided this litigation. Meanwhile, after it served a Second Demand while this litigation was pending, ERSRI received all the documents it was entitled to and still chose to pursue this litigation and impose further burdens and costs on Paramount.

By considering post-Demand evidence of post-Demand conduct in support of ERSRI's purported credible basis, the lower court departed from the approach taken by other Courts of Chancery. Prior to the Opinion below, the Court of Chancery has applied a clear, easy-to-apply rule that follows the statute, requiring stockholders to establish a credible basis for their inspection demands at the time the demand is served, based necessarily on the evidence that exists at that time. The resulting uncertainty in which standard Courts of Chancery should apply underscores the need for clear guidance from this Court as to what evidence may be considered in connection with a Section 220 demand.

2. The Policy Goals Of Section 220 Support Limiting The Credible-Basis Inquiry To Pre-Demand Evidence.

Section 220 is meant to facilitate the efficient resolution of stockholder inspection demands without court intervention whenever possible. It is also geared toward protecting corporations from fishing expeditions in search of wrongdoing, especially where such fishing expeditions could jeopardize sensitive ongoing corporate transactions. A ruling for Defendants will advance these statutory goals.

As discussed above, this case demonstrates that a stockholder can obtain inspection under Section 220 when it has a proper purpose for inspection at the time of its demand. Paramount offered to meet and confer with ERSRI in response to the Demand, explicitly offering "to re-engage" with ERSRI "[s]hould a transaction

be announced or finalized, or circumstances otherwise change." A0076. ERSRI simply ignored Paramount's offer and filed its complaint instead. But as soon as ERSRI served its timely Second Demand in October once a credible basis had ripened around the transaction announced in July, Paramount promptly produced materials in response, and ERSRI never challenged the sufficiency of its productions. Paramount responded likewise to the demands of other stockholders who waited until the transaction had been announced to seek inspection. Paramount's timely production of materials without court intervention to all stockholders demonstrating a proper purpose at the time they served their demands shows that excluding post-Demand evidence is both efficient and vindicates the inspection rights of stockholders.

In re New Relic, Inc. further illustrates the fairness of limiting Section 220 litigation to evidence in existence at the time of the demand. C.A. No. 2023-1089-SEM, Tr. at 17:18-18:3 (Del. Ch. July 22, 2024) (TRANSCRIPT) at 6:3-7. There, plaintiffs served demands seeking records connected to a take-private merger of a public company, which was disclosed before, but closed after, the demands were served. *Id.* As part of its analysis, the court "emphasize[d] [that plaintiffs had a credible basis] ***'at the time of the demands' because those are the relevant dates***." *Id.* at 17:18-19 (emphasis added). The defendant sought to introduce post-demand evidence to vitiate the plaintiffs' asserted purpose, but the court declined to consider

that evidence, stating that "it would be inappropriate to consider the defendant's argument that documents produced in response to the demands have undermined the claimed wrongdoing." *Id.* at 17:19-18:3. *New Relic* thus illustrates that the baseline rule against the consideration of post-demand evidence restrains plaintiffs and defendants alike to preserve the stability and efficiency of Section 220 proceedings.

The lower court here stated that the "case-specific outcome makes sense" on the facts of *New Relic*, but declined to follow its holding because it "does not cite authority or formulate a broader principle that could be applied in other cases." Ex. A at 22. Although it did not cite any binding precedent (and, as the lower court acknowledged, this Court has yet to firmly issue any), *New Relic* did clearly and rationally apply the principle that evidence that postdates a demand cannot be admitted for purposes of establishing (or disproving) a stockholder's credible basis in a Section 220 action: not by a stockholder, and not by a corporation. Such a standard does not tilt the scales in favor of corporate defendants or in favor of stockholders. Instead, both stockholders and corporate defendants know in the first instance what information may be admitted as evidence, which eliminates the guesswork required under any other standard.

Besides preserving fairness, a rule limiting Section 220 litigation to pre-demand evidence in support of a stockholder's alleged credible basis will help keep

such litigation in check and encourage extrajudicial resolution of stockholder demands. After Paramount's proper rejection of ERSRI's premature April Demand, ERSRI filed this litigation and involved the court in the determination whether a proper purpose supports the demand rather than waiting for a transaction to materialize to "re-engage" as Paramount offered. This runs directly contrary to Section 220's purpose of discouraging repetitive litigation, which Delaware courts have repeatedly recognized. *See*, *e.g.*, *Leb. Cty. Emps' Ret. Fund v. Collis*, 287 A. 3d 1160, 1179 (Del. Ch. 2022) (describing the Court of Chancery's "efforts to encourage stockholders and companies to resolve books-and-records requests ***without litigation***") (emphasis added); *see also Martinez v. GPB Capital Holdings, LLC*, 2020 WL 3054001, at *9 (Del. Ch. June 9, 2020) ("[A]n entity should not be required to make multiple reviews of a defective demand following serial attempts to remedy such defects. Strict adherence 'furthers the interest of insuring prompt and limited litigation' of books and records actions and 'protects the right of the corporation to receive and consider a demand in *proper form* ***before litigation is initiated***.'") (emphasis added) (quoted source omitted).

The Vice Chancellor took the opposite view, expressing concern that limiting Section 220 litigation to pre-demand evidence could lead to wasteful "[s]erial enforcement actions" because each time there is non-prejudicial, post-demand information, a stockholder would need to "go back to square one and serve a new

demand." A0328. Such an outcome, however, is highly unlikely to follow a ruling in Defendant's favor here. In fact, if stockholders are compelled to follow the statutory requirements to ensure their demand is substantiated by a credible basis before seeking inspection, corporations will be compelled to promptly comply without court intervention or face consequences. *See, e.g.*, *Donnelly v. Keryx Biopharmaceuticals, Inc.*, 2019 WL 5446015, at *6 n. 84 (Del. Ch. Oct. 24, 2019) ("[C]orporations do have an affirmative statutory obligation to provide books and records, as appropriately demanded by their stockholders . . . I can readily imagine a situation where a legitimate books and records request, met by company intransigence ***leading to needless litigation, rises to bad faith and justifies sanctions***") (emphasis added); *cf. Alexandria Venture Invs., LLC v. Verseau Therapeutics, Inc.*, 2020 WL 7422068, at *10 (Del. Ch. Dec. 18, 2020) (noting that Section 220 encourages companies to "provide certain documents voluntarily without forcing stockholders to litigate over them"). The mere fact that a corporation can reject a demand says nothing about what does or should constitute a credible basis. *See* A0325-A0326 (minimizing Paramount's concerns over consequences of the Opinion below because "the corporation could simply reject the demand" and "need not fear a prolonged process" given the summary nature of Section 220 proceedings). By lowering the bar to establish a credible basis, the

Opinion below invites speculative demands that may or may not find substantiation before trial.

Besides the judicial inefficiency of permitting a stockholder to support its credible basis showing with post-demand evidence, such a rule would allow speculative, premature demands to proliferate, imposing undue burdens on corporations contrary to the legislative goals behind Section 220. As this Court has recognized, "[a]t some point, the costs of generating more information fall short of the benefits of having more information," such that "compelling production of information would be wealth-reducing." *Seinfeld*, 909 A.2d at 122-123. Recent trends in Section 220 litigation confirm the increase of Section 220 demands and the costs they impose on both corporate defendants and Delaware courts. *Bloomberg* recently conducted a review of Section 220 disputes between 2018 and 2021, finding that annual books and records litigation nearly doubled over that period to constitute 15% of Court of Chancery cases. Mike Leonard, *Investor Scrutiny Lawsuits Snarl Business Court's Breakneck Norm*, Bloomberg Law (Nov. 12, 2024), https://news.bloomberglaw.com/esg/investor-scrutiny-lawsuits-snarl-business-courts-breakneck-norm?source=newsletter&item=body-link&region=text-section. This wave of Section 220 demand litigation "ha[s] left the leading US forum for corporate cases deluged and distracted from more urgent matters, like litigation over deals set to close or imminent company meetings." *Id.* And as Vice Chancellor

Laster noted at the hearing in this case, "companies get a lot of demands. And law firms have three, four, five lawyers who basically respond to 220 demands. That's almost like a whole practice niche." A0451.

In response to this proliferation of vexatious stockholder litigation under Section 220, the Delaware legislature took action to rein in excessive 220 demands by passing amendments to Section 220, which the Governor subsequently signed into law. *See* S.B. 21, 85th Leg., 1st Sess. (2025) (requiring a stockholder to describe his purpose with "reasonable particularity"). The amendments to Section 220 heighten the standard for showing a proper purpose and tighten the relationship between that purpose and the information sought. S.B. 21 does not directly address the questions presented here regarding what types of information may be relied upon to support a credible basis, but it is consistent with Paramount's position in this case that stockholders should be required to establish a credible basis before serving demands. Limiting the credible basis test to evidence that existed at the time of the demand will disincentivize gamesmanship and—consistent with the legislative purpose of S.B. 21—keep costs to Delaware corporations from Section 220 demands in check.

Finally, besides economic costs imposed in the form of legal fees, a rule favoring compliance with premature 220 demands also harms Delaware corporations by potentially disrupting ongoing corporate transactions like the one at

issue here. For instance, a stockholder could serve a demand based on suspected wrongdoing in connection with a rumored transaction, opening corporate books and records related to that transaction to stockholders whose interests may run adverse to one or both parties thereto. Absurdly, this could give stockholders access to corporate records when even counterparties who are actively negotiating the transaction lack the same access. It could even, as some legal scholars have warned, compromise a corporation's competitively sensitive information. Lynn Bai & Sean Meyer, *No Peeking: Addressing Pretextual Inspection Demands by Competitor-Affiliated Shareholders*, 18 Va. L. & Bus. Rev. 229, 239 (2024) ("Even when a private corporation in Delaware follows best practices to safeguard its nonpublic information from competitors, the state's current legal landscape on shareholder inspection rights poses a significant vulnerability, enabling competitors to explore pretextual inspections."). In any event, a legal rule like the one announced below that incentivizes acquiescence with a demand for which a credible basis has not yet ripened would force corporations hammering out the details of high-stakes transactions to divert precious resources toward negotiating with stockholders and responding to demands, which might even derail the rumored transaction before it materializes, destroying the transaction's value proposition in its wake.

The economic incentives guiding the Delaware plaintiffs' bar cannot be relied upon to protect corporations from the costs of litigating against premature demands.

See A0326 (noting the plaintiffs' bar consists of "rational economic actors" who "want to get paid" and "must have a [viable] case to bring" in order to do so). In fact, plaintiffs' lawyers will be incentivized by the ruling below to fire off demands as soon as rumored transactions hit the presses: Although Section 220 litigation does not directly lead to monetary settlement, it marks the first step towards the type of plenary stockholder litigation that does, and plaintiffs' lawyers are therefore incentivized to put down their marker through the Section 220 demand process in order to jockey for position as lead counsel in lucrative plenary litigation. Indeed, the cost to plaintiffs and their lawyers of filing multiple, premature demands is minimal because the bulk of the cost of responding to and/or litigating demands routinely falls on corporations, which must gather and produce the documents.

Fixing the time of the demand as the proper lens for the credible basis inquiry does not transform the inquiry into a "subjective" test. A0327. Although "the stockholder must convince ***the court*** that an objectively credible basis to suspect wrongdoing exists" (A0328 (emphasis in original) (citation omitted)), it is not necessary to permit a stockholder to let facts develop up until trial to support a credible basis. Paramount has not and does not suggest that courts look into "what the ***stockholder*** knew when making the demand," A0327 (emphasis added); Paramount's position is to simply hold stockholders to their burden to "present 'some evidence' to suggest a 'credible basis' from which a court can infer that

mismanagement, waste or wrongdoing may have occurred," *Seinfeld*, 909 A.2d at 118, at the time they seek inspection. Excluding post-demand evidence of post-demand conduct does not render the inquiry "subjective."[2] It merely situates the objective inquiry in time as of the service of the demand, furthering the statutory objective of poising parties to resolve demands out of court.

Nor does this standard undermine judicial efficiency. Limiting the credible-basis inquiry to pre-demand evidence would not force "the Stockholder to have to start with a new demand and a new enforcement action" upon the discovery of new, probative evidence. A0328. On the contrary, it would discourage premature, speculative, and meritless demands and encourage stockholders to faithfully follow the statutory requirements to formulate ripe, well-substantiated demands that corporations will resolve out of court. If stockholders are put on notice that the Court of Chancery will evaluate the merits of their inspection demands as of the time of service, they will be required to wait to serve a demand until there is evidence to

[2] The cases cited below for the proposition that "the credible basis standard is not a subjective test" (Cert Op. at 19 & n. 41 (citing *Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1032 (Del. 1996) and *Marathon P'rs, L.P. v. M&F Worldwide Corp.*, 2004 WL 1728604, at *5 (Del. Ch. July 30, 2004))) simply say that a stockholder's subjective belief in corporate wrongdoing is neither relevant nor sufficient to establish a credible basis. Paramount does not dispute that.

support a proper purpose for inspection rather than serve premature demands based on speculation in hopes that a proper purpose will materialize before trial.[3]

In sum, a stockholder should not be able to serve a demand based on speculation, anticipating that it will be rejected by the corporation as lacking a credible basis, and then file suit in hopes that evidence supporting a credible basis will arise before trial. ERSRI has done so here, the Opinion affirmed their right to do so, and this Court should reverse.

[3] This was the course of action taken by the stockholder Gabelli in its 220 action against Paramount. *See* Dkt. #54 ("Implementing Order"), *Gabelli Value 25 Fund, Inc. v. Paramount Global*, No. 2024-1353-SEM (Del. Ch. Apr. 16, 2025).

II. THE COURT OF CHANCERY INCORRECTLY HELD THAT UNCORROBORATED NEWS ARTICLES BASED ON HEARSAY ESTABLISH A CREDIBLE BASIS TO SUPPORT WRONGDOING

A. Question Presented

Did the Court of Chancery err in ruling that hearsay statements in news articles attributed to unnamed, confidential sources were sufficiently reliable evidence to support ERSRI's demand? This question was briefed and decided below. *See* A0165-A0169; A0268; Ex. A at 27.

B. Scope of Review

The lower court's legal conclusions are reviewed *de novo*. *Nationwide Emerging Managers, LLC v. NorthPointe Holdings, LLC*, 112 A.3d 878, 889 (Del. 2015).

C. Merits of Argument

The lower court erroneously held that hearsay statements from confidential sources quoted in the news articles that ERSRI cited in its Demand provided evidence to establish its alleged credible basis to suspect wrongdoing. Ex. A at 27. Specifically, the lower court abandoned the fact-specific inquiry Delaware courts use in the Section 220 context to determine whether hearsay statements are reliable for these purposes, and instead adopted a general rule that hearsay statements in news articles are reliable so long as the outlet is reputable. This is both inconsistent

with Delaware precedent and ignores the inherent unreliability of anonymous sources commenting on an active deal process.

Generally, "news articles alone are insufficient bases on which to justify a Section 220 demand." *La. Mun. Police Emps.' Ret. Sys. v. Lennar Corp.*, 2012 WL 4760881, at *4 (Del. Ch. Oct. 5, 2012). Rather, news articles must be supported by corroborating evidence. *See Paul v. China MediaExpress Holdings, Inc.*, 2012 WL 28818, at *5 (Del. Ch. Jan. 5, 2012) (finding hearsay evidence sufficiently reliable when corroborated by external evidence suggestive of waste or mismanagement). While sufficiently reliable hearsay may be used in a books and records action, *NVIDIA Corp. v. City of Westland Police & Fire Ret. Sys.*, 282 A.3d 1, 22 (Del. 2022)

, hearsay that "lack[s] independent guarantees of trustworthiness and [is] inherently unreliable" may not be considered in a Section 220 proceeding. *Thomas & Betts Corp. v. Leviton Mfg. Co.*, 681 A.2d 1026, 1032 (Del. 1996) (discrediting hearsay evidence from a biased source).

Delaware law "does not endorse a categorical rule of law" on what constitutes sufficiently reliable hearsay in the 220 context. *Paul*, 2012 WL 28818, at *5. Instead, Delaware courts conduct a fact-specific inquiry to determine whether hearsay in news articles is sufficiently reliable to support a credible basis. For example, in *In re Facebook, Inc. Section 220 Litigation*, the court declined to "view[]

[news] reports as standalone evidence of wrongdoing" and instead found the credible basis standard satisfied because "many of the reports either have been acknowledged by the Company or have been corroborated by other investigations." 2019 WL 2320842, at *2 n.10 (Del. Ch. May 30, 2019). Similarly, in *In re Plains All American Pipeline, L.P.*, the court found that news articles supported a credible basis when they reported on federal government data. *See* 2017 WL 6016570, at *4-5 (Del. Ch. Aug. 8, 2017); *see also Okla. Firefighters Pension & Ret. Sys. v. Citigroup Inc.*, 2014 WL 5351345, at *3 (Del. Ch. Sept. 30, 2014) (granting a 220 demand that cited, in addition to news articles, evidence including a public statement from the CEO and results of an internal investigation that resulted in firings).

Here, the Senior Magistrate conducted just the sort of fact-specific inquiry ordinarily undertaken by the Court of Chancery in Section 220 actions before rejecting ERSRI's proffered news articles. A0398 ("Whether hearsay is sufficiently reliable such that it can, and should, be relied upon in this type of proceeding is a fact-intensive inquiry."). In so doing, she noted that there is a spectrum between "hearsay that is anonymous, uncorroborated, or contradicted by other evidence" and, "[o]n the safer end," "hearsay from known disinterested parties that is factually detailed." A0401-A0402. She determined that ESRI's proffered news articles fell far from the "safer end" of the spectrum.

In reaching the opposite conclusion, the Vice Chancellor painted with a broader brush, drawing any inferences in favor of the news articles ERSRI cites, *e.g.*, finding that "well-known news publications generally do not have a financial incentive to favor a particular party" and are thus "more persuasive evidence in general." Ex. A at 31. But this approach ignores the possibility that even reputable news sources can rely on sources that may be biased or otherwise unreliable for purposes of a Section 220 analysis.

The Opinion held that "[n]ews articles from reputable publications that rely on anonymous sources ***will generally be sufficiently reliable*** for a court to consider when assessing whether a stockholder has a credible basis to suspect wrongdoing." *Id.* at 34-35 (emphasis added). This conflicts not only with the fact-specific inquiry required to assess the credibility of hearsay statements adduced in support of a Section 220 demand, but also with other cases where courts have rejected demands reliant on news articles from the very same "well-known news organizations" lauded by the lower court. *Id.* at 35. *See, e.g.*, *Okla. Firefighters Pension & Ret. Sys. v. Amazon.com, Inc.*, 2022 WL 1760618, at *9 (Del. Ch. Jun. 1, 2022) (rejecting plaintiff's demand that was based on a set of "stale" news articles and "more recent pieces," including a *Wall Street Journal* article from two years prior); *Lennar*, 2012 WL 4760881, at *1, *3 (rejecting plaintiff's "demand letter [that] relied solely on []

[*Wall Street] Journal* articles").[4] Other jurisdictions have expressly rejected tying a hearsay statement's reliability to the character or reputation of the publication in which it appears. *See* A0402 ("The court [in *In re Intel Corporation Securities Litigation* in the Northern District of California] explained that an anonymous source was not reliable merely because it was referenced by a reputable media outlet.") (citing 2023 WL 2767779, at *21 (N.D. Cal. Mar. 23, 2023)).

Besides relying on the reputations of news outlets to credit the anonymous statements they publish, the lower court also drew on its own experience in finding ERSRI's proffered hearsay reliable:

> In an M&A setting like the one in this case, the individuals speaking to the reporters are ***often*** the parties' public relations firms, their investment bankers, and ***sometimes*** their lawyers. The sources ***can also be*** internal personnel, such as an in-house public relations person or someone from the investor relations department. The sources are not random people off the street. They are ***people who know what they are talking about***.

Ex. A at 36 (emphasis added). However, the Court of Chancery cites no Section 220 case law in considering the anonymous sources issue. *See id.* at 32-37. Instead, it cites two cases acknowledging the importance of anonymous sources to a free press

[4] The *Lennar* court distinguished the case from another, *La. Mun. Police Emps.' Ret. Sys. v. Countrywide Fin. Corp.*, which granted a Section 220 demand that corroborated a *Los Angeles Times* article with additional, statistical analysis and "implied that the news articles themselves were of limited probative value." *See Lennar*, 2012 WL 4760881, at *4 (citing *La. Mun. Police Emps.' Ret. Sys. v. Countrywide Fin. Corp.,* 2007 WL 4373116, at *2 (Del. Ch. Dec. 6, 2007)).

under the state and federal constitutions, which are inapposite to the reliability of the articles and statements at issue here. *See id.* at 33.

Paramount's cited caselaw demonstrates why ERSRI's proffered hearsay statements do not merit consideration in support of its purported proper purpose. For example, the court purported to distinguish *Thomas & Betts* because the hearsay at issue there was driven by an improper "financial incentive." Here, by contrast, the court reasoned that the ***news organizations*** who published the articles cited by ERSRI "put their reputations on the line." *Id.* at 33-34. But the publication of hearsay statements in a reputable outlet does not cleanse the underlying statements themselves of possible suspect incentives similar to those at issue in *Thomas & Betts*. Moreover, the lower court's opinion would be difficult to administer as the parties would get mired in tangential litigation over what makes a news outlet "reputable." Rival bidders, industry competitors, or even stockholders may have competing incentives to exaggerate how a potential deal has progressed or whether the terms of the deal are more or less favorable to either counterparty. Accordingly, courts should evaluate each hearsay statement in its full context and on its own terms as the Senior Magistrate did here. This settled, contextual inquiry shields the 220 proceeding from the competing incentives of an anonymous source to possibly mislead the press, investors, and the court to obtain a more favorable outcome. During a sensitive deal process where rumors proliferate, courts must be cautious in evaluating the

reliability of anonymous sources, especially when the sources could be motivated to sway the deal process by speaking with the press.

The Court of Chancery has recognized that vague allegations of general corporate wrongdoing similarly undercut a news article's reliability, even where the article is published by a reputable outlet. For example, in *Louisiana Municipal Police Employees' Retirement System v. Lennar Corp*. the plaintiff submitted two *Wall Street Journal* articles alleging that the defendant company was involved in an industrywide federal investigation, which the court found insufficient to substantiate a credible basis to suspect wrongdoing because neither of the articles actually implicated the defendant corporation in wrongdoing. *See* 2012 WL 4760881, at *4. In that respect, the articles rejected in *Lennar* resemble the ones proffered in this case inasmuch as the articles only present the insinuation of possible wrongdoing; not direct allegations thereof. For instance, ERSRI's cited news articles allege that director departures ***may*** have been due to disagreements about the potential Skydance transaction, or present conjecture about the favorability of the Skydance and other potential transactions. They do not directly implicate Paramount in wrongdoing. The Opinion below overlooks this fact.

Here, ERSRI cited articles with substantial indicia of unreliability, which should have been taken into account by engaging with their substance. *See* A0269. The articles rely almost entirely on unidentified confidential sources and other news

reports. *Id.* Since the sources are unidentified, it is impossible to know whether the "sources" are all the same people talking to different news outlets or multiple people. The articles do not provide information descriptive enough to paint a clear picture of the sources' relationships to the Skydance Transaction and instead use general descriptors like "sources," "Hollywood insiders," and "people familiar with the matter[s]" described in the Demand. *Id.* As the Senior Magistrate summarized below, "the anonymous sources are not bolstered by contemporaneous corroborative evidence, nor do the articles demonstrate indicia of reliability such as factual particulars, independent journalistic investigation, or descriptive information[.]" A0404. Put another way, the articles themselves do not substantiate that the sources "are people who know what they are talking about." Ex. A at 37.

The fact that some of the speculation may ultimately be born out does not change the analysis. The reliability of news articles should not be assessed through the lens of hindsight. *See id.* at 37. While future events may sometimes prove a reported rumor correct or corroborate an anonymous statement—and this indeed happened in some instances in this matter (*e.g.*, the rumored transaction with Skydance was eventually announced)—this does not justify the consideration of otherwise unreliable hearsay in compelling a corporation to open its books and records. For the same reasons discussed above, the evidence proffered in support of a Section 220 demand should be evaluated as of the time the demand is served.

Deeming hearsay quoted in news articles reliable for these purposes based on deference to publication standards will not enhance clarity, neither for stockholders intending to file 220 demands nor for companies weighing how to respond. When assessing a demand's validity in weighing whether to produce responsive documents, companies will have to engage in guesswork whether the sources cited "are people who know what they are talking about," whether particular journalists are reputable, and whether individual articles "appear careful" in their sourcing. Clarity on the credible basis standard is needed to preserve Section 220 as a meaningful alternative to immediate, plenary litigation. *See, e.g.*, *Seinfeld*, 909 A.2d at 120 ("The rise in books and records litigation is directly attributable to this Court's encouragement of stockholders, who can show a proper purpose, to use the 'tools at hand' to obtain the necessary information ***before*** filing a derivative action. Section 220 is now recognized as 'an important part of the corporate governance landscape.'") (emphasis added).

Nor would "the Company's rule . . . dramatically reduce the ability of stockholders to rely on news sources when seeking books and records." Ex. A at 35-36. As the facts on the ground progress from the realm of pure speculation to well-grounded narrative, people close to those facts will disclose them publicly. Indeed, for public companies like Paramount, the securities laws require it. Paramount is not seeking to preclude stockholders from relying on news articles, including those

that cite unnamed sources. Rather, following the fact-specific approach already exercised by Delaware courts focused on the reliability of hearsay statements and sources themselves—rather than on which publication happens to report on them—will ensure that stockholders satisfy the credible basis requirement.

CONCLUSION

For the reasons stated, the Opinion should be reversed and the lower court should be instructed to enter an Order in favor of Paramount denying ERSRI's inspection request.

MORRIS, NICHOLS, ARSHT
& TUNNELL LLP

/s/ Alexandra M. Cumings
Jon E. Abramczyk (#2432)
D. McKinley Measley (#5108)
Alexandra M. Cumings (#6146)
1201 N. Market Street
Wilmington, DE 19801
(302) 658-9200
jabramczyk@morrisnichols.com
dmeasley@morrisnichols.com
acumings@morrisnichols.com

Attorneys for Defendant Below/Appellant Paramount Global

SIMPSON THACHER
& BARTLETT LLP
Jonathan K. Youngwood
Meredith Karp
425 Lexington Avenue
New York, NY 10017
(212) 455-2000

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2025, the foregoing *Appellant's Opening Brief* was caused to be served upon the following counsel of record via File and Serve*Xpress*:

Michael Hanrahan
Corinne Elise Amato
Eric J. Juray
Stacey A. Greenspan
Seth T. Ford
PRICKETT, JONES & ELLIOT, P.A.
1310 King Street
Wilmington, DE 19801

/s/ Alexandra M. Cumings
Alexandra M. Cumings (#6146)